

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001600-MR

GEORGE D. LAWSON, EXECUTOR OF
ESTATE OF R. E. PETRIE AND TRUSTEE
OF THE TRUST ESTABLISHED BY THE WILL
OF R. E. PETRIE

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE THOMAS R. LEWIS, JUDGE
ACTION NO. 00-CI-01514

WILLIAM HAYNES, SPECIAL
ADMINISTRATOR OF THE ESTATE
OF FRANCES R. PETRIE

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND HUDDLESTON, JUDGES.

DYCHE, JUDGE: Appellant George D. Lawson, as Executor of the Estate of R. E. Petrie and Trustee of the Trust Established by the Will of R. E. Petrie, filed a complaint in the Warren Circuit Court against William S. Haynes, Administrator of the Estate of Frances R. Petrie, alleging breach of a contract/partnership agreement entered into between their decedents. The complaint

specifically alleged that Haynes had breached that agreement by failing or refusing to make equal contribution to the partnership, and failing and refusing to equally bear the obligations of the partnership.

Haynes filed a motion to dismiss the complaint and a supporting memorandum asserting the defenses of: limitations; failure to state a claim for relief, in that the partnership had terminated by either its own terms, operation of law, or actions of the parties; and failure to join an indispensable party.

The court heard extensive arguments on the motions, the videotape of which we have viewed. The great bulk of these arguments concerned a ruling of the Probate division of the Warren District Court which found that one-half of the proceeds of a certificate of deposit, held in the partnership name, belonged to Mrs. Petrie's estate. This ruling was affirmed on appeal to the Warren Circuit Court, and discretionary review was denied by this court and the supreme court.¹

The trial court apparently agreed with appellee that this district court ruling was *res judicata*, barring the present action. In the words of the trial judge at the hearing, he had

¹There was some confusion at the argument as to the effect of a denial of discretionary review by this court. CR 76.20(9)(a) provides, in part, "The denial of a motion for discretionary review does not indicate approval of the opinion or order sought to be reviewed and shall not be cited as connoting such approval." The discretionary review process is not for error correction, but will be granted only when there are special reasons for it. CR 76.20(1).

to determine if the present claim had ~~A~~a life of its own@ he found no such life, and dismissed the complaint.

We disagree, and reverse. The cause of action pled by the complaint herein alleges a breach of contract/violation of the partnership agreement. Appellant has acknowledged that, although he disagrees with the district court ruling concerning the certificate of deposit, it is the law of the case. Hardaway Management Co. v. Southerland, Ky., 977 S.W.2d 910, 915 (1998). Whether the obtaining of that certificate by appellee caused a violation of the agreement is the cause of action herein. That issue has not been, and could not be, decided by the district court. If the district court attempted to construe the partnership agreement in its ruling, such action is void, as that court is without the subject matter jurisdiction to decide such an issue. KRS 24A.010; 24A.020; 24A.120; 23A.010.

It may well be that, as the proof develops and the evidence is taken, the end result leaves the parties as they are now. But at this point it is premature for the trial court to rule that the complaint has stated no cause of action (CR 12), and error to rule that the cause of action pled in the complaint has been, or could be, decided by the district court.

The order of the Warren Circuit Court is reversed, and this matter is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

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