

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000452-MR

DAN DUFFY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY N. BUNNELL, JUDGE  
ACTION NO. 05-CI-03264

DENNIS A. BRADLEY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND NICKELL, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

NICKELL, JUDGE: Dan Duffy (“Duffy”), *pro se*, has appealed from the Fayette Circuit Court's January 26, 2007, dismissal of his complaint against Dennis A. Bradley (“Bradley”), administrator of the estate of Louise Williams. We affirm.

On July 29, 2005, Duffy filed an original action in the Fayette Circuit Court styled as a claim against the estate of Louise Williams, deceased, seeking payment for

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<sup>1</sup> Senior Judge Daniel 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.

services rendered to the decedent. In order to adequately discuss the issue on appeal, a brief review of the protracted procedural history surrounding the filing of Duffy's complaint is warranted.

Duffy was the estranged son of Louise Williams (“Williams”) but he became her primary caregiver in June 2002. Duffy was appointed limited conservator for Williams on April 2, 2003, and limited guardian on August 23, 2003.<sup>1</sup> He continued in those roles until September 20, 2004, when Williams died intestate. Following Williams' death, Duffy served as administrator for the estate<sup>2</sup> for a short time. On November 3, 2004, Bradley, as the Public Administrator for Fayette County, was appointed to act as administrator for the estate. On May 25, 2005, Duffy filed a claim against the estate for payment of a lengthy listing of services rendered. Bradley, in his capacity as administrator, denied the claim on July 23, 2005. Following an evidentiary hearing, the Fayette District Court entered an order on November 11, 2005, denying Duffy payment for any services rendered as limited conservator or for any extraordinary services.

Duffy timely appealed from the November 11, 2005, order to the Fayette Circuit Court. On August 11, 2006, the circuit court entered an order affirming the district court, specifically finding the district court's opinion and order was supported by

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<sup>1</sup> Williams was declared to be wholly disabled by the Fayette District Court, Mental Health Division, on January 13, 2003. The Commonwealth of Kentucky, Cabinet for Families and Children, was initially appointed as her guardian. Although the record is unclear, Duffy apparently petitioned the Fayette District Court for a change of guardian from the Commonwealth to himself, and subsequently obtained the requested relief.

<sup>2</sup> Although not specifically included in the record, it is apparent that a petition was filed in the probate division of the Fayette District Court to facilitate administration of Williams' estate following her death. It is unclear who actually petitioned the court to open the estate.

substantial evidence and resolved all of Duffy's claims. Duffy then requested discretionary review by this Court, which was denied by order entered on December 7, 2006.

However, immediately following Bradley's initial denial of his claim, and during the pendency of his appeals from that denial, Duffy filed the original action which is the subject of this appeal. Duffy raised no new claims or factual allegations in his complaint. Bradley filed an answer to the complaint on August 22, 2006. On December 11, 2006, Duffy filed a motion for partial judgment accompanied by an affidavit reciting the same factual background previously submitted to the district court.<sup>1</sup> The circuit court overruled Duffy's motion following a hearing by written order entered on January 22, 2007. Bradley then filed a motion to dismiss the complaint as being barred by the doctrine of *res judicata*. The trial court sustained Bradley's motion, dismissing Duffy's complaint, with prejudice, by order entered on January 30, 2007. This appeal followed.

Duffy's brief to this Court fails in many regards to comply with the requirements of Kentucky Rules of Civil Procedure (CR) 76.12, including the failure to provide any citations to the record and the failure to recite any statement regarding proper preservation of the alleged errors in the proceedings below. Duffy provides only a rambling statement of facts regarding his interactions with the decedent. The brief is

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<sup>1</sup> In his affidavit, Duffy claimed entitlement to payment in the amount of \$8,160.00 for his services rendered to Williams between June and October 2002, which represented approximately 408 hours of service. Duffy claimed the value of his service was \$20.00 per hour. He offered no supporting documentation for the number of hours claimed or the valuation of his service. The affidavit included only Duffy's unsupported conclusory statements.

noticeably devoid of legal arguments or authority. We afford much leeway to *pro se* litigants. *Beecham v. Commonwealth*, 657 S.W.2d 234, 236 (Ky. 1983); *Case v. Commonwealth*, 467 S.W.2d 367, 368 (Ky. 1971). Although Duffy claims to have substantial legal training, the deficiencies in his brief are so glaring and pervasive it is extremely difficult to determine the issues he asks us to review on appeal. However, because of the leniency afforded *pro se* litigants, we will address the merits of Duffy's appeal.

As best as we can glean from his briefs, Duffy is advancing essentially the same arguments on appeal as he presented below. Duffy contends the trial court erred in dismissing his complaint without affording him a jury trial. We disagree.

We first note that at the hearing on Bradley's motion to dismiss, Duffy agreed his arguments in relation to the time period following his appointment as limited guardian, *i.e.* after October 2002, had been fully litigated and culminated in the district court issuing a final and appealable judgment. In his briefs to this Court, Duffy again concedes the majority of his contentions have been fully litigated. Thus, the doctrine of *res judicata* prohibits any further litigation of those issues. *See Yeoman v. Commonwealth*, 983 S.W.2d 459 (Ky. 1998). As neither party challenges the preclusion of these issues, they warrant no further discussion.

However, Duffy's novel argument is that the district court failed to address the time period before he was appointed guardian for Williams, thus somehow conferring jurisdiction upon the circuit court to now hear that claim pursuant to Kentucky Revised

Statutes (KRS) 395.510. Our review of the record indicates this argument is without merit.

First, Duffy presented a claim against the estate to the public administrator in May 2005 claiming entitlement to payment for services rendered from June 2002 through September 2004. The public administrator denied this claim and the district court later disallowed payment to Duffy for any services rendered. The record does not contain a copy of the district court's order and is utterly silent as to whether Duffy demanded a ruling on this issue. We are unable to determine from the record before us what time periods were ruled upon by the district court. As such, we must assume the decision of the trial court to have been correct and to have settled all of the issues presented to it. *See Lovett v. Commonwealth*, 103 S.W.3d 72 (Ky. 2003); *Chaffins v. Commonwealth*, 275 S.W.2d 52 (Ky. 1955). Duffy fails to direct us to any proof in the record that the district court failed to rule upon his claim, nor any indication that the circuit court erred in finding the district court had, in fact, determined all of the issues at bar. In fact, the circuit court specifically took judicial notice of all of the proceedings in the district court regarding Duffy's claims. Therefore, we are compelled to hold the doctrine of *res judicata* applies to Duffy's remaining claim of entitlement and the circuit court correctly dismissed his complaint. Duffy had his day in court and has simply failed to carry his burden of showing the circuit court abused its discretion in so finding against him. Absent a showing of such abuse, the ruling of the circuit court will not be disturbed on appeal. *See Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004); *Goodyear Tire and Rubber*

*Co. v. Thompson*, 11 S.W.3d 575 (Ky. 2000); *Sherfey v. Sherfey*, 47 S.W.3d 777 (Ky.App. 2002); *Carroll v. Meredith*, 59 S.W.3d 484 (Ky.App. 2001).

Finally, in light of our earlier analysis, Duffy's contention that KRS 395.510 conferred jurisdiction on the circuit court is inapposite. Since Duffy's claims had been fully litigated, there was nothing before the circuit court to be decided. Even assuming, *arguendo*, that the circuit court had an actual controversy before it, Duffy's claim would have been barred under the prohibition against splitting causes of action. Duffy presented the circuit court with no new issues of law or fact than those that had already been presented to the district court, ruled upon in its judgment, and prosecuted through the appellate process.

As a result, a final judgment precludes subsequent litigation not only of those issues upon which the court was required to form an opinion and pronounce judgment but also of matters included within those issues and matters that, with the exercise of reasonable diligence, might have been raised at the time.

*Whittaker v. Cecil*, 69 S.W.3d 69, 72 (Ky. 2002) (citing *Newman v. Newman*, 451 S.W.2d 417 (Ky. 1970), *Hays v. Sturgill*, 302 Ky. 31, 193 S.W.2d 648, 650 (1946)). Thus, the proper forum for all of Duffy's complaints was in the district court, and the failure to demand relief in that court prohibited the filing of the instant complaint in another judicial forum. There was no error in the dismissal of the action and Duffy was not entitled to a jury trial on the matter.

Therefore, for the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Dan Duffy, *pro se*  
Lexington, Kentucky

BRIEF FOR APPELLEE:

C. David Emerson  
Lexington, Kentucky