

RENDERED: NOVEMBER 4, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-001654-MR

BEN P. WALKER AND WANDA M. WALKER

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 98-CI-005642

GARY S. WEINSTEIN, M.D.

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: JOHNSON, KNOPF, AND VANMETER, JUDGES.

KNOPF, JUDGE: Ben and Wanda Walker, husband and wife, appeal pro se from a summary judgment of the Jefferson Circuit Court, entered July 19, 2004, dismissing various defamation-related damages claims against Douglas Wilson and C. Lloyd Vest, investigator and counsel, respectively, for the Kentucky Board of Medical Licensure (KBML or the Board), and refusing to reinstate like claims against Gary S. Weinstein, M.D., a Board

consultant. The Walkers allege that in the course of investigating and bringing a disciplinary action against Dr. Michael Pravetz, the Walkers' former psychiatrist, Wilson, Vest, and Weinstein invaded the privacy of the Walkers' medical records and made defamatory statements regarding their mental health, their use of medications, and their relationship with Dr. Pravetz. The trial court erred, they contend, by ruling that Wilson and Vest had limitations and immunity defenses to all of the Walkers' claims and that the claims against Weinstein had been dismissed. Because the Walkers failed to name Wilson and Vest in their notice of appeal, this Court did not acquire jurisdiction to address the Walkers' contentions with respect to them. With respect to Weinstein, we affirm the trial court's order upholding his dismissal.

In 1996 the KBML received an anonymous but detailed letter alleging that Dr. Pravetz had violated several ethical and professional responsibilities, including over-prescribing addictive medications, becoming personally involved with patients, and making fraudulent insurance claims. The Board assigned Wilson to investigate the allegations, and he soon learned that the Walkers were among Dr. Pravetz's patients. When the Walkers would not consent to have their prescription and treatment records inspected, Wilson had the records seized.

Dr. Pravetz had diagnosed the Walkers as depressed and had prescribed for them anti-depressants and a sleep aid, chloral hydrate, a controlled substance regarded as highly addictive. Apparently Wilson prepared a summary of the Walkers' prescriptions for a two-year period and asked several of the Board's consulting physicians to comment on the propriety of their treatment. Unanimously, the physicians questioned the use of chloral hydrate, as there were safer alternatives, and expressed concern at both the large doses Ben, in particular, had received, as well as the long course of treatment with such an addictive drug.

Wilson also knew that Ben worked as a special agent for the Federal Bureau of Investigation. Without Ben's permission, Wilson discussed Ben's prescriptions with another agent in Ben's field office. He also complained that Ben was obstructing the investigation of Dr. Pravetz and expressed suspicions that Ben and Dr. Pravetz might be in cahoots. Soon thereafter, at the FBI's request, Vest and Wilson repeated those concerns to other bureau agents and revealed the summary of Ben's prescriptions. The Bureau suspended Ben's employment and subjected him to a fitness-for-duty inquiry. Eventually the Bureau cleared Ben to return to work. He regarded his reassignment and the conditions attached to it as so demeaning,

however, and was so soured by the inquiry process that he opted instead for early retirement.

In the meantime, Wilson's investigation of Dr. Pravetz continued and led to disciplinary charges which were heard by the Board during the spring of 1998. Among much other evidence of Dr. Pravetz's violations, Dr. Weinstein testified in accord with the other consulting physicians that the Walkers' chloral hydrate prescriptions were questionable, at best. Before a decision could be rendered, Dr. Pravetz voluntarily agreed to surrender his Kentucky medical license.

The Walkers filed this case in October 1998, alleging not only that Wilson and Vest had breached the privacy of their medical records by sharing them with the FBI, but also that Wilson had falsified the prescription records to exaggerate the amount of chloral hydrate they had received and had falsely accused Ben of being sexually involved with Dr. Pravetz and of participating in Dr. Pravetz's alleged insurance fraud. Vest and Weinstein, they complained, had violated their privacy by failing to protect their anonymity during the Pravetz investigation and had either repeated or lent support to Wilson's alleged defamations.

In July 2000, the attorney who filed the complaint was permitted to withdraw, and the next month the Walkers obtained substitute counsel. New counsel did not believe that the

Walkers had a good faith claim against Dr. Weinstein and so from the beginning of his representation urged them to dismiss the complaint against him. For a long time the Walkers resisted that advice, but in October 2003, Mrs. Walker authorized counsel to settle with Weinstein in exchange for Weinstein's affidavit stating that he had relied on representations made by Wilson and Vest and his agreement not to seek sanctions for having been improperly sued. In November 2003, counsel sent a draft of the agreement and the affidavit to the Walkers for their approval. They made changes to the affidavit and returned both to counsel. On December 8, 2003, counsel for the parties executed the agreement, and it was entered in the record.

A month later, however, the Walkers moved to reinstate their complaint against Weinstein. They argued that counsel had exceeded his agency by executing and entering a settlement they had not authorized. They also sought sanctions against both their own counsel and defense counsel for allegedly having conspired to undermine their claim against Weinstein. Since then, the Walkers have proceeded pro se. Following a pre-trial conference at which these matters were addressed, the trial court denied the Walkers' motions. In the same order, the court granted Vest and Wilson's motions for summary judgment. It is from those rulings that the Walkers have appealed.

In City of Devondale v. Stallings,¹ our Supreme Court held that this state's reviewing courts acquire appellate jurisdiction over only those parties expressly named in a timely notice of appeal. Indirect references to other parties, such as "etc." or "et al." are not sufficient.² The Walkers' notice of appeal violated this rule:

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We, Ben and Wanda Walker, pro se, do hereby serve notice of appeal of the order of Jefferson County Circuit Court, Division I, entered by Judge Barry Willett on July 19, 2004 attached herewith.

Because the notice names no appellee other than Dr. Weinstein, our jurisdiction is limited to reviewing the Walkers' contention that their settlement with him should have been vacated. Vest and Wilson were not made parties to the appeal, and thus we may not review or disturb the summary judgments in their favor.

As a general rule, "[w]ithout authority from the client, a lawyer has no right to settle a case."³ Whether the client authorized a settlement is a question of fact to be

¹ 795 S.W.2d 954 (Ky. 1990).

² CR 73.03; Schulz v. Chadwell, 548 S.W.2d 181 (Ky.App. 1977).

³ Clark v. Burden, 917 S.W.2d 574, 575 (Ky. 1996).

determined from the totality of the surrounding circumstances.⁴ This Court reviews the trial court's finding under the clearly erroneous standard.⁵

Here, substantial evidence supports the trial court's finding that the Walkers authorized the settlement of their claim against Dr. Weinstein. As noted above, the Walkers have been actively involved in their case from the beginning and knew full well their attorney's desire to dismiss Dr. Weinstein. In October 2003, Wanda expressly approved that dismissal, and then Ben ratified the decision by editing and returning the draft agreement and affidavit without making clear any contrary intent. Notwithstanding the Walkers' ambivalence and eventual change of heart, the trial court did not clearly err by finding from this evidence that they had authorized the settlement their counsel executed and entered on December 8, 2003. Accordingly, we affirm that portion of the July 19, 2004, judgment of the Jefferson Circuit Court upholding the dismissal of Dr. Weinstein.

ALL CONCUR.

⁴ *Id*; Ford v. Beasley, 148 S.W.3d 808 (Ky.App. 2004).

⁵ Ford v. Beasley, *supra*.

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