

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001318-MR

JOHN C. FISHER

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE JOHN T. DAUGHADAY, SPECIAL JUDGE
ACTION NO. 97-CI-00372 & 98-CI-00151

KAREN K. WILLIAMS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, Chief Judge; BUCKINGHAM, and McANULTY, Judges.

BUCKINGHAM, JUDGE: John C. Fisher appeals from a summary judgment entered by the Marshall Circuit Court dismissing his counterclaim against Karen K. Williams. We affirm the summary judgment, but for reasons different from those stated by the trial court.

On September 20, 1997, Fisher and Williams were involved in an automobile accident on Interstate 24 in Marshall County, Kentucky. As a result of the accident, Fisher was convicted of six counts of first-degree wanton endangerment. Additionally, on May 12, 1998, Williams filed this civil suit for damages against Fisher, alleging that his negligent operation of

his vehicle caused the accident. On June 2, 1998, Fisher timely filed his answer to Williams' complaint.

On February 3, 2000, Fisher filed a motion to amend his pleadings to include a counterclaim against Williams. As a basis for his counterclaim, Fisher alleged that Williams violated 42 USCS 1985(3) by depriving him of rights or privileges by acting in a conspiracy to interfere with his use of the roadways, that Williams' outrageous actions resulted in emotional distress, and that he was entitled to punitive damages for Williams' outrageous conduct. The trial court entered an order on March 7, 2000, granting Fisher's motion to amend and add the counterclaim. The trial judge noted in the order that no objection was made by Williams to Fisher's motion.

On March 8, 2000, Williams filed a reply to Fisher's counterclaim. In addition to other defenses, Williams asserted that the claims were barred by the applicable statute of limitations. Williams made no mention of her later argument that the claims were barred by CR¹ 13.01.

On March 13, 2000, Williams filed a motion for summary judgment on Fisher's counterclaim. The motion was based primarily on the argument that the counterclaim was barred by the applicable one-year statute of limitations. In his response to Williams' motion for summary judgment, Fisher argued that under CR 15.03(1), the amendment related back to the date of the original pleading. That pleading was within the statute of limitations.

¹ Kentucky Rules of Civil Procedure.

At the hearing on Williams' summary judgment motion,² she apparently shifted the focus of her argument from the statute of limitations to her argument that Fisher's counterclaim was barred under CR 13.01 because it was a compulsory counterclaim that was not originally pled. The court granted Fisher additional time to supplement his response to Williams' argument. Fisher acknowledged in his supplemental response that his counterclaim fell within the definition of a compulsory counterclaim. However, he argued that the counterclaim was not barred under CR 13.01 and asserted that CR 13.06 specifically allowed for omitted counterclaims. Further, Fisher pointed out that the effect of CR 15.01 and CR 15.03, taken in conjunction with the court's order granting his motion to amend, was to allow the compulsory counterclaim which then related back to the date of his first pleading.

The trial court rejected Fisher's argument and entered an order granting Williams' motion for summary judgment on Fisher's counterclaim. The court held that Fisher's claims "were compulsory counterclaims pursuant to CR 13.01 and should have been asserted in his Answer filed June 1, 1998[.]" The order did not mention CR 13.06. This appeal by Fisher followed.

Regardless of whether Fisher's arguments in this regard have merit, we affirm the trial court's judgment for different reasons. See Kentucky Farm Bureau Mut. Ins. v. Gray, Ky. App., 814 S.W.2d 928 (1991), wherein we held that "we, as an appellate court, may affirm the trial court for any reason sustainable by

² The record does not contain a recording of this hearing.

the record.” Id. at 930. Also, see Cooksey Bros. Disp. Co. v. Boyd County, Ky. App., 973 S.W.2d 64, 70 (1997), at n.3.

The U.S. Supreme Court considered a claim of private conspiracy in violation of 42 USCS 1985(3) in Bray v. Alexandria Women’s Health Clinic, 506 U.S. 263, 113 S.Ct. 753, 122 L.Ed.2d 34 (1993). In that case, the respondents had filed suit seeking to enjoin the petitioners from conducting demonstrations at abortion clinics in the Washington, D.C. area. 113 S.Ct. at 758. Citing precedent, the Supreme Court held that in order to prove a private conspiracy in violation of Section 1985(3), “a plaintiff must show, *inter alia*, (1) that ‘some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators’ actions.’” Id. Further, the Supreme Court stated that the plaintiff must also show “(2) that the conspiracy ‘aimed at interfering with rights’ that are ‘protected against private, as well as official, encroachment[.]’” Id. In discussing the second element, the Court agreed that interstate travel is protected. Id. at 763. However, the Court determined that “a purely intrastate restriction does not implicate the right of interstate travel[.]” Id.

Applying Bray to the facts of this case, we conclude that Fisher was unable to establish a claim under Section 1985(3). First, his complaint failed to alleged any facts which would establish racial or class-based discriminatory animus. Second, his complaint also fails to allege facts sufficient to establish the second element. The alleged interference with his right of travel on the highways consists of an alleged

interference with his use of the roads within the Commonwealth of Kentucky. As in the Bray case, an alleged interference with intrastate travel does not amount to an interference with interstate travel. Furthermore, our review of the record does not indicate that there is evidence which would support either element to establish a valid claim under Section 1985(3). Thus, we conclude that Williams was entitled to summary judgment in her favor.

Thus judgment of the Marshall Circuit Court is affirmed.

ALL CONCUR.

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