

SUPREME COURT OF KENTUCKY

Kentucky Bar Ass'n v. Roberts

493 S.W.3d 373 (Ky. 2016) · Decided August 25, 2016

SUMMARY

The Kentucky Supreme Court imposed reciprocal discipline on James D.R. Roberts, Jr. after the Supreme Court of Tennessee suspended him from practicing law for six months. The discipline arose from misconduct involving interference with a stock sale, misleading testimony, and violations of multiple professional-conduct rules. The Kentucky suspension was ordered to run concurrently with the Tennessee suspension, and Roberts was required to notify courts and clients.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	John D. Minton, Jr.
JURISDICTION	Texas
DECIDED	August 25, 2016
DISPOSITION	other
PROCEDURAL POSTURE	The Kentucky Bar Association moved for reciprocal discipline after the Supreme Court of Tennessee suspended Roberts for six months. Roberts was ordered to show cause but failed to respond.
STANDARD OF REVIEW	Reciprocal discipline is imposed unless the attorney proves by substantial evidence a lack of jurisdiction or fraud in the out-of-state proceeding, or that the established misconduct warrants substantially different discipline in Kentucky.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion and order
PARTIES	Kentucky Bar Association v. James D.R. Roberts, Jr.

TOPICS

civil procedure

PRACTICE AREAS

legal ethics

attorney discipline

QUESTIONS PRESENTED

1. Whether the Supreme Court of Kentucky should impose reciprocal discipline after the Supreme Court of Tennessee suspended Roberts for professional misconduct.
2. Whether Roberts established any basis to avoid reciprocal discipline by proving lack of jurisdiction, fraud in the Tennessee proceeding, or that the misconduct warranted substantially different discipline in Kentucky.

HOLDINGS

1. Roberts was subject to reciprocal discipline because he failed to present substantial evidence of a lack of jurisdiction, fraud in the Tennessee proceeding, or a need for substantially different discipline in Kentucky.
2. Roberts was suspended from the practice of law in Kentucky for six months, concurrent with his Tennessee suspension, and was required to notify courts and clients of the suspension.

KEY QUOTATIONS

“In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.” (374)

FACTUAL BACKGROUND

Roberts represented John Wesley Green in litigation concerning the purchase of stock in Champs-Élysées, Inc. After summary judgment was entered against Green and a sheriff scheduled a stock sale, Roberts devised a plan with George Armstrong to use a company formed under a misspelled version of the corporation's name and stock bearing the same numbers as those listed in the sale notice. Roberts then filed a lawsuit challenging the sale and gave misleading and evasive testimony, misrepresenting his role in the plan. The Supreme Court of Tennessee found that Roberts intended to interfere with execution of the prior judgment and violated six professional-conduct rules.

PROCEDURAL HISTORY

The Supreme Court of Tennessee suspended Roberts for six months based on violations of six Tennessee Rules of Professional Conduct. The Kentucky Bar Association then sought reciprocal discipline in Kentucky. Because Roberts offered no evidence opposing the motion, the Supreme Court of Kentucky granted the motion and imposed a concurrent six-month suspension.

DISPOSITION

other

OPINION

MINTON, J.

OPINION AND ORDER On March 8, 2016, the Supreme Court of Tennessee at Nashville entered an Order suspending James D.R. Roberts, Jr., KBA member number 87787, whose bar roster address is 108 St. Charles Place, Nashville, TN 37212, from the practice of law for six months.

The Kentucky Bar Association (KBA) moved this Court to order Roberts to show cause why we should not impose reciprocal discipline under Supreme Court Rule (SCR) 3.435. Roberts failed to respond to the motion. So we accordingly grant the KBA's motion and impose reciprocal discipline.

The KBA asserts the Supreme Court of Tennessee's decision to ³⁷⁴sanction Roberts was based upon the following facts: Respondent represented John Wesley Green in a declaratory judgment action filed against, his mother, Edna Green, as well as other shareholders in Champs-Élysées, Inc., regarding the purchase of stock by John Wesley Green from his mother.

On July 21, 2006, the Court entered an Order granting summary judgment against Respondent's client and imposed a \$46,000.00 judgment against him, prompting opposing counsel to initiate a sale of Mr. Green's stock in the company.

The local Sheriff posted a notice on November 30, 2006 to sell the stock but misspelled "Champs-Elysees" by omitting an "s." Respondent attempted to stop the sale by filing a motion, contacting the Sheriff and contacting defendant shareholder's counsel, but was unsuccessful. Respondent then contacted a friend and former client, George Armstrong, about the situation and formed a plan in which Armstrong would file for incorporation of a company using the misspelled version of Mr. Green's company and stocks with the same numbering listed on the notice of sale.

Respondent instructed Armstrong to appear and ask questions regarding the legitimacy of the sale, in which he agreed as a favor to Respondent. Respondent immediately filed a lawsuit following the sale against the Sheriff challenging the propriety of the sale.

As a result, opposing counsel in the underlying action sought a finding of contempt against the Respondent. Respondent's subsequent testimony was misleading and evasive, and he misrepresented his role in the plan with Mr. Armstrong, whose testimony was in direct contradiction to his.

The Court found that the Respondent intended to interfere with the Court's prior Order permitting execution of the earlier judgment by disrupting the stock sale. The Supreme Court of Tennessee concluded that Roberts violated the following provisions of the Tennessee Rules of Professional Conduct: Rule 3.3(a)(1), which prohibits making a false statement of fact or law to a tribunal (akin to SCR 3.130(3.3)(a)(1)); Rule 3.3(b), prohibiting attorneys from offering evidence the lawyer knows to be false (akin to SCR 3.130(3.3)(a)(3)); Rule 4.4(a), requiring attorneys to respect the rights of third parties (akin to SCR 3.130(4.4)(a)); Rule 8.4(a), for knowingly assisting or inducing another to violate the Rules of Professional Conduct (akin to SCR 3.130(8.4)(a)); Rule 8.4(c), for

engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation (akin to SCR 3.130(8.4)(c)); and Rule 8.4(d), for engaging in conduct prejudicial to the administration of justice. ' Under SCR 3.436, Roberts is subject to reciprocal discipline unless he proves by substantial evidence: (a) a lack of jurisdiction or fraud in the out-of-state disciplinary proceeding, or (b) that the misconduct established warrants substantially different discipline in Kentucky.

And SCR 4.435(4)(c) further provides that "In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State." Roberts has offered no evidence in opposition to the imposition of reciprocal discipline.

Accordingly, the Court ORDERS: 1) James D.R. Roberts, Jr. is subject to reciprocal discipline under SCR 3.425 *375 based on the Supreme Court of Tennessee's conclusions that Roberts violated six rules of the Tennessee Rules of Professional Conduct; 2) He is hereby suspended from the practice of law in the Commonwealth of Kentucky for six months, to run concurrently with his suspension in Tennessee; AND 3) Roberts must notify all courts and clients of his suspension in accordance with SCR 3.390.

Those notifications must be made by letter in the United States mail within ten days from the date of entry of this Opinion and Order. Roberts must also simultaneously provide a copy of all notification letters to the Office of Bar Counsel. Also, to the extent possible, Roberts must cancel and cease any advertising activities in which he is engaged. Is/ John D. Minton, Jr. CHIEF JUSTICE All sitting.

All concur.