

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002423-MR

GLORIA EDWARDS

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 07-CI-00423

PAUL K. CROLEY, II;
CROLEY & ASSOCIATES, P.S.C.;
AND DON MOSES

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; MOORE AND THOMPSON, JUDGES.

TAYLOR, CHIEF JUDGE: Gloria Edwards brings this appeal from September 30, 2008, and October 1, 2008, orders of the Whitley Circuit Court granting summary judgment dismissing Edwards' complaint. We affirm.

On July 7, 2006, Kenneth Reynolds died as a result of a motor vehicle accident in Campbell County, Tennessee. Reynolds was a resident of Jellico,

Tennessee, and was survived by a daughter (Gloria Edwards), a sister (Betty Price), a niece (Tammy Terry), and various other nieces and nephews.

Two days after the accident, Price and Terry visited the law office of Paul K. Croley, II, in Williamsburg, Kentucky. During the meeting, Price represented that she was Reynolds' only legal heir. Price and Terry then entered into a contract of legal representation with Croley as to claims arising from Reynolds' motor vehicle accident. Croley also referred Price and Terry to another attorney, Don Moses, to assist them in the administration of the Reynolds' estate. Moses was licensed to practice law in Kentucky and Tennessee and had offices in Kentucky and Tennessee. Moses was, however, a resident of Tennessee.

In August 2006, Price and Terry met Moses at his law office in Williamsburg, Kentucky. On August 25, 2006, Moses escorted Price and Terry to the clerk's office of the Chancery Court in Campbell County, Tennessee, to commence the administration of Reynolds' estate. Price and Terry were subsequently appointed co-administrators of Reynolds' estate by the Chancery Court in Tennessee.

Croley ultimately negotiated a settlement for Reynolds' wrongful death claim with the tortfeasor's motor vehicle insurance carrier for the liability carriers' policy limits of \$100,000. Croley then made the following distributions from the proceeds: \$33,300 to Croley for attorney's fees, \$740.11 to Croley in litigation costs, and \$8,558 to a local funeral home for funeral expenses. Croley issued a check for the remaining proceeds to Reynolds' estate and to Betty Price,

as co-administrator of the estate, in the amount of \$57,101.89. From this amount, Moses was paid by the estate 5 percent of the net proceeds as attorney's fees for his assistance with administration of Reynolds' estate.

Shortly after Reynolds' estate had been settled, Reynolds' daughter, Gloria Edwards, contacted Moses. She had not previously been identified by Price or Terry as a lawful heir of Reynolds. Upon discovering that Reynolds' estate was settled and that the funds from the wrongful death settlement were distributed, Edwards filed a complaint in the Whitley Circuit Court against Price, Terry, Moses, Croley and Croley & Associates, P.S.C., (collectively referred to as defendants). Therein, Edwards alleged that the defendants negligently failed to discover that she was Reynolds' legal heir and committed conversion of the wrongful death settlement proceeds of \$100,000. Edwards further alleged that Croley and Moses breached their respective fiduciary duties to the Reynolds' estate.¹

Moses and Croley both filed motions for summary judgment. Moses alleged that he owed no duty to Edwards and that the Whitley Circuit Court lacked personal jurisdiction over him. Croley alleged that he neither owed nor breached any duty to Edwards. The circuit court ultimately granted summary judgment in favor of Moses and Croley and dismissed Edwards' complaint. This appeal follows.

¹ Betty Price and Tammy Terry have not been located and have not entered an appearance in the circuit court action.

Edwards contends that the circuit court erred by rendering summary judgment dismissing her claims against Croley and Moses. Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). For the reasons hereinafter elucidated, we are of the opinion that the circuit court properly rendered summary judgment dismissing Edwards' complaint against both Croley and Moses. We initially address our reasoning for affirming the summary judgment against Croley and then against Moses.

In her complaint, Edwards alleged that Croley was negligent in his representation of the Reynolds' estate and breached his fiduciary duty to the estate by failing to discover that Edwards was Reynolds' legal heir and, thus, entitled to the settlement proceeds of \$100,000. Edwards also claimed that Croley committed the tort of conversion as to the settlement proceeds.

To begin, the facts in the record do not support the claim that Croley committed the tort of conversion. The elements of conversion are:

(1)[T]he plaintiff had legal title to the converted property; (2) the plaintiff had possession of the property or the right to possess it at the time of the conversion; (3) the defendant exercised dominion over the property in a manner which denied the plaintiff's rights to use and enjoy the property and which was to the defendant's own use and beneficial enjoyment; (4) the defendant intended to interfere with the plaintiff's possession; (5) the plaintiff made some demand for the property's return which the defendant refused; (6) the defendant's act was the legal

cause of the plaintiff's loss of the property; and (7) the plaintiff suffered damage by the loss of the property.

Meade v. Richardson Fuel, Inc., 166 S.W.3d 55, 58 (Ky. App. 2005)(quoting *Ky. Ass'n of Counties All Lines Fund Trust v. McClendon*, 157 S.W.3d 626, 632 (Ky. 2005)). The record is devoid of any facts indicating that Croley intended to interfere with Edwards' possession of the settlement proceeds or that Croley's "act was the legal cause of . . . [Edwards'] loss of property." *Id.* In his deposition, Croley stated that he did not know of Edwards' existence prior to the settlement and, in fact, was informed by Price that she was Reynolds' only legal heir. Since Croley did not represent the estate as concerned its administration in Tennessee, we believe Croley was duty bound to turn over the net settlement proceeds to the Reynolds' estate. Whether Croley complied with Tennessee law regarding estate administration and the handling of the settlement proceeds is a matter outside of the jurisdiction of Kentucky courts. Thus, we believe the circuit court properly rendered summary judgment dismissing Edward's claim that Croley committed the tort of conversion.

There are also no facts in the record demonstrating that Croley was negligent as to the wrongful death claim or breached a fiduciary duty. In his deposition, Croley stated that he asked Price and Terry if Reynolds was married or had any children. Croley specifically stated that Price and Terry indicated that Reynolds was not married and had no children. Moreover, Croley pointed out that Price and Terry presented an obituary listing from a local newspaper that listed no

children and that named Price as the only surviving sibling. Additionally, it is undisputed that Croley forwarded the net settlement proceeds to the Reynolds' estate, after payment of funeral expenses and attorney fees. Consequently, we are of the opinion that the circuit court properly rendered summary judgment dismissing Edwards' claims of negligent representation and breach of fiduciary duty against Croley.²

As concerns Moses, at all times relevant herein, he was a resident of Tennessee. Under Kentucky's long-arm statute (KRS 454.210(2)(a)), the courts of this Commonwealth may exercise personal jurisdiction over a nonresident "who acts directly . . . as to a claim arising from" the nonresident's:

1. Transacting any business in this Commonwealth;
2. Contracting to supply services or goods in this Commonwealth;
3. Causing tortious injury by an act or omission in this Commonwealth;
4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of substantial revenue within the Commonwealth[.]

² We also emphasize that both the decedent (Kenneth Reynolds) and the tortfeasor were residents of Tennessee, as well as the location of the accident. Any wrongful death claim arising from this accident would be governed by Tennessee law and subject to the jurisdiction of Tennessee courts, not Kentucky, in our opinion.

KRS 454.210(2)(a).

It has been recognized that “[t]he purpose of this statute [KRS 454.210] is to permit Kentucky courts to exercise personal jurisdiction over nonresident defendants while complying with federal constitutional due process.” *Cummings v. Pitman*, 239 S.W.3d 77, 84 (Ky. 2007). Moreover, the grant of *in personam* jurisdiction in KRS 454.210 was intended “to reach the outer limits of the due process clause.” *Id.* While KRS 454.210(2)(a) might permit a Kentucky court to exercise personal jurisdiction over a nonresident, it must initially be determined whether the assertion of such jurisdiction satisfies the “minimum contacts” requirement of the federal due process clause. *Id.* at 85. Under this requirement, a nonresident must have “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Id.* at 85 (footnote omitted).

To satisfy the due process clause’s requirement of minimum contacts, the following three prong test must be satisfied: (1) the nonresident must have “purposefully availed himself of the privilege of acting within the forum state or causing a consequence in the forum state,” (2) the cause of action must arise from the nonresident’s activities in the forum state, and (3) the nonresident must have a “substantial enough connection to the forum state to make exercise of jurisdiction . . . reasonable.” *Id.* at 85.

While we agree that the first and third prongs are easily satisfied in this case, the second prong – the cause of action must arise from the nonresident’s

activity in the forum state – is not satisfied. Under the second prong, the “operative facts of the controversy” must be related to the nonresident’s contact with the forum state. *Id.* at 88. Here, Moses was retained by Price and Terry as a licensed Tennessee attorney to assist in the administration of the Reynolds’ estate in Tennessee. Thus, any negligence, breach of fiduciary duty, or conversion allegedly committed by Moses was inextricably tied to his representation in such capacity. While his initial meeting with Price and Terry was in Kentucky, the administration of the Reynolds’ estate and all legal duties related thereto undisputedly took place in Tennessee. Thus, “the operative facts of the controversy” surrounding the administration of Reynolds’ estate took place in Tennessee and not in Kentucky. Under these circumstances, we conclude that Kentucky does not have personal jurisdiction over Moses. For this reason, we are of the opinion that the circuit court properly rendered summary judgment dismissing Edwards’ claims against Moses.

We view Reynolds’ remaining arguments as moot.

In sum, we hold that the circuit court properly rendered summary judgment dismissing Reynolds’ complaint as to Croley and Moses.

For the foregoing reasons, the orders of the Whitley Circuit Court are affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
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