

Circuit Court for Prince George's County
Case No. CAL16-04187

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1950

September Term, 2016

DEIDRE JEFFERIES

v.

NTIENSE DAVID ETOKEBE

Woodward, C.J.,
Kehoe,
Berger,
JJ.

Opinion by Kehoe, J.

Filed: November 27, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. *See* Md. Rule 1-104.

Deidre Jefferies appeals from a judgment of the Circuit Court for Prince George's County in favor of Ntiense David Etokebe. Ms. Jefferies presents three issues, which we have reworded:

1. Did the trial court violate Jefferies' due process rights by failing to notify her of the first scheduled trial date?
2. Did the circuit court abuse its discretion when it denied Jefferies' motion for a continuance?
3. Was Etokebe's claim barred by res judicata or collateral estoppel?

We conclude that the trial court abused its discretion when it denied Jefferies' motion for a continuance. This makes it unnecessary for us to consider Jefferies' constitutional argument. We hold that Etokebe's claim against Jefferies is not barred by the doctrine of res judicata. Finally, we will not address Jefferies' collateral estoppel contention because we do not have enough information about the prior proceeding.

We will reverse the judgment and remand the case for a new trial or other proceedings consistent with this opinion.

Background

Mr. Etokebe is a lawyer who practices probate law in Prince George's County. On March 12, 2012, he was retained by Ms. Jefferies to represent her interests in the estate of Freelove Jefferies, appellant's grandfather. Shortly before his death at a very advanced age, Mr. Jefferies executed two wills disposing of his assets. Apparently, in neither of these wills did he leave anything, or at least anything of substance, to Ms. Jefferies.

She retained Etokebe to represent her in challenges to the wills. The parties signed a retainer agreement setting out the terms of his representation. In pertinent part, the retainer agreement provided that the scope of Etokebe's legal services would include filing caveat proceedings to any wills purportedly executed by Mr. Jefferies; filing a petition to have Jefferies appointed as personal representative of Mr. Jefferies' estate, and performing various services as attorney for the personal representative of the estate.

Additionally, the retainer agreement stated the following regarding Etokebe's fees:

(b) Fees for services rendered in Estate Administration: This is statutorily determined. If the property subject to administration is not over \$20,000.00, commission may not exceed 9% of the gross estate. If the property subject to administration is over \$20,000.00 commission may not exceed \$1,800.00 plus 3.6% of excess over \$20,000.00 of the gross estate. All payments made out of estate funds in this regard shall be subject to approval of the Orphan's Court; or signed written consent of each unpaid creditor and all interested persons, including claimants as appropriate.

(c) Fees for other legal services other than Estate Administration: If in the course of administering this estate, you ask us to perform other legal services in addition to, and separate from estate administration [e.g. real estate transactions, will contest, or other litigation, tax matters, etc.] for which we expend a substantial amount of our time and effort, such services will be billed separately from regular estate administration at a negotiated rate. In such event, we have agreed to cap our fees based upon a preferred client hourly rate of \$325.00.

After the agreement was signed, Etokebe filed a caveat proceeding in the Orphans' Court for Prince George's County. That court referred the issues relating to the caveat proceeding to the Circuit Court for Prince George's County for trial pursuant to Estates

and Trusts Article (“ET”) § 2-105.¹ In the circuit court, the parties reached a settlement to set aside both wills and to divide the assets of the estate among the various parties, including Jefferies. However, Jefferies was not appointed as personal representative of the estate, nor did Etokebe perform legal services for the personal representative.

Thereafter, Etokebe filed a petition in the orphans’ court for payment of attorney’s fees from the estate, which the court denied on August 5, 2015. The only information that we have in the record about this claim is a copy of the orphans’ court order denying it without explanation.

In February 2016, Etokebe filed the present action against Jefferies in the circuit court, seeking payment stemming from his representation of her in the probate matter. The complaint set out a single count of quantum meruit. According to Etokebe, his fees, calculated in accordance with the retainer agreement, amounted to over \$60,000. In the complaint, however, he sought a reduced amount of \$20,675.68 in fees and \$5,324.32 in

¹ The statute states in pertinent part:

- (a) In a controversy in the court, an issue of fact may be determined by the [orphans’] court.
- (b) At the request of an interested person made within the time determined by the court, the issue of fact may be determined by a court of law [that is, the circuit court]. When the request is made before the court has determined the issue of fact, the court shall transmit the issue to a court of law.
- (c) After the determination of the issue, whether by the court or after transmission to a court of law, the court shall enter an appropriate judgment or decree.

expenses, totaling \$26,000.00. In the caption of the complaint, Etokebe stated that Jefferies' street address as 501 62nd Avenue, Fairmont Heights, Maryland. In fact, Jefferies' mailing address was 501 62nd Avenue, **Apartment A**, Fairmont Heights, Maryland. The importance of Etokebe's omission will become apparent shortly.

Jefferies was served with the complaint. Both the original and amended returns of the process server indicated that she was served at 501 62nd Avenue, Apartment A in Fairmont Heights. Jefferies filed an answer and among her defenses was her assertion that she owed nothing to Etokebe because the orphans' court had denied his claim for attorney's fees. She listed her address, including her apartment number, on her answer.

A memorandum and order from the trial court dated April 7, 2016 informed the parties that a scheduling order would be coming shortly and advised seeking legal counsel. This was sent to Jefferies' correct address including the apartment number. The actual scheduling order, docketed on April 11, 2016, directed the parties to appear for a pre-trial conference on August 5, 2016. The notice was mailed to 501 62nd Avenue, Fairmont Heights, Maryland, without reference to Jefferies' apartment number. She claims she did not receive the scheduling order.

On June 10, 2016, Jefferies filed a line with the trial court to update her address for this and several other cases, listing her address as "501 62nd Avenue, Apt. A, Fairmont Heights, Maryland[.]"

Etokebe filed a pre-trial statement in early August, with the certificate of service stating that it was mailed to Jefferies' address without reference to her apartment number. Jefferies' position is that she did not receive this document. The August 8 pre-trial conference report noted that Jefferies failed to appear and that the trial was set for August 24, 2016, but there is no indication that a copy of the report was mailed to Jefferies. Again, she denies that she received it.

When the trial convened on August 24, Jefferies did not appear. The presiding judge, the Honorable Erik H. Nyce, reached her by telephone and their conversation was included in the transcript of that proceeding. The court noted that Jefferies had filed an answer to the complaint, but then had not attended the pre-trial conference. Jefferies stated that she had not received any notifications of the pre-trial conference or the trial date. "The last thing I got was from Judge Green saying that he was getting ready to schedule something and that I should prepare with an attorney," Jefferies said, referring to the April 7 memorandum and order. The court then granted Jefferies a continuance (emphasis added):

THE COURT: I am going to postpone [the trial] based on your motion to postpone because essentially at this point, **although the Court didn't notify you**, I think you have to pay attention to these matters a little better.

Basically, the case had been pending for some time. I think you probably need a lawyer in the matter. Are you going to get a lawyer?

JEFFERIES: Yes, sir.

After the court made its finding that Jefferies had not been given notice of the trial date, it confirmed with the parties that September 22, 2016 would work and granted a continuance until that time.

On September 14, 2016, Jefferies filed a motion to continue the trial. She asserted that, after her conversation on August 24th with Judge Nyce, she had located a lawyer, specifically, her current counsel, who was willing to represent her but that he had a previously-scheduled trial in a different case and therefore was unwilling to enter his appearance unless the court granted a continuance. In her motion, Jefferies identified her prospective counsel by name, address, and telephone number, and further identified counsel's previously-scheduled case by name, court, and docket number.

The trial court took up this motion on September 22, which was the day of trial. Jefferies stated that she had not received notice of the trial date until the court called her on August 24, and explained that she had been having great difficulty in finding a lawyer to take on her case. She also indicated that the lawyer who had agreed to represent her would do so only if he had sufficient time to prepare for trial.

The trial court denied the motion and the trial proceeded. The following exchange followed shortly thereafter:

JEFFERIES: I can't believe I'm here without an attorney. I've been trying and trying.

* * *

THE COURT: As long as the court has your correct address, which you've already verified... that is notice in and of itself. And on top of that, since you said that... [the court] contacted you sometime in August and told you this date today, you've known since August and this is now September.

JEFFERIES: It was less than a month.

THE COURT: You can find an attorney in less than a month in the Washington Metropolitan area.

The court then conducted a trial on the merits and entered judgment for Etokebe in the amount of \$30,334.32, a sum which included \$25,000.00 in attorney's fees and \$5,334.32 in expenses.

Analysis

I. The Motion for Continuance

In what is concededly a very close case, we believe that the interests of justice are better served by reversing the judgment and remanding this case to the circuit court for a new trial in which Jefferies can have an attorney represent her.

Our review of the record leads us to conclude that the trial court was not aware of the fact that many of the notices sent by the court were misaddressed, as were, apparently, most or all of the court papers filed by Etokebe. This determination is based in considerable part upon a part of the record which was not before the trial court because it had not yet been transcribed, namely, the August 24th proceeding before Judge Nyce, in which he made a finding that Jefferies had not received notice of the trial date. The trial

court was correct in noting that Jefferies had sufficient time after the August 24th proceeding to locate a lawyer. However, finding a lawyer in a little less than a month is one thing; finding a lawyer who is able and willing to try a circuit court civil case within that same period is quite another.

Additionally, Jefferies did everything that she was supposed to do to keep the court informed of her correct address. *See Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 512 (2013) (A party’s obligation to furnish the court with her most recent address “may be satisfied by filing a pleading or a paper with the court listing the correct address.” (citations and quotation marks omitted)). Jefferies did both. Her answer, which was a pleading, stated that her address included the apartment number. Later she filed a line, which is a court paper, calling the court and Etokebe’s attention to the fact that her correct mailing address included an apartment number. It was not her fault that neither Etokebe nor the circuit court clerk’s office was able to use her correct address on a consistent basis.² In our view, giving Jefferies an opportunity to appear with counsel is a fair way to resolve the problem.

² Our conclusion that the trial court should have granted the motion for continuance makes it unnecessary for us to address Jefferies’ constitutional arguments. *See Myer v. State*, 403 Md. 463, 475 (2008) (“This Court generally follows the principle that we will not reach a constitutional issue when a case can properly be disposed of on a non-constitutional ground.”); *Burch v. United Cable*, 391 Md. 687, 695 (2006) (“[T]his Court will not reach the constitutional issue unless it is necessary to do so.”).

II. Res Judicata and Collateral Estoppel

We will briefly address Jefferies' final contention. She argues that, because the orphans' court denied Etokebe's request for fees, his present claim against her is barred as a result of that judgment. We do not agree.

Jefferies first relies on the doctrine of res judicata. As this Court recent explained:

The doctrine of res judicata bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation. Under Maryland law, the elements of res judicata, or claim preclusion, are: (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.

Anand v. O'Sullivan, 233 Md. App. 677, 696 (2017) (citations, emphasis, and quotation marks omitted).

Res judicata is inapplicable because Etokebe's current claim, namely, that Jefferies was obligated to him for his professional services in the caveat proceeding on a theory of quantum meruit, was not an issue that could have been raised in the orphans' court proceeding. The orphans' court jurisdiction is limited to "judicial probate, direct[ing] the conduct of a personal representative, and pass[ing] orders which may be required . . . in the administration of the estate of a decedent." ET § 2-102. The court's jurisdiction does not extend to what is for all practical purposes a breach of contract action between an

attorney and a former client unless, of course, the former client was the personal representative of the estate, which Jefferies was not.

Collateral estoppel “precludes a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action.” *Elec. Gen. Corp. v. Labonte*, 454 Md. 113, 142 (2017) (quoting *Nat’l Union Fire Insurance Co. v. The Fund for Animals, Inc.*, 451 Md. 431, 463-64 (2017)). Collateral estoppel is applicable when:

- (1) the issue that was decided in a prior adjudication is identical to the issue that the party seeks to re-litigate;
- (2) the court issued a final judgment on the merits;
- (3) the party that seeks to re-litigate the issue was either a party to, or in privity with a party to, the prior adjudication; and
- (4) the party that seeks to re-litigate the issue was given a fair opportunity to be heard on the issue.

Id.

The only information we have from the orphans’ court proceeding is the docket entry denying Etokebe’s petition for fees. We do not have any information about the issues that were actually presented to the orphans’ court, nor any indication of whether the court’s denial was based on the merits or some procedural lapse. If Jefferies wishes to pursue her collateral estoppel defense, she needs to provide enough information to the trial court for the court to make an informed decision. We don’t know what may be required, but it seems to us that docket entries, a copy of any pleadings filed with regard to Etokebe’s petition, and a transcript of the hearing would be a start.

**THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S
COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR
PROCEEDINGS CONSISTENT WITH THIS OPINION.**

APPELLEE TO PAY COSTS.