

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000126-MR

DONNA YEAGER, EXECUTRIX OF
THE ESTATE OF STACEY CLISE

APPELLANT

v.

APPEAL FROM GRANT CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 07-CI-00094

TALIAFERRO, SHIROONI, CARRAN &
KEYS, PLLC; ROBERT CARRAN;
ALICE KEYS; PHIL TALIAFERRO

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT AND TAYLOR, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Donna Yeager, as Executrix of the Estate of Stacey Clise (the Estate), appeals from a summary judgment dismissing her claims for

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

intentional infliction of emotional distress, breach of contract, and professional negligence against the law firm of Taliaferro, Shirooni, Carran & Keys, PLLC (the firm).

Attorney Eric Deters represented Stacey Clise in her dissolution of marriage proceedings against her husband, Richard Clise. By the terms of their property settlement agreement, Richard Clise agreed that Stacey was entitled to one-half of his union pension. Stacey Clise was responsible for preparing a Qualified Domestic Relations Order (QDRO). This was not done. As a result, Stacey Clise's mother, Donna Yeager, asked attorney Christopher J. Mehling, then a partner at the firm, to prepare the QDRO. Subsequently, after some confusion, the QDRO was entered. On December 21, 2006, Mehling informed Stacey of his election to the Kenton Family Court and stated that he would be leaving the practice of law effective January 1, 2007. Mehling stated that his law partner, Robert Carran, would be available if any further assistance would be needed in the matter of the QDRO.

On January 17, 2007, a school bus accident resulted in injuries to Jacob Clise, the minor child of Richard Clise and Stacey Clise, and to Abby Brinker, the daughter of Becky Clise, Richard's current wife. Becky Clise contacted the firm to discuss a claim for the children's injuries. After performing a conflicts check, the firm was retained to represent Richard Clise as next-friend for Jacob Clise to seek damages for the child's personal injuries and for Richard's claim for time spent caring for his son. The firm obtained a formal KBA ethics

opinion stating that there was no conflict between the claim for the child's injuries and past or current representation of Stacey Clise.

On February 20, 2007, Stacey Clise filed a complaint against the firm for intentional infliction of emotional distress, breach of contract and fiduciary duty, and professional negligence. Stacey Clise died on March 24, 2007, and her mother, Donna Yeager, continued the litigation as executrix of Stacey's estate. Donna Yeager requested leave to file an amended complaint alleging a claim for wrongful death, which was denied by the trial court. The trial court ultimately entered summary judgment in favor of the firm and dismissed all of the claims. This appeal followed.

The standard of review for summary judgments is well established. Summary judgment is appropriate "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." Kentucky Rules of Civil Procedure (CR) 56.03. Furthermore, summary judgment is proper only "where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). However, "a party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial." *Hubble v. Johnson*, 841 S.W.2d 169, 171 (Ky. 1992). If such evidence is presented, the

trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.”

Steelvest, 807 S.W.2d at 480 (citing *Dossett v. New York Mining and Manufacturing Co.*, 451 S.W.2d 843 (Ky. 1970)).

The Estate first argues that the trial court erred by dismissing its claim for intentional infliction of emotional distress. The Estate alleges that the appellees simultaneously represented Richard Clise and Stacey Clise and then dropped Stacey as a client in order to pursue a more lucrative claim on behalf of Richard.

The elements of intentional infliction of emotional distress are as follows:

- 1) the wrongdoer’s conduct must be intentional or reckless;
- 2) the conduct must be outrageous and intolerable in that it offends against the generally accepted standards of decency and morality;
- 3) there must be a causal connection between the wrongdoer’s conduct and the emotional distress; and
- 4) the emotional distress must be severe.

Stringer v. Wal-Mart Stores, Inc., 151 S.W.3d 781, 788 (Ky. 2004).

The Estate has not pointed to any evidence of record beyond conclusory allegations which would demonstrate any of the elements of intentional infliction of emotional distress.

Next, the Estate argues that the trial court erred by dismissing its claims for professional negligence and breach of contract. These claims fail

because the Estate has not demonstrated any evidence of damages. The firm prepared the QDRO and that was its only task. Moreover, according to the settlement agreement, Stacey's rights under the QDRO would revert to Richard if she predeceased him, which she did. Any damages the Estate claims for negligent infliction of emotional distress are barred by the impact rule. *Steel Technologies, Inc. v. Congelton*, 234 S.W.3d 920, 929 (Ky. 2007). We decline the Estate's invitation to reevaluate the rulings of our Supreme Court on the validity of the impact rule.

Next, the Estate argues that the trial court erred by dismissing its claim for breach of fiduciary duty. Again, we are pointed to no evidence of record which would establish any breach of duty by the firm.

The Estate argues that the trial court erred by refusing to allow it to amend its complaint to include a wrongful death claim. Leave to amend a complaint is committed to the discretion of the trial court and will not be disturbed absent an abuse of discretion. *Lambert v. Franklin Real Estate Co.*, 37 S.W.3d 770, 779 (Ky. App. 2001). Based on the circumstances of this case including the undisputed fact that Stacey Clise's death was the result of a self-medicated oxycodone overdose, we cannot conclude that the trial court abused its discretion.

Finally, the Estate argues that the trial court erred by failing to compel the discovery of written communications between Richard and Becky Clise and their attorneys. Discovery issues are reviewed under the abuse of discretion standard. *Sexton v. Bates*, 41 S.W.3d 452, 455 (Ky. App. 2001). The trial court

gave the Estate an opportunity to establish its need for the confidential communications. We discern no abuse of discretion in the trial court's refusal to compel discovery.

Accordingly, the judgment of the Grant Circuit Court is affirmed.

LAMBERT, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY AND FILES SEPARATE OPINION.

TAYLOR, JUDGE, CONCURRING IN RESULT ONLY:

Reluctantly, I must concur with the result reached by the majority in this case.

While the conduct of the Taliaferro Law Firm may not have risen to the level of outrageous, the record in this case clearly presents genuine issues of disputed fact as to whether the law firm's conduct was less than that of the acceptable standard of professional care owed to Stacey Clise, in my opinion. Unfortunately, Stacey Clise's death has effectively extinguished any viable claims that may have accrued as a result of the law firm's alleged conduct unless the Kentucky Supreme Court elects to revisit some of the legal precedents that preclude recovery in this case.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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