

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001742-MR

CYNTHIA SAWYER, AS ADMINISTRATOR
OF THE ESTATE OF PAMELA FAY
JOHNSTON, DECEASED¹

APPELLANT

v. APPEAL FROM McCracken Circuit Court
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 04-CI-00094

DAVID CLYMER AND JIMMY DALE
ENGLISH, AS EXECUTOR OF THE
ESTATE OF JUNIA FLETCHER,
DECEASED²

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: ABRAMSON AND WINE, JUDGES; GUIDUGLI,³ SENIOR JUDGE.

¹ The caption of the notice of appeal indicates that Cynthia Sawyer is the plaintiff/appellant in this action. However, based upon the complaint filed, the actual denomination of the plaintiff/appellant is Cynthia Sawyer, as Administrator of the Estate of Pamela Fay Johnston, Deceased. Therefore, we have captioned this opinion appropriately.

² On March 31, 2006, this Court entered an order substituting Jimmy Dale English, as the Executor of the Estate of Junia Fletcher, deceased, as an appellee in place of Junia Fletcher, who passed away on November 30, 2005.

³ Senior Judge Daniel T. Guidugli, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

GUIDUGLI, SENIOR JUDGE: Cynthia Sawyer, as Administrator of the Estate of Pamela Fay Johnston, Deceased, has appealed from the McCracken Circuit Court's Order and Summary Judgment entered August 25, 2004, dismissing her complaint based upon the terms of a Release she executed on October 2, 2003. We affirm.

On February 2, 2003, David Clymer, while operating a motorcycle, was involved in an accident with an automobile driven by Junia Fletcher, who was insured by GEICO General Insurance Company. Clymer suffered serious injuries. Clymer also had a passenger on the motorcycle, Pamela Johnston, who died as a result of her injuries. Johnston died intestate, and Sawyer was promptly appointed as the administrator of the Estate. Sawyer and Clymer settled their respective claims against Fletcher. Specifically, Sawyer settled her claim for \$25,000, and executed a release to that effect on October 3, 2003:

RELEASE
In Full of All Claims

I/we, Cynthia K. Sawyer, as administrator of the Estate of Pamela Fay Johnston, deceased, Releasor(s) of 1485 Clark Line Road, City of Paducah, State of Kentucky, being over the age of majority, for and in consideration of a check for the sum of twenty-five thousand dollars (\$25,000.00), lawful money of the United States of America to me/us in hand paid, the receipt of which is hereby acknowledged, do for myself/ourselves, my/our heirs, executors, administrators, successors and assigns, hereby remise, release, and forever discharge Junia Fletcher and GEICO General Insurance Company, Releasee(s), successors and assigns, and/or his, her or their associates, heirs, executors and administrators, and all other persons, firms or corporations of and from any and every claim, demand, right or cause of action, of whatever kind or nature, on account of or in any way growing out of any and all personal injuries and consequences thereof,

including, but not limited to, all causes of action preserved by the wrongful death statute applicable, any loss of services and consortium, any injuries which may exist but which at this time are unknown and unanticipated and which may develop at some time in the future, all unforeseen developments arising from known injuries, and any and all property damages resulting or to result from an accident that occurred on or about the 2nd day of February, 2003, at or near Clark River Road in Paducah, Kentucky, and especially all liability arising out of said accident including, but not limited to, all liability for contribution and/or indemnity.

AS A FURTHER CONSIDERATION FOR THE MAKING OF SAID SETTLEMENT AND PAYMENT, IT IS EXPRESSLY WARRANTED AND AGREED:

(1) That I/we understand fully that this is a final settlement and disposition of the disputes both as to the legal liability for said accident, casualty, or event and as to the nature and extent of the injury, illness, disease and/or damage which I/we have sustained and I/we understand that liability is denied by Junia Fletcher and GEICO General Insurance Company, Releasee(s), and it is covenanted and agreed between the Releasor(s) and Releasee(s) herein that this release and settlement is not to be construed as an admission of liability on the part of said Releasee(s); that this release and settlement agreement shall not be used by said Releasor(s) or any one on his behalf as a defense or estoppel in any action which is now pending or may be brought hereafter by said Releasee(s) against said Releasor(s) or his agents and servants, and any claim of whatever kind or nature the Releasee(s) might have or hereafter having arising from said accident is expressly reserved to them.

(2) That I/we do hereby for myself/ourselves, my/our heirs, executors, administrators, successors, assigns and next of kin covenant to indemnify and save harmless the Releasee(s) from any and every claim or demand of every kind or character arising from said accident which may ever be asserted.

(3) That no promise, agreement, statement or representation not herein expressed has been made to or relied upon by

me/us and this release contains the entire agreement between the parties.

The document also indicates that “THIS IS A RELEASE IN FULL”.

On January 30, 2004, Sawyer filed a complaint in McCracken Circuit Court against Clymer alleging negligence. She claimed that Clymer was in violation of KRS 186.410 and 186.412, as he did not have an operator’s license for the motorcycle, and that Clymer was driving at an excessive rate of speed at the time of the accident. Clymer filed an Answer denying any liability, as well as a Third Party Complaint against Fletcher seeking indemnification. In her Answer to the Third Party Complaint, Fletcher stated that she had settled with and obtained releases from Sawyer and Clymer, and that she should therefore be discharged from any liability.

Clymer filed a motion for summary judgment pursuant to CR 56.02, arguing that Sawyer’s claim should be dismissed because she executed a general release, which released her claims against all other persons, firms, or corporations, including himself. In response, Sawyer countered with the argument that the release she executed did not meet the requirements announced by the Supreme Court of Kentucky in *Richardson v. Eastland, Inc.*, 660 S.W.2d 7 (Ky. 1983), in that Clymer was not specifically released and that the release did not indicate that it was for a payment in satisfaction of all claims or that she had been fully compensated. Fletcher also filed a motion for summary judgment on the basis of her previous settlement with Sawyer.

Following a hearing, the circuit court granted Clymer's motion for summary judgment, and deemed Fletcher's motion moot. This appeal followed.⁴

On appeal, Sawyer continues to argue that the circuit court erred in granting a summary judgment because the release she signed was only between GEICO, Fletcher and herself. No other parties or potential tortfeasors were mentioned in the release, and the release contained no provision that she had been fully compensated. On the other hand, Clymer argues that Sawyer executed a general release of liability, which released all of her claims against all parties, including him. Fletcher merely adopts Clymer's argument.

The entry of a summary judgment is governed by CR 56.03, which provides that such a motion should be granted if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." An appellate court's standard of review is set forth in *Lewis v. B&R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001), as follows: "Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue de novo."

In the present case, Sawyer relies upon the holding in *Richardson* to argue that the release at issue did not operate as a release of all future claims against all potential parties. She points out that no party, other than GEICO, Fletcher and herself,

⁴ This appeal was placed into abeyance on October 19, 2005, pending a final resolution by the Supreme Court in *Abney v. Nationwide Mutual Ins. Co.*, No. 2004-SC-000937-DG. The Supreme Court's decision in *Abney* became final on March 22, 2007, and this appeal was then returned to the active docket.

was specifically mentioned or released, and that the release does not purport to be for full compensation for her injuries. She also argues that she did not intend to release all other possible wrongdoers, but only meant the release to apply to GEICO and Fletcher. On the other hand, Clymer argues that the plain and unambiguous language of the release constitutes a general release of all parties involved in the accident.

Both parties rely upon *Richardson* in support of their respective arguments. In *Richardson*, the Supreme Court adopted as a rule the *Restatement (Second) of Torts*, § 885(1), and held:

Unless the release shows on its face that others not mentioned in the release are also released or that the claimant has been fully compensated for all damages and the release constitutes payment in satisfaction of all claims, the release shall not be interpreted as providing a defense to a third party not expressly covered.

Richardson, 660 S.W.2d at 9. Five years after *Richardson* was rendered, the Legislature enacted KRS 411.182, which includes a codification of *Richardson's* holding and governs the effect of the release in this case:

(4) A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable, shall discharge that person from all liability for contribution, but it shall not be considered to discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons shall be reduced by the amount of the released persons' equitable share of the obligation, determined in accordance with the provisions of this section.

The Supreme Court addressed the application of the statute in *Abney v. Nationwide Mutual Ins. Co.*, 215 S.W.3d 699 (Ky. 2006), as modified on denial of

petition for rehearing March 22, 2007. The *Abney* court addressed the “unless it so provides” requirement of KRS 411.182(4) as it pertained to the release of one joint tortfeasor, her insurer, and all other persons, firms or corporations that were liable or that might be claimed to be liable. The Supreme Court held that under the statute and plain terms of the release, that requirement was satisfied, and held that “[i]t is of no consequence to our decision that neither the Brakes nor Nationwide are specifically named or specifically identified in the release. If our legislature had intended to impose a specific identity requirement, as Abney urges this Court to impose, it would have so provided.” *Id.* at 703. Finally, the court determined that the language of the release was unambiguous, meaning that the intentions of the parties must be identified in the four corners of the document. The release, the court held, clearly and unambiguously released all others who might be claimed to be liable. *Id.*

Turning to the release currently before the Court, its clear and unambiguous terms work to release not only GEICO and Fletcher, but all other potential wrongdoers from any liability arising from the February 2, 2003, accident. We disagree with Sawyer’s argument that the word “of” following “all other persons, firms and corporations” relates back to the releasees. Instead, we hold that “of” must be read with “and from” and follows from the phrase “remise, release, and forever discharge.” The release also contains other similar elements as the *Abney* release does, such as a boxed notation warning “THIS IS A RELEASE IN FULL” and a statement in the body of the release that “this is a final settlement and disposition of the disputes both as to the legal liability for said accident . . . and as to the nature of the injury[.]” Following the *Abney*

court, we also perceive no defect in that neither Clymer nor any other potential wrongdoer was named in the release; the Legislature did not include this requirement when it enacted KRS 411.182.

Sawyer has also argued that she did not intend to release all potential wrongdoers when she executed the release, relying upon her statement detailing her understanding of the release in the response to Clymer's motion for summary judgment. In examining the intent of the parties, however, we must look to the language of the release itself, and need not go any further than the four corners of the document when no ambiguity exists. *Abney*, 215 S.W.3d at 703. While a party, such as Sawyer, might have intended a different result, that fact is not enough to interpret a contract outside of its unambiguous terms. *Id.* citing *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky.App. 2002). Here, as in *Abney*, the plain terms of the release Sawyer entered into reveal an intention to release all of the parties who had or might have any liability and to end all of her claims in relation to the accident. This language would necessarily release any claim Sawyer might have against Clymer. Hence, the circuit court properly entered a summary judgment dismissing Sawyer's claims against Clymer.

For the foregoing reasons, the judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Paducah, Kentucky

BRIEF FOR APPELLEE, DAVID
CLYMER:

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