

RENDERED: SEPTEMBER 4, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001632-MR

MEREDITH L. LAWRENCE
and MEREDITH L. LAWRENCE, P.S.C.

APPELLANTS

v.

APPEAL FROM GALLATIN CIRCUIT COURT
HONORABLE JAMES R. SCHRAND II, JUDGE
ACTION NO. 13-CI-00056

ROBERT RYAN, P.A.

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER, JUDGES.

KRAMER, JUDGE: Meredith Lawrence and Meredith Lawrence, P.S.C., appeal a decision of the Gallatin Circuit Court dismissing with prejudice various civil claims they jointly filed against Robert Ryan, P.A. Upon review, the circuit court had no subject matter jurisdiction over the claims at issue. We therefore reverse, remand, and direct the circuit court to dismiss the claims without prejudice.

FACTUAL AND PROCEDURAL HISTORY

This appeal arises from allegations that appellee Ryan was negligent, breached fiduciary duties, and breached a contract in relation to his preparation and filing of appellant Lawrence's personal income tax returns for the years of 2004, 2005, and 2006. Because the circuit court entered judgment in favor of Ryan pursuant to Kentucky Rules of Civil Procedure (CR) 12.02(f) before the parties engaged in any discovery, the record from the circuit court mainly consists of Lawrence's complaint, Ryan's motion to dismiss, and some responses thereto. However, the substance of this matter originates from federal proceedings relating to Lawrence's aforementioned tax returns—proceedings which ultimately resulted in Lawrence's conviction, 27-month prison sentence, and liability to the United States Internal Revenue Service (IRS) for \$128,253 in restitution for violations of federal tax law. A summary of those proceedings is included in the federal appellate court's opinion which affirmed this result, *United States v. Lawrence*, 557 Fed.Appx. 520 (6th Cir. 2014). Thus, we will recite the relevant portions of the federal appellate court's opinion (which, incidentally, are consistent with the allegations in Lawrence's complaint) as follows:

Defendant Meredith Lawrence was a personal injury lawyer who owned Racers, a strip club, held a number of residential and commercial office properties, which he leased, and lived on over 3,000 acres of land, which he farmed. He earned income from these businesses and operated them with the assistance of several employees, including bookkeepers. In 2003, Lawrence hired CPA Robert Ryan to prepare tax returns for all of the entities in which Lawrence was involved. Ryan also prepared

and electronically filed Lawrence's personal tax returns for 2004, 2005, and 2006. Ryan included Lawrence's unique PIN (Personal Identification Number) on each return.

In August of 2011, a grand jury indicted Lawrence for filing three false tax returns in violation of 26 [United States Code] U.S.C. § 7206(1). The three-count indictment alleged that during the 2004 (count one), 2005 (count two), and 2006 (count three) tax years, Lawrence willfully signed his personal income tax returns, under penalties of perjury, when he knew and believed that his adjusted gross income (AGI) was greater than what he reported on the Form 1040s for these years.

During a two-week jury trial, the government introduced proof that Lawrence failed to report income from five different sources: (1) "house fees" from the exotic dancers who worked at Racers; [FN] (2) withdrawals from his client trust accounts; (3) rental income from attorneys who leased office space from him; (4) reimbursements from those same attorneys for office expenses; and (5) rental income from residential tenants.

[FN] The exotic dancers at Racers had to pay several different fees to the "house." These included a daily right-to-work fee, a percentage of their earnings from their dances, and a parking fee.

Id. at 522.

[At trial, Lawrence] had a comprehensive defense to each source of allegedly understated income. Lawrence testified that the "house fees" received from Racers represented the repayment of loans he had made to the business and, therefore, were not income. As for the other sources, he testified that he relied in good faith on his accountant [*i.e.*, Ryan] and bookkeepers to prepare accurate tax returns for these tax years. And Lawrence's expert witness retained for trial, CPA Gary Stephens, exhaustively disputed the "specific items" identified by

the government as unreported income for the tax years in question.

Id. at 527.

As noted, the jury nevertheless convicted Lawrence on all three counts of violating 26 U.S.C. § 7206(1). The Federal Court of Appeals affirmed his conviction on March 3, 2014. *Id.* And, Lawrence's conviction and accompanying liabilities to the IRS became final when the United States Supreme Court eventually denied Lawrence's petition for writ of certiorari on October 6, 2014. *See Lawrence v. United States*, 135 S.Ct. 223, 190 L.Ed.2d 133 (2014).

Keeping the above in mind, Lawrence and Meredith L. Lawrence, P.S.C., filed their joint complaint against Ryan in this matter on April 8, 2013. They alleged in their complaint that Ryan had improperly handled Lawrence's 2004, 2005 and 2006 personal tax returns, and that Ryan's improper handling of those tax returns was the cause of Lawrence's criminal convictions, accompanying liabilities to the IRS, and the consequent fallout that ensued (*i.e.*, damage to Lawrence's professional reputation and the losses of his law license, legal practice, and associated revenues). Stated differently, Lawrence had taken an unsuccessful theory he had put forth as a defense in his criminal proceedings (*i.e.*, that he had relied in good faith upon his accountant, Ryan, to prepare accurate tax returns for

these tax years),¹ and had repackaged it as three civil causes of action against Ryan sounding in negligence, breach of fiduciary duty, and breach of contract.

Ryan moved to dismiss pursuant to CR 12.02(f). Three bases of his motion were as follows: (1) Lawrence's conviction for three counts of violating 26 U.S.C. § 7206(1) had a preclusive, collateral estoppel effect upon each of the claims he had asserted; (2) public policy estopped Lawrence from founding civil claims upon, and thus profiting from, his own criminal misconduct; and (3) Lawrence's claims were barred by the applicable statute of limitations.²

Thereafter, the circuit court granted Ryan's motion based upon grounds (1) and (2), enumerated above. This appeal followed.

STANDARD OF REVIEW

Our standard for reviewing orders granting CR 12.02(f) motions to dismiss is as follows:

¹ Under 26 U.S.C. § 7206(1),

Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter . . . shall be guilty of a felony. . . .

To prove this offense, the government is required to prove beyond a reasonable doubt both falsity as to a material matter in the tax return or statement, and the defendant's knowledge of such falsity when he signed the return. *United States v. Marabelles*, 724 F.2d 1374, 1380 (9th Cir. 1984).

It is a valid defense if the taxpayer provides full information regarding taxable income and expenses to an accountant or other professional qualified to prepare federal tax returns and the taxpayer adopts and files the return without having reason to believe that it is incorrect. *United States v. Wilson*, 887 F.2d 69, 73 (5th Cir.1989).

² A fourth basis of Ryan's motion was that a binding arbitration agreement prohibited Lawrence from filing suit against him in circuit court. The circuit court declined to address this basis. Likewise, we need not address this argument in light of our resolution of this matter.

The court should not grant the motion 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. In making this decision, the circuit court is not required to make any factual determinations; 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?

James v. Wilson, 95 S.W.3d 875, 883–84 (Ky. App. 2002) (internal quotations and footnote omitted).

ANALYSIS

A common thread between the three grounds of Ryan’s motion to dismiss, discussed above, is that each ground depended upon the finality of Lawrence’s criminal conviction. For example, an essential element of collateral estoppel is “a final decision or judgment on the merits.” *See Moore v.*

Commonwealth, 954 S.W.2d 317, 319 (Ky. 1997). Likewise, while public policy generally precludes illegal conduct from supplying a proper basis for legal or

equitable proceedings,³ it would not preclude conduct deemed illegal by a trial court, but subsequently deemed legal on appeal, from supplying such a basis.

Additionally, the statute of limitations on any of Lawrence’s claims would not have commenced until the result of his appeal in his criminal proceedings became final and the federal trial court’s judgment became the

³ *See Miller v. Miller*, 296 S.W.2d 684, 688 (Ky. 1956) (“Any conduct or contract of an illegal, vicious or immoral nature cannot be the proper basis for a legal or equitable proceeding.”)

unalterable law of the case. Only then would Lawrence be effectively on notice that the principal damage (*i.e.*, his criminal conviction and the ultimate amount of his monetary liability to the IRS) was real and non-speculative. *See Stephens v. Denison*, 64 S.W.3d 297, 299 (Ky. App. 2001) (explaining statute of limitations regarding criminal defendant’s legal malpractice action against his attorney did not commence until the date his appeal in the criminal case became final); *see also Alagia, Day, Trautwein & Smith v. Broadbent*, 882 S.W.2d 121, 126 (Ky. 1994) (“Not until damages were fixed by the final compromise with the IRS was there an occurrence of the type required to commence the running of the statute”).⁴

And for precisely the same reason, when Lawrence filed his claims in this matter over a year before the United States Supreme Court denied his petition for writ of certiorari, his claims were unripe. At that point in time, even if Ryan’s conduct could have been considered negligent, it had yet to cause Lawrence legally cognizable damage. *See Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 272 (Ky. App. 2005) (“without legally cognizable damages, there is no ripe claim for legal malpractice”).⁵

⁴ Below, there was a measure of confusion regarding the applicable statute of limitations in this matter. As *dicta*, we note that because all of Lawrence’s claims arise from the rendering of professional services, the statute of limitations generally applicable to each of Lawrence’s claims, whether couched in terms of contract, tort, or even intentional tort, would be Kentucky Revised Statutes 413.245. *See Abel v. Austin*, 411 S.W.3d 728, 737-39 (Ky. 2013).

⁵ Lawrence asserts in his brief that even *after* he has exhausted his direct appellate processes from his criminal conviction, he might still lack cognizable damages and thus a ripe claim because he might be able to collaterally attack his conviction. This argument lacks merit, however, because it has already been rejected in prior, binding case law. *See Bryant v. Howell*, 170 S.W.3d 421 (Ky. App. 2005).

We are left, then, in precisely the same situation as the Court in *Doe*, *supra*—a situation involving a plaintiff who filed an unripe cause of action which, subsequent to being filed, became ripe. In that situation, the Court held:

The circuit court has jurisdiction over justiciable claims. An unripe claim is not justiciable. Because the Appellants' claims were filed before they were ripe, the circuit court has no jurisdiction over the instant case. . . . [T]he Appellants' claims should have been dismissed, without prejudice, for lack of subject matter jurisdiction.

Id. at 275-276 (internal citations and footnotes omitted).

CONCLUSION

In light of *Doe*, we REVERSE the Gallatin Circuit Court's decision to dismiss Lawrence's claims, and we REMAND with directions to dismiss this case, without prejudice.

ALL CONCUR.

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