

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001090-MR

BROOKS MOREHOUSE

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT  
HONORABLE SAMUEL C. LONG, JUDGE  
ACTION NO. 00-CI-00183

W. JEFFREY SCOTT  
AND W. JEFFREY SCOTT P.S.C.

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: GUDGEL, CHIEF JUDGE; BARBER AND GUIDUGLI, JUDGES.

BARBER, JUDGE: Appellant, Brooks Morehouse ("Morehouse"), seeks review of an order of the Carter Circuit Court, granting judgment on the pleadings in favor of W. Jeffery Scott and W. Jeffrey Scott, P.S.C., the Appellees ("Scott"). Finding no error, we affirm.

The underlying action involves a complaint that Morehouse filed against her former attorney, Scott. Morehouse alleged that Scott had withdrawn from legal representation "without cause," leaving her "in the position of having to try her jury trial case by herself and without any legal assistance." Scott had represented Morehouse in a lawsuit she had filed in the

Rowan Circuit Court on July 17, 1995, against Tracy Sparks for injuries allegedly sustained in a motor vehicle accident. Morehouse's first attorney had been granted leave to withdraw for good cause shown by order entered June 13, 1996. Scott and Morehouse entered into an attorney-client agreement dated July 11, 1996.

Shortly before the trial date in the Sparks lawsuit, Morehouse had asked Scott to request a continuance on her behalf. The record reflects that Morehouse's husband had furnished Scott with a statement from a psychiatrist, Dr. Murthy, in Milford Ohio, dated April 30, 1999, stating that Morehouse was under increased stress and was unable to handle legal problems or go to court for at least 60 days. On May 3, 1999, Scott served a motion to continue the trial, advising that he had been informed earlier that week that his client was receiving psychiatric treatment.

The defendant, Sparks, objected to the continuance, on the ground that Morehouse had not been diligent in prosecuting her case. Sparks stated that the case was first set for trial on September 9, 1996, that it had been continued by Morehouse, and that non-binding mediation was ordered, for which Morehouse failed to appear. The case was reset for trial on January 29, 1997, and Morehouse again requested a continuance, alleging that future surgery was necessary. That continuance was granted. The case was again reset for trial on October 6 and 7, 1997; Morehouse again sought a continuance on the ground of the necessity of future surgery, which was granted. The case was

reset for trial on August 31, 1998, and Morehouse again moved for continuance on the ground of the necessity of future surgery, and that motion was granted. The case was then set for trial on May 10 and 11, 1999. In her objection, Sparks also advised the Rowan Circuit Court that Morehouse "had filed another suit as result of another auto accident occurring in Hamilton County, Ohio, on May 20, 1996, . . . ." That accident occurred less than two months before Morehouse had retained Scott, a fact which Morehouse had apparently concealed from her attorney.

On May 5, 1999, Scott served a combined reply to Sparks's objection/motion for leave to withdraw, requesting that he be allowed to withdraw as Morehouse's counsel. Scott explained that he believed his continuing representation would be in violation of SCR 3.130.<sup>1</sup> He requested that Morehouse be allowed time within which to obtain new counsel and that the trial be continued. Scott also explained that he had agreed to take a doctor's deposition on May 7, 1999, and that he "would honor that agreement" and take the previously-scheduled deposition. By order entered May 7, 1999, the trial court granted Scott's motion for leave to withdraw "for good cause shown. However, the motion for continuance is denied. The reasons for delay in trying this case are attributable solely to the Plaintiff, and further delay will prejudice the Defendant."

On May 10, 2000, Morehouse filed a complaint against Scott in the Carter Circuit Court alleging breach of the

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<sup>1</sup>Scott apparently did not know about Morehouse's other accident and lawsuit, until Sparks informed the court about it in her objection to Morehouse's motion for a continuance.

attorney-client contract – that Scott withdrew from representation “without cause,” leaving her in the position of trying her case without an attorney. On June 5, 2000, Scott filed an answer raising several defenses, including statute of limitations, estoppel, and breach by Morehouse. On December 6, 2000, Scott filed a motion to dismiss for failure to prosecute/motion for judgment on the pleadings. Scott maintained, *inter alia*, that Morehouse had essentially abandoned her case; further, Morehouse should have challenged the Rowan Circuit Court’s order by way of an appeal, instead of attempting to relitigate her case in the Carter Circuit Court.

On December 21, 2000, Morehouse filed a motion for summary judgment, as well as a response to Scott’s motion to dismiss. In her response, Morehouse states that she “has filed an appeal in the **Morehouse v. Sparks** case in order to mitigate the damages that the Defendants will ultimately have to pay as a result of the breach of contract.” (Emphasis original.) On January 5, 2001, Scott filed a response to Morehouse’s motion for summary judgment, noting that it was the first he had heard of an appeal in the Sparks case. By order entered May 7, 2001, the Carter Circuit Court entered an order denying Morehouse’s motion for summary judgment and granting Scott’s motion for judgment on the pleadings.

On May 18, 2001, Morehouse filed a notice of appeal to this court. On May 31, 2001, Morehouse filed a Civil Appeal Prehearing Statement. In response to question No. 8 on the form, “Is there any known case involving substantially the same issue

now pending before either appellate court of this state?" Morehouse responded, "Not known." In her briefs filed in this Court, Morehouse never mentions that she had appealed Sparks. Morehouse only asserted that "the court order in the former [Sparks] case is not a final decision or judgment on the merits." Morehouse maintained that Scott could not rely upon collateral estoppel because she did not have an opportunity to fully and fairly present her case in the Rowan Circuit Court.

Morehouse's propensity for concealing litigation is not confined to the earlier proceedings. On **March 2, 2001**, approximately two and a half months *before* she filed this appeal, another panel of this Court rendered an opinion in Brooks Morehouse v. Tracy Sparks, No. 1999-CA-001841.<sup>2</sup> The majority opinion provides, in pertinent part:

On appeal, Morehouse alleges that the trial court erred in denying her motion for a continuance of the trial date. We affirm.

. . . .

On May 4, 1999, Morehouse's request for a continuance because of mental distress was denied. On May 6, 1999, Morehouse's attorney moved for leave to withdraw as counsel . . . The trial court granted the motion to withdraw but denied Morehouse's motion for a continuance stating that the delay in the trial of the case was attributable to her actions and further delay would prejudice Sparks.

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<sup>2</sup>The Opinion reflects that Morehouse's counsel in that appeal is the same as in the present appeal. On April 2, 2001, Morehouse filed a motion for discretionary review with the Supreme Court; her request was denied on February 13, 2002.

There is no constitutional right to legal counsel in a civil trial. Whether to continue a trial at the request of a party is clearly within the sound discretion of the trial court. "It is necessary for the trial court to have power to control the course of litigation. The effect of granting a continuance must be considered from the standpoint of all concerned." This case has been pending since June 17, 1995, and at every opportunity Morehouse sought to delay its resolution. **The withdrawal of her counsel days prior to trial was attributable to her own actions. Her lack of cooperation with counsel, concealment of her mental history and other facts germane to her case, left counsel with no alternative but to conclude that he could not represent her at trial. The trial court did not abuse its discretion in denying Morehouse's motion for continuance.**

(Internal citations omitted; emphasis added.)

The final decision of the Court of Appeals – that withdrawal of Morehouse's counsel was attributable to her own actions and that the trial court did not abuse its discretion in denying her motion for continuance – effectively precludes Morehouse from maintaining an action against Scott for breach of contract in this case. There is an implied covenant of good faith and fair dealing in every contract. Ranier v. Mount Sterling Nati'l. Bank, Ky., 812 S.W.2d 154 (1991). Clearly, Morehouse was the party in breach, leaving Scott with no alternative but to seek leave to withdraw, due to her "lack of cooperation with counsel, concealment of her mental history and other facts germane to her case, . . . ." Collateral estoppel applies to prevent Morehouse from relitigating the reasons and justification for Scott's withdrawal. Napier v. Jones By &

Through Reynolds, Ky. App., 925 S.W.2d 193 (1996). We affirm the order of the Carter Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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