Third District Court of Appeal

State of Florida

Opinion filed October 2, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-159
Lower Tribunal No. 16-8291

William P. Sousa, et al.,
Appellants,

vs.

Zuni Transportation, Inc., etc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, John Schlesinger, Judge.

Law Offices of Paul Morris, P.A., and Paul Morris; Cofiño Trial Law, and Pedro A. Cofiño, for appellants.

Katz Barron, and Keith T. Grumer (Fort Lauderdale), for appellee.

Before SALTER, MILLER and GORDO, JJ.

GORDO, J.

William Sousa and Eastern Medical Transportation, LLC appeal the trial court's dismissal of their lawsuit with prejudice and grant of summary judgment in favor of Zuni Transportation, Inc. The trial court found that Sousa lacked standing to sue. As we conclude that the trial court should not have dismissed the case on the

grounds briefed and argued and that the alternative grounds for affirmance were not preserved for appeal, we reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

Jorge Azor was the owner and operator of Zuni, a non-emergency transportation company for the elderly and disabled. In 2014, Alejandro Castro agreed to purchase Zuni's corporate assets. On April 1, 2015, Zuni and Castro executed an Asset Purchase Agreement (the "Agreement"). The Agreement contained an assignment clause, which permitted an assignment of Castro's rights and obligations to an unaffiliated entity only upon Zuni's consent.

In March of 2016, Castro executed a Transfer of Assets and Assignment and Assumption Agreement (the "Assignment"). The Assignment granted Sousa all of Castro's rights under the Agreement. It is undisputed that Sousa was not a party to the Agreement and that he was not affiliated with Castro's operation of Zuni. The parties also agree that Zuni never consented to the Assignment to Sousa. Simultaneously with the Assignment, Castro executed a Bill of Sale. The Bill of Sale specifically provided that the assets transferred to Sousa included "[a]ll choses in action [Castro] may be connected to or in any way involved with Zuni . . . or [Eastern]."

Sousa and Eastern filed suit against Zuni based on the Assignment and Bill of Sale. In their third amended complaint, Sousa and Eastern allege that they have

standing to sue Zuni based on the Bill of Sale, which assigns Castro's choses in action to Sousa. Zuni moved to dismiss the third amended complaint and for summary judgment arguing that Sousa lacked standing because the contract prohibited assignment to an unaffiliated entity without Zuni's prior consent. In its Order Granting Zuni's Motion to Dismiss and Motion for Summary Judgment on Plaintiffs' Third Amended Complaint, the trial court granted both motions on the grounds that Sousa and Eastern had failed to prove that they satisfied a condition precedent—obtaining Zuni's consent for the Assignment.

STANDARD OF REVIEW

"We review an order granting a motion to dismiss with prejudice de novo." Papunen v. Bay Nat'l Title Co., 271 So. 3d 1108, 1111 (Fla. 3d DCA 2019) (citing Williams Island Ventures, LLC v. de la Mora, 246 So. 3d 471, 475 (Fla. 3d DCA 2018)). We also review a trial court's determinations on summary judgment de novo. Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000).

LEGAL ANALYSIS

In considering a motion to dismiss, a trial court is required to accept all factual allegations contained in the complaint as true. See, e.g., Chakra 5, Inc. v. City of Miami Beach, 254 So. 3d 1056, 1061 (Fla. 3d DCA 2018) (citing Falkinburg v. Village of El Portal, 183 So. 3d 1189, 1191 (Fla. 3d DCA 2016)). The trial court is

bound to the "well-pled allegations of the complaint, including its incorporated attachments." Id.

Accepting the well-pled allegations in Sousa and Eastern's third amended complaint as true under the motion to dismiss, it is evident that the basis for their standing to sue was sufficiently alleged. Sousa and Eastern clearly pled that the Assignment and Bill of Sale transferred Castro's choses in action to them and that they were entitled to enforce those choses in action. Accepting the allegations in paragraphs 31 through 36 of the third amended complaint as true and looking no further than the four corners of that pleading, Sousa and Castro's complaint was legally sufficient. We therefore find the trial court should not have dismissed the third amended complaint on those grounds.

The trial court also should not have granted summary judgment based on Zuni's lack of consent to the Assignment. Florida law interprets anti-assignment clauses to prohibit only the assignment of the right to seek performance. See, e.g., Cordis Corp. v. Sonics Int'l, Inc., 427 So. 2d 782, 783 (Fla. 3d DCA 1983) (finding the assignment at issue valid because the anti-assignment clause had no effect on the "well-established right freely to assign . . . chose[s] in action for the damages caused by [a] breach" (citing Spears v. W. Coast Builders' Supply Co., 133 So. 97 (Fla. 1931); Oceanic Int'l Corp. v. Lantana Boatyard, 402 So. 2d 507, 512 (Fla. 4th DCA 1981); 4 Fla. Jur. 2d Assignments § 5 (1978))). Such a clause does not prohibit a

party from assigning potential claims for damages or causes of action arising from a breach of the agreement. See, e.g., C.P. Motion, Inc. v. Goldblatt, 193 So. 3d 39 (Fla. 3d DCA 2016) (distinguishing between the assignment of performance due under a contract and the assignment of a chose in action arising from a breach). Thus, under Florida law, Castro was not required to obtain Zuni's consent prior to assigning his choses in action to Sousa.

Zuni argues that we should employ the "tipsy coachman rule" and affirm the trial court's ruling on alternative grounds. "Under the tipsy coachman rule, 'if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support judgment in the record.'" Ruiz v. Policlinica Metropolitana, C.A., 260 So. 3d 1081, 1090–91 (Fla. 3d DCA 2018) (quoting Dade Cty. Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638, 644 (Fla. 1999)). The grounds raised by Zuni in this appeal include that Castro did not have any viable choses in action to assign at the time of the assignment and that Castro breached and abandoned the contract prior to the Assignment. Even if the record on appeal were to support an affirmance on these alternative grounds—an issue about which we express no opinion—it is well-settled that "[t]he [t]ipsy [c]oachman doctrine does not apply to grounds not raised in a motion for summary judgment . . . ." Mitchell v. Higgs, 61 So. 3d 1152, 1155 n.3 (Fla. 3d DCA 2011); see also Agudo, Pineiro & Kates, P.A. v. Harbert Const. Co., 476 So. 2d 1311, 1315 n.3 (Fla. 3d DCA 1985)

(finding the rule inapplicable "in summary judgment proceedings where the issue was never raised in the motion for summary judgment" (citations omitted)). The legal issues proposed as alternative grounds for affirmance were raised for the first time on appeal. They were not briefed in the motion for summary judgment before the trial court, were not argued at the summary judgment hearing and did not form the basis for the trial court's ruling.

Because these issues were not properly raised before the trial court and preserved for appeal, we decline to consider them at this time. This Court is confined to review of the issues raised and preserved before the trial court. See, e.g., Castor v. State, 365 So. 2d 701, 703 (Fla. 1978) ("As a general matter, a reviewing court will not consider points raised for the first time on appeal." (citing Dorminey v. State, 314 So. 2d 134 (Fla. 1975))).

CONCLUSION

Sousa and Eastern's third amended complaint contained legally sufficient allegations of standing. Thus, the trial court should not have dismissed the action and entered summary judgment in favor of Zuni. Further, the alternative grounds raised on appeal by Zuni were not preserved in the trial court and therefore, cannot be considered at this time.

Reversed and remanded.