

STATE OF MICHIGAN
COURT OF APPEALS

KLINGMAN FURNITURE COMPANY, INC.,

Plaintiff-Appellant,

v

LESLIE E. TASSELL TRUST,

Defendant-Appellee,

and

KRYSTYNA COTTER,

Defendant.

UNPUBLISHED

February 12, 2009

No. 282727

Kent Circuit Court

LC No. 07-002130-CK

Before: Markey, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Plaintiff appeals by right from the order of the circuit court granting defendants' motions for summary disposition according to MCR 2.116(C)(8) and MCR 2.116(C)(10).¹ We affirm.

Plaintiff's argues on appeal that Michigan law should be applied to the case or that defendant should be estopped from applying Florida law to the dispute. We conclude, however, that plaintiff's claim against defendant would be barred by either Florida or Michigan law. We review de novo issues of summary dispositions and conflict of laws. *Frederick v Federal-Mogul Corp*, 273 Mich App 334, 336-337; 733 NW2d 57 (2006). When reviewing a motion brought under MCR 2.116(C)(10),² the court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary

¹ Cotter was a codefendant in this suit, but during appeal the parties stipulated to dismiss her. This opinion's references to defendant include only the Leslie E. Tassell Trust.

² Defendant Cotter moved for summary disposition under both MCR 2.116(C)(8) and MCR 2.116(C)(10), but the Leslie E. Tassell Trust moved for summary disposition only under MCR 2.116(C)(10). This appeal will be considered according to MCR 2.116(C)(10).

disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005).

Leslie E. Tassell died in March 2004. He had an open account with plaintiff where he would select furniture, it would be ordered and delivered, and then he would be sent a bill. Tassell and his long time companion, Krystyna Cotter, purchased several homes together. Cotter was also able to select furniture on the open account, provided that Tassell approved the purchase. In 2003, Cotter selected furnishings for a new home in Fort Lauderdale, Florida that Tassell purchased for her. There was testimony that plaintiff did not obtain Tassell's consent for these purchases, but the formation of a contract is not the subject of this appeal. The furniture that Cotter ordered for the Florida home was not delivered and billed to Tassell until after his death. Payment for these furnishings is the basis of this lawsuit.

The circuit court applied Florida law to this suit because domicile fixes jurisdiction for the purposes of settlement of a decedent's affairs. The circuit court also correctly found Florida law would bar the plaintiff's claim. The relevant Florida statute provided:

After the death of a grantor, no creditor of the grantor may bring, maintain, or continue any direction against a trust described in [§] 733.707(3), the trustee of the trust, or any beneficiary of the trust that is dependent on the individual liability of the grantor. Those claims and causes of action against the grantor shall be presented and enforced against the grantor's estate" [Fla Stat 737.3061(1).]³

Under the plain language of this Florida statute, plaintiff's claim would be barred because plaintiff had to bring its claim against Tassell's estate rather than against defendant.

The circuit court further correctly found that even if it applied Michigan law, plaintiff's claim against defendant was barred. Michigan law also prohibits claims against a trust if the decedent's estate has assets sufficient to cover the claim. MCL 700.7501 provides:

The property of a trust over which the settlor has the right without regard to the settlor's mental capacity, at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to all of the following, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses, claims, and allowances: . . .

³ This section was repealed and reenacted with minor changes as Fla Stat 736.1014(1), effective July 1, 2007. The present suit was filed on March 2, 2007, when the repealed statute was in effect. As a result the repealed statute applies to this case.

An enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses. [MCL 700.7501(1)(b).]

Tassell's estate in Florida was valued at an amount far more than sufficient to satisfy plaintiff's \$48,024 claim.

Thus, the circuit court correctly granted summary disposition to defendant because plaintiff's claim is barred under both Florida or Michigan law. Accordingly, we need not resolve whether the circuit court was correct in concluding that Florida law should apply. See *Netter v Bowman*, 272 Mich App 289, 308; 725 NW2d 353 (2006) (this Court will not reverse the lower court if it reaches the correct result even if for a wrong reason).⁴

We affirm. Defendant being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey

/s/ William B. Murphy

/s/ Stephen L. Borrello

⁴ In light of our conclusion that plaintiff's claim is barred by either Florida or Michigan law, we need not reach plaintiff's argument that defendant should have been estopped from invoking Florida law.