

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002402-MR

GWEN MEEHAN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 09-CI-001390

JOHN H. RUBY AND
JOSEFINA S. RUBY

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: LAMBERT, NICKELL, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Gwen Meehan appeals the opinion and order of the Jefferson Circuit Court finding that her attorney's lien was invalid. We affirm.

On November 17, 2007, Josefina Sison Ruby obtained an emergency protective order against her husband, John Ruby. After some debate, the domestic violence hearing was scheduled for December 12, 2007. At the hearing, John failed to appear and his substitute counsel informed the family court that John's

counsel's understanding was that the hearing was continued. After testimony was given regarding whether counsel was informed of a continuance, the family court found that no such information had been conveyed and proceeded with the hearing.

During the hearing, Meehan represented Josefina who testified that John physically assaulted her on November 17, 2007, by "slamming" her against a wall. At the end of the hearing, the family court ruled that it would permit John to testify at a subsequent hearing. John would later testify that Josefina's irrational behavior caused the couple's argument and that she had injured herself when she tripped over an open dishwasher door. After hearing the testimony, the family court issued a DVO against John, which was entered on December 26, 2007. At this time, Meehan and Josefina terminated their attorney-client relationship.

Later, John filed a motion to vacate the DVO and an agreed order was prepared wherein both parties requested the dismissal of the DVO. According to John's motion, John and Josefina were attempting to reconcile. The family court denied the motion but amended the DVO from a "no contact order" to a "no unlawful contact order." After John appealed to this Court, we held that a family court has the discretion to accept or deny a parties' agreed order to vacate an existing DVO but only after a hearing to determine if the victim's participation in the request is voluntary. Because no such inquiry occurred in the family court, we reversed the family court's denial of the motion to vacate the DVO and remanded

the case for a hearing regarding the voluntariness of Josefina's participation in the request and for appropriate findings.

On January 9, 2008, an agreed order was entered in John and Josefina's case providing, in part, that John would pay "all reasonable legal fees that the Petitioner has incurred associated with this matter." On February 18, 2008, citing KRS 376.460 as authority, Meehan filed an attorney's lien on the couple's real property in Jefferson County. John responded by sending Meehan a letter demanding that she release the lien or be prepared for the initiation of legal action. Almost a year later, with the lien not having been released, John and Josefina filed suit against Meehan for slander of title and for a declaration of rights.

After bringing suit, John moved for summary judgment, and Meehan filed a cross-motion for partial summary judgment. The Rubys then filed a motion for immediate injunctive relief, which was granted. In No. 09-CA-000967-I, this Court upheld the trial court's ruling on Meehan's motion for interlocutory relief. Subsequently, on the claim for a declaration of rights, the trial court issued a summary judgment order in favor of the Rubys, finding that Meehan's attorney's lien was improper and invalid. The trial court denied both parties' other motions.

Meehan contends that she was authorized to attach a lien to the Rubys' property to secure the payment of her legal fees pursuant to KRS 376.460. She argues that the statute expressly permits an attorney to have a lien "upon all

claims” in which she institutes suit on behalf of a client. She further argues that there is no question that she instituted suit in this case on Josefina’s behalf. Thus, she contends that she had a right to the attorney’s lien pursuant to KRS 376.460.

The standard of review applicable to an appeal of a summary judgment is well-established. An appellate court must decide whether the trial court correctly ruled that there was no genuine issue as to any material fact and that the moving party was entitled to a judgment as a matter of law. *Barnette v. Hospital of Louisa, Inc.*, 64 S.W.3d 828, 829 (Ky.App. 2002). “Summary judgment is proper ‘if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Id.*, quoting CR 56.03.

Summary judgment should only be granted when it appears that it would be impossible for the non-moving party to produce sufficient evidence to succeed at trial. *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985). Because there are no disputed facts involved with summary judgments, we review the decision of the trial court without deference. *Kreate v. Disabled American Veterans*, 33 S.W.3d 176, 178 (Ky.App. 2000).

Kentucky’s attorney’s lien statute contains the following:

Each attorney shall have a lien upon all claims, except those of the state, put into his hands for suit or collection

or upon which suit has been instituted, for the amount of any fee agreed upon by the parties or, in the absence of such agreement, for a reasonable fee. If the action is prosecuted to a recovery of money or property, the attorney shall have a lien upon the judgment recovered, legal costs excepted, for his fee. If the records show the name of the attorney, the defendant shall be deemed to have notice of the lien. If the parties in good faith and before judgment compromise or settle their controversy without the payment of money or other thing of value, the attorney for the plaintiff shall have no claim against the defendant for any part of his fee.

While the attorney's lien statute does not require that money has to be paid on a judgment before an attorney can file a lien as stated in *Arny v. Johnson*, 443 S.W.2d 543, 545 (Ky. 1969), the right to file a lien can only arise when the suit handled by the attorney results in the creation or obtaining of attachable assets. *Rice v. Kelly*, 226 Ky. 347, 10 S.W.2d 1112, 1115 (1928).

After reviewing the record, we conclude that Meehan was not entitled to file an attorney's lien against the Rubys' real estate pursuant to KRS 376.460. While we acknowledge Meehan's argument that *Rice* involved an interpretation of an earlier version of our attorney's lien statute, the language of the prior statute and of the present statute are very similar. Additionally, the current statute expressly provides the manner in which a lien may be filed and, while the statute provides a right to a lien in a suit involving the recovery of money or property, it does not authorize a lien in cases without the recovery of attachable assets.

Furthermore, the right to file an attorney's lien is founded upon the theory that the attorney's services and skills produced the property that the client now possesses. *Exchange Bank of Kentucky v. Wells*, 860 S.W.2d 785, 787 (Ky.App. 1993). Therefore, consistent with our courts' interpretation of the attorney's lien statute for over a century, we conclude that KRS 376.460 does not permit a lien against property or assets that did not arise directly as a result of the underlying suit. *Wilson v. House*, 10 Bush 406, 73 Ky. 406 (1874). Therefore, because Meehan's legal services did not result in the recovery of any property or money on Josefina's behalf, she was not entitled to file an attorney's lien.

Meehan next argues that she had a right to file an attorney's lien pursuant to KRS 403.220. Specifically, she contends that the trial court's approach to an attorney's lien rendered “. . . KRS 403.220 impotent in cases where, despite financial disparity between the parties, no one wants to pay his or her lawyer.”

KRS 403.220 provides the following:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

While KRS 403.220 does permit a trial court to order a party in a financially better position to pay the legal fees of the opposing party, the statute establishes a process for awarding attorney's fees, including considering the financial resources of both parties and determining the reasonableness of the claimed attorney's fees. Thus, because this statute and its proceedings were not invoked during the underlying domestic violence action but in a subsequent declaratory rights action, we conclude that KRS 403.220 has no application in the present case on appeal.

Meehan next contends that her right to file the attorney's lien was authorized by the family court's order and enforceable pursuant to KRS 426.720. She argues that the family court entered an agreed order providing that John would pay for Josefina's reasonable legal fees regarding the DVO proceeding. Thus, she argues that the agreed order permitted her to file the lien pursuant to KRS 426.720.

KRS 426.720 provides a statutory scheme in which final judgments for the "recovery of money or costs in the courts of record in this Commonwealth, . . . shall act as a lien upon all real estate in which the judgment debtor has any ownership interest" In order to file a valid lien, KRS 426.720(1) requires that the judgment creditor shall file with the county clerk a "notice of judgment lien containing the court of record entering the judgment, the civil action number of the suit in which the judgment was entered, and the amount of the judgment, including principal, interest rate, court costs, and any attorney fees."

Under Kentucky law, a purported lienholder must strictly comply with the statutory provisions permitting her to file a lien against another party. *Laferty v. Wickes Lumber Co.*, 708 S.W.2d 107 (Ky.App. 1986). Generally, the failure to comply with the procedures establishing a lien will render it invalid. *Id.* at 108. Here, Meehan cannot comply with KRS 426.720, because there was no judgment entered setting out the amount of attorney's fees as required by KRS 426.720(1). The agreed order that Meehan cites merely provides that John would pay for Josefina's reasonable attorney's fees. Despite this general provision, Meehan filed an attorney's lien for \$6,000, without an adjudication for reasonableness pursuant to the right to a jury trial. We conclude that KRS 426.720 cannot be used to obtain a lien for attorney's fees unless a court has adjudicated a specific amount. Thus, KRS 426.720 cannot be utilized to provide Meehan the relief that she requests.

For the foregoing reasons, the opinion and order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Daniel J. Canon
Louisville, Kentucky

BRIEF FOR APPELLEE:

John H. Ruby, *Pro Se*
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