

[Cite as *Gombach v. Laurie*, 2016-Ohio-7720.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104163

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**CATHERINE DOWNIE GOMBACH**

PLAINTIFF-APPELLANT

vs.

**CAROLE E. LAURIE, ADMINISTRATOR OF THE  
ESTATE OF CHARLES R. LAURIE, JR., DECEASED**

DEFENDANT-APPELLEE

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**JUDGMENT:  
REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-12-790224

**BEFORE:** Keough, P.J., E.A. Gallagher, J., and McCormack, J.

**RELEASED AND JOURNALIZED:** November 10, 2016

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Plaintiff-appellant, Catherine Downie Gombach (“Gombach”), appeals from the trial court’s judgment awarding her \$0 in damages. For the reasons that follow, we reverse and remand, with instructions to the administrative judge to reassign this matter, and for the newly assigned judge to issue an order awarding Gombach \$341,196.11 of her funds misappropriated by defendant-appellee, Charles R. Laurie, Jr. (“Laurie”) from his Interest on Lawyers’ Trust Account (“IOLTA account”), plus all or such portion of \$68,700 that she is entitled to recover.

### I. Background

{¶2} Gombach’s husband died in March 2006. Upon his death, Gombach received life insurance benefits totaling \$504,889.29: one check for \$251,924.22 issued by American Life Insurance Company, and another for \$252,965.07 issued by Empire General.

{¶3} In June 2006, Gombach retained Laurie, an attorney, to represent her in matters pertaining to her late husband’s estate and in connection with creditors’ claims asserted against her. On June 16, 2006, Gombach delivered the two endorsed insurance checks to Laurie, who deposited the full amount into his IOLTA account.

{¶4} In September 2006, Gombach submitted an affidavit of financial condition to Sky Bank, one of her creditors. The affidavit required Gombach to respond to various questions by the bank. Laurie prepared the responses; Gombach then reviewed the

affidavit, made a few handwritten edits, and signed it. Gombach did not disclose the funds held in Laurie's IOLTA account in response to questions on the affidavit regarding whether she owned an insurance policy or was the beneficiary of any insurance policy, and whether any agent held assets or personal property for her.

{¶5} The paragraph directly above Gombach's signature on the affidavit stated:

I acknowledge that 18 U.S.C. Section 1014 provides that whoever knowingly makes any false statement or willfully overvalues any property for the purpose of influencing the action of any F.D.I.C. insured bank upon any application or loan, or any change or extension of the same, shall be fined not more than \$5,000 or imprisoned for not more than two years, or both. I further acknowledge that Bank is an F.D.I.C. insured bank, and that the information in this Affidavit is being provided to Bank to influence Bank's action with respect to changes to and extensions of the loans presently owing by Affiant to Bank.

{¶6} On December 12, 2008, Laurie informed Gombach by letter that the balance of her funds remaining in the IOLTA account was \$485,236.47. It is undisputed that the funds withdrawn to this date were properly earned as attorney fees and/or used on behalf of Gombach to pay certain of her debts.

{¶7} It is also undisputed that over the next several years, Laurie earned additional fees and expended additional funds from the IOLTA account in the amount of \$94,993.18 on behalf of Gombach. The parties dispute, however, whether other withdrawals totaling \$68,700 were made to Gombach with her authorization or expended for her benefit.

{¶8} Beginning in 2010, Laurie began depleting Gombach's funds from the IOLTA account. In 2012, Gombach learned that all of her money in the IOLTA account was gone. She was unaware that in late 2008, Laurie had begun experiencing cognitive

difficulties, and had subsequently been diagnosed with dementia, relinquished his law license, and later placed under guardianship due to his incompetency.

{¶9} In August 2012, Gombach filed suit against Laurie for legal malpractice, breach of fiduciary duty, breach of contract, conversion, and fraud, seeking to recover the life insurance benefits misappropriated by Laurie. She subsequently dismissed her claims for breach of contract, conversion, and fraud, as well as the prayer for punitive damages and attorney fees; only the claims for legal malpractice and breach of fiduciary duty remained for trial.

{¶10} The trial court held a bench trial at which Gombach was the only witness, and for which the parties submitted joint stipulated facts and exhibits. Laurie's defense at trial was that Gombach had deposited the life insurance proceeds into his IOLTA account in order to avoid creditors' claims and, accordingly, had unclean hands that precluded her from any recovery.

{¶11} The trial court subsequently issued judgment against Gombach. It reasoned that Gombach and Laurie were *in pari delicto* in hiding assets from Gombach's creditors, *i.e.*, "in equal fault," and that "no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act."

{¶12} This court reversed the trial court's judgment on appeal. *Downie-Gombach v. Laurie*, 8th Dist. Cuyahoga No. 102167, 2015-Ohio-3584 ("*Gombach I*"). This court found that the defense of unclean hands does not apply in this case because the defense requires a showing that the party seeking relief has harmed the party against whom he

seeks relief, and there was no allegation that Gombach defrauded or harmed Laurie. *Id.* at ¶ 47.

{¶13} This court also found that the doctrine of *in pari delicto* is only applicable where the plaintiff bears equal or more fault than the defendant for the alleged wrong, and that the doctrine will not apply at all in situations that implicate important public policy considerations, such as an attorney's ethical obligations to his client. *Id.* at ¶ 57.

{¶14} This court found that there was no evidence that Gombach engaged in an illegal, premeditated plot to defraud creditors and used Laurie or conspired with him to do so. *Id.* at ¶ 66. Specifically with respect to the Sky Bank affidavit, this court found no evidence that Gombach's averments were incorrect. It reasoned that Laurie had completed the affidavit and may have determined that as of the date of the affidavit, Gombach was in fact not a beneficiary or owner of an insurance policy. It also found no evidence that Gombach knew or believed her averments in the affidavit were incorrect.

{¶15} This court further found that Laurie's unauthorized misappropriation of Gombach's funds was both unethical and illegal. *Id.* at ¶ 66. It reasoned that even if in hindsight Gombach questioned some of the events that transpired, such reflection did not evidence illegal intent at the time or rise to a level of equal culpability with Laurie, her attorney. *Id.* at ¶ 75. Accordingly, this court found that because Gombach was not at equal or more fault than Laurie, the doctrine of *in pari delicto* did not apply.

{¶16} Stating that it would "not facilitate the theft of client funds in this case," this court reversed the trial court's judgment and remanded the case to the trial court "to

determine the amount of proceeds to be returned to Gombach due to the misappropriation of her funds.” *Id.* at ¶ 79.

{¶17} On remand, the trial court found that the amount of proceeds to be returned to Gombach was \$0. In its judgment entry, the trial court stated:

This case was remanded to the court to determine the amount of proceeds to be returned to plaintiff Catherine Downie-Gombach. Pursuant to plaintiff’s attached affidavit of financial condition signed and notarized September 14, 2006, plaintiff was not the beneficiary of any insurance policy, she had no account with any financial institution besides her checking and savings account, and no assets or personal property were held for her benefit or on her behalf. Assuming that plaintiff Catherine Downie-Gombach’s statements were not false statements in violation of 18 U.S.C. 1014, plaintiff never had any insurance proceeds deposited into defendant’s IOLTA account. Therefore, the amount of proceeds to be returned to her is \$0.

{¶18} Gombach now appeals the trial court’s judgment awarding her \$0 in damages.

## II. Law and Analysis

{¶19} In her first and second assignments of error, Gombach asserts that the trial court abused its discretion in awarding her \$0 in damages because its decision was against the manifest weight of the evidence. In her third assignment of error, she contends that the trial court erred in relying on 18 U.S.C. 1014 in determining that she was precluded from recovering any proceeds misappropriated by Laurie.

{¶20} A reviewing court will not reverse a decision of the trial court as to a determination of damages absent an abuse of discretion. *Sivit v. Village Green of Beachwood, L.P.*, 143 Ohio St.3d 168, 171, 35 N.E.3d 508 (2015), citing *Roberts v.*

*United States Fid. & Guar. Co.*, 75 Ohio St.3d 630, 634, 665 N.E.2d 664 (1996). A court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable.

*State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). We hold that the trial court abused its discretion in awarding Gombach \$0 in damages because the record directly refutes the trial court's finding that Gombach "never had any insurance proceeds deposited into defendant's IOLTA account."

{¶21} As noted above, the parties submitted joint stipulated facts to the trial court for the bench trial, as well as a joint list of admitted exhibits. Our review of the record demonstrates that the parties stipulated that (1) upon her husband's death, "Gombach received death benefits from two insurance policies in the total amount of \$504,889.29"; (2) "[i]n June 2006, Gombach retained Charles R. Laurie, Jr. to represent her"; and (3) "[o]n June 16, 2006, Ms. Gombach delivered the endorsed checks in the amount of \$504,889.29, the total sum of the death benefits, to Mr. Laurie who deposited the full amount into his IOLTA account."

{¶22} The parties' stipulations could not be more clear: Gombach deposited \$504,889.29 in insurance proceeds into Laurie's IOLTA account. Thus, the trial court abused its discretion in awarding \$0 in damages to Gombach on the basis that she "never had any insurance proceeds deposited into defendant's IOLTA account" because its decision was clearly against the manifest weight of the evidence.

{¶23} The trial court's finding that Gombach never deposited any insurance proceeds into Laurie's IOLTA account also directly conflicts with this court's decision in



*Gombach I.* In *Gombach I*, this court specifically found that the joint stipulations of fact established that Gombach received life insurance proceeds totaling \$504,889.29 and “the life insurance proceeds were deposited into Laurie’s IOLTA account on June 16, 2006.” *Gombach*, 2015-Ohio-3584 at ¶ 4, 7. When an appellate court remands a case for a limited purpose, the trial court must accept all issues previously adjudicated as finally settled. *Blackwell v. Intl. Union, U.A.W.*, 21 Ohio App.3d 110, 112, 487 N.E.2d 334 (8th Dist. 1984). Here, the issue of whether Gombach deposited funds totaling \$504,889.29 into Laurie’s IOLTA account was settled; this court found that she had, in fact, done so. Thus, the trial court’s factual determination that Gombach had not deposited any insurance proceeds into Laurie’s IOLTA account was inconsistent with this court’s decision, and with the mandate for the trial court to determine upon remand what portion of those proceeds were to be returned to her.

{¶24} Laurie contends that the trial court could properly disregard the joint stipulations of fact “in the interest of justice,” however, because “from the court’s perspective,” awarding Gombach damages would allow her to receive a windfall of over \$300,000 that she shielded from creditors through the Sky Bank affidavit of financial condition. Laurie contends that the trial court properly awarded Gombach \$0 in damages because any award to Gombach would be in “direct contradiction” to the statements contained in her affidavit, which the trial court assumed to be true due to Gombach’s acknowledgement that 18 U.S.C. 1014 prohibits a person from knowingly making any false statements to federally insured banks. We disagree.

{¶25} In *Gombach I*, this court determined that there was no evidence that Gombach had illegally tried to defraud her creditors. *Id.* at ¶ 66. Moreover, this court addressed the Sky Bank affidavit and concluded that an award to Gombach would not be contrary to her statements in the affidavit. Finally, this court determined that Laurie’s misappropriation of Gombach’s funds was unethical and illegal, and that the court would not facilitate the theft of client funds by denying recovery to Gombach. *Id.* at ¶ 79. The trial court’s “perspective” that this court’s decision in *Gombach I* does not serve the interest of justice is not relevant to the mandate upon remand that the trial court determine what portion of the \$504,889.29 that Gombach deposited into Laurie’s IOLTA account she is entitled to recover.

{¶26} Accordingly, we hold that the trial court abused its discretion in awarding Gombach \$0 in damages on the basis that she had not deposited any insurance proceeds into Laurie’s IOLTA account. The assignments of error are sustained. We reverse and remand, with instructions that the administrative judge reassign this case because the trial court’s “perspective” appears to be at odds with this court’s decision in *Gombach I*.

{¶27} We note that in *Gombach I*, this court determined that pursuant to the parties’ joint stipulation of facts, (1) Gombach deposited \$504,889.29 in Laurie’s IOLTA account; (2) Laurie depleted all of these funds; (3) withdrawals totaling \$94,993.18 were authorized by Gombach; (4) the parties dispute the propriety of \$68,700 in other expenditures; and (5) \$341,196.11 is unaccounted for. *Id.* at ¶ 21. Accordingly, we instruct the newly assigned judge to award Gombach a minimum of \$341,196.11 in

damages upon remand, plus all or such portion of the disputed \$68,700 it determines after a hearing that Gombach is entitled to recover.

{¶28} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and  
TIM McCORMACK, J., CONCUR