

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002392-MR

MARTHA Y. PATTERSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 00-FC-004641

DAVID L. PATTERSON AND
DENISE CLAYTON

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: DYCHE, GUIDUGLI AND KNOPF, JUDGES.

GUIDUGLI, JUDGE. Attorney, Katie Marie Brophy (Ms. Brophy) appeals on behalf of her client from an order of the Jefferson Family Court that disqualified Ms. Brophy from representing Martha Y. Patterson (Martha) in a dissolution of marriage action. We affirm.

Ms. Brophy contends that the Family Court Judge abused her discretion when she ordered counsel be disqualified from representing Martha by order entered August 16, 2000. We disagree. The record reveals the following: (1) that Martha and David L. Patterson (David) were married on May 15, 1997; (2) that

in 1998 David adopted Alexander Michael Patterson, a child born to Martha prior to their marriage from another relationship; (3) that Ms. Brophy represented David in the step-parent adoption proceedings in 1998; (4) that on June 8, 2000, David filed a petition for dissolution of marriage against Martha, and (5) that Ms. Brophy filed a responsive pleading on behalf of Martha indicating that she represented Martha in the dissolution proceedings.

On July 13, 2000, David filed a motion to disqualify Ms. Brophy from representing Martha in the dissolution action based upon her representation of David in the prior step-parent adoption proceedings. Ms. Brophy filed a response contending that her representation of David in the adoption case did not implicate or violate Supreme Court Rule (SCR) 3.130(1.9), and thus, David's motion should be denied. The Family Court disagreed and entered its order of August 16, 2000, disqualifying Ms. Brophy from further representing Martha in the dissolution action. This appeal followed.

In Ms. Brophy's appellate brief (page 2), she states "[i]t is Appellant's position herein, that the representation by the undersigned of David Patterson in the combined termination/step-parent adoption was in no way the "same or substantially" similar matter as the present dissolution action. Furthermore, in the representation of Appellee incident to the combined termination and step-parent adoption, no information was acquired from Appellee which would be protected by Rules 1.6 and 1.9(c) [SCR 3.130(1.6) and SCR 3.130(1.9(c))] that is material to

the present matter." SCR 3.130(1.9) addresses attorney-former client conflicts as follows:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation;

(b) Represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client consents after consultation.

(c) A lawyer who has formerly represented a client in a matter of whose present or former firm has formerly represented a client in matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known; or

(2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

Despite Ms. Brophy's contentions to the contrary, we believe her prior representation of David in the step-parent

adoption clearly implicates the rule as stated above. See Lovell v. Winchester, Ky., 941 S.W.2d 466 (1997).

The Jefferson Family Court did not abuse its discretion in disqualifying Ms. Brophy as counsel for Martha in the dissolution of marriage proceeding; thus, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Katie Marie Brophy
Louisville, KY

BRIEF FOR APPELLEE:

Jacqueline L. Chauvin
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