

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001454-MR

JAMES F. CLAY, JR.

APPELLANT

APPEAL FROM BOYLE CIRCUIT COURT
v. HONORABLE WILLIAM T. JENNINGS, SPECIAL JUDGE
ACTION NO. 94-CI-00297

KATHY DUVALL; AND
J. ANDREW WHITE

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant James F. Clay, Jr. ("Clay"), appeals from a judgment in a malpractice action. That judgment held that the decision in a disciplinary case barred relitigation of the issue of whether Clay had acted as a reasonably prudent attorney with regard to Kathy Duvall's case. In that action Clay was required to compensate Duvall for benefits she allegedly lost due to Clay's misconduct, and Duvall's attorney's fees. Duvall's attorney, Appellee White, is a party before this Court arguing that the award of attorneys fees was proper.

Clay is an attorney who was retained by Duvall to seek worker's compensation benefits on her behalf. Clay asserts that at the time he was retained, Duvall did not inform him that her reconsideration of an adverse determination in the worker's compensation case had previously been rendered, or that the time for appealing that decision had expired.

The record shows that Clay received a copy of the reconsideration notice, and forwarded it to Duvall. He took no further action on her behalf on that matter for a year. Clay asserts that on a later date, Duvall requested that Clay provide her with a motion for belated hearing in the compensation action. He claims that he provided her with one, but she did not file it. Duvall argues that the motion contained false statements, and asserts that she refused to sign it on that ground. It is uncontroverted that Clay did not request a hearing for Duvall on her claims.

The Kentucky Supreme Court held, in KBA v. Clay, Ky., 932 S.W.2d 369 (1996), that Clay's inaction warranted discipline due to his failure to act with reasonable diligence in the representation of his client; for misrepresenting the status of his client's case, and for engaging in dishonest conduct with regard to Duvall's social security claim. When Duvall requested a hearing before a special judge, the special judge relied upon the published disciplinary action to find Clay negligent. The

special judge awarded Duvall damages for her loss of disability benefits under the Worker's Compensation and Social Security Acts. The special judge also awarded Duvall her attorney's fees for prosecuting the action against Clay.

Clay asserts that the special judge's reliance on the disciplinary action as res judicata with regard to the issue of legal negligence is misplaced. A court may properly bar relitigation of issues which have been decided on the merits in an earlier action which raised the same claims Godbey v. University Hosp. Of Albert B. Chandler Medical Center, Inc., Ky. App., 975 S.W.2d 10, 105 (1998). If the parties to both actions are the same, the bar is termed res judicata. If the parties are different, then just the particular issues actually litigated are barred under the doctrine of collateral estoppel. Id. Although Duvall was a complaining witness in the action brought by the Bar Association, she was not the plaintiff in that action. The question of whether Clay was negligent or acted improperly was actually litigated on the merits in the KBA case and was expressly discussed in the published opinion. For this reason, relitigation of those issues is barred as a matter of law. Napier v. Jones, Ky. App., 925 S.W.2d 193, 195 (1996). We affirm the trial court's reliance on the earlier case as having adjudicated the issue of professional negligence.

Clay argues that he was not provided notice of the trial against him in which the underlying judgment appealed from was rendered. Clay argues that the order he received merely set a hearing, not a trial date. The motion at issue contains language showing that it is a motion for default judgment, summary judgment, or a prehearing order. The motion and supporting memorandum were sufficient to have given Clay notice of the purpose of the hearing. Clay does not deny receipt of the motion and supporting memorandum. Receipt of this document clearly provided adequate notice of the purpose of the hearing. Clay did not attend the hearing, and judgment was rendered against him.

Clay asserts that the fact that the special judge conducted a trial on the date set for hearing on the motion for default judgment or summary judgment was a violation of law. A review of the record shows that the order Clay received was an order setting a hearing on a motion for default judgment or summary judgment. Clay did not attend the hearing, or provide evidence supporting any defense he may have had to the claims against him. The trial court held a bench trial on that date, and a default judgment was entered. No grounds sufficient to warrant setting aside of this judgment have been shown by Clay.

Clay also claims error in rendition of the judgment against him because he had requested a jury trial, and the trial

court conducted a bench trial. Where the defendant does not appear and defend in an action after sufficient notice, the trial court may conduct a bench trial and enter a judgment. Bench trials are permitted by law. Cole v. Gilvin, Ky. App., 59 S.W.3d 468, 472 (2001).

Clay argues that Duvall's proof of damages before the special judge was inadequate, and should not have formed the basis of a damage award. The record shows that Duvall's claim for damages was supported by documentation. Where a party shows proof of damages, and provides evidence from which damages may be ascertained, such proof and evidence is sufficient to support a damage award. Newsome v. Billips, Ky. App., 671 S.W.2d 252, 254 (1984). Clay has not shown that this award is properly reversible. Similarly, Clay's request that the attorney fee award be reversed for lack of proof or for being excessive is unsupported by the evidence. Clay asserts that the attorney fees awarded Appellant White were excessive, and that White's work did not warrant the fees claimed. The record does not contain a showing that White's fees were excessive such that the fee award should be set aside.

After the default judgment was rendered against him, Clay filed a CR 59 "Motion for Relief" in the Boyle Circuit Court. That motion was set for hearing in Boyle County, where the judge had already recused himself, rather than in Madison

County where the special judge sat, and where all proceedings in the case had been heard. The special judge took the motion and the response filed by Duvall under submission, and rendered its decision without a hearing after several months. Clay objects to the failure of the trial court to conduct a hearing prior to rendering its decision on the motion for new trial. Clay has not cited authority which would deny the special judge the right to render a decision without hearing. A trial court has discretion to issue a ruling on a motion for new trial. Collins v. Commonwealth, Ky., 951 S.W.2d 569, 576 (1997). Such a ruling will not be disturbed unless an abuse of discretion is shown. Lewis v. Grange Mut. Cas. Co., Ky. App., 11 S.W.3d 591, 593 (2000). We do not find the special judge abused his discretion in entering an order on the motion for new trial. No reversible error has been shown.

For the foregoing reasons, the decision of the Special Judge, Boyle Circuit Court, is affirmed.

TACKETT, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT.

BRIEFS FOR APPELLANT,
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BRIEF FOR APPELLEES:

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