RENDERED: AUGUST 4, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000887-MR

NATHAN CRAIG GIBSON; ROSETTA RICH
AND SCOTT RICH APPELLANTS

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
ACTION NO. 13-CI-00375

ALLSTATE INDEMNITY COMPANY
AND HIRAM GIBSON APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: Appellants bring this appeal to argue that the trial court erred in dismissing their claim against Allstate Indemnity Company in regards to proceeds paid from insurance coverage on a residence. Finding no error, we affirm.

Six individuals, including Nathan Gibson, Rosetta Rich, and Hiram Gibson,[1] allegedly have some degree of ownership interest in the residence at issue.[2] These individuals obtained their interest in this property through the administration of the Estate of James G. Gibson. Hiram Gibson individually purchased insurance coverage on the property through Allstate. No other party procured insurance on the residence. On March 23, 2013, the residence burned down and the Allstate insurance adjuster determined the loss was a policy limit loss of $70,000.

On May 16, 2013, Allstate filed a Complaint for Interpleader pursuant to Kentucky Rule of Civil Procedure (CR) 22. Allstate named as parties Hiram Gibson, individually, Hiram Gibson, as administrator of the Estate of James Gibson, and First National Bank and Trust, which had a mortgage on the property. The Complaint also stated that there may be other "heirs at law who may be entitled to a proportionate share of said estate." Allstate sought to set up an escrow account with the court, put the $70,000 into the account, and allow the court to determine who was entitled to the proceeds.

The court ordered that the escrow account be created and that the $70,000 be put into the account. After Allstate deposited the funds with the court, it moved to be dismissed from the case. Allstate, First National Bank, and Hiram

[1] Mr. Gibson's first name is spelled both Hiram and Hairm in the record. We will use the spelling set forth in the notice of appeal.

[2] We use the term "allegedly" because the underlying case is still ongoing and the record before us does not definitively indicate who has ownership interest in the residence.

Gibson all moved for summary judgment. The court granted all motions. First National Bank was awarded an amount of the insurance proceeds equal to what remained on the mortgage, Hiram Gibson was awarded the remainder of the insurance proceeds, and Allstate was dismissed from the case. The court believed that because Hiram Gibson was the only person to purchase the insurance, he was entitled to the remainder of the funds.[3]

In November of 2014, the other heirs of James Gibson learned about the insurance payout and filed a motion to set aside the summary judgment granted in favor of Hiram Gibson and Allstate. They argued that because they also owned an interest in the residence at issue, they were entitled to a portion of the insurance proceeds. The trial court granted the motion, vacated the orders, and the case was revived.

A short time later, Allstate moved again for summary judgment in which it argued that because it had paid the insurance policy limits into the court pursuant to valid court orders, it had fulfilled its duty and should be dismissed from the case. The trial court agreed and again dismissed Allstate. The trial court believed that once Allstate paid the total amount of the policy into the court, it was discharged from further liability. It also believed that if the other Gibson heirs believed they were entitled to a portion of the insurance proceeds, any potential recovery would come from Hiram Gibson. This appeal followed.

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[3] It is unclear at the time of this order whether the court considered the interest any other heirs may have in the property or insurance proceeds or whether it granted summary judgment solely because Hiram Gibson was the only person named in the insurance agreement.

> The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. . . . . "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.,* Ky., 807 S.W.2d 476, 480 (1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest,* 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose,* Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . ." *Huddleston v. Hughes,* 843 S.W.2d 901, 903 (Ky. App. 1992)[.]

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).

We agree with the trial court that Allstate was properly dismissed from the case as a matter of law. The trial court relied primarily on the case of *Wedding v. Commonwealth Life Ins. Co.*, 310 Ky. 388, 220 S.W.2d 833 (1949). That case is directly on point and states that once an insurance company pays proceeds into the court, it is discharged from further liability and obligation. *Wedding*, 310 Ky. at 391-92, 220 S.W.2d at 835. When Allstate paid the insurance proceeds into the court, it was acting under valid orders of the court and relied on the court to determine who should recover from said proceeds. Allstate at all times fulfilled its obligation.

In addition, this case has some similarities to *Estes v. Thurman*, 192 S.W.3d 429 (Ky. App. 2005). In *Estes*, William and Gayle Estes entered into a land sale

contract with Virgie Thurman in which they agreed to purchase property, including a residence, owned by Thurman. Thurman then purchased fire insurance on the property. The residence then burned down. At the time of the fire, the Esteses still owed Thurman $16,000 on the purchase price. The insurance company paid Thurman over $34,000 in proceeds to cover the loss. The Esteses then filed a claim against Thurman for a portion of the insurance proceeds over the $16,000 remaining on the purchase price.

The Court in *Estes* determined: "First, it is not necessary that one be named as an insured in an insurance policy in order to be entitled to policy proceeds. Second, a named insured under a policy is not entitled to recover more than the value of his or her insurable interest." *Id.* at 432 (citations omitted). The Court determined the Esteses were entitled to the portion of the insurance proceeds that exceeded the $16,000 left on the purchase price.

The *Estes* case is not determinative of the case *sub judice*, but is discussed for illustrative purposes. *Estes*, like the case at hand, had multiple people who owned an interest in property, but only one person acquiring insurance for his or her sole benefit. The *Estes* Court determined that the Esteses could recover from Thurman and no insurance company was involved in that litigation. Such should be the same here. If Appellants are entitled to any insurance proceeds recovered by Hiram Gibson, such recovery should be against Hiram Gibson.

Based on the foregoing, we affirm the judgment of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEE ALLSTATE INDEMNITY COMPANY:

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