RENDERED: OCTOBER 30, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001004-MR

UNITED GRAFIX INCORPORATED,
D/B/A TRI-STATE OUTDOOR
ADVERTISING COMPANY, INC. APPELLANT

APPEAL FROM LAUREL CIRCUIT COURT
v. HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 97-CI-00161

GLENN WILLIAMS, AS
EXECUTOR OF THE ESTATE
OF DECEDENT, GLENN HOUSE;
OSCAR GAYLE HOUSE;
BAXTER BLEDSOE, JR.;
BAXTER BLEDSOE, LTD;
AND UNITED SIGN, LTD APPELLEES

AND NO. 2008-CA-001075-MR

BAXTER BLEDSOE, JR.;
BAXTER BLEDSOE, LTD;
AND UNITED SIGN, LTD CROSS-APPELLANTS

CROSS-APPEAL FROM LAUREL CIRCUIT COURT
v. HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 97-CI-00161

UNITED GRAFIX INCORPORATED,
D/B/A TRI-STATE OUTDOOR
ADVERTISING COMPANY, INC. CROSS-APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

** ** ** ** **

BEFORE: STUMBO AND TAYLOR, JUDGES; HENRY,[1] SENIOR JUDGE.

STUMBO, JUDGE: In this appeal, United Grafix Incorporated, d/b/a Tri-State Outdoor Advertising Company, Inc. (hereinafter Tri-State) appeals the orders of the lower court granting directed verdicts in favor of Baxter Bledsoe, Jr., Baxter Bledsoe, LTD, and United Sign, LTD (hereinafter collectively known as Bledsoe). In the cross-appeal, Bledsoe argues that he and his corporations were not liable for conversion and that the orders granting a directed verdict in his favor should be upheld. We affirm some of the orders of the lower court, reverse others, and remand this case for further proceedings.

This case has been litigated for over ten years. This is the third time the case has been to this Court. As such, substantial background needs to be related. In 1986, two companies specializing in billboard advertising merged to

[1] Senior Judge Michael L. Henry 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.

create Tri-State. Among the assets of the new company was a billboard located along I-75 in Laurel County. The sign was constructed in 1959, which predated federal and state highway beautification laws. It was, therefore, given a "grandfather" status and exempt from certain restrictive regulations. This sign is at the center of the case at hand.

Upon purchasing the sign, Tri-State entered into a lease with the property owner, Wilma Poynter, for a five-year term beginning on May 31, 1986. The lease contained an option to renew for an additional five-year term and upon its expiration was to continue in force from year-to-year until one party served written notice of termination. The lease also made clear that Tri-State was to remain the owner of the billboard itself and that Tri-State could remove the billboard at any time. Tri-State began renting advertising space on the board to a local gasoline retailer, Curry Oil Company.

On July 12, 1990, Tri-State received a letter from a London, Kentucky, attorney advising it that Ms. Poynter had died. The letter directed all future lease payments were to be made to her estate and sent to the administrator, Roland Mooney. In accordance with these instructions, Tri-State sent subsequent checks to the administrator for the years of 1991, 1992, and 1993.

Sometime in 1992, the Poynter Estate sold the property which contained the billboard to Glenn House and Cloyd House. Tri-State denies being informed of this property transfer. We would note that the 1993 rent check sent to

the Poynter Estate was endorsed by Mr. Mooney, but made payable to the "House Brothers for Deposit."

This check prompted Tri-State to send a letter to Mr. Mooney to inquire as to whether the estate still owned the property. Tri-State alleges it never received any response from Mr. Mooney or the Houses. Unsure as to how to proceed, Tri-State did not send any rent payments for 1994 and 1995.

Sometime in 1996, Tri-State was informed that the Houses now owned the land with the billboard and that Tri-State should contact them immediately. A phone number and address were provided. Another letter stating the same was sent a few months later.

Tri-State alleges that it tried to contact the Houses, but the Houses deny this. The lease for the land expired on May 31, 1996.[2] Tri-State continued to maintain the sign even after the lease expired and continued to rent the space to Curry Oil Company. Curry Oil paid rent through October 1996.

On October 15, 1996, Baxter Bledsoe entered into a contract with the Houses to lease the sign to one of his companies, Baxter Bledsoe, LTD. Mr. Bledsoe then assigned the lease to United Sign, LTD, a company in which he was a principal owner. At the same time, Mr. Bledsoe sent a letter to Curry Oil advising of his interest in the sign and informed Curry Oil that Tri-State no longer owned the sign.

[2] This date was confirmed by a previous panel of this Court during one of the previous appeals.

Sometime around December 10, 1996, Tri-State learned of these actions and wrote a letter to Glenn House seeking to renew the lease. Mr. Bledsoe, who is also a lawyer, responded on behalf of Mr. House and indicated he considered the sign abandoned and had assumed control over it.

Over the next several months, United Sign received rental payments from Curry Oil. On April 29, 1997, United Sign entered into a new lease agreement with Curry Oil. Also, Mr. Bledsoe had made significant alterations and repairs to the sign.

On February 28, 1997, Tri-State brought this action seeking a declaration of rights as to the ownership and possession of the billboard. Glenn House, Cloyd House,[3] and Mr. Bledsoe were named as defendants.

After some discovery, the defendants filed a motion for summary judgment claiming that the sign had been abandoned and that they had rightfully assumed possession. The lower court granted the motion on September 29, 1998, holding that Tri-State's lease had lapsed and that Tri-State abandoned the sign by not removing it within a reasonable amount of time.

Tri-State sought review by a previous panel of this Court. The Court reversed and remanded the case for trial, finding that although the lease had lapsed, it was up to a jury to decide whether Tri-State had abandoned the sign.

[3] During the course of litigation, Cloyd House died and devised his interest in the land to Oscar Gayle House. Glenn House also died and the action was then brought against the administrator of his estate.

Upon remand, Tri-State was allowed to file an amended complaint expanding the scope of the lawsuit seeking recovery of monetary damages for trespass, conversion, and intentional interference with an existing contract as well as loss of prospective business advantage. In addition, Mr. Bledsoe's companies, Baxter Bledsoe, LTD and United Sign, LTD, were joined as parties.

Further discovery was taken and depositions taken of all parties. The defendants then filed another motion for summary judgment. On September 17, 2001, the lower court granted the motion finding that Tri-State did not remove the sign within a reasonable amount of time and that its failure to do so deprived it of any claims for trespass, conversion, or intentional interference with a contract.

Tri-State appealed the decision and this Court again reversed and remanded holding that there were genuine issues of material fact regarding the claims for monetary damages.

A trial was held on August 21 and 22, 2006. During the course of the trial, the lower court sustained motions for directed verdicts as to all claims against Mr. Bledsoe and his companies. In the end, the jury returned a verdict finding that Tri-State had not abandoned the billboard. The jury also determined that the Houses had illegally converted the sign and awarded damages in the amount of $19,500. This amount was concluded to be the fair market value of the sign.[4]

[4] The only evidence presented as to the fair market value of a billboard was that it was equal to five years' worth of rent; in this case, five years' worth of rent is that Curry Oil would have paid Tri-State.

Post-judgment motions were filed by all parties. One such motion was for the court to reconsider the directed verdict in favor of Bledsoe. The court ultimately determined that it properly dismissed the claim for intentional interference with an existing contract, but that it erred in dismissing the claim for conversion. The lower court then ordered a new trial be held as to Bledsoe's liability.

Further, the jury award was lowered to $17,500. The fair market value was determined to actually be five years' worth of rent minus the expenses for the upkeep of the sign, which were determined to be $2,000.

Before a new trial could begin, the representatives of the Houses tendered the full amount of the judgment, $17,500. This then prompted new motions. Bledsoe argued that since the full amount of the judgment had been tendered, no new trial was necessary. Tri-State argued that it should be entitled to recover punitive damages from Bledsoe, not just compensatory damages, thereby necessitating a new trial as to Bledsoe's liability.

The lower court ultimately rejected Tri-State's arguments. Orders were entered denying Tri-State's ability to seek punitive damages from Bledsoe and dismissing all remaining compensatory claims asserted against Bledsoe for conversion.[5] Tri-State is now appealing the orders dismissing the claims against Bledsoe for conversion, punitive damages, and intentional interference with an existing contract. Bledsoe cross-appeals, arguing that the conversion claim was

[5] The lower court held that since the full amount of $17,500 had been tendered, the remaining conversion claims against Bledsoe were moot.

properly dismissed in the first place and should never have been resurrected by the lower court.

As stated above, the issues appealed by Tri-State are those disposed of by directed verdict.

> In general, a motion for directed verdict admits the truth of all evidence which is favorable to the party against whom the motion is made. When reviewing such a motion, the court may not consider the credibility of evidence or the weight it should be given; this is a function reserved to the trier of fact. The court must draw all inferences to be drawn from the evidence in favor of the party against whom the motion is made. The trial court must then determine whether the evidence favorable to the party against whom the motion is made is of such substance that a verdict rendered thereon would be palpably or flagrantly against the evidence, so as to indicate that it was reached as a result of passion or prejudice. If it concludes such would be the case, a directed verdict should be given, otherwise the motion should be denied. (Citations omitted).

Simpson County Steeplechase Ass'n, Inc. v. Roberts, 898 S.W.2d 523, 527 (Ky. App. 1995).

We will first discuss Tri-State's argument that it was error for the lower court to grant a directed verdict in favor of Bledsoe for intentional interference with an existing contract. We agree with the lower court that this claim was properly disposed of via directed verdict. One is liable for tortious interference with an existing contract when he wrongfully induces a third party not to perform a contract or enter into or continue a business relationship with another.

Carmichael-Lynch-Nolan Advertising Agency, Inc. v. Bennett & Associates, Inc., 561 S.W.2d 99, 102 (Ky. App. 1977).

There is no evidence that this claim was viable. Mr. Bledsoe did not begin using the billboard in question until October of 1996. The lease between Tri-State and the Houses expired in May of 1996. In October of 1996, Tri-State had no existing contract with the Houses because their lease had expired and was not renewed. At the same time, Tri-State had no authority to contract with Curry Oil on behalf of the Houses to use the area for advertising.

According to the lease bought by the Houses from the Poynter Estate, when the lease expired and notice was given that it would not be renewed, the billboard should be removed. The previous panel of this Court held that the lease expired May 31, 1996. As of May 31, 1996, Tri-State had no legal right to use the Houses' land or the billboard for any advertising purposes; therefore, no contract existed between Tri-State and the Houses or Tri-State and Curry Oil. Without an existing contract, Bledsoe could not be held liable for intentionally interfering with an existing contract. There being no existing contract between any parties as of May 31, 1996, and Tri-State no longer having any legal interest in the Houses' land, Bledsoe could not have wrongfully induced anyone not to perform on an existing contract or enter into or continue with an existing business relationship.

Further, any recovery for this cause of action would be in the form of lost profits. *Id.* As stated above, Tri-State was awarded five years' worth of lost

profits for the conversion claim. Awarding lost profits for intentional interference with an existing contract would be an impermissible double recovery.

As for the conversion claim against Bledsoe, we agree with the lower court's initial ruling that it erred in directing a verdict in Bledsoe's favor.[6] The issue of Bledsoe converting the billboard should have been submitted to a jury. More than one person can be liable for conversion. *See Ranier v. Gilford*, 688 S.W.2d 753 (Ky. App. 1985); *State Automobile Mutual Inc. Co. v. Chrysler Credit Corp.*, 792 S.W.2d 626 (Ky. App. 1990). Here, both the Houses and Bledsoe knew Tri-State claimed ownership of the billboard. Both thought Tri-State had abandoned the sign. A jury determined that Tri-State had not abandoned the sign.

The lower court, however, determined that no new trial was necessary because the full amount of the conversion judgment had been tendered. We disagree. While the full amount of compensatory damages has been paid into the court, Tri-State was not able to present to the jury its claim for punitive damages against Bledsoe for the conversion. Punitive damages are allowed to be considered for claims of conversion. *See Hensley v. Paul Miller Ford, Inc.*, 508 S.W.2d 759 (Ky. 1974). There is some evidence in the record that Mr. Bledsoe was aware that Tri-State was the owner of the billboard. Mr. Bledsoe claims he believed the sign had been abandoned and did not know Tri-State had any intention of continuing to use the sign. As a directed verdict was improper on the issue of Bledsoe's liability

[6] As stated previously, the lower court determined it had erred in directing a verdict on this issue, but declined to hold a new trial because the full amount of the jury award had been paid.

for conversion, as found by the lower court, the matter of punitive damages should be left to a jury to decide.

For the foregoing reasons, we reverse and remand this case to the lower court for a trial to determine if Mr. Bledsoe, Baxter Bledsoe, LTD, and United Sign, LTD are liable for conversion and if so, whether or not punitive damages are warranted.

ALL CONCUR.

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NO BRIEF FOR APPELLEES
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