

SUPREME COURT OF KENTUCKY

Tim Davis and Tim Davis & Associates, Inc. v. John J. Scott and Whitlow & Scott

320 S.W.3d 87 (Ky. 2010) · No. 2009-SC-000159-DG; 2009-SC-000391-DG · Decided August 26, 2010

SUMMARY

The Supreme Court of Kentucky held that a settlement agreement assigning control and most proceeds of a legal malpractice claim constituted an impermissible assignment of the entire malpractice claim, not merely its proceeds. The improper assignment did not forfeit the underlying malpractice claim or automatically invalidate the entire settlement agreement. The court remanded with directions to dismiss the malpractice complaint without prejudice, allowing Davis to reassert the claim after demonstrating that the attempted assignment was no longer in place and that he was the real party in interest.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Cunningham
JURISDICTION	Kentucky
DECIDED	August 26, 2010
DOCKET	2009-SC-000159-DG; 2009-SC-000391-DG
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Davis appealed the dismissal with prejudice of his legal-malpractice claim following the trial court's determination that a settlement agreement improperly assigned the malpractice claim. Scott cross-appealed issues addressed in the trial court's summary-judgment order. The Court of Appeals affirmed, and the Supreme Court of Kentucky granted discretionary review.
STANDARD OF REVIEW	Summary-judgment rulings are reviewed de novo to determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. The evidence must be viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential

PARTIES

Tim Davis, Tim Davis & Associates, Inc. v. John J. Scott, Whitlow & Scott

TOPICS

professional negligence

assignment and delegation

summary judgment

civil procedure

appellate procedure

PRACTICE AREAS

legal malpractice

contracts

civil procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the settlement agreement assigned Davis's entire legal-malpractice claim to Global, rather than merely assigning proceeds of the claim.
2. Whether the improper assignment invalidated the underlying malpractice claim or required dismissal of the present action.
3. Whether the settlement agreement was void in its entirety because it contained an invalid assignment.
4. Whether summary judgment was properly granted under Kentucky's summary-judgment standard.

HOLDINGS

1. The settlement agreement effected a de facto assignment of Davis's entire legal-malpractice claim, not merely an assignment of its proceeds, because Global controlled the initiation, continuation, dismissal, financing, settlement, and privileged communications relating to the litigation, while Davis retained only a nominal interest.
2. An invalid assignment does not forfeit or extinguish the underlying legal-malpractice claim, but the present action, having been brought under and tainted by the improper assignment, could not continue.
3. The invalid assignment provision did not automatically void the entire settlement agreement.

KEY QUOTATIONS

"This level of control over a lawsuit is consistent with an assignment of the entire cause of action, not merely the proceeds of the litigation." (91)

"However, while we agree that Davis has not forfeited his claim, we also cannot ignore the fact that the present suit was born of the invalid assignment and is, therefore, tainted in some respect." (92)

"Should Davis wish to reassert his claim against Scott, he will be able to do so only upon a showing that the attempted assignment is no longer in place and that he is the real party in interest." (92)

FACTUAL BACKGROUND

Davis negotiated to purchase PICA Group Services, Inc., but the transaction failed after the parties executed a non-solicitation agreement. Davis later solicited former PICA clients and settled related federal litigation for \$300,000. As part of that settlement, Davis agreed that Global would select and finance counsel for a malpractice action against Scott, control significant aspects of the litigation and settlement, and receive 80 percent of any recovery. Davis then sued Scott for legal malpractice and emotional-distress damages.

PROCEDURAL HISTORY

After Davis settled federal litigation brought by Global Risk Management and agreed to pursue a malpractice claim against Scott, with 80 percent of any recovery assigned to Global, Davis filed this legal-malpractice action. The Hardin Circuit Court ruled that the settlement agreement constituted an improper assignment of a legal-malpractice claim, dismissed the claim with prejudice, and addressed other issues including expert testimony. The Court of Appeals affirmed, but the Supreme Court of Kentucky affirmed in part, reversed in part, and remanded for dismissal without prejudice.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Hardin Circuit Court with directions to dismiss Davis's complaint without prejudice. Davis may reassert the malpractice claim only upon showing that the attempted assignment is no longer in place and that he is the real party in interest.

CASES CITED

- Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996)
- Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991)
- 3D Enterprises Contracting Corp. v. Louisville and Jefferson County Metropolitan Sewer District, 174 S.W.3d 440, 445 (Ky. 2005)
- Coffey v. Jefferson County Board of Education, 756 S.W.2d 155 (Ky. App. 1988)
- Associated Insurance Service, Inc. v. Garcia, 307 S.W.3d 58, 63 (Ky. 2010)
- Power Grocery Co. v. Hinton, 187 Ky. 171, 218 S.W. 1013, 1018 (1920)
- Napier v. Duff, 281 Ky. 779, 136 S.W.2d 1083, 1085 (1939)
- Patterson v. Miracle, 253 Ky. 347, 69 S.W.2d 708, 710 (1934)
- Greene v. Leasing Associates, Inc., 935 So. 2d 21, 25 (Fla. Dist. Ct. App. 2006)
- Kim v. O'Sullivan, 133 Wash. App. 557, 137 P.3d 61 (2006)
- Weiss v. Leatherberry, 863 So. 2d 368, 373 (Fla. Dist. Ct. App. 2003)
- Botma v. Huser, 202 Ariz. 14, 39 P.3d 538, 542-543 (2002)
- Weston v. Dowty, 163 Mich. App. 238, 414 N.W.2d 165, 167 (1987)
- Tate v. Goins, 24 S.W.3d 627, 635 (Tex. App. 2000)

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