

[Cite as *Schlauch v. Schlauch*, 2015-Ohio-577.]

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

EDWARD SCHLAUCH, et al.

Plaintiffs-Appellants

-vs-

JAMIE SCHLAUCH, et al.

Defendants-Appellees

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 14 CA 008

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 14 CV 037

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

February 13, 2015

APPEARANCES:

For Plaintiffs-Appellants

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Wise, J.

{¶1}. Plaintiffs/Appellants Edward Schlauch, et al. appeal the dismissal of their complaint against Defendants/Appellees Jamie Schlauch, et al. for the intentional interference with expectancy of inheritance and other claims in the Court of Common Pleas, Holmes County. The relevant facts leading to this appeal are as follows.

{¶2}. Appellants Edward Schlauch, Susan Taylor, Peg Sowers, and Diane (aka Dianna) Schlauch are the adult children of Lloyd Schlauch, who passed away on September 12, 2013. Appellee Jamie Schlauch is the widow of Lloyd Schlauch. Appellee Jamie is not the mother of any of the aforesaid appellants; however, her marriage to Lloyd produced a son, V.S., born in 1997. Appellee Jamie is also the executor of Lloyd's estate and has filed to be named as guardian of V.S.

{¶3}. Pursuant to Lloyd's will, executed on December 28, 2012, each of the appellants herein was to receive the sum \$75,000.00 from the decedent's estate. Thereafter, when Lloyd's case was opened in the Holmes County Probate Court, there were purportedly insufficient estate assets to fund said bequests.

{¶4}. On May 20, 2014, appellants filed a complaint in the Court of Common Pleas, Civil Division, against appellee, in her individual, guardian, and executor capacities, seeking the following relief:

{¶5}. Count I: Breach of Fiduciary Duty

{¶6}. Count II: Undue Influence

{¶7}. Count III: IIEI

{¶8}. Count IV: Fraud

{¶9}. Count V: Constructive Trust

{¶10}. Count VI: Declaratory Judgment (Relief)

{¶11}. Appellees, on July 17, 2014, filed a motion to dismiss under both Civ.R. 12(B)(1) and 12(B)(6). Each side thereafter filed various memoranda in support of their respective positions.

{¶12}. On September 4, 2014, the trial court issued a judgment entry granting the motion to dismiss, ordering *inter alia* that the case "shall continue in the Holmes County Probate Court."

{¶13}. Appellants filed a notice of appeal on October 1, 2014, and herein raise the following seven Assignments of Error:

{¶14}. "I. THE TRIAL COURT ERRED BY APPARENTLY GRANTING DEFENDANTS/APPELLEES' MOTION TO DISMISS PURSUANT TO CIV.R. 12(B)(6) BY CONSIDERING EVIDENCE OUTSIDE THE PLEADINGS.

{¶15}. "II. THE TRIAL COURT ERRED BY FAILING TO CONVERT THE MOTION TO DISMISS PURSUANT TO CIV.R. 12(B)(6) TO A MOTION FOR SUMMARY JUDGMENT.

{¶16}. "III. THE TRIAL COURT ERRED BY APPARENTLY DISMISSING THE CLAIMS OF PLAINTIFFS/APPELLANTS SET FORTH IN THEIR COMPLAINT DUE TO A LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO CIV.R. 12(B)(1).

{¶17}. "IV. THE TRIAL COURT ERRED BY APPARENTLY DISMISSING THE CLAIMS OF PLAINTIFFS/APPELLANTS SET FORTH IN THEIR COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO CIV.R. 12(B)(6).

{¶18}. “V. THE TRIAL COURT ERRED BY DISMISSING THE CLAIMS OF PLAINTIFFS/APPELLANTS AND, APPARENTLY, TRANSFERRING THOSE CLAIMS TO THE HOLMES COUNTY PROBATE COURT AS THE DECISION EFFECTIVELY DENIED PLAINTIFFS/APPELLANTS' RIGHT TO A JURY TRIAL.

{¶19}. “VI. THE TRIAL COURT ERRED BY DISMISSING THE CLAIMS OF PLAINTIFFS/APPELLANTS AND TRANSFERRING THE CLAIMS TO THE HOLMES COUNTY PROBATE COURT AS THE UNDUE INFLUENCE CLAIMS FILED AS PART OF THE EXCEPTIONS TO INVENTORY, AND THE PROBATE COURT'S LIMITED JURISDICTION PROHIBITS THE PROBATE COURT FROM PROPERLY ADDRESSING ALL OF THE CLAIMS OF PLAINTIFFS/APPELLANTS; THAT PLAINTIFFS/APPELLANTS' FRAUD CLAIMS, THE CLAIMS ASSERTING INTENTIONAL INTERFERENCE WITH THE RIGHT AND EXPECTANCY OF INHERITANCE, CONSTRUCTIVE TRUST CLAIMS AND CLAIMS FOR DECLARATORY RELIEF ARE INEXTRICABLY INTERTWINED WITH THE UNDUE INFLUENCE CLAIMS AND SUCH CLAIMS ARE SET FORTH AS A SEPARATE CAUSE OF ACTION IN COUNT II OF PLAINTIFFS/APPELLANTS' COMPLAINT.

{¶20}. “VII. THE TRIAL COURT ERRED AS A MATTER OF LAW AS THE DECISION OF THE TRIAL COURT DID NOT PROVIDE A STATEMENT OF THE RELIEF THAT WAS AFFORDED, AND DID NOT ADDRESS ALL OF THE ISSUES INVOLVED WITH THE PENDING MOTIONS.”

I., II., III., IV., V., VI., VII.

{¶21}. This case is before us on the accelerated calendar docket. App.R. 11.1, which governs accelerated calendar cases, provides, in pertinent part: "(E) *** The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form. ***."

{¶22}. Before we can reach the merits of the within appeal, we are compelled to gauge the basis for the trial court's decision to dismiss the entire case before it. In granting dismissal, the trial court stated in pertinent part as follows:

{¶23}. "The Court finds that the Holmes County Probate Court is the proper forum for this matter and that the Motion to Dismiss filed by the Plaintiffs [sic] on July 17, 2014, is well-taken and is hereby granted. This case is hereby dismissed, all further hearings are canceled, and the case shall continue in the Holmes County Probate Court."

{¶24}. Judgment Entry, September 4, 2014, at 2.

{¶25}. Thus, the trial court in the case sub judice did not specifically state whether it was relying on 12(B)(1) or 12(B)(6) as its basis for dismissal. The court's reference to the "proper forum" suggests it was granting dismissal of all of appellants' claims under 12(B)(1), even though appellees had recited that rule only in response to Count III (intentional interference with expectancy of inheritance) and Count VI (request for declaratory relief). If that is the case, we would likely be compelled to treat the 12(B)(6) portions of the motion to dismiss as having been denied, because "[a] motion not expressly decided by a trial court when the case is concluded is ordinarily presumed

to have been overruled." *Kostelnik v. Helper*, 96 Ohio St.3d 1, 770 N.E.2d 58, 2002-Ohio-2985, ¶ 13, citing *State ex rel. The V. Cos. v. Marshall*, 81 Ohio St.3d 467, 469, 692 N.E.2d 198, 1998-Ohio-329.

{¶26}. On the other hand, the trial court's statement that appellees' motion to dismiss was "well-taken" could suggest the court was basing its decision, at least in part, on 12(B)(6), which was the basis for the majority of the motion. Certainly, when considering a Civ.R. 12(B)(6) motion, "a trial court must examine the complaint to determine if the allegations provide for relief on any possible theory." *Fahnbulleh v. Strahan* (1995), 73 Ohio St.3d 666, 667, 653 N.E.2d 1186. But it is well-established that a trial court, in dismissing a complaint pursuant to Civ.R. 12(B)(6), does not assume the role of factfinder and has no duty to issue findings of fact and conclusions of law. See *State ex rel. Drake v. Athens Cty. Bd. of Elections*, 39 Ohio St.3d 40, 41, 528 N.E.2d 1253 (1988).

{¶27}. Nonetheless, the Ohio Supreme Court has indicated that the proper procedure for a trial court, when deciding a motion to dismiss filed under both Civ.R. 12(B)(1) and 12(B)(6), is to "clearly identify" the basis for its ruling. See *Nemazee v. Mt. Sinai Med. Ctr.* (1990), 56 Ohio St.3d 109, 111, 564 N.E.2d 477, f.n. 3. Furthermore, Ohio appellate courts have recognized that in some situations, if a trial court's judgment entry is not "sufficiently detailed," the reviewing court is "left in the unfortunate position of being unable to provide meaningful review." *Stephens v. Stephens*, 9th Dist. Wayne No. 12CA0049, 2013-Ohio-2797, ¶ 5 (additional citations omitted). In those situations, an appellate court may reverse the judgment and remand the matter so the trial court

can create an entry sufficient to permit appellate review. *Id.*, citing *MSRK, LLC v. Twinsburg*, 9th Dist. Summit No. 24949, 2012–Ohio–2608, ¶ 10.

{¶28}. Under the specific circumstances of this matter, we find Ohio Supreme Court's guidance in *Nemazee* supports ordering a reversal and remand for the trial court to articulate the basis for its granting, *in toto*, of appellees' motion to dismiss appellants' complaint in the civil division. Appellants' Assignments of Error are therefore all found premature in the present appeal.

{¶29}. For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Holmes County, Ohio, is hereby reversed and remanded for further proceedings.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

JWW/d 0129