

SUPREME COURT OF KANSAS

Tilzer v. Davis, Bethune & Jones, L.L.C.

288 Kan. 477 (2009) · Decided April 3, 2009

SUMMARY

The Kansas Supreme Court reviewed summary judgment in a legal malpractice action arising from an attorney's representation in a Missouri mass-settlement proceeding. The court held that the malpractice claims were not compulsory counterclaims to the attorney's motion to enforce a fee lien and therefore were not barred by claim preclusion. It further held that collateral estoppel did not preclude relitigation of the aggregate-settlement issue because the plaintiffs lacked a full and fair opportunity to litigate it, and remanded the case; the court upheld sealing of confidential settlement documents.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Johnson, J.; King, J.
JURISDICTION	Kansas
DECIDED	April 3, 2009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the granting of summary judgment to defendants in a legal malpractice action. The case was transferred to the Kansas Supreme Court under K.S.A. 20-3018(c).
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court; summary judgment is improper when reasonable minds could differ on material facts or the conclusions drawn from them. Statutory interpretation is reviewed de novo. The decision to seal documents is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Jerome S. Tilzer, individually and as plaintiff ad litem for Rita Tilzer, Todd A. Tilzer, and Jill Jokelson v. Grant L. Davis, Davis, Bethune & Jones, L.L.C.

TOPICS

summary judgment

res judicata

civil procedure

attorney fees

standard of review

PRACTICE AREAS

civil procedure

legal malpractice

professional responsibility

appellate procedure

QUESTIONS PRESENTED

1. Whether the Tilzers' legal malpractice claims were compulsory counterclaims to Davis's motion to enforce an attorney's fee lien in the prior Missouri action and therefore barred by claim preclusion.
2. Whether collateral estoppel barred the Tilzers from litigating in Kansas whether the Global Settlement was an aggregate settlement under Missouri Rule of Professional Conduct 4-1.8(g).
3. Whether the Global Settlement constituted an aggregate settlement under Rule 4-1.8(g).
4. Whether the Kansas district court abused its discretion by ordering confidential settlement documents filed under seal.

HOLDINGS

1. The malpractice claims were not compulsory counterclaims under Missouri's compulsory-counterclaim rule because Davis proceeded against the judgment through a lien motion rather than filing an independent action against the Tilzers and therefore did not become an opposing party in the relevant sense.
2. Collateral estoppel did not bar the Tilzers from litigating the aggregate-settlement issue because they lacked a full and fair opportunity to litigate it in the Missouri lien proceedings and the issue was not necessarily decided for purposes of the lien ruling.
3. The Global Settlement had the defining characteristics of an aggregate settlement under Rule 4-1.8(g), including collective conditionality and collective allocation; the district court erred in concluding otherwise.
4. The district court did not abuse its discretion by ordering documents containing confidential Missouri settlement information to be filed under seal.

KEY QUOTATIONS

“By moving to enforce an attorney’s fee lien in the underlying action, Davis was proceeding against the judgment itself, not against the former client.” (486)

“Additionally, the collateral estoppel doctrine in Missouri only applies “to those issues that were necessarily and unambiguously decided” in the prior adjudication.” (490-491)

“Under the ALI definition, the Global Settlement had both characteristics of interdependency which define an aggregate settlement.” (494)

“Rather than establishing a non-aggregate settlement, the unavailability of the information required to be disclosed by Rule 4-1.8(g) simply corroborated that it was an aggregate settlement and rendered it impossible for Davis to obtain an informed consent under the rule.” (495)

FACTUAL BACKGROUND

The Tilzers hired Grant Davis and his firm to represent Rita Tilzer in litigation against pharmaceutical companies arising from diluted cancer drugs. After Rita's death, her husband and children continued the Missouri litigation and opted into a confidential Global Settlement involving hundreds of claimants, a capped settlement fund, and allocations determined by special masters. Davis later sought enforcement of an attorney's fee lien in the Missouri action, while the Tilzers asserted that the settlement was an aggregate settlement requiring disclosures under Missouri Rule of Professional Conduct 4-1.8(g). The Missouri court enforced the lien and settlement and ruled that the Global Settlement was not an aggregate settlement; the Tilzers then filed a Kansas legal malpractice action.

PROCEDURAL HISTORY

The Johnson County District Court granted Davis summary judgment, ruling that the Tilzers' malpractice claims were compulsory counterclaims to Davis's motion to enforce an attorney's fee lien in a prior Missouri action and were barred by claim preclusion. The court also ruled that collateral estoppel barred relitigation of whether the Missouri Global Settlement was an aggregate settlement and denied the Tilzers' motion for partial summary judgment on that issue. The Kansas Supreme Court affirmed the sealing order, reversed the summary judgment rulings, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on the Tilzers' legal malpractice action, consistent with the holdings that the claims were not barred by compulsory-counterclaim claim preclusion, collateral estoppel did not bar the aggregate-settlement issue, and the Global Settlement had aggregate-settlement characteristics. The sealing order remains affirmed.

CASES CITED

- Smith v. Kansas Gas Service Co., 285 Kan. 33, 39, 169 P.3d 1052 (2007)
- Genesis Health Club, Inc. v. City of Wichita, 285 Kan. 1021, 1031, 181 P.3d 549 (2008)
- In re Tax Appeal of City of Wichita, 277 Kan. 487, 513-14, 86 P.3d 513 (2004)
- Jewish Hospital of St. Louis v. Gaertner, 655 S.W.2d 638, 641 (Mo. App. 1983)
- Hemme v. Bharti, 183 S.W.3d 593, 595-96 (Mo. 2006)
- Computer One, Inc. v. Grisham & Lawless, P.A., 141 N.M. 869, 873, 161 P.3d 914 (Ct. App. 2007), rev'd, 144 N.M. 424, 188 P.3d 1175 (2008)
- Computer One, Inc. v. Grisham & Lawless, P.A., 144 N.M. 424, 188 P.3d 1175 (2008)
- Nelson v. Massman Construction Co., 120 S.W.2d 77, 89 (Mo. App. 1938)
- Hollida v. Hollida, 190 S.W.3d 550, 555 (Mo. App. 2006)
- Durfee v. Duke, 375 U.S. 106, 109 (1963)
- State ex rel. Johns v. Kays, 181 S.W.3d 565, 566 (Mo. 2006)

- Wilkes v. St. Paul Fire and Marine Insurance Co., 92 S.W.3d 116, 121-22 (Mo. App. 2002)
- Straubinger v. Schmitt, 348 N.J. Super. 494, 792 A.2d 481 (2002)
- Arce v. Burrow, 958 S.W.2d 239, 245 (Tex. App. 1997), aff'd in part and rev'd in part, 997 S.W.2d 229 (Tex. 1999)
- Bright v. LSI Corp., 254 Kan. 853, 860, 869 P.2d 686 (1994)
- Kennedy v. City of Sawyer, 228 Kan. 439, 461, 618 P.2d 788 (1980)
- OMI Holdings, Inc. v. Howell, 260 Kan. 305, Syl. ¶ 1, 918 P.2d 1274 (1996)

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