

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2001-CA-002375-MR

CHAD STRADER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS MCDONALD, JUDGE  
ACTION NO. 98-CI-001917

ELIZABETH W. CHANDLER

APPELLEE

### OPINION

### REVERSING AND REMANDING

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BEFORE: BAKER, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. Chad Strader (hereinafter "Strader") appeals from an opinion and order entered by the Jefferson Circuit Court on September 21, 2001, granting summary judgment to Elizabeth W. Chandler.<sup>1</sup> We reverse and remand.

This is a second appeal before this Court addressing an order of the Jefferson Circuit Court that granted summary

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<sup>1</sup> Although Elizabeth W. Chandler is the named defendant, she is occasionally called Gail W. Chandler in certain documents filed on her behalf. We will simply use her last name Chandler to identify her in this appeal.

judgment to Chandler. Chandler is the director of St. Patrick's Halfway House, a halfway house operated by Dismas Charities, Inc. in Louisville, Kentucky. The first summary judgment was appealed by Strader and resulted in an opinion vacating and remanding entered by this Court on June 16, 2000. In that appeal, this Court set forth the following facts and issues:

This is an appeal from a summary judgment entered in favor of a halfway house in an action by an inmate claiming that certain personal property was wrongfully kept by the halfway house when he was transferred therefrom. As appellant's action was brought within the statute of limitations and there exist material questions of fact, summary judgment was improperly entered. Accordingly, the judgment is vacated and the matter is remanded for further proceedings.

In March of 1997, appellant, Chad Strader, was a resident of St. Patrick's Halfway House ("St. Patrick's"), a work-release facility operated by Dismas Charities in Louisville. Because of disciplinary violations, Strader was terminated from the St. Patrick's program and transferred to the Marion Adjustment Center ("Marion") on March 12, 1997. Strader claims that while at St. Patrick's he was working on a patent for a fire suppression system and that employees of St. Patrick's were aware of this. Strader maintains that at the time he was transferred from St. Patrick's, he had two posters and a ledger which contained information regarding his proposed patent. Prior to being transported to Marion, Strader was lodged at the Jefferson County Jail for approximately two weeks. Upon arriving at Marion on March 26, 1997, Strader discovered that the two posters and

the ledger were missing from his personal belongings. On April 8, 1998, Strader filed the pro se action herein against Elizabeth Chandler, Director of St. Patrick's (real party in interest), claiming that St. Patrick's failed "to adequately store and secure Plaintiff's personal property." In a subsequent pleading filed by Strader captioned "Response", Strader alleged:

Defendants in this cause of action saw that this plaintiff was destined to make a very large sum of money from this mechanism and sought this fortuitous opportunity to deny him of his project and thereby keep it for themselves. All the staff there at Dismas Charities knew of this project upon which the plaintiff had been continuously working on; and that he was preparing to cash in on this project, and all to [sic] suddenly he is transferred and without his blue prints for his fire suppression mechanism. The defendants were acting under color of state law and did willfully deprive him of that device which he planned to patent, so that they could benefit from said fire mechanism.

On September 3, 1998, upon motion of Chandler, the trial court entered summary judgment in favor of Chandler. This appeal by Strader followed.

The trial court did not give a reason for entering summary judgment, but we shall presume it was because the action was barred by the one-year statute of limitation in KRS 413.140(1), as argued by Chandler in her motion for summary judgment.

In addressing the statute of limitation issue, this Court determined that Strader's complaint was based upon conversion and theft and thus, the five-year statute of limitation found in KRS 413.120(5) was applicable.

Specifically, this Court stated:

In the instant case, although he [Strader] is accusing the employees of St. Patrick's of taking his property, Strader does not know who is presently in possession of the property. Further, St. Patrick's had a legal right to possession of his property while he was a resident there. Thus, if an employee of St. Patrick's took his property, it was, for purposes of the statute of limitation, conversion, not theft. Accordingly, the five-year limitation period in KRS 413.120(5) applies and Strader's action was brought well within the statutory period.

However, after having determined that the trial court improperly granted summary judgment based upon its use of the improper statute of limitation, the Court of Appeals then proceeded to address the issue of summary judgment relative to the existence of genuine issues of material fact. On this issue, the Court's opinion held:

Thus, in considering the evidence in the light most favorable to Strader, we must assume that St. Patrick's was in possession of the property in question when Strader was transferred and that Strader did not get the property back when he was transferred. Although there is no direct proof that someone from St. Patrick's actually took Strader's property, there is evidence that St. Patrick's failed to return said property

to him upon transfer. Accordingly, we believe there exists a genuine issue of material fact on the claim of conversion so as to overcome the motion for summary judgment.

For the reasons stated above, the judgment of the Jefferson Circuit Court is vacated and the matter is remanded to the trial court for further proceedings.

Based upon the opinion vacating and remanding, this matter was returned to the Jefferson Circuit Court for further proceedings. Both parties proceeded with discovery, including Chandler taking Strader's deposition on April 3 and 4, 2001. Following the completion of discovery and the trial court's orders concerning completion of all pre-trial matters, the case was set for trial. However, prior to the commencement of trial, Chandler filed another motion for summary judgment. Initially the trial court denied the motion on August 3, 2001, finding that "there are genuine issues of material facts remaining in this action." However, on September 21, 2001, the court sua sponte reconsidered the motion for summary judgment and entered an order granting Chandler's motion and dismissed Strader's complaint with prejudice. This appeal followed.

The order granting Chandler summary judgment, in relevant part, stated:

This matter is before the Court on the motion of the Defendant, Elizabeth W. Chandler, for summary judgment regarding a release form signed by the Plaintiff thereby

allowing the institution to dispose of the Plaintiff's personal property.

After careful review of the record, submitted memorandum and applicable case law, the Court grants the Defendant's motion for summary judgment.

#### **BACKGROUND SUMMARY**

This is an inmate pro se action involving the return of personal property or \$500,000 in damages to the Plaintiff. The Plaintiff, is a former resident of the Dismas-St. Patrick's facility, which is a work release facility located in Louisville, Kentucky. As a resident of Dismas-St. Patrick's, the Plaintiff was asked to sign a release allowing for the destruction of his personal property if not retrieved by him or an authorized representative within seven (7) days from being removed from the facility.

On March 12, 1997, the Plaintiff was discharged from the Dismas-St. Patrick's due to a violation and ultimately sent to Marion Adjustment Center in St. Mary, Kentucky. Upon his arrival on March 27, 1997, the Plaintiff underwent an inventory of his personal property and allegedly discovered the two mail tubes and a ledger were missing.

#### **OPINION**

. . .

The Court in Cline v. Allis-Chalmers Corporation, Ky.App., 690 S.W.2d 764, 766 (1985), stated "in general, a person who has the opportunity to read a contract, but does not do so and signs the agreement, is bound to the contract terms unless there was some fraud in the process of obtaining his signature." Here, there is no evidence of fraud nor that the Plaintiff contests the

fact that he signed, read and understood this release agreement. As a result, there exists no genuine issues of material fact and the Defendant, Elizabeth W. Chandler, is entitled to judgment as a matter of law.

The release in question was signed by Strader on September 4, 1996, and signed at the same time he executed a document entitled Consent to Disclosure of Information. The following is a copy of the release signed by Strader:

#### CLOTHING RELEASE

I authorize Dismas Charities Staff to release all my personal belongings to the following person(s) in situations where I cannot personally retrieve them. If not retrieved in seven days, I authorize Dismas Charities Staff to dispose of them. I understand that my personal belongings will not be released until I have returned all property of Dismas Charities, Inc.

Chandler argued and the trial court agreed that this document was a contract releasing Chandler of all liability and duties and thus, summary judgment was proper in that there existed no genuine issues of material fact. Chandler pointed out that, in Strader's deposition, he admitted he signed the release and did not take any action to recover his personal belongings within the seven (7) day time-frame permitted under the release. Strader, on the other hand, claims the "Clothing Release has many faults and does not hold the type of water that [Chandler] portray(s) that it does."

Summary judgment is property "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, 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). In Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985), our Supreme Court held that for summary judgment to be proper the movant must show that the adverse party cannot prevail under any circumstances. The Court has also stated that "the proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor. Steelvest v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). The standard of review on appeal of a summary judgment is whether the trial court correctly found that there was no genuine issue as to any material fact and that the moving party was entitled to judgment as a matter of law. Scifres v. Kraft, Ky.App., 916 S.W.2d 774, 781 (1996). There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992). "The record must be viewed in a light most favorable to the party opposing



the motion for summary judgment and all doubts are to be resolved in his favor." Steelevest, supra, at 480.

While we do not comment as to the ultimate merits of Strader's complaint, we do believe that the trial court erred in finding that no genuine issue of material fact exists as to the signed release. First, the obvious problem exists that the release in bold caption is called a "Clothing Release." While the release itself calls for all personal belongings, we believe this document is ambiguous as to whether it relates only to clothing or to all belongings. Second, Strader was taken from St. Patrick's weeks before his belongings were inventoried and sent to the next correctional facility. Although it was Strader's breach of disciplinary rules which resulted in his removal, he was not present when his personal belongings were inventoried nor did he sign the inventory as is normal procedure. Third, he was not even aware of the inventory list or the alleged missing items until well after seven (7) days had passed since his last day at St. Patrick's. And finally, the release was signed months prior to his removal from St. Patrick's and part of other administrative processing procedures when he first arrived at the halfway house. We believe these issues to present factual issues that need to be resolved by the trier of the facts and not appropriate for summary dismissal.

Although the record contains Strader's deposition, we still believe the issuance of the present summary judgment was premature, especially when given the basis for the judgment. As such, we reluctantly reverse the opinion and order of the Jefferson Circuit Court granting summary judgment and remand this matter to the trial court for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT, PRO SE:

Chad Strader  
Pineville, KY

BRIEF FOR APPELLEE:

Ian T. Ramsey  
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