

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002292-MR

JAMES GARY BALE

APPELLANT

v. APPEAL FROM FRANKLIN FAMILY COURT
HONORABLE REED RHORER, JUDGE
CIVIL ACTION NO. 99-CI-00392

SHARON ALICIA BALE

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, HUDDLESTON and KNOFF, Judges.

HUDDLESTON, Judge: James Gary Bale appeals the denial by Franklin Family Court of various motions he filed in the dissolution action between him and Sharon Bale. The circuit court found that Gary lacked standing under the decree dissolving his marriage to Sharon Bale to assert claims regarding the trust fund established for the parties' daughter Cassity. The court also found that Gary's claim regarding reimbursement for the amount of mortgage interest claimed by Sharon on her tax return failed to state a claim for which relief may be granted.

"The [circuit] court should not grant [a motion to dismiss for failure to state a claim upon which relief can be

granted^{1]} unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.”² In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law. Stated another way, the court must ask: If the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

Gary's first allegation is that he approached Sharon with concerns about the funds in Cassity's trust fund. Given the fluctuations in the stock market at that time, Gary thought that \$15,000.00 should be removed from mutual funds and placed in certificates of deposit. Sharon did not transfer the money as suggested, which allegedly led to a decline in the value of the trust assets. Gary then moved under the divorce decree to hold Sharon liable for reimbursement to the fund of the amount allegedly lost by her failure to convert mutual funds to certificates of deposit. Gary relies on the following provisions of the parties' separation agreement in asserting his claim:

The definition of joint custody as envisioned by these parties is that they shall both continue to have an active role in providing a sound social, economic educational [sic], and moral environment for their child. The parents shall consult with one another on substantial questions relating to educational programs, religious

¹ See Ky. R. Civ. Proc. (CR) 12.03.

² Pari-Mutuel Clerks' Union v. Kentucky Jockey Club, Ky., 551 S.W.2d 801, 803 (1977).

upbringing, significant changes in social environment, and health care. The parties shall exert their best efforts to work cooperatively in making plans consistent with the best interests of the children and amicably resolving disputes as they arise.

* * *

Currently, there is a trust account for each child to be used for their education and daily living expenses. In the event that either child of the parties shall not attend college for any reason, then the parties may elect to apply the funds to another use, devote those funds to another child's educational pursuits, or put the funds at the affected child's disposal.

In order to have standing, a plaintiff must show some injury in fact; that is, the plaintiff must have a personal stake in the matter to be adjudicated.³ Here, Gary has failed to allege a personal injury in fact created by Sharon's alleged actions. Even assuming Gary's allegations to be true, the above language from the separation agreement creates no fiduciary obligation owed to Gary by Sharon, and provides no remedy for a breach thereof. While such a claim may possibly be asserted under the trust agreement itself, that is not before us in this case and must be

³ ACLU of Kentucky v. Pulaski County, 96 F. Supp. 2d 691, 694 (E.D. Ky. 2000), citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

litigated in a separate action independent of the parties' dissolution.

Gary's second argument is that the parties' daughter, Cassity, should have been joined as an indispensable party to the action. However, because Gary's action failed to state a claim for which relief can be granted, there was no need to join Cassity. Therefore, the circuit court was correct in denying Gary's motion to join Cassity as a party to this proceeding. Once again, any action for breach of a fiduciary duty should have been brought under the trust agreement, not the dissolution action.

Finally, Gary included in his motions an allegation that Sharon improperly claimed a federal income tax deduction for the entire amount of mortgage interest paid on the parties' former marital residence for the year 2000. As admitted by Gary in his brief, the parties' separation agreement is silent as to the deduction of mortgage interest for income tax purposes. While it may have been improper for Sharon to claim such a deduction, the matter is for the federal tax authorities to resolve, not us. The circuit court was correct in holding that Gary's allegation about the mortgage interest failed to state a valid claim for which relief may be granted.

Accordingly, the Franklin Family Court order is affirmed.

GUIDUGLI, Judge, CONCURS.

KNOFF, Judge, CONCURS IN RESULT.

KNOFF, Judge, CONCURRING IN RESULT: Although I agree with the result reached by the majority, I believe that the parties, the trial court and the majority have mischaracterized the

controlling issue in this case. This case does not turn on Gary's standing to assert claims on behalf of the trust, but rather on his attempt to assert these claims as part of the now-closed dissolution proceeding. In dissolution proceedings, a trial court retains jurisdiction to enforce its prior orders, and over matters involving maintenance, child support and custody.⁴ In other respects, however, a decree of dissolution is a final order which the trial court loses jurisdiction to modify ten days after it is entered.⁵ A party may not invoke the court's limited continuing jurisdiction to raise new issues that were not adjudicated in the original proceeding and which bear only tangentially on the dissolution.⁶

In essence, Gary asserts that Sharon Failed to follow his advice concerning the management of the college trust funds. He claims that Sharon should be required to reimburse the trust for the loss caused by her negligence. However, the separation agreement did not create the college trust fund. It merely acknowledged the trust's existence, and it provided that the trust funds could be used for other purposes should the children decide not to use it for college expenses. Because the trial court never adjudicated any issues relating to the trust, Gary cannot raise those issues in a post-decree motion within the dissolution proceeding. Furthermore, any action for an accounting under the

⁴ KRS 403.250; KRS 403.340. See also Underwood v. Underwood, Ky. App., 999 S.W.2d 716, 721 (1999).

⁵ CR 59.05.

⁶ Ping v. Denton, Ky. 562 S.W.2d 314, 317 (1978).

Uniform Transfers to Minors Act (UTMA) must be brought in district court.⁷ Even if the Franklin Family Court has concurrent jurisdiction over a UTMA claim,⁸ it is still a new cause of action which must be brought in a separate action. Although Gary's standing may be an issue in that proceeding, it is not at issue here.

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⁷ Privett v. Clendenin, Ky., 52 S.W.3d 530, 532 (2001).

⁸ Although KRS 23A.110(3) does not expressly include UTMA actions as within the family court's jurisdiction, the statute states that the court's jurisdiction is not limited to the enumerated types of cases.