RENDERED: JUNE 3, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001964-MR

JAMES R. SEALS AND
JAMES C. SEALS — APPELLANTS

v.

APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 92-CI-00327

CHESTER HOLLAND
AND BILLY SEALS — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

BARBER, JUDGE: This case is before us for a second time. In its first visit we held that James R. Seals and James C. Seals had failed to prove by clear and convincing evidence that their signatures on a partnership dissolution agreement were forged.

[1] Senior Judge Joseph R. Huddleston, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Thus, a jury verdict in their favor was reversed.[2] Thereafter, James R. Seals and James C. Seals moved the circuit court to reopen the case; the court allowed it and allowed James R. Seals and James C. Seals to present further proof on the issue of the alleged fraud. Ultimately, however, the court dismissed the case and also denied their motion to alter, amend or vacate. It is from this disposition that this current appeal is prosecuted.

On October 20, 1992 James C. Seals and James R. Seals (the Seals) filed a complaint alleging on December 23, 1987 they entered into a partnership agreement with Chester Holland, Billy Seals, and Steve Bentley.[3] The Seals complained that Chester Holland and Billy Seals entered into a sublease for coal mining and did not pay the Seals their percentage of the partnership profit. The appellees filed a motion to dismiss on the grounds that the partnership, CBS Construction Company, had been dissolved by agreement on November 25, 1991.

The Seals responded that their signatures, appearing on the dissolution agreement, were not, in fact their signatures. The case proceeded to trial and a jury returned a verdict in favor of the Seals. As noted above, this Court reversed that disposition stating:

> We have reviewed the evidence presented by [the Seals] in support of their allegation of fraud in the document of

[2] Holland v. Seals, 1995-CA-001443-MR (January 10, 1997).
[3] Steve Bentley has never been a party in the case.

> dissolution, and do not find clear and convincing evidence to support their claim. The testimony of the notary was ambiguous, at best, and that is the only independent evidence available. The handwriting exemplars provided by [the Sealses] during the trial are unconvincing; no expert testimony was produced in support of [the Sealses] denials of execution of the instrument.
>
> The judgment of the Letcher Circuit Court is reversed.

Holland v. Seals, 1995-CA-001443-MR, slip opinion at 3-4 (January 10, 1997).

No appeal was taken from this Court's ruling. Thus, the holding of the case, that insufficient evidence was presented to support the Sealses claim that the partnership dissolution document was fraudulent, is now the law of the case. See Inman v. Inman, 648 S.W.2d 847, 849 (Ky. 1982).

The Seals have attempted to revive their claims by moving the circuit court under CR 60.02 for a new trial and to present further evidence of fraud in the execution of the partnership dissolution papers. The Seals both filed an affidavit with their CR 60.02 motion in which they claim that they have "discovered other instances where the same defendants have engaged in similar acts of forgery in relation to mining activities." Although there is no written order reflecting whether the court formally granted the Sealses motion, the record does reflect that the court denied the appellees' motion

for summary judgment, set the case for trial, and scheduled pretrial conferences.

Prior to the scheduled trial, on July 24, 2003, the Sealses filed a pretrial conference memorandum to the court advising it of the evidence it intended to introduce and instructions for the jury. In that memorandum the Sealses identified only two pieces of evidence they intended to introduce that were not presented at the first trial; the deposition of Steve Bentley and an affidavit of Jerry Banks.

The deposition of Steve Bentley is short and reveals the following: He signed a buy out agreement from the partnership with the appellees on March 31, 1989, in the presence of the appellees and the Sealses. He specifically acknowledged the signature appearing on the document was his. No notary was present at the time he signed, but it was his understanding that Jerry Banks, a notary, would sign the document at a later time. In a search of the record we are unable to locate an affidavit from Jerry Banks, but there is a notice to take his deposition, and we know from the deposition of Steve Bentley and a review of the buy-out agreement that he is the notary of Steve Bentley’s signature on that document.

The trial court reviewed the case and found that the Sealses had failed to present any additional relevant evidence

of fraud beyond that presented at the first trial. Accordingly, it dismissed the case.

On appeal the Sealses maintain the circuit court committed error by dismissing their case. Their claim is two-fold; first they argue the decision from the first appeal in this case recognized the evidence of fraud was sufficient to present to a jury; second, they point to the evidence from Steve Bentley described above as showing the appellees' tendency to have notary clauses signed under false pretenses.

The Sealses also devote some amount of their brief to the effect of the mandate of this Court in the former appeal. A general and unqualified reversal, such as in this case, nullifies any judgment, order or decree entered. Noland v. Wise, 285 S.W.2d 168, 169 (Ky. 1955); 5 C.J.S. Appeal and Error § 959 (2004). Generally, it is within the discretion of the trial court whether to allow further proof unless the mandate of the appellate court directs otherwise. Preece v. Wolford, 20 Ky. 604, 255 S.W. 285, 286 (1923). And even if the case is remanded for further proceedings, (which the Sealses case was not) the trial court remains free to enter an order of summary judgment or other order disposing of the case unless the appellate court's mandate specifically directs retrial. Shreve v. Taylor County Public Library Board, 431 S.W.2d 861, 862 (Ky. 1968).

We cannot see any error in the trial court's actions in this case. Following the former appeal, the case was over. The Sealses moved the circuit court for a new trial under CR 60.02, the court allowed the Sealses to take further evidence, and placed the case on its trial docket. Prior to the scheduled trial it found the Sealses had produced insufficient evidence to support their claims. These procedural steps are entirely proper and not cause for any argument of error to the circuit court.

The Sealses' contention that the opinion from the first appeal of this case recognized the evidence of fraud as sufficient to present to a jury is simply incorrect. As the above-quoted portion of the opinion demonstrates, this Court held the opposite, *vis*, that the evidence was insufficient as a matter of law to allow a jury to pass on the question.

The additional evidence from Steve Bentley does nothing to bolster the Sealses' claim that their signatures on the partnership dissolution agreement were forged. Bentley specifically acknowledged his signature on the buy-out agreement was genuine and he offered no evidence as to the authenticity of the partnership dissolution agreement. We concur with the circuit court that the Sealses have failed to produce any evidence of fraud beyond that presented at the first trial.

That being the case, the holding of this Court in the former appeal must direct the outcome.

The order of the Letcher Circuit Court dismissing is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Frank R. Riley, III
Whitesburg, Kentucky

BRIEF FOR APPELLEE:

Peyton Reynolds
Whitesburg, Kentucky