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Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000684-DG

RICKEY BOBBETT AND
SANDRA BOBBETT

APPELLANTS

ON DISCRETIONARY REVIEW FROM LOGAN CIRCUIT COURT
v. HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 06-XX-00003

RUSSELLVILLE MOBILE PARK, LLC

APPELLEE

OPINION
AFFIRMING IN PART AND
REVERSING AND REMANDING IN PART

** ** *

BEFORE: LAMBERT, MOORE, AND WINE, JUDGES.

MOORE, JUDGE: Rickey and Sandra Bobbett appeal from the Logan Circuit Court's order affirming the Logan District Court's decision to deny a motion to dismiss a complaint filed by a non-attorney on behalf of Russellville Mobile Park, LLC. A panel of this Court granted the Bobbetts' motion for discretionary review.

After a careful review of the record, we affirm the Logan Circuit Court's order in part and reverse and remand it in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

In the circuit court's order, it entered the following findings of fact:

John Rockaway is the manager of Russellville Mobile Home Park, a Limited Liability Company, solely owned by Mr. Rockaway and his wife. This Company is in the business of leasing lots for the placement of mobile homes. Ricky and Sandra Bobbett own their own mobile home and entered into a contract (an oral contract according to the Complaint) to place their mobile home on the lot owned by Russellville Mobile Home Park.

On October 3, 2006, Mr. Rockaway signed and filed in the Logan District Court a Forcible Detainer Complaint, on behalf of Russellville Mobile Home Park, against Appellants, Ricky and Sandra Bobbett. The Complaint simply alleged: "Too much traffic/visitors, Violating park rules." It was filed on a Court of Justice form AOC - 216.

At the "Court Trial" Mr. Rockaway admitted that he was not an attorney and had prepared the Complaint. The District Court denied Appellants['] oral motion to dismiss on the grounds that a non-attorney illegally prepared the Complaint and continued the matter to October 16, 2007, instructing Mr. Rockaway to obtain legal representation for the LLC before that hearing. On October 16, the Appellants filed a written motion to dismiss on the same grounds.

At the October 16, [sic] hearing, Hon. Randy Epley appeared on behalf of Russellville Mobile Home Park. At the conclusion of the hearing, the lower court ruled for Appellee, ordering eviction within four days. No written findings were made by the District Court but this is not claimed as error and it is presumed that findings were made. The Appellant[s] filed a notice of appeal on October 20, 2006.

The circuit court noted two issues were presented: (1) whether Mr. Rockaway engaged in the unauthorized practice of law; and (2) if yes, then should the action be dismissed?

The circuit court concluded that Mr. Rockaway engaged in the unauthorized practice of law when he filed the forcible detainer complaint on behalf of the LLC. The circuit court next inquired whether Mr. Rockaway's actions made the detainer pleading void or merely voidable. Relying on the foundation that Mr. Rockaway retained counsel at the district court level once the court discovered that the plaintiff was a LCC¹ and that only the LCC would suffer if dismissal was granted, the circuit court determined that the pleadings were voidable, not void, and ruled that dismissal was unnecessary.

Despite the circuit court's determination, it agreed with other jurisdictions holding that a person is prohibited from representing an entity when he is the sole owner despite the fact he is likely to be the only person to suffer. The circuit court ruled there should be a "[prohibition] across the board [for] any lay representation of a business entity Hiring an attorney, even for 'simple legal matters' must be part of the price said for the protections of the corporate veil."

¹ Despite Mr. Rockaway's having retained counsel after filing the detainer action in the district court, Mr. Rockaway argued the matter on behalf of the LLC before the circuit court.

Thereafter, the court ruled that Mr. Rockaway must not attempt any further representation of the LCC. The court noted it was a Class B misdemeanor crime for a non attorney to engage in the practice of law under KRS 524.130.

The issues presented by this appeal are the same as those presented to the circuit court. No appellee brief was filed.

II. ANALYSIS

A. WHETHER MR. ROCKAWAY ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW

Kentucky Supreme Court Rule 3.020 provides as follows:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor. An appearance in the small claims division of the district court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law.

Regarding the unauthorized practice of law, Kentucky's highest Court has noted that

[t]he basic consideration in suits involving unauthorized practice of law is the public interest. Public interest dictates that the judiciary protect the public from the incompetent, the untrained, and the unscrupulous in the practice of law. Only persons who meet the educational and character requirements of this Court and who, by

virtue of admission to the Bar, are officers of the Court and subject to discipline thereby, may practice law. The sole exception is the person acting in his own behalf.

Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778, 782 (Ky. 1964), *as modified* (1965).

In the present case, although the LLC is owned solely by Mr. Rockaway and his wife, the LLC is, nevertheless, its own legal entity, and the mobile home park is owned by the LLC, rather than by Mr. Rockaway and his wife. Therefore, Mr. Rockaway was not “acting in his own behalf,” when he filed the forcible detainer complaint against the Bobbetts, so he does not qualify for the exception to the rule that only members of the Bar may practice law. *Frazee*, 393 S.W.2d at 782; *see also Kentucky State Bar Ass’n v. Tussey*, 476 S.W.2d 177, 179 (Ky. 1972). Rather, Mr. Rockaway was acting on the LLC’s behalf when he filed the forcible detainer complaint.

As noted by the circuit court, the Kentucky Bar Association has issued an advisory opinion on the subject at hand. In KBA U-38 (May 1983),² the Kentucky Bar Association opined that the “manager of rental real estate, who is not [a] lawyer and does not own the real estate, [cannot] prepare and file a writ of forcible detainer without engaging in the unauthorized practice of law.” In arriving at this conclusion, the Kentucky Bar Association stated, *inter alia*, that “the application to a District Court for writ of forcible detainer constitutes the institution of a ‘civil action’ and regardless of the form used or the name otherwise

² A copy of KBA U-38 (May 1983) is available at http://cowgill.com/kba_upl_opinons_questions.html.

given it, that application constitutes a ‘complaint.’ CR 1 & 2; KRS 383.210. It is a pleading.” The circuit court cited to a number of other jurisdictions that have held in accord,³ and we agree with their conclusion. Accordingly, Mr. Rockaway engaged in the unauthorized practice of law, and the circuit court did not err in its finding on this issue.

B. WHETHER THE ACTION SHOULD HAVE BEEN DISMISSED

The circuit court ruled that in spite of Mr. Rockaway’s unauthorized practice of law in filing the detainer pleading, the pleading was voidable rather than void. This is contrary to *Brozonski v. Johnson*, 179 S.W.3d. 261 (Ky. App. 2005).

Our Court reviewed *Brozonski* under CR 11, which was not analyzed by the court below in this matter. Pursuant to CR 11,

[e]very pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

Brozonski is somewhat different than the case at hand, but the result of dismissal must be the same. In *Brozonski*, an out-of-state attorney signed a

³ *Cincinnati Bar Ass’n v. Clapp*, 764 N.E.2d. 1003 (Ohio 2001); *In Petition of Eisenberg*, 291 N.W.2d. 565 (Wis. 1980); *Senna v. City of Wildwood*, 23 N.J. Tax 275 (N.J. Tax Ct. 2006); *Disciplinary Counsel v. Kaffle*, 843 N.E.2d. 169 (Ohio 2006); *Winzer v. EHCA Dunwoody LLC*, 627 S.E.2d. 426 (Ga. Ct. App. 2006); *Sterling Winchester & Long LLC v. Loyd*, 634 S.E.2d. 188 (Ga. Ct. App. 2006); *Carlo LLC v. Yorro*, 761 N.Y.S.2d. 766 (N.Y. Dist. Ct. 2002); *see also Martinez v. Roscoe*, 33 P.3d. 887 (N.M. 2001); *Lexis-Nexis v. Travishan Corp.*, 573 S.E.2d. 547 (N.C. 2002).

complaint although he had not yet been granted pro hac vice status. Defendants moved to dismiss the complaint pursuant to SCR 3.030(2)⁴ and CR 11. The court granted the motion dismissing the action with prejudice. Our Court on review, relying on CR 11 held that:

The lack of a signature on a pleading is typically not a proper ground for dismissal. Rather, CR 11 provides that the remedy for “attacking such a deficient pleading . . . is to have it stricken as sham and false.” When the pleading that is not signed is the complaint, however, striking the pleading has the practical effect of ending the lawsuit, and dismissal is not improper. . . .

Id. (notes and citations omitted).

Thus, according to CR 11 and *Brozonski*, the district court in the case at bar should have stricken the complaint, dismissed the action and ended the lawsuit.

Further buttressing our conclusion is the practice of our Court in refusing to accept pleadings filed by non-attorneys. *See, e.g., Wright v. Kentucky Bar Association*, 169 S.W.3d 858, 859 (Ky. 2005) (discussing Kentucky Court of Appeals’ actions concerning unauthorized pleading in the case). And the Supreme Court has stricken motions not properly signed under CR 11. *See, eg., Brey v. Commonwealth*, 917 S.W.2d 558 (Ky. 1996).

Accordingly, the order of the Logan Circuit Court is affirmed in part concerning the issue of whether Mr. Rockaway engaged in the unauthorized

⁴ This rule governs the practice of law in Kentucky for out-of-state attorneys.

practice of law. It is reversed and remanded in part with the instruction that the action should be remanded to the Logan District Court for dismissal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Alicia C. Johnson
Russellville, Kentucky

BRIEF FOR APPELLEE:

N/A