

RENDERED: JUNE 27, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001210-MR

MICHAEL HADDIX AND
RHONDA HADDIX

APPELLANTS

v. APPEAL FROM GALLATIN CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 99-CI-00014

CHRISTOPHER S. NORDLOH

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: BAKER and KNOPF, JUDGES; and JOHN D. MILLER, Special
Judge.¹

BAKER, JUDGE. Michael and Rhonda Haddix (appellants) bring this
appeal from a May 2, 2002, order of the Gallatin Circuit Court.
We affirm.

¹ Senior Status Judge John D. Miller sitting as Special Judge by assignment of
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Appellee is an attorney licensed to practice law in the Commonwealth of Kentucky. He shared office space with F. Scott Cammack and Meredith Lawrence, also attorneys licensed to practice law in this Commonwealth. Lawrence and Cammack were representing Michael Haddix in a personal injury action against Kubota Tractor Corporation. The action was filed in the Kenton Circuit Court and was assigned to Special Judge Gregory Bartlett. Before trial, Cammack communicated to appellee that he believed the action had been knowingly filed outside the one year statute of limitations but that a false date of injury was given to avoid dismissal. Thereupon, appellee went to Judge Bartlett's chambers in Kenton County, Kentucky, and repeated to Judge Bartlett what Cammack had told him concerning the alleged false date of injury. Judge Bartlett then temporarily stayed the lawsuit pending investigation.

Appellants filed a complaint in the Gallatin Circuit Court against appellee. Therein, appellants sought to recover damages under a theory of defamation for appellee's statement to Judge Bartlett:

6. Upon information and belief, the Defendant communicated to the Judge a false and fabricated story suggesting the Plaintiff's [sic] had participated in organizing, perpetrating or otherwise filed or caused to be filed a cause of action(s) with a fictitious date of injury(s).

. . .

9. Plaintiff's [sic] state the Defendant has caused them to suffer a defamation of character by slandering their name in the false and fabricated story improperly communicated directly to the Judge in their civil action(s) about false or incorrect dates.

Complaint at 2-3.

Appellee filed a motion for summary judgment claiming entitlement to absolute immunity. The circuit court ultimately denied the motion for summary judgment.

Appellee subsequently pursued an appeal to the Court of Appeals and filed a petition for a writ of "mandamus" seeking to prohibit the judge from proceeding with the action. The Court of Appeals entered an order dismissing the appeal as interlocutory (Appeal No. 1999-CA-001714-MR).² The Court also entered an order denying the writ (Appeal No. 1999-CA-001695-MR). An appeal as a matter of right was taken to the Supreme Court of Kentucky from the order denying the writ, and appellee sought discretionary review from the order dismissing the appeal as interlocutory. In Appeal No. 1999-SC-0832-MR, the Supreme Court affirmed the Court of Appeals dismissal of the appeal as interlocutory and the denial of the writ. The Supreme Court

² The Court of Appeals' order addressed two appeals brought by appellee. In 1999-CA-001714-MR, appellants were appellees. The other appeal, 1999-CA-001713-MR, is irrelevant to disposition of this appeal.

noted that the appeal was properly dismissed as interlocutory and that the writ was properly denied because appellee had an adequate remedy by appeal.

Appellee then moved the circuit court to dismiss the action based upon improper venue. On May 2, 2002, the circuit court entered an order dismissing the action and finding that proper venue "resides in Kenton County." This appeal follows.

Appellants initially contend that appellee is barred from raising the issue of improper venue by the law of the case doctrine. Specifically, appellants argue:

This matter has been the subject of a Motion for Summary Judgment. That Motion was overruled. The Appellee had appealed that decision. That appeal was decided by the Court of Appeals [sic] and then presented to the Supreme Court.

Additionally, Appellee filed a Petition for Writ of Prohibition. They lost and appealed to the Supreme Court. They lost that appeal. The case was remanded for trial, and set for trial. Discovery took place, and on the eve of trial, Appellee raised improper venue for the first time. Appellee's attempt to interject this defense at this late date is barred by the "law of the case doctrine." (Citations omitted).

Appellants' Brief at 2. We reject appellants' argument.

The direct appeal to our Court was dismissed as interlocutory, and the petition for writ of mandamus was denied as there was an adequate remedy by appeal. Under the law of the case doctrine, an actual decision of an issue by an appellate

court may have a preclusive effect as to that issue in a later proceeding. Here, the only issue decided by the earlier appeal was that the circuit court's order denying summary judgment was interlocutory, and the only issue decided from denial of the writ was that appellee had an adequate remedy by appeal; thus, we think the law of the case doctrine only would bar relitigation of those issues. Simply put, we do not believe that the law of the case doctrine would bar the issue of whether venue properly lies in the Gallatin Circuit Court. As such, we view this contention to be without merit.

Appellants next assert that the circuit court committed error by concluding that proper venue lies in Kenton County. Relying upon Kentucky Revised Statute (KRS) 452.460, appellants maintain that venue is proper in the county where "the injury was done." Specifically, appellants argues:

Here the injury was done to a case pending in Gallatin County and the claims of Gallatin County residents and their reputations. The injury was done when the orders of the Special Judges were entered in the Gallatin Circuit Clerk's office, delaying the trial, appointing and then reappointing special judges, and the consequences of these defamatory statements eating away like a cancer at a case pending in Gallatin County.

Appellants' Brief at 3-4.

KRS 452.460(1) reads in pertinent part:

Every other action for an injury to the person or property of the plaintiff, and every action for an injury to the character of the plaintiff, against a defendant residing in this state, must be brought in the county in which the defendant resides, or in which the injury is done.

Under the above statute, an action for defamation may be brought in the county in which the defendant resides or in which the injury was done. Appellants contend that the injury was done in Gallatin County and, thus, venue is proper there. We, however, reject this interpretation of the statute. We believe that the injury was done for purposes of KRS 452.460 in the county in which the utterances were made. Caldwell v. Story, 107 Ky. 10, 52 S.W. 850 (1899).

In the case at hand, the facts are undisputed. Appellee was a resident of Kenton County, Kentucky, and the alleged defamatory statement took place in Judge Bartlett's office in Kenton County. As such, we are of the opinion that venue properly lies in Kenton County under KRS 452.460.

Appellants further argue that "a serious and genuine issue of fact exists regarding the nature and extent of damage caused to appellants, precluding summary judgment." We consider this issue moot as the action was properly dismissed based upon improper venue.

For the foregoing reasons, the order of the Gallatin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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