

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-001350-MR

JOHN R. BELL, DECEASED,
BY AND THROUGH HIS WIDOW AND PERSONAL
REPRESENTATIVE, SUSAN K. BELL

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 04-CI-00129

WANDA W. BELL
(ORIGINALLY DESIGNATED
WANDA BELL GIANGROSSO)

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KNOPF, JOHNSON, AND VANMETER, JUDGES.

KNOPF, JUDGE: Susan K. Bell, individually as executrix of the estate of John R. Bell, appeals from an order of the Fayette Circuit Court dismissing a declaratory judgment action due to lack of personal jurisdiction over the defendant, Wanda W. Bell. We agree with the trial court that Wanda Bell's contacts with Kentucky are insufficient to warrant the exercise of personal jurisdiction over her. Hence, we affirm.

The underlying facts of this action are not in dispute. John R. Bell and Wanda W. Bell were married in 1969. They were both residents of Kentucky during the marriage. In 1984, the Fayette Circuit Court entered a decree dissolving the marriage. The decree required John to pay maintenance to Wanda until her death or remarriage. Wanda remarried in 1998 and she now resides in Florida. John remained a resident of Kentucky.

On June 21, 1985, John designated Wanda as the beneficiary of his Federal Employee's Group Life Insurance (FEGLI) policy. On August 26, 2002, John married Susan Kolenda (now Susan K. Bell). Shortly thereafter, John filed the paperwork to designate Susan as the beneficiary of his life insurance policy. John also named his daughters, Susan Jean Bell and Lauren Nichole Bell, as beneficiaries of the policy.

John died on July 9, 2003. Following his death, Susan filed claim forms with FEGLI, seeking to receive the benefits under the policy. The insurer denied the claim because John used the incorrect form to attempt to change the beneficiary under the policy. The insurer notified Susan that it intended to pay the death benefits to Wanda, whom John had previously designated. Thereupon, Wanda completed the claim forms in Florida and mailed them to the insurer's offices in New Jersey.

On January 12, 2004, Susan K. Bell, individually and as executrix of John's estate (the estate), filed a declaratory

judgment action in Fayette Circuit Court against Wanda.¹ The estate also named Susan Jean Bell and Lauren Nichole Bell as potential beneficiaries of the insurance proceeds. The estate sought to impose a constructive trust on the insurance proceeds which were paid to Wanda, based on a theory of unjust enrichment. Shortly after filing of the action, the trial court entered a restraining order against Wanda, prohibiting her from disposing of the insurance proceeds.

Wanda was served with the petition and summons by the Okaloosa County Sheriff at her residence in Destin, Florida. She was later served through the Kentucky Secretary of State's office. Thereafter, Wanda appeared specially, arguing that the trial court lacked personal jurisdiction over her. After considering the briefs and the arguments of counsel, the trial court agreed with Wanda, dissolved the restraining order, and dismissed the estate's petition. Subsequently, the trial court denied the estate's motion to alter, amend, or vacate,² and this appeal followed.³

¹ The petition initially named Wanda Bell Giangrosso. However, it was discovered that Wanda did not take her new husband's last name upon her remarriage, and the petition was subsequently amended to name her as Wanda W. Bell.

² CR 59.05.

³ Although it named them as parties to the action before the trial court, the estate did not name Susan Jean Bell and Lauren Nichole Bell as parties to this appeal.

Because the trial court's factual findings are not in dispute, we review *de novo* the trial court's legal determination regarding personal jurisdiction.⁴ Nevertheless, after considering the estate's arguments and the applicable law, we find that the trial court reached the correct result. We adopt the following portion of Judge Goodwine's well-reasoned and researched opinion:

Kentucky has adopted a three-pronged jurisdictional test to determine personal jurisdiction. Wilson v. Case, Ky., 85 S.W.3d 589 (2002). This test creates a "workable three-pronged analysis to determine the outer limits of personal jurisdiction based upon a single act." Id. at 593. The three prongs of the accepted test for personal jurisdiction are: (1) whether the defendant purposefully availed "[herself] of the privilege of acting within the forum state or causing a consequence in the forum state;" (2) whether the cause of action arose "from the alleged in-state activities;" and (3) whether the defendant has "such connections to the state as to make jurisdiction reasonable." Id. At 593 (citing Tube Turns Div. Of Chemetron Corp v. Patterson Co., Inc., Ky.App., 562 S.W.2d at 100). "Each of these three criteria represents a separate requirement, and jurisdiction will lie only where all three are satisfied." Wilson at 593.

Giangrosso does not satisfy all three prongs of the Wilson test. Assuming that Giangrosso's visits to Kentucky are such that she purposefully availed herself to [*sic*] the privilege of acting within this

⁴ Bridgeport Music, Inc. v. Still N the Water Publishing, 327 F.3d 472, 477 (6th Cir. 2003).

state and that she has such connections with this state as to make jurisdiction reasonable and convenient given that most of the witnesses are located here in Kentucky[,] this cause of action did not arise from any "alleged in-state activity" on the part of Giangrosso, which is the second requirement of the Wilson test. The action that gives rise to this litigation was action on the part of John Bell in 1985 in designating his ex-wife Giangrosso, then Wanda W. Bell, as beneficiary of his life insurance policy. Giangrosso resided in Florida at the time she completed the claim form for receipt of the death benefit proceeds.

The Wilson Court stated: "In International Shoe and cases subsequent, we have witnessed a departure from the rigid rules of the past, but there still are and must be limits on states' exercise of jurisdiction over nonresident defendants." Id. Indeed, the "facts of each case must [always] be weighed in determining whether personal jurisdiction would comport with [']fair play and substantial justice.[']" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 486 (1985), citing Kulko v. California Superior Court, 436 U.S. 84, 92 (1978).

Kentucky's long arm statute, "allows Kentucky courts to reach to the full constitutional limits of due process in entertaining jurisdiction over nonresident defendants. At the same time, the limits of due process serve as a safeguard to ensure that state courts comply with federal constitutional requirements. Therefore, Kentucky's jurisdictional reach cannot exceed those prescribed limits." Wilson at 593.

To determine whether this Court may exercise personal jurisdiction over a nonresident defendant pursuant to KRS 454.210, this Court must first look to the three-prong test set forth in Wilson. Though the three-prong test is not dispositive of the inquiry into minimum

contacts in this case, it determines the outer limits of personal jurisdiction. Wilson at 593. As stated earlier, this Court believes the Wilson test is not satisfied because this action did not arise out of any alleged in-state activity on the part of Giangrosso.

KRS 454.210(2)(a) enumerates several prerequisites to jurisdiction. Plaintiff bases her argument on two of them: (1) "transacting business in the Commonwealth" and (2) "causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth." KRS 454.210 states in pertinent part:

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; or

(4) Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of substantial revenue within the Commonwealth;

(Emphasis added).

Plaintiff argues that Giangrosso has conducted "personal business" in Kentucky and that the phrase "transacting any business" is not limited to commercial business but includes personal business. Plaintiff refers the Court to two non-Kentucky cases to support her proposition that "transacting business" includes personal business. First, a Kansas case, Woodring v. Hall, KA 438 P.2d 135 (1968)[,] wherein the defendant, Charles Hall, was

personally served in Texas where he had resided since 1962. He previously resided in Kansas where the action was brought in 1965 by his former mother-in-law. She sued him to recover money that she loaned him during a period beginning in 1952 and ending in 1962. He spent the money for "living expenses and expenses of his education" while attending medical school in Kansas, and he and the plaintiff's daughter were divorced prior to the commencement of this action. The plaintiff obtained a default judgment against the defendant.

Woodring is clearly distinguishable from the case before this Court. In Woodring, the defendant was sued because he failed to repay funds he borrowed within the state of Kansas from his former mother-in-law. Although the Kansas trial court found it did not have personal jurisdiction over the defendant because he was a nonresident of Kansas, the Appellate Court reversed the trial court and held that it did have jurisdiction over the defendant based upon the Kansas long-arm statute. Plaintiff argues that this Court should accept Woodring as authority that "transacting business" includes any personal business. Even if this Court accepts the argument that "transacting any business . . ." includes personal business, the difference between the case before this Court and the case before the Kansas court is that the "personal business" conducted therein is what resulted in the action taken, i.e., borrowing money and failing to pay it back. That is not the case here. It is not Giangrosso conducting personal business within the state of Kentucky on one of her many visits here that has resulted in this lawsuit. Her action of completing a claim form to collect death benefits was done in Florida.

The second case Plaintiff relies upon is Powers v. Parish, 409 S.E.2d 725 (1991). In that case a New Mexico resident was sued by his former wife for child

support six years after he left North Carolina, where he previously resided with his former spouse and their child. There was no mention in that case whether North Carolina had adopted the Uniform Reciprocal Enforcement of Child Support Act. Again, the North Carolina case is clearly distinguishable from the case before this Court. First, the North Carolina case was instigated to resolve issues not previously addressed in a divorce proceeding in North Carolina. Second, the child or children involved in that action for which child support was sought also resided in North Carolina. North Carolina clearly had an interest in protecting the welfare of its minor residents. The case before this Court does not involve any issues that were not addressed in the Bells' divorce proceeding here in Kentucky. As previously noted and conceded, had Giangrosso not remarried, John Bell would have had a continuing obligation to pay her maintenance. If he failed to do so, she could have sought relief in Fayette Circuit Court to enforce the divorce decree. However, once she remarried, all issues regarding their divorce ended. The Bells' divorce action and any possible issues that could resurrect it, died in 1998 when Giangrosso married her present husband and all maintenance responsibilities ended.

Because Giangrosso is a nonresident of Kentucky, this Court must determine whether KRS 454.210 confers jurisdiction within the federal constitutional requirements of due process. The Court concludes that this cause of action does not arise out of any of the listed circumstances contained in KRS 454.210 nor does it satisfy the requirements of Wilson. Therefore, Kentucky does not have personal jurisdiction over Giangrosso. This Court believes the state of Florida is the proper forum for this action.

The estate further argues that Kentucky may assert personal jurisdiction over Wanda based upon theories of general

and specific jurisdiction. The trial court specifically rejected the estate's theory of general jurisdiction over Wanda, finding that her contacts with Kentucky were not continuous and systematic. In Third National Bank in Nashville v. WEDGE Group, Inc.,⁵ the Sixth Circuit Court of Appeals held that "[i]n a case of general jurisdiction, a defendant's contacts with the forum state are of such a "continuous and systematic" nature that the state may exercise personal jurisdiction over the defendant even if the action is unrelated to the defendant's contacts with the state."⁶ But in the present case, the trial court found that Wanda's contacts with Kentucky amounted to personal visits, a few times a year, to friends and family. We agree with the trial court that such contacts are not of a "continuous and systematic" nature such that Kentucky could maintain personal jurisdiction over Wanda in a matter unrelated to her visits.

Likewise, the estate has failed to establish that its claim against Wanda arises out of her contacts with Kentucky. Contrary to the estate's assertion, "specific jurisdiction" is not a distinct basis for finding personal jurisdiction. To determine specific jurisdiction, the Sixth Circuit in Third

⁵ 882 F.2d. 1087 (6th Cir. 1989).

⁶ Id. at 1089.

National Bank in Nashville v. WEDGE Group, Inc.,⁷ applied the three-part test adopted in Southern Machine Co. v. Mohasco Industries, Inc.⁸ This is the same test applied by the Kentucky Supreme Court in Wilson,⁹ and applied by the trial court in its opinion. Therefore the trial court's reasoning is dispositive of this argument.

Nevertheless, the estate also cites Perry v. Central Bank & Trust Co.,¹⁰ to support its contention that specific jurisdiction is an independent basis for asserting jurisdiction over a non-resident defendant. However, Perry is clearly distinguishable. In Perry, a Virginia resident signed a personal guaranty for two Kentucky residents to obtain a mortgage on real property located in Kentucky. Although the guarantor never physically entered Kentucky, this Court held that signing a personal guaranty for a Kentucky business in which one has an economic interest is the sort of conduct and connection with the forum state that makes it reasonable to

⁷ *Supra*.

⁸ 401 F.2d 374 (6th Cir. 1968).

⁹ 85 S.W.3d at 593.

¹⁰ 812 S.W.2d 166 (Ky.App. 1991).

anticipate being haled into court there when the underlying contract is breached.¹¹

In contrast, the estate's claim against Wanda does not arise out of any action taken in Kentucky, any property located in Kentucky, or even a contract governed by Kentucky law. Indeed, it is important to note that the estate's claim against Wanda does not arise out of the FEGLI policy. While the FEGLI policy is not included in the record, the estate concedes that the Federal courts have jurisdiction over all matters pertaining to the administration of the FEGLI insurance program. In addition, FEGLI's determination that Wanda is the proper beneficiary of the insurance proceeds is not at issue. Furthermore, John's decision to designate Wanda as a beneficiary of his FEGLI policy was not part of the dissolution proceedings, and John's obligation to pay maintenance to Wanda ended in 1998 when Wanda re-married. Thus, Wanda's right as a beneficiary does not arise under Kentucky law.

Rather, the only question presented is whether Wanda would be unjustly enriched if she is allowed to retain the proceeds paid to her by FEGLI. As noted by the trial court, Wanda completed the claim forms in Florida and mailed them to FEGLI's administrator (MetLife) in New Jersey. MetLife paid the

¹¹ Id. at 169.

insurance proceeds to Wanda in Florida. Unlike in Perry, the matter in dispute does not involve an issue of conduct in Kentucky, property located in Kentucky, or rights arising from Kentucky law. Simply put, Wanda's contacts with Kentucky regarding the subject matter of this action are too attenuated to justify Kentucky's exercise of personal jurisdiction over her. Therefore, the trial court properly dismissed the estate's claim against her.

Accordingly, the order of the Fayette Circuit Court dismissing the complaint is affirmed.

ALL CONCUR.

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