

[Cite as *Betinis v. Sinon*, 2009-Ohio-5790.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

REBECCA BETINIS, ET AL.

Plaintiffs-Appellants

-vs-

JOHN W. SINON, ET AL.

Defendants-Appellees

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Julie A. Edwards, J.

Case No. 2009CA00028

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2008CV02056

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 2, 2009

APPEARANCES:

For Plaintiffs-Appellants

JOHN L. WOLFE
45 Mayfield Avenue
Akron, OH 44313

For Defendant-Appellee

JOHN S. COURY
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Farmer, P.J.

{¶1} In October of 2003, appellant, Rebecca Betinis, entered into a retainer agreement with Stuart Abramson, Esq., an attorney in New York, to represent her in an EEOC action. Appellant Betinis paid Mr. Abramson \$8,000 of a \$12,000 fee upfront. Instead of this amount being deposited in a professional law office or trust account, it was deposited in an account which was a joint and survivorship account in the names of Mr. Abramson and his wife, appellee, Eileen Abramson. In September of 2004, appellant Betinis paid Mr. Abramson the balance of his fee, \$4,000. This amount was also deposited into the joint account with appellee.

{¶2} In November of 2005, appellant, David Greene, entered into a retainer agreement with Mr. Abramson to represent him in his EEOC action. Appellant Greene paid Mr. Abramson \$4,500. This amount was deposited into a joint account with appellee.

{¶3} On July 4, 2006, Mr. Abramson died. He had done very little work on appellants' cases. A public administrator was appointed as administrator of Mr. Abramson's estate.

{¶4} On November 17, 2007, both appellants presented their claims for the return of unearned attorney fees to the public administrator. Both claims were de facto rejected.

{¶5} On April 28, 2008, appellants filed a complaint against the public administrator and appellee in the Court of Common Pleas of Stark County, Ohio for the return of the unearned attorney fees. On August 20, 2008, appellee filed a motion to

dismiss, claiming no personal jurisdiction. By judgment entry filed January 16, 2009, the trial court granted the motion and dismissed appellee from the case.

{¶6} A judgment entry nunc pro tunc had been filed on October 20, 2008 awarding appellant Betinis \$16,455.00 and appellant Greene \$5,522.00 as against the public administrator for Mr. Abramson's estate and the estate of Mr. Abramson for unearned attorney fees.

{¶7} Appellants filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶8} "THE COURT BELOW ERRED IN ADOPTING THE DECISION OF THE TRIAL COURT IN CASE NO. 2008CV02055 AND NOT MAKING AN INDEPENDENT DETERMINATION AS TO WHETHER OHIO HAD PERSONAL JURISDICTION OVER DEFENDANT-APPELLEE EILEEN ABRAMSON."

II

{¶9} "IN ADOPTING THE DECISION OF THE TRIAL COURT IN CASE NO. 2008CV02005, THE TRIAL COURT ERRED IN SUSTAINING DEFENDANT-APPELLEE EILEEN ABRAMSON'S MOTION TO DISMISS HER AS A PARTY-DEFENDANT ON THE GROUNDS THAT UNDER OHIO'S LONG ARM STATUTE, R.C. 2307.382, AND CIV. R. 4.3, OHIO HAD NO PERSON JURISDICTION OVER HER."

I

{¶10} Appellants claim the trial court erred in not rendering an independent judgment on the issue of personal jurisdiction as the trial court merely adopted another

trial court's ruling on the issue involving the same named defendant (Case No. 2008CV02055). We disagree.

{¶11} In its judgment entry filed January 16, 2009, the trial court stated the following:

{¶12} "With regard to Defendant Eileen Abramson's Motion to Dismiss, the Court previously ruled that this same motion to dismiss was filed by this same Defendant in a companion case (Case No. 2008CV02055), which was assigned to Judge Haas.***Due to the fact that the motions to dismiss were identical in that both motions required the Court to determine whether the Court lacked personal jurisdiction over Defendant Eileen Abramson, this Court found that justice required this Court to hold its ruling on the motion to dismiss that was filed in the above-captioned case in abeyance pending the outcome of the hearing which was held in Case No. 2008CV02055 before Judge Haas on December 18, 2008, so as to minimize the chance of inconsistent rulings on the two identical motions to dismiss.

{¶13} "Judge Haas held a hearing on the motion to dismiss that was filed in Case No. 2008CV02055, and subsequent to said hearing filed a Judgment Entry on December 19, 2008 finding that the Court lacked personal jurisdiction over the person of Defendant Eileen Abramson.

{¶14} "For the reasons set forth by Judge Haas in the Judgment Entry filed on December 19, 2008, the Court hereby adopts the ruling of Judge Haas and grants Defendant Eileen Abramson's Motion to Dismiss in the instant case."

{¶15} We note the trial court stated it reviewed the judgment entry of a concurrent trial court. We find given the nature of the record, we presume the regularity of the proceedings.

{¶16} Assignment of Error I is denied.

II

{¶17} Appellants claim the trial court erred in granting appellee's motion to dismiss for lack of personal jurisdiction under Civ.R. 12(B)(2). We disagree.

{¶18} R.C. 2307.382 governs personal jurisdiction. Subsection (A) states in pertinent part:

{¶19} "(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

{¶20} "(1) Transacting any business in this state;

{¶21} "(3) Causing tortious injury by an act or omission in this state;

{¶22} "(6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state;"

{¶23} Civ.R. 4.3, which governs out-of-state service, states the following in pertinent part:

{¶24} "(A) When service permitted

{¶25} "Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. 'Person' includes an individual, an individual's executor, administrator, or other personal

representative, or a corporation, partnership, association, or any other legal or commercial entity, who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

{¶26} "(1) Transacting any business in this state;

{¶27} "(2) Contracting to supply services or goods in this state;

{¶28} "(9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state;"

{¶29} It is appellants' position that appellee, as the spouse of Stuart Abramson, Esq., became a co-trustee and co-owner of the funds generated by Mr. Abramson's law practice:

{¶30} "6. Defendant Eileen Abramson is the surviving spouse of Stuart Abramson and was at all relevant times an agent, business partner, trustee, and co-owner of all assets and bank accounts, joint and survivorship, standing in the name of Stuart Abramson, both in his professional, business, and personal relationships.

{¶31} "7. Plaintiffs have jurisdiction over Defendants under Ohio's long-arm statute, RC 2307.382 and Civil Rule 4.3 by reason of both Stuart Abramson and Eileen Abramson, through Stuart, having transacted business in Ohio and contracting to supply services to Plaintiff in Ohio and for other acts within the purview of Rule 4.3 and RC2307.382.

{¶32} "13 & 23. The above bank account was a joint and survivorship account standing in the names of Stuart A. Abramson and his wife, Defendant Eileen Abramson.

At no time did Stuart A. Abramson maintain identifiable bank accounts in New York State, either professional law office or trust accounts, as required by the Disciplinary Rules governing members of the New York bar.

{¶33} "15. After Stuart Abramson's death, Plaintiff [Betinis] demanded of Defendant Eileen Abramson that she and Mr. Abramson's estate account for all time expended by Mr. Abramson and that she and Mr. Abramson's estate reimburse her for all fees that he had not earned.

{¶34} "16. Defendant Eileen Abramson refused to reimburse Plaintiff [Betinis] for any sums of money whatsoever, claiming that all Mr. Abramson's fees had been earned. Further, she refused to open any estate for Stuart Abramson, contending that there were no assets or funds belonging to him at the time of his death and that all of Mr. Abramson's funds and assets were joint and survivorship or tenancy by the entireties, which were not subject to administration by the New York Surrogate's Court." See, Appellant's Complaint filed April 28, 2008.

{¶35} On August 20, 2008, appellee filed a motion to dismiss with an accompanying affidavit. Within the affidavit, appellee avers that she is "a legal resident of the State of New York," did not transact "any business in the State of Ohio," and "was not an agent, employee, or business partner of Stuart A. Abramson in his law practice." Appellants do not dispute the first two averments.

{¶36} "In ruling on a Civ.R. 12(B)(2) motion to dismiss for lack of jurisdiction over the person, the trial court is not limited to the allegations in the complaint, but may consider other evidence contained in answers to interrogatories and counsel's affidavit

filed with the motion." *Price v. Wheeling Dollar Savings & Trust Co.* (1983), 9 Ohio App.3d 315, paragraph one of the syllabus.

{¶37} In *Joffe v. Cable Tech, Inc.*, 163 Ohio App.3d 479, 2005-Ohio-4930, ¶10-11, our brethren from the Tenth District explained the following:

{¶38} "Once a defendant moves to dismiss for lack of personal jurisdiction, a plaintiff must establish that the trial court had personal jurisdiction over the defendant.***If the trial court determines personal jurisdiction without holding an evidentiary hearing, the trial court must 'view allegations in the pleadings and the documentary evidence in a light most favorable' to the plaintiff and resolve 'all reasonable competing inferences' in favor of the plaintiff.***Without an evidentiary hearing, a plaintiff need establish only a prima facie showing of personal jurisdiction.***A prima facie showing exists if a plaintiff produces sufficient evidence to allow reasonable minds to conclude that the trial court has personal jurisdiction.***If the plaintiff makes a prima facie showing of personal jurisdiction, the trial court shall not dismiss the complaint without holding an evidentiary hearing.***Lastly, personal jurisdiction is a question of law that we review de novo.***

{¶39} "When determining whether an Ohio court has personal jurisdiction over a nonresident defendant, the court must (1) determine whether Ohio's long-arm statute and the applicable civil rule confer personal jurisdiction and, if so, (2) whether granting jurisdiction under the statute and rule comports with the defendant's due process rights under the Fourteenth Amendment to the United States Constitution.***Courts must engage in the two-step analysis because the long-arm statute does not give Ohio courts jurisdiction to the limits of the due process clause.***" (Citations omitted.)

{¶40} In *U.S. Sprint Communications Co., Ltd. Partnership v. Mr. K's Foods, Inc.* (1994), 68 Ohio St.3d 181, 186, the Supreme Court of Ohio noted the following:

{¶41} "The United States Supreme Court has held that in order for a state court to subject a foreign corporation to a judgment *in personam*, the corporation must 'have certain minimum contacts with [the state] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."****' (Citations omitted.) *International Shoe Co. v. Washington* (1945), 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102. In formulating this rule, the United States Supreme Court emphasized that the analysis 'cannot simply be mechanical or quantitative,' but rather whether due process is satisfied depends 'upon the quality and nature of the activity.' *Id.* at 319, 66 S.Ct. at 159-160, 90 L.Ed. at 103-104."

{¶42} We are required to accept as true the allegation that Mr. Abramson co-mingled attorney fees with personal funds in an account he shared with appellee. However, this allegation alone is insufficient to establish minimum contacts of appellee with the state of Ohio. The complaint does not establish agent or co-conspirator activity by appellee in Ohio.

{¶43} Upon review, we concur with the trial court that Ohio lacked personal jurisdiction over appellee.

{¶44} Assignment of Error II is denied.

{¶45} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, P.J.

Gwin, J. and

Edwards, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Julie A. Edwards

JUDGES

SGF/sg 1007

