

SUPREME COURT OF OKLAHOMA

Verbon Smith and Hazel Smith v. The Baptist Foundation of Oklahoma and The Baptist General Convention of the State of Oklahoma

Smith v. Baptist Found. of Okla., 50 P.3d 1132 (Okla. 2002) · No. No. 97,110 · Decided June 25, 2002

SUMMARY

The Oklahoma Supreme Court considers whether claims by Verbon Smith against the Baptist Foundation of Oklahoma and the Baptist General Convention were time-barred or barred by acquiescence and laches, and whether lost insurance premiums were recoverable as consequential damages. The court holds that claims concerning pooled investment strategies predating January 1, 1995, are barred by acquiescence, but material fact questions preclude summary judgment on claims involving losses from the sale of mineral interests. It also holds that the record does not support recovery of lost insurance premiums as consequential damages, and remands the case after affirming in part and reversing in part.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Kauger, J.; Hargrave, C.J.; Lavender, J.; Boudreau, J.; Winchester, J.; Watt, V.C.J.; Opala, J.; Summers, J.
JURISDICTION	Oklahoma
DECIDED	June 25, 2002
DOCKET	No. 97,110
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Oklahoma Supreme Court granted certiorari to review a certified interlocutory order granting partial summary judgment for the trustee and the Convention. The order barred claims for damages predating January 1, 1995, based on acquiescence and rejected recovery of life-insurance premiums as consequential damages.
STANDARD OF REVIEW	Summary judgment is proper only when no material fact is in dispute and the moving party is entitled to judgment as a matter of law. Whether discovery, notice, or concealment established accrual of a breach-of-trust claim presented a fact question; legal error is not presumed from a silent appellate record.

PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential
PARTIES	Verbon Smith, Hazel Smith v. The Baptist Foundation of Oklahoma, The Baptist General Convention of the State of Oklahoma

TOPICS

trust administration trustee duties breach of trust charitable trusts appellate procedure

PRACTICE AREAS

trusts and estates fiduciary litigation appellate procedure remedies mineral rights

QUESTIONS PRESENTED

1. Whether claims relating to investment strategies and damages predating January 1, 1995, were barred by statute of limitations, laches, or acquiescence.
2. Whether factual disputes concerning notice of the Foundation's charging mineral-sale losses to the trust precluded summary judgment.
3. Whether lost life-insurance premiums could be recovered as consequential damages when the evidentiary material supporting the claim was not included in the record before the trial court.

HOLDINGS

1. A trust settlor or beneficiary who knew that pooled investments were being used and received information showing the resulting investment returns could not pursue claims concerning those investment procedures for the period during which the settlor silently acquiesced. Claims for damages relating to pooled assets and reduced trust income before January 1, 1995, were barred.
2. Summary judgment was inappropriate because material factual questions existed concerning when Verbon received information that the Foundation had charged the trust for losses from the sale of mineral interests and whether the information was sufficient to disclose the alleged breach.
3. Lost life-insurance premiums could not be recovered as consequential damages on the record presented because the deposition testimony supporting the alleged arrangement was not included in the record before the trial court.

KEY QUOTATIONS

“Therefore, we determine that Verbon's knowledge that pooled investments were being utilized by the trustee coupled with information provided indicating the returns on the investments precludes Verbon from pursuing claims during the period in which he, through silence, acquiesced in the investment procedures utilized.”
(1141)

“Because material issues of fact exist concerning when Verbon was provided with a tax return which may have alerted him that the trustee was charging the estate with losses associated with the sale of mineral

interests and whether, when provided, the return would have advised him of the nature of the transaction resulting in the loss, we hold that summary judgment on these issues was inappropriate.” (1142-1143)

“Under the facts presented, where the only evidence that the purchase of life insurance policies was contemplated from the revenues of the trust is a quotation from a deposition not included in the record, we hold that lost insurance premiums may not be recovered as consequential damages.” (1144)

“The trustee of a charitable trust has all the same responsibilities and duties of the trustee of a private trust.” (1145)

FACTUAL BACKGROUND

In 1984, Verbon Smith transferred real estate and mineral interests to the Baptist Foundation of Oklahoma to create a charitable remainder unitrust, under which he was to receive trust income during his lifetime and Hazel Smith was later entitled to income, with the remainder going to the Baptist General Convention. The Foundation invested and managed the trust assets, including pooled investments, and purchased Smith's mineral interests before later selling some interests at a loss that it charged to the trust estate. Smith became incompetent after a 1994 stroke, and suit was filed in February 1997 alleging fiduciary breaches, negligence, improper self-dealing, and other relief. The record showed Smith received reports identifying pooled-investment income but did not establish when he received information sufficient to discover the alleged mineral-loss chargeback.

PROCEDURAL HISTORY

The Smiths sued concerning administration of a charitable remainder unitrust, asserting claims including breach of fiduciary duty, negligence, removal of trustee, accounting, and invalidity of the trust. The trial court initially granted summary judgment for Verbon and ordered return of the trust corpus; the Court of Civil Appeals reversed and remanded on venue and the Foundation's authority to serve as trustee, without reaching the remaining theories. On remand, the trial court granted the defendants' motions for summary judgment in part, certified the order for immediate interlocutory appeal, and the Supreme Court granted certiorari. The Supreme Court affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded for further proceedings on claims involving losses associated with the sale of mineral interests, because notice and accrual presented genuine factual issues. The ruling barring pre-January 1, 1995 claims relating to pooled-investment strategies and the ruling denying recovery of lost insurance premiums were left standing.

CASES CITED

- Smith v. Baptist Foundation of Oklahoma, 2000 OK CIV APP 119, 17 P.3d 466
- Mud Trans, Inc. v. Foster-Dickenson & Co., Inc., 1993 OK 94, 856 P.2d 282

- Kinzy v. State ex rel. Oklahoma Firefighters Pension & Retirement System, 2001 OK 24, 20 P.3d 818
- Dotson v. Rainbolt, 1995 OK 39, 894 P.2d 1109
- Canning v. Bennett, 1952 OK 191, 245 P.2d 1149
- American Nat'l Bank of Enid v. Crews, 1942 OK 182, 126 P.2d 733
- Holmes v. McKey, 1962 OK 278, 383 P.2d 655
- Chisholm v. House, 183 F.2d 698 (10th Cir. 1950)
- Digital Design Group, Inc. v. Information Builders, Inc., 2001 OK 21, 24 P.3d 834
- Samuel Roberts Noble Found., Inc. v. Vick, 1992 OK 140, 840 P.2d 619
- Reynolds v. Porter, 1988 OK 88, 760 P.2d 816
- Anderson v. Eichner, 1994 OK 136, 890 P.2d 1329
- Jackson v. Jackson, 2002 OK 25, 45 P.3d 418
- City of Dubuque v. Iowa Trust, 519 N.W.2d 786 (Iowa 1994)
- First Nat'l Bank of Wichita Falls v. Stricklin, 1959 OK 208, 347 P.2d 652
- State ex rel. Oklahoma Bar Ass'n v. Wallace, 1998 OK 65, 961 P.2d 818
- Panama Processes v. Cities Serv. Co., 1990 OK 66, 796 P.2d 276
- Harrison v. Barton, 1960 OK 256, 358 P.2d 211
- Wilkin v. R.H. Wilkin Trust, 261 F. Supp. 977 (W.D. Okla. 1966)
- Stephenson v. Stephenson, 171 S.W.2d 565 (Mo. 1943)
- Baskin v. Griffith, 127 So. 2d 467 (Fla. App. 1961)
- Wallace v. Timmons, 101 S.E.2d 844 (S.C. 1958)