

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In re Estate of Galon Howard, Deceased

Court of Appeals No. L-13-1191

Trial Court No. 2011 EST 0826

DECISION AND JUDGMENT

Decided: March 7, 2014

* * * * *

Rene Mays, pro se.

Kristen A. Connelly and Elizabeth E. Baer, for appellee
The Toledo Hospital.

Peter N. Lavalette, for appellee Mercy St. Anne Hospital.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This accelerated appeal is before the court on appeal of the August 21, 2013 judgment of the Lucas County Court of Common Pleas, Probate Division, which denied appellant's, Rene Mays, as administrator of the estate of Galon Howard, motion for relief

from judgment pursuant to Civ.R. 60(B). Because we agree that there are no reasons which justify relief, we affirm.

{¶ 2} For purposes of this appeal, we will refer to the lengthy history of the cases in the lower courts only as needed. In 2011, appellant, individually and as administrator of the estate, pro se, commenced a wrongful death and survival claim in the General Division of the Lucas County Court of Common Pleas. The claims surrounded the death of her brother, Galon Howard, and named The Toledo Hospital and Mercy St. Anne Hospital as defendants. The case was dismissed on September 19, 2013, because appellant failed to file an affidavit of merit under Civ.R. 10(D). Further, as the personal representative of the estate, appellant was not permitted to bring the action in a pro se capacity.

{¶ 3} Prior to the above filings, on April 18, 2011, appellant commenced a probate court action requesting summary release from the administration of the deceased's estate. On the same day, the request was granted. Appellant was appointed as fiduciary to the estate, for litigation purposes only, on September 6, 2011.

{¶ 4} On June 5, 2013, in the probate court, appellant filed a motion for judgment in favor of the administrator in her wrongful death and survivorship claims (though the claims had been and were being litigated before the common pleas court and, at various points, were before this court). Appellees opposed the motion arguing that the probate court did not have jurisdiction to hear the claims.

{¶ 5} In her reply, appellant contended that judgment was to be rendered in her favor because in the general division case, appellees failed to timely file an answer; thus, the allegations were deemed admitted. Appellant claimed that appellees owed \$3,240,395 in damages to the estate. Attached to her reply was a letter dated June 20, 2013, instructing appellees that if they paid the amount by July 15, 2013, she would consider the account “Settled in full.”

{¶ 6} On July 11, 2013, the magistrate vacated the motion hearing date because one of the general division cases was pending in this court and the two remaining cases had pending motions to dismiss. Also on July 11, the magistrate issued its decision denying appellant’s motion and dismissing the matter for lack of jurisdiction.

{¶ 7} On July 18, 2013, appellant filed objections to the magistrate’s decision. Appellant argued that probate jurisdiction was proper because the parties “are in agreement with the settlement of the wrongful death and survival claims and agree as to the division of proceeds.” Appellant also filed a motion to set aside the magistrate’s order, which essentially recited the same arguments.

{¶ 8} On August 1, 2013, the trial court denied the motions finding that while the court had the authority to approve settlements, it did not have jurisdiction to determine the merits of a wrongful death action. The court specifically found that there was no settlement before it.

{¶ 9} Appellant then filed a motion to vacate the August 1, 2013 judgment pursuant to Civ.R. 60(B)(1) and (5). On August 21, 2013, the probate court denied the

motion finding no extraordinary circumstances which would warrant relief. This appeal followed. Appellant raises the following assignment of error for review:

Assignment of Error No. 1: The trial court abused its discretion in denying appellant's 60(B) motion to vacate judgment entry of August 1, 2013, under the facts and circumstances of this case.

{¶ 10} In her sole assignment of error, appellant contends that she is entitled to relief under Civ.R. 60(B)(1) because appellees' "poor choice of counsel" constitutes excusable neglect. Further, counsels' conduct constitutes "extraordinary circumstances" under Civ.R. 60(B)(5) which warrants relief. Specifically, appellant claims that she gave counsel the settlement letter and that they, in turn, failed to either pay the amount offered or submit a counteroffer on behalf of their clients.

{¶ 11} Upon review, we find no evidence that, in the wrongful death claims before the general division, there had ever been settlement. In fact, the cases were dismissed and appealed on multiple occasions due to appellant's failure to file an affidavit of merit and obtain counsel. Accordingly, appellant's assignment of error is not well-taken and it is denied.

{¶ 12} Based on the foregoing, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas, Probate Division, is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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