

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001313-MR

CONNIE ELISE BUCKLEY, AKA
CONNIE ELISE BUCKLEY SNODDY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
ACTION NO. 07-CI-00641

JOCELYN MORGAN; MATTHEW SNODDY;
AND JOSHUA SNODDY

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: NICKELL AND THOMPSON, JUDGES; ROSENBLUM,¹ SPECIAL
JUDGE.

THOMPSON, JUDGE: Connie Elise Buckley Snoddy (Buckley) appeals from a
judgment of the Fayette Circuit Court granting partial judgment on the pleadings to

¹ Retired Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Jocelyn Morgan, Matthew Snoddy, and Joshua Snoddy in a breach of contract action. For the reasons stated herein, we affirm.

On August 27, 2006, Timothy K. Snoddy was tragically killed in the Comair plane crash in Lexington, Kentucky. Two days later, Snoddy's three children, Jocelyn, Matthew, and Joshua filed a civil action to obtain control of their father's body and burial arrangements from Buckley. Prior to his untimely death, Snoddy filed a divorce action against his estranged wife, Connie Buckley. On September 7, 2006, Buckley and the children entered into a written agreement settling their case.

The parties' written contract provides, in pertinent part, the following:

1. In accordance with the Agreement entered into by the parties in Fayette Circuit Court Action No. 06-CI-03690, the remains of Timothy K. Snoddy shall be released by the Fayette County Coroner to his surviving spouse, Connie Elise Buckley Snoddy. Mrs. Buckley Snoddy has exclusive rights to determine method of disposition of the remains, to make all funeral arrangements including choice of funeral home, to choose the officiant who may preside over a graveside ceremony at burial, and to choose burial site at Lexington Cemetery. Any headstone placed at the burial site at Lexington Cemetery shall bear only the name of Timothy K. Snoddy.

Subsequently, at Snoddy's burial site, Buckley placed a headstone inscribed with the following:

UNDER THE SHADOW OF
HIS WINGS

TIMOTHY K.
SNODDY

DEC. 24, 1954
AUG. 27, 2006

AGE 51

IN LOVING MEMORY OF
MY HUSBAND, OUR SON,
OUR DAD & OUR GRANDPA

The reverse side of the headstone is inscribed with the following:

I ASSURE YOU THOSE WHO
LISTEN TO MY MESSAGE
AND BELIEVE IN GOD WHO
SENT ME HAVE ETERNAL LIFE
THEY WILL NEVER BE
CONDEMNED FOR THEIR SINS
BUT THEY HAVE ALREADY
PASSED FROM
DEATH INTO LIFE

JOHN 5:24

BELOVED HUSBAND, WITH YOU LIES BURIED
MANY BRIGHT HOPES AND DREAMS.

Due to their belief that the inscription on the headstone breached the contract, on February 6, 2007, the children filed an action seeking, *inter alia*, its removal under the terms of the contract. The children contended the parties' written contract provided that the headstone could only be inscribed "Timothy K. Snoddy." They contended that any other inscription was in breach of the contract.

Connie Buckley denied that she breached the contract and argued for a different contractual interpretation.

Thereafter, the children moved the trial court for a partial judgment on the pleadings. Ruling that the language inscribed on the headstone breached the parties' written contract, the trial court granted partial judgment to the children and ordered the removal of the headstone. After Buckley's motion to alter, amend, or vacate was denied, this appeal followed.

Buckley argues that the parties' written contract, regarding the permissible inscription for the headstone, was ambiguous because it was subject to multiple interpretations. Therefore, she contends that the partial judgment was improperly granted because the trial court failed to consider her alternative interpretation as a defense to the plaintiffs' breach of contract claim. We disagree.

A judgment on the pleadings should only be granted if it appears that the nonmoving party cannot prove any set of facts that would entitle her to relief. *City of Pioneer Village v. Bullitt County*, 104 S.W.3d 757, 759 (Ky. 2003). The moving party must admit the truth of the nonmovant's factual allegations and their fair inferences and the untruth of his own allegations which have been denied by the nonmoving party. *Archer v. Citizens Fidelity Bank & Trust Company*, 365 S.W.2d 727, 729 (Ky. 1963). If the motion for a judgment on the pleadings is made by a plaintiff, the motion must be denied if any defense might be sufficient to defeat the plaintiff's claim. *Bennett v. Bennett*, 477 S.W.2d 799, 801 (Ky. 1972).

An unambiguous written contract must be strictly enforced according to the plain meaning of the terms stated in the agreement without resorting to extrinsic evidence. *Allen v. Lawyers Mut. Ins. Co. of Kentucky*, 216 S.W.3d 657, 659 (Ky.App. 2007). Even if one of the contracting parties may have intended a different result, a contract cannot be interpreted in discordance with the plain meaning of the terms of the contract. *Abney v. Nationwide Mut. Ins. Co.*, 215 S.W.3d 699, 703 (Ky. 2006). The interpretation of contracts, including determining the existence of ambiguities, is a question of law and is subject to *de novo* review. *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky.App. 2002).

Based on the terms of the written contract, the trial court's ruling that the parties' contract prohibited the inscription of any words other than "Timothy K. Snoddy" was correct as a matter of law. The written contract mandates, in no uncertain terms, that "[a]ny headstone placed at the burial site at Lexington Cemetery shall bear only the name of Timothy K. Snoddy." The plain and ordinary meaning of the terms of this contract prevents the inscribing of additional language on Snoddy's headstone. *Nationwide Mutual Insurance Co. v. Nolan*, 10 S.W.3d 129, 131 (Ky. 1999). Finally, despite Buckley's argument that her interpretation of the contract was not properly considered, courts cannot create ambiguities where none exist even if a more palatable outcome results. *First Com. Bank of Prestonsburg v. West*, 55 S.W.3d 829, 836 (Ky.App. 2000).

Buckley next contends that the trial court's interpretation was erroneous because the interpretation creates an absurd result. According to Buckley, Lexington Cemetery requires a headstone to contain at least the decedent's name and date of death. Therefore, Buckley argues that the trial court's interpretation of the contract, permitting only the inscription of the decedent's name, leads to the absurd conclusion of preventing the placement of any headstone. Contending that this result is unreasonable, Snoddy contends that her interpretation should have been permitted. We disagree.

The fact that a contract cannot be fully performed because of a mistaken belief regarding an existing fact does not require that the contract be given no effect. The trial court's statements at the hearing regarding bringing the headstone in compliance with cemetery policy indicates that the parties' contract was formed under a mutual mistaken belief that a headstone inscribed with only a name would be sufficient for placement at the cemetery. Under these circumstances, a court usually remedies mistakes by rescinding or reforming the contract under its equitable powers. *Bradshaw v. Kinnaird*, 319 S.W.2d 475, 477 (Ky. 1959). In this case, the trial court may use its equitable powers to make a minor reformation by permitting the inscription of Snoddy's date of death to comply with the cemetery's headstone policy. *Hodges v. Todd*, 698 S.W.2d 317, 320 (Ky.App. 1985).

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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