

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001742-MR

PLUMBRIGHT SERVICES AND ROOTER, INC.

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE SAMUEL TODD SPALDING, JUDGE
ACTION NO. 14-CI-00322

PLUMB RIGHT SERVICE PLUMBING, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, TAYLOR, AND THOMPSON, JUDGES.

JOHNSON, JUDGE: PlumbRight Services and Rooter, Inc. (“PlumbRight”) appeals from the Taylor Circuit Court’s October 18, 2016 Trial Order and Judgment in which the court granted a directed verdict to Plumb Right Service Plumbing, Inc. (“Plumb Right”) as to the issue of an indistinguishable name claim. After reviewing the record in conjunction with the applicable legal authorities, we AFFIRM.

BACKGROUND

Both PlumbRight and Plumb Right offer plumbing services to the general public, statewide. PlumbRight was incorporated August 10, 2004, with its primary place of business Mt. Washington. Plumb Right was incorporated January 7, 2014, with its primary place of business Campbellsville. On November 2, 2014, PlumbRight filed a Complaint for Injunctive Relief alleging that Plumb Right's name is so similar to PlumbRight as to cause confusion by the public. PlumbRight alleged several instances where vendors have confused the two companies or one party has received service calls from individuals who were actually seeking the other company. The record shows that most of the confusion appeared in or around Elizabethtown.

After discovery, both parties filed a motion for summary judgment. On September 23, 2016, the court denied both motions and set the matter for trial on October 10, 2016. After both parties presented their case to the jury, both moved for a directed verdict. PlumbRight sought motions for injunctive relief on its claim of unjust competition and likelihood of confusion, and its claim under Kentucky Revised Statutes (KRS) 14A.3-010, failure to utilize an indistinguishable name. The court denied PlumbRight's motions for injunctive relief. Plumb Right then sought a directed verdict on both issues. The court granted Plumb Right's motion as to the statutory claim, but denied its motion as to the unjust competition claim allowing the matter to go to the jury. The jury returned a unanimous verdict in favor of Plumb Right on the issue of unjust competition which is not being

appealed. PlumbRight then filed this appeal arguing that the court erred when it granted Plumb Right's motion for a directed verdict on the issue of the application of KRS 14A.3-010 as it applies to the distinguishability of the two corporate names of the parties.

STANDARD OF REVIEW

The general standard for granting a directed verdict is that the trial judge must draw all fair and reasonable inferences from the evidence in favor of the party opposing the motion. There must be a complete absence of proof on a material issue or no disputed issues of fact upon which reasonable minds could differ. *Bierman v. Klapheke*, 967 S.W.3d 16, 18-19 (Ky. 1998).

ANALYSIS

PlumbRight argues that the court erred when it granted a directed verdict at trial on the issue of their claim under KRS 14A.3-010(1) that the two names of PlumbRight and Plumb Right are indistinguishable.

KRS 14A.3-010(1) states, “[e]xcept as authorized by subsection (24) of this section, the real name of an entity or foreign entity shall be distinguishable from any name of record with the Secretary of State.”

PlumbRight argues that the responsibility of determining whether or not the statutory criteria has been satisfied rests upon the filer of the document, and thus the issue of whether the names of the parties are distinguishable under the statute should have gone to the jury.

In reviewing the statutory scheme set in place by the Kentucky legislature, the responsibility of registering or rejecting corporate names is strictly placed within the authority of the Secretary of State. “If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this chapter and applicable organic law, the Secretary of State shall file it.” KRS 14A.2-100(1). This requirement places the responsibility of determining compliance with the statutes on the Secretary of State, not the filer. In determining that there were no disputed issues of fact upon which reasonable minds could differ, the court relied upon the proof presented at the trial. The testimony of the general counsel for the Secretary of State’s office, who unequivocally stated that her office makes the determination of whether a name is distinguishable from another as required by statute, testified as to the specific policies followed by the Secretary of State’s office in making such a determination and how those policies are implemented.

In general, a directed verdict should not be granted until the conclusion of the party’s case. *Lambert v. Franklin Real Estate Co.*, 37 S.W.3d 770, 775 (Ky. App. 2000) (quoting *Buchholtz v. Dugan*, 977 S.W.2d 24, 26 (Ky. App. 1998)). After hearing the testimony of all witnesses at trial, including the general counsel for the Kentucky Secretary of State and reviewing the record, the court determined that there was no question of fact, and that Plumb Right had not violated KRS 14A.3-010. Here, the trial judge did not entertain the motion until all proof was in and the matter was ready to be submitted to the jury.

We agree with the court that there was no question of fact left for the jury to decide. The jury agreed that only the Secretary of State's office makes the final determination. There was no issue of fact concerning that it is the responsibility of the Secretary of State to make the final determination, not the filer of the document.

Given that as a matter of law, the names have been determined to be distinct, a directed verdict was appropriate when after drawing all inferences in favor of the nonmoving party, the court concluded that a reasonable jury could only conclude that the moving party was entitled to a verdict. *Lambert* 37 S.W.3d at 775.

CONCLUSION

For the foregoing reasons, we AFFIRM the opinion of the Taylor Circuit Court.

ALL CONCUR.

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