

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000365-MR

DAN DUFFY

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 05-CI-05239

KENNETH RAY WILLIAMS AND
DONNA GAIL BORDELON

APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: THOMPSON AND WINE JUDGES; KNOPF, ¹ SENIOR JUDGE.

THOMPSON, JUDGE: The Fayette Circuit Court dismissed with prejudice Dan Duffy's complaint filed against Kenneth Ray Williams and Donna Gail Bordelon wherein he alleged that Williams and Bordelon agreed that, in exchange for Duffy's care of their mother during her lifetime, they would give to him their shares of their mother's estate. We hold that since the consideration for the alleged contract was nothing more than a mere expectancy, the circuit court properly dismissed Duffy's action and affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5) (b) of the Kentucky Constitution and KRS 21.580.

Duffy, Williams and Bordelon are the children of Louise Williams. Prior to her death on September 20, 2004, Louise was declared partially disabled and the Cabinet for Families and Children was appointed as her limited guardian and limited conservator. On August 21, 2003, Duffy was appointed as successor limited guardian and limited conservator. Following Louise's death, the Fayette District Court found that during his appointment Duffy misappropriated \$25,000 of his mother's funds; pursuant to a court order, however, that amount was subsequently transferred by Duffy to the administrator of the estate of Louise Williams .

In December 2005, Duffy filed this action in the Fayette Circuit Court naming as defendants, Judge David F. Hayse as Judge of the Fayette District Court, the Fayette County Attorney, the Commonwealth of Kentucky, Williams and Bordelon.² Although the circuit court dismissed the claims filed against all the named defendants, only Williams and Bordelon are named in the notice of appeal; we do not, therefore, address the actions filed against the remaining defendants.

The cause of action against Williams and Bordelon consists of three allegations stated by Duffy as follows:

32. That they made an offer to relinquish their part of the estate if their mother that had raised them was taken care of.
33. That Louise Williams was pleased with her care after the return from the Cabinet.
34. That I relied on their promise to made decisions in regard to management of the estate.

In response to the complaint, Williams and Bordelon, *pro se*, filed motions

² Duffy was joined as a plaintiff by Louise's sister, Mary M. Brown, who provided surety for Duffy as the limited guardian and limited conservator. She did not appeal from the circuit court's order.

to dismiss the complaint for failure to state a cause of action against them.

The circuit court dismissed the complaint and this appeal followed.

The standard of review applicable to a dismissal of a complaint under Kentucky Rules of Civil Procedure (CR) 12.02(f) for failure to state a claim is as follows:

The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. In making this decision, the circuit court is not required to make any factual determinations; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief? *James v. Wilson*, 95 S.W.3d 875, 883-884 (Ky.App. 2002) (internal quotation omitted).

Under the applicable standard of review, assuming the facts as alleged by Duffy to be true, he is not entitled to the relief requested.

The basis for Duffy's complaint is that he agreed to and did take care of Louise in reliance on the promise that, upon her death, Williams and Bordelon would convey to him their interest in Louise's estate. Notably, he makes no assertion that Louise promised to transfer any part of her estate, either by will or inter vivos conveyance, in exchange for services rendered by Duffy; rather, his claim is based on the promises allegedly made by Williams and Bordelon to transfer property that they expected to inherit from their mother's estate.

It is the long standing law in this Commonwealth that the sale of a mere expectancy by an heir apparent is void. *Prater v. Hicks*, 310 Ky. 444, 220 S.W.2d 1011,

1012 (Ky. 1949); *Snyder v. Snyder*, 193 Ky. 233, 235 S.W. 743, 744 (Ky. 1921). The invalidity of such a contract is based on the premise that no one can be the heir of a living person and it being essential to a sale that the thing to be sold have actual or potential existence, the mere possibility or contingency not founded on a right or coupled with an interest cannot be the subject of a sale or assignment. In *Snyder*, the court further explained that “a transaction based on the idea of a future right to succession of a living person is devoid of consideration and can have no effect.” *Id.* at 745.

Having held that the alleged promises made by Williams and Bordelon were to convey an expected inheritance, as a matter of law, there is no legally binding contract; Duffy's complaint, therefore, fails to state a cause of action upon which relief can be granted. The order dismissing the complaint is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dan Duffy, *Pro Se*
Lexington, Kentucky

BRIEF FOR APPELLEE:

No Brief Filed.