

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001535-MR

BERTHA C. DICK

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY BURDETTE, JUDGE
ACTION NOS. 14-CI-00070 AND 14-CI-000484

MELISSA RENAE DICK ATON, APRIL NICHOLE
DICK SIMPSON, GENWORTH LIFE ANNUITY INSURANCE
COMPANY, AND ANTHEM LIFE
INSURANCE COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, GOODWINE, AND SPALDING, JUDGES.

ACREE, JUDGE: The question in this appeal is whether the signatures of Roy Dick on two change of beneficiary forms are authentic. His widow, Appellant Bertha Dick – listed as the beneficiary on the forms – says they are authentic.

Roy's daughters, Appellees Melissa Aton¹ and April Simpson – beneficiaries if the signatures are invalid – say they are not authentic. After a bench trial, the Pulaski Circuit Court ruled in favor of Melissa and April. Bertha appeals that decision. We affirm.

Roy was the policyholder of a workers' compensation-based annuity from Genworth Life Annuity Insurance Company and a life insurance policy from Anthem Life Insurance Company. Because competing claims were made as to each policy after Roy's death, Genworth and Anthem filed separate interpleader actions in the Pulaski Circuit Court, which were later consolidated.²

At trial, Melissa and April called Steven Slyter to testify. Slyter is a forensic document examiner and handwriting expert. He reviewed the signatures in question and compared them to documents with Roy's authenticated signature. His expert opinion was that the signatures in question were not signed by Roy on either form. Bertha testified to the contrary that both signatures were authentic. She said Roy signed the Genworth form at the local electric company, South Kentucky RECC, in the presence of one of its employees, Melissa Johnson.

¹ Also called Anton at times in the record.

² Though Genworth and Anthem are named Appellees, the only dispute is between Bertha and her stepdaughters as each company only wants to receive guidance as to the proper beneficiaries.

However, Johnson testified only that she recalled Bertha and Roy coming to her office – she was unsure what, if any, document Roy signed.

The trial court issued detailed findings of fact and conclusions of law holding there was “overwhelming and convincing” evidence that Roy did not sign either form, making each a nullity. (Record (R.) at 147). Bertha filed a motion to alter, amend or vacate pursuant to Kentucky Rule of Civil Procedure (CR) 59.05, principally arguing that the court misconstrued Johnson’s testimony, and asserting that said testimony could only have been interpreted as supporting the fact that Roy signed the workers’ compensation beneficiary form. The court denied that motion in a detailed order, reciting Johnson’s testimony at length, and held that her lack of specific recall meant her testimony “carries no weight in proving the signature of Roy Dick. The Court observed the witness . . . testify and is convinced she does not recollect what paperwork may have been signed, or if Roy Dick in fact signed it.” (R. at 168). This appeal followed.

An appellate court’s review of a bench trial is governed by CR 52.01, which provides in relevant part that “[f]indings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” CR 52.01. Therefore, the trial court alone may assess the credibility of witnesses and determine the weight to assign to the evidence. *See, e.g., Barber v. Bradley*, 505 S.W.3d 749, 754 (Ky.

2016). Findings of fact are not clearly erroneous if they are supported by substantial evidence, in which case our role is to determine only whether those facts support the trial court's legal conclusions. We review legal conclusions *de novo*. *Id.*

Bertha's main argument is that the trial court erred by not accepting as conclusively favoring her interpretation of the only witness she perceives as disinterested, Melissa Johnson. However, as the trial court noted, Johnson's testimony was quite indefinite and inconclusive. Her only specific recollection was that Roy and Bertha came to her office. She said she thought she saw Roy sign a document at that time, but she had no recollection of the nature of what he may have signed and admitted it was possible he filled out a form but did not then sign it in her presence. Bertha's argument to the contrary notwithstanding, Johnson declared she did not recall whether Roy signed the Genworth form. (Video Transcript: 5/30/17; 3:07:57). Indeed, she admitted Roy may have signed a document related to a "Guardian" policy, which is irrelevant to this case. *Id.* at 3:08:23.

Bertha also makes much of the very little substance contained in a short letter she asked Johnson to write in 2014. In its entirety, the unsigned letter, which is on South Kentucky RECC letterhead, provides:

January 2, 2014

To Whom It My Concern:

Mr. & Mrs. Roy Dick came into the Somerset office sometime in 2012 with questions regarding a beneficiary form that had been sent to him from his workers' compensation company. Apparently, someone other than Mr. Dick had contacted the workers' compensation company concerning his beneficiary. I advised Mr. Dick to fill out the beneficiary form with the beneficiary of his choice; he proceeded to fill out Mrs. Dick's information.

Thank you,

Missy Johnson, Benefits Administrator

(Defendant's Exhibit 1).

The letter is not conclusive of the central fact question here – whether Roy signed the form. It is not a contemporaneous recording of the event. More importantly, Johnson's letter does not state that she saw Roy *sign* anything at her office. The letter is not inconsistent with her testimony that it was possible Roy asked her about the Genworth form but did not actually sign it in front of her. She stated the contents of the letter were what she believed to be true when she wrote it, but the letter simply does not directly address whether Roy signed the change of beneficiary forms.

Thus, the outcome of this case essentially hinged on Bertha's credibility. At trial, Bertha testified that Roy signed the Genworth form at Johnson's office. This contradicts her testimony in deposition that Roy signed the

Genworth form at his home. Bertha was unable to explain this conflict in testimony. Moreover, Bertha admitted signing Roy's name to a check, after he died, drawn on an account in which she had no legal interest.

By contrast, the handwriting expert testified that the signatures at issue were not Roy's. The trial court was entitled to believe Slyter and disbelieve Bertha. Finding no error, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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