

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001786-MR

JANIE CLARK

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE TOMMY W. CHANDLER, SPECIAL JUDGE
ACTION NO. 99-CI-00275

KENNETH V. ANDERSON, JR.

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Janie Clark appeals from a May 26, 2000 summary judgment of the McCracken Circuit Court. We affirm.

Clark was represented by Kenneth V. Anderson, Jr., appellee, in a marital dissolution action in 1997. Clark's husband had a pension from his work as a United States postal employee. During the dissolution action, Clark filled out a form provided by Anderson waiving her right to the pension. On February 21, 1997, Clark entered a property settlement agreement, which included, in relevant part, the following clause:

The Wife hereby specifically waives any marital interest she may have in the

Husband's savings, pension plans, or life insurance.

According to Clark, "some months" later in 1997, she and a friend had a detailed conversation about the pension. Her friend expressed surprise that Clark had not received a portion of the pension and asked Clark why. Clark then indicated she spoke to an attorney about the pension in April of 1998. On March 29, 1999, Clark filed the current legal malpractice action in the McCracken Circuit Court. Therein she alleged her attorney, Kenneth Anderson, negligently advised her as to her husband's pension and savings. After some discovery, Anderson moved the circuit court for summary judgment based on Clark's waiver of her husband's pension and the running of the statute of limitations. On May 26, 2000, the circuit court granted the summary judgment in favor of Anderson. This appeal followed.

Clark maintains the circuit court erred by dismissing her claim as time barred under Kentucky Revised Statutes (KRS) 413.245, which reads in pertinent part:

[A] civil action, whether brought in tort or contract, arising out of any act or omission in rendering, or failing to render, professional services for others shall be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.

The circuit court concluded, in relevant part, as follows:

On February 21, 1997, against her attorney's advice, plaintiff signed an agreement which excluded her from sharing in the pension benefits no matter what their value. . . . The Court entered its decree on March 11, 1997, incorporating the settlement agreement. Plaintiff certainly knew on March 11, 1997,

that her husband had pension benefits and that she would get none of them. Yet, she did not sue defendant before March 11, 1998. In fact, she admits that a friend sometime within a few months told her she should have part of the pension benefits but apparently she still did not file this action within one (1) year after the friend's advice.

From the above, it is clear the circuit court concluded that the statute of limitations is triggered by Clark's conversation with "a friend" in 1997.

Under the discovery rule, the statute is triggered when Clark discovered or reasonably should have discovered the legal malpractice. See Graham v. Harlin, Parker & Rudloff, Ky. App., 664 S.W.2d 945 (1983), *overruled on other grounds by Alagia, Day, Trautwein & Smith v. Broadbent*, Ky., 882 S.W.2d 121 (1994). In the case at hand, we think Clark's conversation with her friend was sufficient to put a reasonable person on notice of the alleged legal malpractice. Hence, we hold that summary judgment was appropriate and Clark's claim was time barred under KRS 413.245.

For the foregoing reasons, the summary judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jill L. Giordano
Princeton, Kentucky

BRIEF FOR APPELLEE:

Richard C. Roberts
Paducah, Kentucky