

[Cite as *Estate of Snowden v. Wright State Univ.*, 2018-Ohio-4164.]

ESTATE OF EUGENIA A. SNOWDEN,
et al.

Plaintiffs

v.

WRIGHT STATE UNIVERSITY, et al.

Defendants

Case No. 2010-08446JD

Judge Patrick M. McGrath

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} Defendant Wright State University (WSU) filed a motion for summary judgment on June 28, 2018. Plaintiffs filed a memorandum in opposition on July 12, 2018. WSU argues it is an affiliate of Wright State Physicians, Inc. (WSPI) and, therefore, entitled to the benefit of a release executed in the Montgomery County connected action in favor of WSPI while plaintiffs argue that WSU and WSPI are independent entities and that the release has no effect on plaintiffs' claims against WSU in the case before this court. For the following reasons, the court GRANTS WSU's motion.

Civ.R. 56(C) states, in part, as follows:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶2} There is no dispute regarding the relevant facts. Plaintiffs settled their claims in the Montgomery County connected action and executed a release. WSU is not a party to the release. The parties to the release are the plaintiffs in the connected action, the Estate of Eugenia Snowden and Dennis Snowden, the defendant in the connected action, WSPI, and the insurer in the connected action, The Doctors Company. The release, a copy of which WSU provided with its motion, states in pertinent part:

This release and discharge shall also apply to Defendant's and Insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, *affiliates*, partners, predecessors and successor in interest, and assigns and *all other persons, firms or corporations with whom any of the former have been are now, or may hereafter be affiliated.* (Emphasis added).

{¶3} WSU also relies on the affidavit of Dr. Margaret Dunn, Dean of the Boonshoft School of Medicine at Wright State. Per Dr. Dunn's affidavit and the attachments thereto, WSPI's articles of incorporation state its purpose is "to carry out, improve, enhance and supplement the medical educational activities and services of Wright State University School of Medicine * * * and the physicians who render clinical services in connection with their teaching duties." WSPI's Code of Regulations state that faculty of the Boonshoft School of Medicine will execute employment contracts with it and that it shall "serve as the vehicle for the professional and clinical activity of the WSU/BSOM faculty." Dr. Dunn states, "WSPI is Wright State University's affiliated faculty practice plan and has been so since its inception in 2006."

{¶4} Releases are contracts, subject to the normal rules of contract construction in that "intent is presumed to reside in the language the parties chose to employ in the agreement, and the intention of the parties governs the interpretation of releases." *Jacob v. Grant Life Choices Fitness Ctr.*, 10th Dist. No. 95APE12-1633, 1996 Ohio App. Lexis 2313 at *7 (June 4, 1996). If unambiguous, "a court cannot in effect create a new

contract by finding an intent not expressed in the clear language employed by the parties.” *Id.* at 7-8. Absent an ambiguity, the interpretation of a release is a question of law and “intentions not expressed in the writing are deemed to have no existence and may not be shown by parol evidence.” *Id.* at *10. A “third-party beneficiary need not be named in the contract as long as the third-party is contemplated by the parties and sufficiently identified.” *Id.* at *10-11.

{¶5} The court finds the release is not ambiguous. In fact, plaintiffs do not argue ambiguity. The court, therefore, can only determine the intent of the parties through the language employed in the release. The language used in contracts, including settlement agreements and releases, should be ascribed its plain and ordinary meaning. See *Wilson v. Durrani*, 1st Dist. No. C-130234, 2014-Ohio-1023, 2014 Ohio App. Lexis 948, ¶ 15-16.

{¶6} Webster’s online dictionary defines the noun affiliate as “an affiliated person or organization” whereas affiliated, a transitive verb, is defined as “to bring or receive into close connection as a member or branch” or “to associate as a member.” As an example, Webster’s states, “[t]he medical school is affiliated with a hospital.”¹ WSU also cites a case wherein the 12th District adopted the definition of affiliate as “a company * * * associated with others under common ownership or control” and/or “a corporation that is related to another corporation by * * * other means of control; a subsidiary, a parent or sibling corporation.” *Bond Ins. Co. v. Dixon Builders I, LLC*, 12th Dist No. CA2011-02-027, 2012 Ohio 3313, ¶ 38.

{¶7} Dr. Dunn’s affidavit and its attachments establish that WSU and Wright State Physicians, Inc. are affiliated. Clearly, there is a close connection, an association, and a relation between the two entities as well as elements of common control. All faculty of WSU’s school of medicine practice through WSPI. Quite simply, there is no

¹ <https://www.merriamwebster.com/dictionary/affiliate> (accessed August 29, 2018)

question that, though separate entities, Wright State University and Wright State Physicians, Inc. are affiliated.

{¶8} Given the above, the court finds there are no genuine issues of material fact that the release was executed, that affiliates are included within the release's ambit, and that WSU and WSPI are affiliates and/or are affiliated. Thus, plaintiffs released their claims against WSU. Therefore, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge