SUPREME COURT OF ARKANSAS

Warren E. Dupwe v. Frank G. Wallace, and First State Bank, et al., 355 Ark. 521

140 S.W.3d 464 (2004) · No. No. 03-594 · Decided January 8, 2004

SUMMARY

The Supreme Court of Arkansas reversed a summary judgment holding that bankruptcy trustee Warren E. Dupwe was judicially estopped from pursuing tort claims omitted from the debtors' bankruptcy petition. The court held that Arkansas judicial estoppel requires, among other elements, an intent to manipulate the judicial process, and that the record presented genuine issues of material fact regarding intent. The court also concluded that allowing the trustee to pursue the claims would protect rather than impair the interests of the bankruptcy estate and its creditors.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Hannah; Robert L. Brown; Annabelle Clinton Imber; Dickey
JURISDICTION	Arkansas
DECIDED	January 8, 2004
DOCKET	No. 03-594
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from summary judgment entered in favor of the defendants on judicial-estoppel grounds in a tort action originally filed by Chapter 7 debtors and later prosecuted by their bankruptcy trustee.
STANDARD OF REVIEW	Summary judgment is reviewed de novo to determine whether the evidentiary materials leave a material fact unanswered; the evidence is viewed in the light most favorable to the nonmoving party, with all doubts and inferences resolved against the moving party.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Warren E. Dupwe, bankruptcy trustee v. Frank G. Wallace, First State Bank, Parkin Bancorp, Inc., William N. Griffin, Other employees of First State Bank

TOPICS

bankruptcy summary judgment civil procedure appellate procedure commercial litigation

PRACTICE AREAS

Bankruptcy Civil procedure Appellate procedure Commercial litigation Torts

QUESTIONS PRESENTED

1. Whether the Nixes' failure to disclose their tort claims in their bankruptcy petition required judicial estoppel of the action later pursued by the bankruptcy trustee.
2. Whether summary judgment was proper when the defendants presented no evidence establishing that the omission was intentional or designed to manipulate the judicial process.
3. Whether judicial estoppel should bar the trustee's action after the bankruptcy estate was reopened and the trustee was substituted as plaintiff.

HOLDINGS

1. A prima facie case of judicial estoppel requires proof that the party assumed a clearly inconsistent position, did so with intent to manipulate the judicial process for an unfair advantage, successfully maintained the earlier position such that a court relied on it, and impaired or injured the integrity of at least one court.
2. The omission of the claims from the bankruptcy schedules was not, by itself, clearly inconsistent conduct warranting judicial estoppel because the record contained no evidence that the omission was intentional rather than the result of mistake or inadvertence.
3. Judicial estoppel should not bar the trustee from pursuing the tort action after the bankruptcy estate was reopened and the trustee was substituted as plaintiff because recovery would benefit creditors rather than the debtors accused of manipulating the courts.

KEY QUOTATIONS

> *"A prima facie case of judicial estoppel includes four elements:"* (at 466)

> *"A party must assume the inconsistent position with the intent to manipulate the judicial process to gain an unfair advantage;"* (at 472)

> *"The application of judicial estoppel requires a showing by the party seeking to invoke judicial estoppel that the petitioner acted fast and loose with the courts."* (at 473)

> *"Justice is best served by allowing Dupwe to pursue this suit against First State."* (at 474)

FACTUAL BACKGROUND

Barry and Deborah Nix filed Chapter 7 bankruptcy petitions after Barry's used-car business allegedly failed because First State Bank and its president, Frank Wallace, failed to provide promised financing. The Nixes answered that they had no contingent or unliquidated claims and listed no prior suits, although they later asserted fraud and other tort claims arising from the financing dispute. After the bankruptcy case was closed, the Nixes filed suit; the bankruptcy case was reopened and trustee Warren E. Dupwe was substituted as plaintiff so that the claim could be pursued for the benefit of the bankruptcy estate's creditors.

PROCEDURAL HISTORY

Barry and Deborah Nix filed Chapter 7 bankruptcy petitions and did not disclose their potential lender-liability claims against First State and its employees. After the bankruptcy case was closed, the Nixes filed a tort action. The bankruptcy case was reopened, Dupwe was substituted as trustee-plaintiff, and the circuit court treated the defendants' motions for summary dismissal as motions for summary judgment and granted them without prejudice. The case was transferred from the court of appeals to the Arkansas Supreme Court.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case was remanded for further proceedings on the trustee's tort action; judicial estoppel may not be imposed on the existing record absent proof of the required intentional manipulation and other elements.

CASES CITED

- Coats v. Gardner, 333 Ark. 581, 970 S.W.2d 802 (1998)
- Nielsen v. Berger-Nielsen, 347 Ark. 996, 69 S.W.3d 414 (2002)
- Ford v. Arkansas Game & Fish Commission, 335 Ark. 245, 979 S.W.2d 897 (1998)
- Nelson v. River Valley Bank & Trust, 334 Ark. 172, 971 S.W.2d 777 (1998)
- McLane v. Davis, 353 Ark. 539, 110 S.W.3d 251 (2003)
- Francis v. Francis, 343 Ark. 104, 31 S.W.3d 841 (2000)
- Employers Surplus Insurance v. Murphy Oil USA, 338 Ark. 299, 993 S.W.2d 481 (1999)
- First Commercial Bank, N.A. v. Walker, 333 Ark. 100, 969 S.W.2d 146 (1998)
- Edwards v. State, 328 Ark. 394, 943 S.W.2d 600 (1997)
- Muncrief v. Green, 251 Ark. 580, 473 S.W.2d 907 (1971)
- Rinke v. Weedman, 232 Ark. 900, 341 S.W.2d 44 (1960)
- Daley v. City of Little Rock, 36 Ark. App. 80, 818 S.W.2d 259 (1991)
- Womack v. First State Bank of Calico Rock, 21 Ark. App. 33, 728 S.W.2d 194 (1987)
- House v. Wakefield, 42 Tenn. 325 (1865)
- International Harvester v. Burks Motors, 252 Ark. 816, 481 S.W.2d 351 (1972)
- Cox v. Harris, 64 Ark. 213, 41 S.W. 426 (1897)
- Benton v. State, 78 Ark. 284, 94 S.W. 688 (1906)
- Rudolph v. Kelly, 144 Ark. 296, 222 S.W. 42 (1920)
- Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp., 337 F.3d 314 (3d Cir. 2003)
- New Hampshire v. Maine, 532 U.S. 742 (2001)

- Emergency One, Inc. v. American Fire Eagle Engine Co., Inc., 332 F.3d 264 (4th Cir. 2003)
- Arboireau v. Adidas-Salomon, A.G., 347 F.3d 1158 (9th Cir. 2003)
- Barger v. City of Cartersville, 348 F.3d 1289 (11th Cir. 2003)
- Burnes v. Pemco Aeroplex, Inc., 291 F.3d 1282 (11th Cir. 2002)
- American National Bank of Jacksonville v. Federal Deposit Insurance Corp., 710 F.2d 1528 (11th Cir. 1983)
- Wenderoth v. City of Fort Smith, 256 Ark. 735, 510 S.W.2d 296 (1974)
- Potts v. Rader, 215 Ark. 160, 219 S.W.2d 769 (1949)
- Potter v. Easley, 288 Ark. 133, 703 S.W.2d 442 (1986)
- Dicus v. Allen, 2 Ark. App. 204, 619 S.W.2d 306 (1981)
- Crain v. Foster, 230 Ark. 190, 322 S.W.2d 443 (1959)
- Tennessee v. Barton, 210 Ark. 816, 198 S.W.2d 512 (1946)
- Taylor v. Comcast Cablevision of Arkansas, Inc., 252 F. Supp. 2d 793 (E.D. Ark. 2003)
- Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355 (3d Cir. 1996)