

RENDERED: JUNE 2, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2004-CA-002523-MR

GEORGE D. LAWSON, EXECUTOR OF THE  
ESTATE OF R.E. PETRIE AND TRUSTEE  
OF THE TRUST ESTABLISHED BY THE  
WILL OF R.E. PETRIE

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE STEVE A. WILSON, JUDGE  
ACTION NO. 00-CI-01514

WILLIAM S. HAYNES, SPECIAL  
ADMINISTRATOR OF THE ESTATE  
OF FRANCES R. PETRIE; AND  
THOMAS R. LOID, JR.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KNOFF AND TACKETT,<sup>1</sup> JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>2</sup>

TACKETT, JUDGE: George D. Lawson, Executor of the Estate of  
Robert E. Petrie, appeals from the judgment of the Warren  
Circuit Court granting summary judgment in this action for

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<sup>1</sup> This opinion was completed and concurred in prior to Judge Julia K. Tackett's retirement effective June 1, 2006. Release of the opinion was delayed by administrative handling.

<sup>2</sup> 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.

contribution to a partnership debt from William S. Haynes, Special Administrator of the Estate of Frances R. Petrie, and Thomas R. Loid, who was an intervening plaintiff in the action below. Lawson argues that the court improperly granted summary judgment by misinterpreting the partnership agreement and the release of claims signed in 2000 in a separate action between these parties. We disagree, and affirm the judgment.

This case involves a partnership, Panorama, founded by Robert and Frances Petrie, which owned and operated a facility for mentally handicapped persons in Bowling Green, Kentucky. In 1987, Robert Petrie obtained a loan of approximately \$470,000 to construct a gymnasium at the facility. Rather than mortgage the property, Robert used a certificate of deposit in his name for collateral. Robert died in October 1989, and Lawson became his executor. Frances was adjudicated incompetent in December 1989, and co-guardians Kirby and Thomas (Tommy) Loid were appointed for her. Frances died in 1995, and Haynes was appointed as Special Administrator.

In 1990, Lawson began acting as the managing partner of Panorama. The seeds of this dispute were planted when Lawson claimed the CD as part of Robert's estate and substituted another CD in the partnership name as collateral, using funds from the partnership. The circuit court noted that of these

funds, \$236,605 would otherwise have been distributed to Frances.

In August 1995, Lawson made a claim against Frances's estate for contribution to the partnership of \$236,605, exactly the amount which would have been distributed to Frances. Haynes, as Special Administrator, rejected the claim and instead claimed a one-half interest in the above amount in the substitute CD as an asset of Frances's estate. The Warren District Court, probate division, ordered Lawson to transfer to Frances' estate the \$236,605 demanded by the Administrator. This ruling was appealed to the circuit court, which affirmed, and discretionary review was denied both by this Court and the Kentucky Supreme Court.

In order to facilitate the sale of the partnership to third parties, Lawson moved the district court to transfer Frances' half of the partnership to Robert's trust. The district court approved the distribution in an interim order subject to the parties entering into a release which contained the following language:

[Plaintiffs] shall . . . agree and consent to release, acquit and forever discharge, and indemnify and hold harmless William S. Haynes, Individually and as Special Administrator With Will Annexed of the Estate of Frances R. Petrie, from and against any and all liabilities whatsoever, whether in law or in equity, including without limitation any and all claims, fees,

charges, actions, causes of action and expenses of any nature or kind, whether known or unknown, arising out of or in connection with the distribution of the Panorama Partnership and its asset, and any sale or other disposition made thereof.

At the time of the release, Lawson was aware of a possible claim for contribution by the partnership against Frances for the partnership debt. Lawson filed this action seeking contribution in November 2000, after the execution of the release and interim settlement described above.

The circuit court granted a motion to dismiss the complaint for failure to state a claim on which relief could be granted, agreeing that the matter was *res judicata* as the probate court had already determined that Frances had met her obligation for contribution when Lawson withheld part of the receipts due in order to fund the substitute CD. This Court reversed and remanded the matter, holding that the action under the partnership agreement was separate and distinct from the probate matter and that to the extent the probate court purported to rule on the issue, it lacked subject matter jurisdiction to do so.

On remand, the Special Administrator filed an answer and after discovery, moved for summary judgment. The circuit court granted summary judgment on two independent grounds. First, the court held that Lawson could not prevail on the

merits of the claim because the actions Lawson took with respect to the partnership's debt, specifically re-titling the substitute CD in the name of the partnership rather than the joint names of Robert and Frances Petrie was an ultra vires action, unauthorized by the partnership agreement and not ratified by either the guardians or the Special Administrator. Therefore, the court held, Frances's estate could not be liable for contribution of funds to purchase the substitute CD. Second, the court held that any claim that might have existed was released, as the above-quoted release extinguished all claims relating to the partnership. This appeal followed.

The court's interpretation of the release is a question of law, and thus is reviewed de novo by this Court. If the circuit court's ruling on this issue is correct, then it is unnecessary to address its other ground for granting summary judgment.

A release is, by nature, a contract or agreement between two or more parties to relinquish a cause of action. We therefore turn to contract law to interpret it. The language must be interpreted to give effect to all its provisions where possible, and unless the terms are so vague as to be subject to more than one reasonable interpretation on the face of the document, extrinsic evidence is not permitted and the interpretation must be made using only the document itself.

Here, each side places special emphasis on different portions of the release's language. Appellant argues that the court should have focused on the language "arising out of or in connection with the distribution of the . . . Partnership . . . ."

The court focused instead on the language "without limitation any and all claims, fees, charges, actions, causes of action and expenses in any nature or kind". The Appellees insist that the court's interpretation was correct since Lawson had full notice of the claim's existence and had an opportunity while the parties were negotiating the release and drafting its terms to specifically exempt this cause of action from the broad language of the release but did not do so.

In this Court's view, the provisions of the release must be harmonized to give full effect to the overall intent of the release. It is our view that the language "arising out of or in connection with" the distribution of the partnership is broad enough to encompass the claim at issue here. From the face of the document, the intent of the parties would seem to be to foreclose all litigation pertaining to the partnership and its distribution, because of the connection with the substitution of funds belonging to Frances with funds obtained through other means in the name of the partnership, addressed at length in the probate court. This Court's prior holding that the claim under the partnership agreement is separate from the

matters litigated in the probate court does not preclude the conclusion that this claim was released by the agreement in the probate court.

Because we resolve this matter on the grounds of release, we need not address whether summary judgment on the merits was appropriate, even though the circuit court felt the need to do so. For the foregoing reasons, the judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR APPELLANT:

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