

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001598-MR

DONNA GUY WATSON

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 05-CI-001341

ALLEN RAY WATSON; AND
MARK A. SMEDAL

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Donna Guy Watson brings this *pro se* appeal from a July 11, 2006, summary judgment of the Jefferson Circuit Court dismissing her claims. We affirm.

Donna and Allen divorced in 1989 after nearly twenty-two years of marriage. They had two children, Dennis Watson and Kimberly Watson. Dennis passed away on June 30, 2004. Donna was appointed administratrix of his estate. Subsequently, a dispute arose between Donna and Allen concerning proceeds of a State Farm life insurance policy that insured Dennis's life. During the probate action, Mark A. Smedal

was employed as Allen's counsel. As administratrix, Donna claimed that the estate was entitled to the proceeds from the State Farm life insurance policy. It appears that State Farm paid the proceeds to Allen as the primary beneficiary thereunder.

On February 10, 2005, Donna filed a *pro se* complaint in the Jefferson Circuit Court against Allen and Mark.¹ Therein, Donna sought recoupment from Allen of the State Farm life insurance proceeds. She also sought damages against Allen and Mark for defamation and slander in connection with statements made by them during the probate proceedings. On March 2, 2005, the circuit court entered an order dismissing the defamation claims against Allen and Mark under Ky. R. Civ. P. (CR) 12.02 and CR 56.02. The court concluded that statements made during a pending judicial proceeding were privileged. The March 2, 2005, order included complete CR 54.02 language. Thereafter, on July 11, 2006, the circuit court entered summary judgment concluding that the estate was not entitled to the proceeds from the State Farm life insurance policy. On August 3, 2005, Donna filed a notice of appeal specifically identifying the July 11, 2006, order only. This appeal follows.

We initially observe that Donna has filed a *pro se* brief with this Court. In her brief, Donna states that there were “lies and misrepresentations” perpetrated by Allen and Mark in the probate action and that the proceeds from the State Farm life insurance policy should have been paid into the estate. While Donna has devoted four pages of her brief to these arguments, she has failed to set forth any sound legal reason or authority

¹ Curiously, Donna Guy Watson did not file the February 10, 2005, complaint in her capacity as administratrix of the Estate of Dennis Allen Watson.

why the circuit court's dismissal of her claims was improper. While arguing that the policy's ownership was fraudulently transferred from Dennis to Allen, Donna does not dispute that the designated beneficiary under the policy was always Allen. As such, the State Farm life insurance policy proceeds were properly tendered to Allen, as beneficiary. Moreover, under the alleged facts, only the estate could bring a claim for the State Farm life insurance proceeds, not Donna in her individual capacity. The estate was neither a party to the action below nor to this appeal, which is fatal to Donna's claim for recovery of the State Farm life insurance proceeds.

As to the dismissal of the defamation claim, we do not believe that this issue is properly before us. The defamation claim was dismissed by a March 2, 2005, order, and the circuit court made this order final and appealable under CR 54.02. However, Donna failed to file a timely appeal from this final order. CR 73.02(2).

It is well-established that “in order to secure a reversal of a judgment, it is incumbent upon the appellant to show error and to overcome the presumption that the trial court's decision was correct.” *Sloan v. Jewel Ridge Coal Corp.*, 347 S.W.2d 504, 506 (Ky. 1961). Here, Donna has simply failed to demonstrate any error and to overcome the presumption that the circuit court's decision was proper. Simply put, we believe the circuit court properly concluded that there existed no material issue of fact and that Allen and Mark were entitled to judgment as a matter of law. Thus, summary judgment was correctly entered.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Donna Guy Watson, *Pro Se*
Louisville, Kentucky

BRIEF FOR APPELLEES:

Mark A. Smedal
Louisville, Kentucky