

RENDERED: March 11, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002406-MR

KEVIN J. STRONG

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 03-CI-005244

ROBERT S. STRONG

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Kevin J. Strong appeals from a September 4, 2003, order of the Jefferson Circuit Court that granted in part and denied in part Robert S. Strong's motion to dismiss for lack of personal jurisdiction. We affirm.

Kevin and Robert were involved in an intimate relationship for approximately five years while living in Indiana. During that period, the parties "resided together, purchased property together, contributed their incomes to a

joint account, [and] made joint investments" Complaint at 1. In February 2000, the relationship ended and Kevin moved to Kentucky.

Kevin initiated this action by filing a complaint in the Jefferson Circuit Court on June 13, 2003. Therein, Kevin alleged that there were items of "joint" property, both real and personal, to be divided between the parties. Specifically, Kevin asserted the parties jointly owned several items of personal property and had jointly contributed to investment and checking accounts. Kevin also asserted that the parties jointly purchased a burial plot in a Louisville cemetery. Kevin further alleged that Robert engaged in tortious behavior in Kentucky that constituted an invasion of his privacy.

Robert entered a special appearance and filed a motion pursuant to Ky. R. Civ. P. 12.02 to dismiss the complaint for lack of jurisdiction. Robert claimed to be a resident of Indiana and asserted that during the relationship both his residence and business were located in Indiana. Robert further asserted that while the parties resided in Indiana, they accumulated personal property in Indiana, and maintained a checking account in Indiana. Robert argued the circuit court lacked personal jurisdiction over him.

The circuit court conducted a hearing on Robert's motion to dismiss. By order entered September 4, 2003, the

circuit court partially granted and partially denied the motion. In its order, the circuit court concluded it could exercise personal jurisdiction over Robert as to the invasion of privacy claim. The court further concluded it could exercise in rem jurisdiction over the claim related to the burial plot located in Kentucky. The court dismissed the remaining claims for lack of jurisdiction. Kevin filed a motion to reconsider which the circuit court denied. This appeal follows.

Kevin contends the circuit court erred by concluding it lacked personal jurisdiction over Robert to adjudicate the claims relating to division of the parties' assets, including the investment account, checking account, and personal property. Specifically, Kevin maintains that the parties, acting as a "partnership," transacted business in Kentucky by purchasing the burial plot located in a Louisville cemetery.¹ Kevin contends that as a result of the partnership transacting business in Kentucky, the court had personal jurisdiction over Robert as to all issues related to the "partnership" assets pursuant to Kentucky Revised Statutes (KRS) 454.210(2)(a)(1). Kevin essentially argues that the "partnership" assets included the investment account, the checking account, and other numerous items of personal property. Kevin also asserts that as a result

¹ We note that there is nothing in the record to indicate the existence of a partnership between the parties as defined by Kentucky Revised Statutes 362.175.

of the tortious invasion of privacy committed by Robert in Kentucky the circuit court could properly exercise personal jurisdiction pursuant to Kentucky Revised Statutes 454.210.

KRS 454.210 states, in relevant part, as follows:

(1) As used in this section, "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a nonresident of this Commonwealth.

(2) (a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person's:

1. Transacting any business in this Commonwealth;

. . . .

3. Causing tortious injury by an act or omission in this Commonwealth;

. . . .

(b) When jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.

KRS 454.210(2)(a)(1) clearly establishes personal jurisdiction over a nonresident defendant who has transacted business in this Commonwealth but only as to a claim that arises from such business transaction. See Tennessee Farmers Mutual Ins. Co. v. Harris, 833 S.W.2d 850 (Ky.App. 1992).

In the case sub judice, Kevin has not asserted that the parties' contributions to the investment account, checking account and items of personal property arose from the parties'

business transaction (i.e., the purchase of the burial plot in Kentucky). As such, KRS 454.210(2)(a)(1) clearly does not provide a basis for the circuit court to exercise personal jurisdiction over Robert as to the claims relating to the investment account, checking account and items of personal property.

KRS 454.210(2)(a)(3) provides that personal jurisdiction may be exercised over a nonresident defendant who has caused tortious injury in this Commonwealth but only as to a claim that arises from such injury. Kevin has not asserted that the claims related to the investment account, checking account and personal property arose from Robert's alleged tortious conduct in Kentucky. As the claims did not arise from the tortious conduct, KRS 454.210(2)(a)(3) clearly does not confer personal jurisdiction over Robert as to those claims.

Kevin's next argument is that the parties' relationship constituted an implied partnership and the circuit court erred in refusing to recognize the same. Kevin argues Glidewell v. Glidewell, 790 S.W.2d 925 (Ky.App. 1990) recognizes that implied partnerships may arise from relationships involving unmarried parties. In Glidewell, an unmarried couple held themselves out as husband and wife and were treated as a partnership implied by law for the purpose of dividing assets when the relationship ended. Both parties in Glidewell resided

in Kentucky at the time the lawsuit was filed. The circuit court distinguished Glidewell from the facts of this case noting that jurisdiction was not raised in Glidewell. We agree with the circuit court that Glidewell is not applicable to this case, and without jurisdiction, we are not in a position to consider recognition of an implied partnership for the purpose of dividing assets located in Indiana.

Kevin's next argument is that the circuit court's refusal to apply Glidewell to this case constituted a violation of the Equal Protection Clause of Section 3 of the Kentucky Constitution. Kevin argues that he is being punished because he was engaged in a homosexual relationship with Robert and that the circuit court failed to apply the rule of Glidewell on the premise that it only applied to unmarried heterosexual couples. We find this argument to be a misinterpretation of the circuit court's order.

While the circuit court acknowledged in its order that Kevin and Robert were engaged in a homosexual relationship, the circuit court clearly distinguishes Glidewell on the basis of jurisdiction, not homosexuality. As noted, we agree with the circuit court's analysis on this issue and thus believe Kevin's arguments under the Equal Protection Clause of the Kentucky Constitution to be totally without merit and otherwise not applicable to this case.

Kevin's final contention is that pursuant to KRS 362.305 the circuit court could have properly exercised jurisdiction to dissolve the parties "partnership" and, thus, divide the assets. KRS 362.305 merely identifies the circumstances under which a court shall enter a decree dissolving a partnership. The statute, however, has nothing to do with whether a court may properly exercise jurisdiction over a partnership under Kentucky law. Since there exists no express or implied partnership as to the assets located in Indiana, we are of the opinion that this argument is without merit.

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

ALL CONCUR.

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