

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002597-MR

RAYMOND HAYDEN

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 94-CI-00072

PARAMEDIC EMERGENCY AMBULANCE SERVICE, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, BUCKINGHAM AND MILLER, JUDGES.

BARBER, JUDGE: We are asked to decide whether the trial court erred in entering summary judgment in favor of the Appellee, Paramedic Emergency Ambulance Service, Inc. ("PEASI"), on ground that no contractual relationship existed between it and the Appellant, Raymond Hayden ("Hayden"). Finding no error, we affirm.

On February 18, 1994, Hayden filed a complaint in the Greenup Circuit Court against PEASI. Hayden alleged that while working as a volunteer firefighter on February 23, 1993, he experienced pain, and subsequently suffered a heart attack; further, that PEASI had refused to dispatch an ambulance to the scene, breaching its contract with the Wurtland Volunteer Fire

Department. Another ambulance service transported Hayden to the local emergency room. Hayden alleged that the delay resulted in his increased injury and impairment.

On August 3, 1995, PEASI filed a motion for summary judgment. By order entered September 12, 1995, the trial court denied that motion. The court explained that Hayden's case hinged upon his ability to establish a contract, oral or written, between the Wurtland Volunteer Fire Department and PEASI. Hayden had been unable to do so. The court denied the motion to allow Hayden a fair opportunity to completely develop his case.

On August 14, 2001, PEASI filed another motion for summary judgment, contending that no valid and enforceable contract existed between it and the Wurtland Volunteer Fire Department. PEASI asserted that although it had a contract with several districts, including the City of Wurtland corporate limits, it did not have a contract with the Wurtland Fire Service District, which was larger than the city limits. PEASI also asserted that Hayden's arrival at the ER was timely and that he could not demonstrate any damages caused by PEASI's alleged breach.

On October 30, 2001, the trial court entered summary judgment in favor of PEASI, finding that:

1. There was no recorded evidence of any written contract by and between the Defendant, PEASI, and the Wurtland Volunteer Fire Department.
2. The Plaintiff failed to show by any clear and convincing evidence that an express oral contract was formed between PEASI and the Wurtland Volunteer Fire Department. . . .
3. Even if this Court had found that some contractual relationship existed, the evidence is equally clear that the failure of PEASI to

respond to the ambulance call on February 23, 1993, was not the cause of the cardiac damage sustained by Mr. Hayden. . . .

The Court dismissed the case with prejudice. On November 29, 2001, Hayden filed a notice of appeal to this Court.

On appeal, Hayden contends that the circuit court erred in granting summary judgment,¹ because genuine issues of material fact exist with regard to: (1) an oral contract between the Wurtland Volunteer Fire Department and PEASI; (2) an implied contract between Wurtland Volunteer Fire Department and PEASI; (3) whether the thrombolytic (TPA) therapy administered at the ER dissolved the clot; and, (4) causation of the damage to Hayden's heart.

(1)

Hayden acknowledges that he bears the burden of proving the existence of an oral contract by clear and convincing evidence.²

¹ The standard for summary judgment is abundantly clear in Kentucky. A movant must show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. CR 56.03. The record must be viewed in a light most favorable to the party opposing the motion for a summary judgment and all doubts must be resolved in favor of that party. Summary judgment should be used only when, as a matter of law, it appears it would be impossible for the respondent to produce evidence at trial warranting a judgment in favor of the respondent and against the movant. . . .

. . . .

[S]ummary judgment is proper when it is manifest that the opposing party cannot strengthen the case at trial and the moving party would be entitled ultimately to a directed verdict. Com v. Whitworth, Ky. 74 S.W.2d 695, 698, 701 (2002).

² "The general rule is that where the alleged expressed contract is oral the evidence to support it must be clear and convincing."

(continued...)

Hayden would have us believe that the testimony of a former employee, Bruce Bowling, provides such proof of an "agreement" that PEASI would provide emergency assistance to police officers and volunteer firemen, outside of its service area. Bruce Bowling, a paramedic, left PEASI "full time" in 1990. Bowling did not know if PEASI's alleged policy had changed after 1990. When asked if "[s]itting here today," he could say PEASI's policy *in 1993* was to respond to firemen and policemen down anywhere in the county, Bowling testified: "I can't say that in 1993 it was. I can only testify to my full-time employment period."

Hayden asserts that Donnie Wellman, the department chief, testified that there was an agreement requiring PEASI to respond outside the city limits for any downed fireman; however, a review of Wellman's testimony reveals that this was only an "impression." When asked about where this "impression" came from, Wellman responded that it was "hearsay from some unknown source."

Hayden also contends contracts between PEASI and other volunteer fire departments are somehow evidence of an oral contract between PEASI and the Wurtland Volunteer Fire Department. Neither the Bowling/Wellman testimony, nor the existence of contracts with *other* volunteer fire departments create a genuine issue of material fact with regard to the existence of an oral contract.

(2)

Next, Hayden argues that an implied contract existed between the Wurtland Volunteer Fire Department and PEASI. PEASI explains

(...continued)
Corbin's Ex'rs v. Corbin, 302 Ky., 208, 194 S.W.2d 56, 58 (1946).

that it is a non-profit, private ambulance service, which receives its funding through a particular service district and contracts with municipalities to provide emergency ambulance care. A.V. Rash, the Board Chairman of PEASI, testified that the Eastern Greenup County Tax District contracts ambulance service. In February 1993, the taxing district included the corporate limits of the cities in eastern Greenup County, and those areas "embraced by" the Raceland, Worthington, and Russell school systems. PEASI's contract included the *corporate limits* of the City of Wurtland; however, Wurtland's *fire district* was larger than the City of Wurtland's corporate limits.

The evidence upon which Hayden relies falls far short of establishing a genuine issue of material fact that an "implied" contract existed between Wurtland Volunteer Fire Department and PEASI to pick up firefighters outside the service area.

We agree with the trial court there is no genuine issue of material fact with regard to the existence of a contract. Accordingly, we do not reach the other issues Hayden has raised. We affirm the summary judgment of the Greenup Circuit Court.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR
APPELLANT:

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BRIEF AND ORAL ARGUMENT FOR
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