

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Katharine Walther Bain v. Robert McIntosh

597 F. App'x 1023 (11th Cir. 2015) · No. 14-13836

SUMMARY

The Eleventh Circuit held that under Florida law, an attorney retained solely to represent a trustee owes no fiduciary duty to the trust beneficiaries. The court relied on Fla. Stat. § 90.5021(2), which defines only the trustee as the lawyer’s client, and on Florida Bar rules that limit a lawyer’s duties to third parties when representing a fiduciary. The panel distinguished contrary dicta and affirmed summary judgment for the attorney.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Hull; Rosenbaum; Black
JURISDICTION	Florida
DOCKET	14-13836
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order granting summary judgment in favor of defendants-appellees.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	unpublished
PARTIES	Howard Walther, Dorothy B. Walther v. Steven Kane, Esq., Kane & Koltun, Attorneys at Law

TOPICS

- trusts
- fiduciary duty
- summary judgment
- appellate procedure

PRACTICE AREAS

- Legal Ethics
- Trusts and Estates
- Professional Responsibility

QUESTIONS PRESENTED

1. Whether, under Florida law, an attorney retained to represent only the trustee also owes a fiduciary duty to the beneficiaries of the trust.

HOLDINGS

1. Under Florida law, an attorney retained to represent only the trustee owes no fiduciary duty to the beneficiaries of the trust.

KEY QUOTATIONS

“The Florida Legislature has indicated an unwillingness to expand a lawyer’s fiduciary duties to a person other than the trustee. Pursuant to Florida Statutes § 90.5021(2) (2011), “only the person or entity acting as a [trustee] is considered a client of the lawyer.”” (at 3)

“The court in Gory said, “We have no quarrel with the view that counsel for the personal representative of an estate owes fiduciary duties not only to the personal representative but also to the beneficiaries of the estate.” This statement, however, was dicta.” (at 4)

FACTUAL BACKGROUND

Howard and Dorothy Walther were beneficiaries of the James Walther Revocable Life Insurance Trust. Patrick Walther served as trustee. The trustee retained Steven Kane and his firm as legal counsel solely for the trustee. The beneficiaries sued Kane, alleging he owed them a fiduciary duty. No attorney-client relationship ever existed between Kane and the beneficiaries.

PROCEDURAL HISTORY

Beneficiaries of a trust sued the trustee's attorney in the Middle District of Florida, alleging breach of fiduciary duty. The district court granted summary judgment for the attorney, and the beneficiaries appealed.

DISPOSITION

affirmed

CASES CITED

- McCormick v. Cox, 118 So. 3d 980 (Fla. 3d DCA 2013)
- In re Estate of Gory, 570 So. 2d 1381 (Fla. 4th DCA 1990)
- Levinson v. Reliance Standard Life Ins. Co., 245 F.3d 1321 (11th Cir. 2001)
- Bravo v. United States, 577 F.3d 1324 (11th Cir. 2009)
- United States v. Jernigan, 341 F.3d 1273 (11th Cir. 2003)

OPINION

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

_____, No. 14-13836 Non-Argument Calendar
_____, D.C. Docket No. 6:13-cv-00472-RBD-GJK

KATHARINE WALTHER BAIN,

Plaintiff,

HOWARD WALTHER,

DOROTHY B. WALTHER,

Plaintiffs – Appellants, versus ROBERT MCINTOSH, et al., Defendants,

STEVEN KANE,

Esq.,

KANE & KOLTUN,

Attorneys at Law, Defendants – Appellees. Case: 14-13836 Date Filed: 03/02/2015 Page: 1 of 5 2

_____ Appeal from the United States District Court for the Middle District of Florida _____ (March 2, 2015) Before HULL, ROSENBAUM and BLACK, Circuit Judges. PER CURIAM: Howard Walther and Dorothy B. Walther (collectively, the Walthers), the beneficiaries of the James Walther Revocable Life Insurance Trust (the Trust), appeal the district court’s order granting summary judgment in favor of Steven Kane, Esq. and Kane and Koltun, Attorneys at Law (collectively, Kane). Kane served as the attorney for the trustee, Patrick Walther (Trustee). 1 The single issue on appeal is whether, under Florida law, an attorney retained to represent only the trustee also owes a fiduciary duty to the beneficiaries of the trust. The district court held an attorney retained to represent the trustee has no such duty. Upon review, we affirm. 2 1 In their initial brief, the Walthers concede no attorney-client relationship arose between themselves and Kane. Kane was retained solely to represent the Trustee. 2 “ We review a district court’s grant of summary judgment de novo, applying the same legal standards that controlled the district court’s decision.” *Levinson v. Reliance Standard Life Ins. Co.*, 245 F.3d 1321, 1325 (11th Cir. 2001). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Case: 14-13836 Date Filed: 03/02/2015 Page: 2 of 5 3 The district court did not err in granting summary judgment because Kane owed no fiduciary duty to the Walthers under Florida law. 3 The Florida Legislature has indicated an unwillingness to expand a lawyer’s fiduciary duties to a person other than the trustee. Pursuant to Florida Statutes § 90.5021(2) (2011), “only the person or entity acting as a [trustee] is considered a client of the lawyer.” Furthermore, the Rules Regulating the Florida Bar, which are promulgated by Florida Supreme Court, narrowly limit a lawyer’s duties to third parties when serving as the personal representative of an estate. R. Regulating Fla. Bar 4-1.7 cmt. (2014) (“In Florida, the personal representative is the client rather than the estate or the beneficiaries.”); see also ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 94-380 (1994) (“The majority of jurisdictions consider that a lawyer who represents a fiduciary does not also represent the beneficiaries, and we understand the Model Rules to reflect this majority view.” (citation omitted)). The Walthers have not identified any contrary legal authority in Florida establishing a fiduciary relationship between a lawyer representing a trustee and the beneficiaries of a trust. The Walthers’ reliance on

McCormick v. Cox, 118 So. 3d 980 (Fla. 3d DCA 2013), is misplaced. In McCormick, the court held the trustee, who also happened to be a lawyer, breached his fiduciary duty to the 3 “[F]ederal courts sitting in diversity jurisdiction must apply substantive state law.” Bravo v. United States, 577 F.3d 1324, 1325 (11th Cir. 2009). Case: 14-13836 Date Filed: 03/02/2015 Page: 3 of 5 4 beneficiaries of the trust. Id. at 982, 986–87. The court never decided whether an attorney representing a trustee owes a fiduciary duty to the beneficiaries. The trustee and the lawyer were the same person. Id. at 982. The Walthers’ citation to In re Estate of Gory, 570 So. 2d 1381 (Fla. 4th DCA 1990), is similarly unconvincing. The court in Gory said, “We have no quarrel with the view that counsel for the personal representative of an estate owes fiduciary duties not only to the personal representative but also to the beneficiaries of the estate.” Id. at 1383. This statement, however, was dicta. The question before the court was whether the law firm representing the personal representative of an estate should have been disqualified from representation due to an alleged conflict of interest with the beneficiaries of the estate. Id. at 1382–83. The court held that, even if the law firm owed a fiduciary duty to the personal representative and the beneficiaries, Florida law did not mandate disqualification because no attorney-client relationship existed between the law firm and the beneficiaries. Id. at 1383. Gory did not extend an attorney’s fiduciary duty to the beneficiaries of a trust whenever an attorney agrees to represent a trustee. Accordingly, we conclude Kane, as the attorney for the Trustee, owed no fiduciary duty to the Walther beneficiaries. 4 4 Because the Walthers failed to plainly and prominently argue in their initial brief that they were intended third-party beneficiaries of the legal services contract between Kane and the Case: 14-13836 Date Filed: 03/02/2015 Page: 4 of 5 5 For the foregoing reasons, we affirm the district court’s grant of summary judgment. AFFIRMED. Trustee, they have abandoned this argument. United States v. Jernigan, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003). Case: 14-13836 Date Filed: 03/02/2015 Page: 5 of 5