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Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000017-MR

BOBBIE CAUDILL

APPELLANT

v. APPEAL FROM MAGOFFIN CIRCUIT COURT
HONORABLE KIM C. CHILDERS, JUDGE
ACTION NO. 95-CI-00226

SALYERSVILLE NATIONAL BANK

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, THOMPSON AND WINE, JUDGES.

THOMPSON, JUDGE: Bobbie Caudill, Administratrix of Arnett Gertrude's estate, filed this action against Salyersville National Bank, alleging that the Bank aided and assisted Jack Scriber, acting under the authority of a power of attorney and as an authorized signatory on Gertrude's personal checking account, to convert \$414,000 in funds held by the Bank. The Bank defended on the basis that Scriber was an authorized signatory on Gertrude's account and that Scriber presented a valid and enforceable power of attorney which authorized him to cash the

certificates of deposit. A jury trial was commenced and, after hearing the evidence presented on behalf of the estate, the trial court granted the Bank's motion for a directed verdict holding that the signature card and the power of attorney precluded any action against the Bank.

Gertrude, a widower with no children, lived with her sister, Dovie Cisco and Scriber, her son. After Gertrude was diagnosed with cancer, in March 1995, she added Scriber to her checking account at the Bank as an authorized signatory and, on March 27, 1995, gave Scriber her power of attorney. The "Consumer Account Agreement" and the power of attorney were crucial to the trial court's decision to grant a directed verdict.

The Consumer Account Agreement was a standard form provided by the Bank and, in addition to its designation of Scriber as an authorized signatory, it stated that the account's purpose was "household."

The power of attorney included a general clause authorizing Scriber to "exercise or perform any act, power, duty, and right obligation whatsoever that I now have or may hereafter acquire. . . ." It further granted authority to "collect, receive, hold all such money . . . checks . . . certificate of deposits . . . payable" to Gertrude, "redeem certificate of deposits," "withdraw assets from any account" in Gertrude's name and to "transact every kind of business of whatever nature."

Paragraph twenty-two provided:

Interpretation and Governing Law. This instrument is to be construed and interpreted as a general durable power of attorney. The enumeration of specific powers herein

is not intended to, nor does it, limit or restrict the general powers herein granted to my agent. Paragraph headings are for convenience only and are not to be deemed to be part of this instrument. This instrument is executed and delivered in the State of Kentucky, and the laws of the State of Kentucky shall govern all questions as to the validity of this power and the construction of its provisions;

Despite the general provisions quoted, the estate contended at trial that the power of attorney was limited by paragraph six which provided:

Banking Powers. To make, draw, sign in my name, deliver and accept checks, drafts, receipts for moneys, notes, or other orders for the payment of money against, or otherwise make withdrawals from any commercial, checking or savings account which I may have in my sole name or in joint name with my spouse or other person(s), in any Bank or financial institution, for any purpose which my agent may think necessary, advisable or proper; and to endorse and negotiate in my name and deliver checks, drafts, notes, bills, certificates of deposit, commercial paper, money market instruments, bills of exchange or other instruments for the payment of money and to deposit same, as cash or for collection, and cash into any commercial, checking or savings account which I may have in my sole name or in joint name with my spouse or other person(s), in any Bank or financial institution and to carry on all my ordinary Banking business.

The transactions involving the present controversy occurred after March 1995, but prior to Gertrude's death in August 1995, and involved five checks written by Scriber and two certificates of deposits cashed by Scriber. The estate argues that paragraph six limited Scriber's authority to transfer funds held by the Bank only to Gertrude's personal account.

Three of the five checks were written on April 11, 1995. The first, written for \$5,000 payable to the Bank, was signed by Scriber as power of attorney. He received a cashier's check that was deposited into Scriber's bank account. On the same date, he signed a second check as power of attorney for an additional \$5,000 that was also deposited into Scriber's bank account. The third check was cashed for \$150,000 and was payable to Dovie Cisco with a "gift" notation on the remitter line. This check was deposited into Cisco and Scriber's joint account.

The fourth check was written on July 6, 1995, payable to the Bank in the amount of \$90,000 most of which was deposited into Scriber and Cisco's joint bank account. On the same date, Scriber cashed two certificates of deposit owned by Gertrude, one for \$55,000 and the second for \$100,000. Because the certificates of deposit were redeemed prior to their maturity date, an early withdraw penalty of \$3,714.51 was assessed. The proceeds from the certificates of deposit were deposited into Scriber and Cisco's joint account.

The fifth check dated July 7, 1995, in the amount of \$90,000 was deposited into Scriber's savings and checking accounts and he was given cash in the amount of \$3,000.

After Gertrude's death, Gertrude's sister, Amanda Caudill, was appointed as administratrix. She filed a complaint against Scriber and Dovie Cisco alleging that they had converted Gertrude's funds by Scriber's exercise of authority beyond that granted by the power of attorney. Subsequently, the complaint was

amended to include the Bank as a defendant alleging that it had aided and assisted Scriber in converting Gertrude's funds.

When the trial commenced against the Bank in November 2007, Amanda Caudill, Jack Scriber, and Dovie Cisco had died and Bobbie Caudill had been appointed as administratrix. The claims against Scriber and Cisco had been settled and those claims dismissed leaving only the estate's claims against the Bank.

At trial, Scriber's deposition was introduced. He testified that Gertrude entrusted the management of her financial affairs to him and instructed him that she desired to dispose of her estate to him and his mother. According to his testimony, Gertrude requested that a power of attorney be prepared. He recalled that when he requested that the certificates of deposit be redeemed, he presented the power of attorney to a Bank employee who had it approved by a superior.

The estate introduced testimony from Amanda Caudill and Ruth Gertrude who both described Gertrude's frail physical condition when the power of attorney was executed and testified that it was given to Scriber for the limited purpose of paying her bills.

Donna Sayler, president of the Bank, testified that, although an authorized signatory on a bank account is not the owner, the Bank was required to honor the signature because it had no knowledge that Scriber was violating a fiduciary duty or acting beyond the scope of the power of attorney. She reviewed

the power of attorney when presented and concluded that it gave Scriber unlimited power, including access to Gertrude's account.

The estate also offered the expert testimony of James Taylor who opined that the Bank breached a fiduciary duty to Gertrude to guard against misappropriation of her funds but acknowledged that there was no document or trust instrument that would impose such a duty. The premise upon which his opinion was based was that the three checks written on April 11, 1995, and the transactions on July 6, 1995, should have "signaled" to the Bank that Scriber's actions were a breach of fiduciary duty to Gertrude. He further opined that paragraph six of the power of attorney limited Scriber's authority.

After the estate closed its case, both parties moved for a directed verdict. The trial court held that cashing the checks and depositing the proceeds into Scriber's accounts did not constitute notice to the Bank that Scriber converted the funds. It further held that the signature card authorized Scriber to sign the checks, and that the power of attorney authorized Scriber to liquidate the certificates of deposit and deposit the proceeds into Scriber's and his mother's personal account.

The standard of review of a trial court's granting of a motion for a directed verdict is well established.

On a motion for directed verdict, the trial judge must draw all fair and reasonable inferences from the evidence in favor of the party opposing the motion. When engaging in appellate review of a ruling on a motion for directed verdict, the reviewing court must ascribe to the

evidence all reasonable inferences and deductions which support the claim of the prevailing party. *Meyers v. Chapman Printing Co., Inc.*, Ky., 840 S.W.2d 814 (1992). Once the issue is squarely presented to the trial judge, who heard and considered the evidence, a reviewing court cannot substitute its judgment for that of the trial judge unless the trial judge is clearly erroneous. *Davis v. Graviss*, Ky., 672 S.W.2d 928 (1984).

Bierman v. Klapheke, 967 S.W.2d 16, 18 (Ky. 1998). Having reviewed the record, we conclude that the trial court properly sustained the Bank's motion for directed verdict.

We emphasize that Scriber's liability as a fiduciary is not an issue on appeal and the cases cited by the estate as to a fiduciary's liability are irrelevant. As a general rule, a fiduciary relationship is "founded on trust or confidence reposed by one person in the integrity and fidelity of another and which also necessarily involves an undertaking in which a duty is created in one person to act primarily for another's benefit in matters connected with such undertaking."

Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 485 (Ky. 1991).

It is the consistent view that the relationship between a bank and a depositor is one of debtor-creditor and ordinarily does not impose a fiduciary duty upon the bank. *de Jong v. Leitchfield Deposit Bank*, 254 S.W.3d 817 (Ky.App. 2007); *Steelvest, Inc.*, 807 S.W.2d at 485. Because there was no document or trust arrangement that established a fiduciary relationship between the Bank and Gertrude, Gertrude's relationship to the Bank was simply as a depositor; therefore, the Bank did not owe her a fiduciary duty.

The Bank's liability to the estate must rest upon its knowledge of Scriber's breach of his fiduciary duty owed to Gertrude or that it acted in bad faith.¹ Our legal premise is founded in our statutory law codified in KRS 386.120:

If a fiduciary makes a deposit in a bank or trust company to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him if he is empowered to endorse them, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank or trust company receiving the deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary. The bank or trust company may pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless it receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the deposit or in drawing the check or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

The definition of bad faith as used in the context of banking transactions was articulated in *Taylor v. Citizens Bank of Albany*, 290 Ky. 149, 160 S.W.2d 639 (1942). Bad faith "does not necessarily involve furtive or evil motives, but has a commercial sense of disregard of and refusal to learn the facts when available; and that the circumstances and conditions may be so cogent and obvious that to remain passive amounts to bad faith." *Id.* at 641.

¹ The estate has made recurrent references to KRS 355.3-307(2)(b) with no explanation regarding its relevance. Regardless of its reasoning for referring this Court to the statute, it fails to recognize that the provision cited was not added until 1997, two years after the transactions in question. Therefore, we refrain from further comment on the application of that provision.

Although the estate produced a plethora of evidence that Scriber was of questionable character, there was no evidence that the Bank acted in bad faith. To the contrary, the undisputable evidence was that its actions were in conformity with the legal authority granted by Gertrude to Scriber.

There is no dispute that the power of attorney was validly executed. By its explicit terms, it conferred general unlimited authority upon Scriber to transact all financial affairs for Gertrude. Although the estate relies on paragraph six and urges its interpretation in isolation, the entire instrument evidences Gertrude's intent to bestow unlimited authority upon Scriber to conduct her financial affairs. *See Ingram v. Cates*, 74 S.W.3d 783 (Ky.App. 2002). The purpose of the power of attorney was to confer general powers and was not limited by any of the specific powers granted.

In addition to the general power of attorney, Scriber was an authorized signatory on Gertrude's account. Although designated as a household account, there was unrefuted testimony that the designation meant it was a personal account, not a restriction on how the funds could be expended. Under the Consumer Account Agreement, Scriber was given all rights to make withdrawals and deposits and, in accordance with the terms of the signature card, the Bank was obligated to honor any checks written by Scriber on Gertrude's account. Indeed, had it refused to do so, the Bank was subject to liability for wrongful dishonor pursuant to KRS 355.4-402.

In summary, there was no evidence that the Bank acted in bad faith or with knowledge that Scriber breached his fiduciary duty when it conducted the financial transactions concerning Gertrude's account. It acted pursuant to a valid power of attorney and Consumer Account Agreement. Although the estate is critical of Gertrude's decision to authorize Scriber's general authority to access her financial affairs, the Bank was not obligated to look beyond the language of the power of attorney to determine the extent of the power. *Parton v. Robinson*, 574 S.W.2d 679 (Ky.App. 1978). We reiterate the view expressed in *Pulliam v. Pulliam*, 738 S.W.2d 846, 848 (Ky.App. 1987), that a bank has no duty to meddle into the affairs of its account holders and echo the federal court's observation in *Long v. Watkins*, 271 F.Supp. 630, 634-635 (D.C. Ky. 1967), as to the responsibility of a bank regarding the financial decision of its depositors, including the appointment of a fiduciary:

A depositor has a right to rely upon the bank for the security of deposits entrusted to it. He must also recognize the limits of the bank with respect to security for the money deposited. The bank keeps the money secure and under the direction of the depositor. It has no personnel equipped by training to investigate fiduciaries having legal authority to withdraw funds from the depositor's account. While the bank is held to a strict accountability, the law does not impose upon it the duty of insuring the depositor's funds against the depredations of a corrupt or careless fiduciary. For this reason courts should be slow to adjudge responsibility upon a bank in the absence of clear and convincing proof of actual knowledge of fraud. If banks were held to a stricter accountability with each of their hundreds or possibly thousands of depositors, they could not continue long in business. Certainly they should not be charged with

withholding money on checks or drafts, which on their face are regular and in accord with the fiduciary arrangement, until investigation is made.

The liability for the conversion of the funds, if any, rests with Scriber and Cisco, not the Bank.

Based on the foregoing, the judgment of the Magoffin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Barbara Anderson
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BRIEF FOR APPELLEE:

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