[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14785
Non-Argument Calendar

D.C. Docket No. 0:18-cv-61128-BB

FADER THOMPSON REICHARD,
individually and as Beneficiary of the Amended and Restated James E. Reichard Trust u/a/d August 12, 2009, as amended,

Plaintiff - Appellant,

versus

HENDERSON COVINGTON MESSENGER NEWMAN & THOMAS CO., L.P.A.,
an Ohio Legal Professional Corporation,
DAVID K. HOLMQUIST,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(July 16, 2019)

Before WILSON, BRANCH, and DUBINA, Circuit Judges.

PER CURIAM:

Plaintiff/Appellant Fader Thompson Reichard ("Reichard") appeals the district court's order granting the defendants' motion to dismiss. The dispute centers on a legal malpractice claim lodged against an Ohio law firm and one of their attorneys, individually, for services rendered in executing a trust for Reichard's late husband. However, the Reichards later moved from Ohio to Florida, where the alleged negligence occurred. The singular issue on appeal is straightforward: Did the district court properly determine that Ohio law, rather than Florida law, governs the claim, and therefore, that Reichard lacked standing as a third-party beneficiary to pursue this claim? If Ohio law governs, her claim fails. But if Florida law governs, with no requirement of privity, then her claim can move forward. After review, we agree with the district court that because Ohio law applies, Reichard lacks standing and we thus affirm the dismissal.

I. BACKGROUND

A. Factual history

Reichard's late husband, James, initially retained the defendants to prepare various trust documents sometime around 2009 while the Reichards were both Ohio residents. In 2010, however, they moved to Florida, and James executed an

amendment to his trust in 2015. This amendment, along with the original 2009 trust document, contained a choice-of-law provision dictating that Ohio law shall apply. In 2017, James executed a second amendment and executed a Last Will and Testament. These documents were silent as to choice of law. A Florida court later found the 2015 and 2017 trust amendments invalid for unrelated reasons. Reichard, as the intended beneficiary of her late husband's trust, now sues alleging negligence in the defendants' preparation of the Will and the trust, which she says failed to comply with Florida requirements and has subjected her portion of the trust residue to estate tax liability.

B. Procedural history

Reichard filed suit in the Southern District of Florida on May 18, 2018. On August 15, 2018, defendants moved to either transfer venue to the Northern District of Ohio on the basis of *forum non conveniens*, or alternatively, for the court to dismiss the case. On October 16, 2018, the district court granted the defendants' motion to dismiss, finding that Ohio law, and not Florida law, was determinative, and that under Ohio law, because Reichard was a third-party beneficiary of her late husband's trust, she lacked privity with the defendants, and thus lacked standing to pursue the claim. This appeal followed.

II. ISSUE

There is one issue on appeal:

(1) Whether the district court erred in granting the motion to dismiss based on its finding that Ohio law controlled the claim and that it did not grant Reichard standing as a third-party beneficiary?

III. STANDARD OF REVIEW

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when the plaintiff's allegations allow a court to "draw [a] reasonable inference that defendant is liable for [the] misconduct alleged." *Id.* When reviewing a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations therein as true. *Brooks v. Blue Cross & Blue Shield of Fla. Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

A grant of a 12(b)6 motion to dismiss will be reviewed *de novo*, also abiding by the district court's obligation to accept the plaintiff's factual allegations as true and construing the complaint in the light most favorable to the plaintiff. *Glover v. Liggett Group, Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006).

IV. DISCUSSION

In undertaking its choice-of-law analysis, the district court began with the substantive law of the forum state, which in this case was Florida. With no dispute from the parties, the district court applied Florida's "most significant relationship" test for conflicts of law, which dictates a two-part inquiry to determine which state's law shall govern. *Cont'l Cas. Co. v. The Cura Grp.*, No. 03-618846-CIV-ALTONAGA/McAiley, 2007 WL 9700733, at *5 ("In effect, *Bishop* [*v. Fla. Specialty Paint Co.*, 389 So. 2d 999, 1001 (Fla. 1980)] creates a two-part test in which the Court must first evaluate each state's contacts with the parties and the alleged incident and then determine, in light of the policy considerations set forth in section 6 of the Restatement, which state has the most significant contacts to the matter."). The district court found, first, that an analysis of the parties' contacts to each forum did not break in either party's favor, because both Ohio and Florida had significant contacts to Reichard's claim. Reichard does not dispute its analysis and findings up to this point.

Secondly, the district court found that, on the policy considerations, Ohio had the stronger interest in regulating its lawyers, and that its interest in regulating its own lawyers outweighed Florida's interest in regulating out-of-state lawyers.

Thus, Ohio law controlled, and with it, its requirement for privity that Reichard was unable to meet. Thus, the district court dismissed her case.

On appeal, Reichard argues that the district court erred because Eleventh Circuit case law has previously held that, in negligence cases, parties do not have a justified expectation to protect, and therefore, this factor cannot play into the choice-of-law analysis. *Grupo Televisa, S.A. v. Telemundo Communications Group, Inc.*, 485 F.3d 1233, 1244 (11th Cir. 2007) ("The district court also appears to have accorded too much weight to what the 'justified expectations of the parties' were. . . We also note that intentional torts are not like negligent torts. When parties commit a negligent act, they give no thought to the legal consequences of their conduct or to the particular law that may apply." (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6(2) cmt. G (1971))). According to Reichard, this general reasoning rendered it improper for the district court to rely on Ohio's interest in regulating its lawyers as the predominant policy consideration in the choice-of-law analysis.

The defendants counter that under Ohio law, the parties never moved the principal place of administration of the trust to Florida when the Reichards moved, and furthermore, the Ohio choice of law provision in the 2015 trust amendment indicated that the parties had thought through the legal consequences of their

actions, which should afford some weight to the district court's finding that Ohio law controlled.

As a preliminary matter, the defendants' argument regarding the place of administration is a bit of a red herring. The principal place of administration was one of four factors considered in the district court's contacts analysis, before it reached the policy analysis. The district court found that the contacts analysis was inconclusive before it moved to the policy analysis, which is the subject of this appeal. Thus, the defendants' argument about the place of administration does not meaningfully counter Reichard's contention that the district court erred in its policy analysis. Nonetheless, we conclude that the district court did not err in its policy analysis for other reasons.

Reichard's argument takes too broad a view of the expectations prong in the choice-of-law test. This prong is not intended to protect all expectations; it protects *justified* expectations. As the district court noted, Ohio law has specifically considered, and rejected, the needs of third-party beneficiaries in favor of attorneys' needs to serve their own clients. *Shoemaker v. Gindlesberger*, 887 N.E.2d 1167, 1171 (Ohio 2008) ("Otherwise, an attorney's preoccupation or concern *with potential negligence claims* by third parties might diminish the quality of legal services provided to the client if the attorney were to weigh the

client's interest against the possibility of third-party lawsuits.") (emphasis added). In other words, Ohio law contemplates the concern articulated in *Grupa Televisa*, but specifically encourages Ohio attorneys to discount third-party liability concerns, including negligence claims, in favor of pursuing zealous representation of its clients.

Even assuming, *arguendo*, that *Grupa Televisa* controlled under these facts, the outcome of a negligence suit is not the only expectation that the parties seek to protect. The parties themselves contemplated a wide range of possible conflicts and included broad language in the trust and one of the trust amendments dictating a desire for Ohio law to govern. (D.E. 1-4 at 17) ("This instrument shall be interpreted, construed, and administered in accordance with the laws of the State of Ohio, regardless of the domicile of any beneficiary."). The parties doubled down on this provision during the 2015 amendment of the trust, even after the Reichards had moved to Florida. (D.E. 1-5 at 2) ("This trust shall be interpreted and controlled in accordance with Ohio trust law as if signed and delivered in the State of Ohio."). Accordingly, even if the parties did not specifically contemplate a negligence action, and even though they failed to include a choice-of-law provision in the Last Will and Testament, they still signaled a direct preference for Ohio law to control in nearly any conceivable dispute involving the trust.

Furthermore, this stated desire plays almost directly into some of the other policy considerations underlying the district court's decision. In addition to protecting the justified expectations of the parties, Florida utilizes six other factors in analyzing the policy considerations. Two other factors are pertinent here: first, the certainty, predictability, and uniformity of result; and second, the ease in the determination and application of the law to be applied. Predictability and uniformity would favor choosing Ohio law to govern Ohio lawyers, rather than subjecting lawyers to a patchwork of out-of-state laws anytime their clients changed states, especially when the clients never signaled any desire to change their choice-of-law preference after moving. Additionally, the ease of determination points toward Ohio when, as here, the parties expressly contemplated Ohio law, and the instruments in question were all drafted by Ohio-based defendants.

V. CONCLUSION

Because Ohio has the more compelling policy interests at stake in this dispute, we affirm the well-reasoned order of the district court. The district court correctly found that Ohio law controlled the dispute, Reichard lacked standing as a third-party beneficiary under Ohio law, and the case was due to be dismissed.

Because we affirm on the choice-of-law finding, we need not reach the defendants' argument that Reichard would also lack standing under Florida law.

AFFIRMED.