

15-1035

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. BAIRD, CLERK
KANAWHA COUNTY CIRCUIT COURT

ANN KENDALL MORRIS,
JOSEPH GREENE and CAROLYN
BESTE and MICHAEL BESTE,

Plaintiffs,

v.

Civil Action No.: 14-C-2197
The Honorable Charles E. King

THE ESTATE OF ROBERT LEE MORRIS,
EUGENIE MATYAS, individually and in
her capacity as the Executrix of and for the
ESTATE OF ROBERT LEE MORRIS,
EDWARD M. MATYAS and JULIA MATYAS,

Defendants.

**ORDER DISMISSING THE PLAINTIFFS'
COMPLAINT WITHOUT PREJUDICE**

I. Findings of Fact

The Plaintiffs in this case are Ann Kendall Morris, Carolyn Beste and their husbands, Joseph Greene and Michael Beste. The Defendants are Eugenie Matyas and her two children: Edward Matyas and Julia Matyas. Eugenie Matyas, Ann Kendall Morris and Carolyn Beste are the daughters of the Robert L. Morris, deceased, and Ann Vintroux Morris, deceased. The Defendants, Eugenie Matyas, Edward M. Matyas and Julia Matyas, and the Plaintiffs, Ann Kendall Morris and Carolyn Beste, are beneficiaries under the Will of Robert Lee Morris.

Mr. Morris was a resident of Charleston (Kanawha City) in Kanawha County, West Virginia, and suffered from Alzheimer's. After the death of Mr. Morris's wife, Ann Vintroux Morris, Eugenie Matyas took her father, Mr. Morris, to her home in New Jersey in August 2012

to care for him. Mr. Morris continuously resided with his daughter, Eugenie Matyas, until it became necessary to place Mr. Morris in a care facility.

On May 13, 2014 a *Verified Complaint for Appointment of a Guardian for an Alleged Mental Incompetent* was filed in the Superior Court of New Jersey, Chancery Division, Gloucester County, Docket # 14-682, seeking the appointment of Eugenie Matyas as guardian for Mr. Morris. A New Jersey attorney was appointed by the New Jersey court as the Guardian Ad Litem for Mr. Morris. The report of the Guardian Ad Litem refutes all of the Plaintiffs' allegations in the present Civil Action No. 14-C-2197, and specifically finds that there were not "any improprieties or misappropriations (glaring or otherwise) of funds by Eugenie Matyas. ... I simply do not see any real and factual basis that would support any claim for missing funds." Exhibit 2, p. 8, to the Affidavit of Jeffrey V. Puff, which is Exhibit A to The Defendants' Brief in Support of their Motion to Dismiss.

On May 13, 2014, an *Order to Show Cause* was entered in the New Jersey Guardianship wherein Ms. Matyas was appointed as temporary guardian for Mr. Morris. He died on October 27, 2014 before a permanent guardian was appointed. Mr. Morris's Will was probated in Gloucester County, New Jersey, on November 7, 2014. Mr. Morris's estate filed an estate/inheritance tax return in New Jersey and paid \$121,506.64 in tax to the State of New Jersey.

First, the Plaintiffs ask this Court to direct that the identical Will being probated in New Jersey also be probated by the County Commission of Kanawha County. They assert that Mr. Morris's domicile/residence was in West Virginia and not in New Jersey. The Plaintiffs have brought a similar action in New Jersey questioning Mr. Morris's residency/domicile there and

requesting that the New Jersey Court find that Mr. Morris was a resident of Kanawha County, West Virginia. The matter is pending before the New Jersey Probate Court, which has Ordered the New Jersey taxing authority be made a party to protect the State's interest.

Second, in this West Virginia action, the Plaintiffs assert a number of personal claims against Eugenie Matyas. No claims were asserted against the other named Defendants, Edward M. Matyas and Julia Matyas. In the New Jersey action, essentially the same claims have been asserted against the Defendant, Eugenie Matyas. The Defendants' Motion to Dismiss has cross referenced in detail the claims between this action and the New Jersey action.

The Defendants, Eugenie Matyas, and her children, Edward and Julia Matyas, are nonresidents of West Virginia. They do not own real estate in West Virginia, save that Mrs. Matyas has an interest in a burial plot that does not relate to any claim of the Plaintiffs. The Plaintiffs assert that they obtained service over the Defendants under our long-arm statute (W.Va Code § 56-3-3), which provides that jurisdiction may be obtained if the cause of action relates to a defendant's ownership of an interest in real estate in West Virginia. The Plaintiffs argue that since the Defendants are beneficiaries of Mr. Morris's estate which held his former residence here, they have an interest in real estate in West Virginia. Mr. Morris's home was not specifically devised under the Will. The home was sold pursuant to the power granted to the Executrix under the Will. The sale was approved by this Court.

The Plaintiffs also argue that the maintenance of Mr. Morris's personal investment and bank account in Charleston constitutes doing business in West Virginia and this allows the exercise of in personam jurisdiction over Eugenie Matyas under W.Va. Code § 56-3-33(1) and (2) of our long arm statute. The Plaintiffs also assert that Mr. Morris was wrongfully taken to

New Jersey by Defendant Eugenie Matyas, and so she committed a tort in West Virginia which would provide jurisdiction over her under W. Va. Code § 56-3-33(4) of the long-arm statute. The Plaintiffs, in the alternative, argue that they have jurisdiction over the Defendants by virtue of W. Va. Code § 55-13-11, governing declaratory judgments.

II. Conclusions of Law

A. Service Under the Long-Arm Statute

The real property in Mr. Morris's estate was not specifically devised to the Defendants and was sold pursuant to the authority of the Executrix under the Will and the sale was approved by this Court. Therefore, the Court holds that the Defendants did not own an interest in real estate relating to the Plaintiffs' claims within the meaning of the long-arm statute (W. Va. Code § 56-3-3(6)).

Since Defendant Eugenie Matyas was appointed temporary guardian by the New Jersey Court and the Guardian ad Litem in New Jersey found nothing improper about Mr. Morris going to live with his daughter in New Jersey, Eugenie Matyas did not wrongfully take Mr. Morris to her home in New Jersey and did not commit a tort in West Virginia.

The maintenance of a personal investment account or checking account at Wells Fargo, a multi-national banking institution, which has a representative in West Virginia with whom the Executrix, Eugenie Matyas, communicates by phone, does not constitute transacting business in West Virginia. "[L]imited telephone contacts by themselves are insufficient to support personal jurisdiction over an out-of-state defendant." State ex rel. Roseville Pediatrics v. Risovich, 1997 W. Va. LEXIS 306, 6 (1997) (Per Curiam opinion granting writ of prohibition). Eugenie Matyas' actions as Guardian and Executor occurred under the authority of the Courts

of New Jersey while Eugenie Matyas was in New Jersey. The contacts between Eugenie Matyas and a Wells Fargo representative who happens to be in West Virginia, are "incidental" and do not constitute minimum contacts sufficient to establish in personam jurisdiction in West Virginia under § 53-3-33. Lane v. Boston Sci Corp., 198 W.Va. 447, 458, 481 S.E.2d 753, 764 (1996). Therefore, the Court holds that the presence of a Wells Fargo representative with whom Eugenie Matyas communicates in her capacity as a New Jersey Guardian and Executor, does not mean she transacts business in West Virginia relating to the transfer of intangible assets from a Wells Fargo investment account.

As to the grandchildren, Edward and Julia, Plaintiffs' Complaint does not assert any claim against the grandchildren, nor does it assert any grounds for jurisdiction over them. Therefore, it is clear that the Plaintiffs do not have a claim against the grandchildren that is in any way connected to West Virginia.

Further, the Court holds that W. Va. Code, § 55-13-11 provides that in a declaratory judgment action, all interested parties must be served so that they may have the opportunity to appear. That section does not give the Plaintiffs in personam jurisdiction over the Defendants in this lawsuit.

B. Comity and W. Va. Code, § 56-6-10

In their Complaint filed in this Court, the Plaintiffs have raised substantially the same issues in their Complaint in New Jersey and a redundant proceeding here is not appropriate.

The report of the Guardian Ad Litem appointed by the New Jersey Court has already found there were not "any improprieties or misappropriations (glaring or otherwise) of funds by Eugenie Matyas and that Mr. Morris was being well cared for."

The Plaintiffs have an adequate remedy in New Jersey. The proceeding in New Jersey will have the same "legal operation and effect" and will "settle the matter of controversy" upon the same issues as set forth in the present action in West Virginia, and therefore, the West Virginia case should be stayed. Scott v. Keenan, 69 W.Va. 412, 414, 71 S.E. 570, 571 (1911).

Mr. Morris's Will has been probated in New Jersey. The Court holds that since the New Jersey Court is considering the issue of whether the Will of Mr. Morris should have been probated there or in West Virginia, and that the New Jersey proceeding is well advanced, the Court will not hear that same issue. The Plaintiffs have an adequate remedy in the Court in New Jersey and under the doctrine of comity, a redundant proceeding here is not judicially economical and would only result in confusion between courts. The doctrine of comity has been defined as follows:

Whether denominated reciprocity, comity or necessity, the principle is imperative, because [it is] essential to the orderly administration of justice. It avoids the conflict, confusion and imposition that inevitably may follow or result from the encroachment by one court upon the jurisdiction of coordinate tribunals assuming to act in the same matter, whether they be within the same or different state governments. Necessarily, any other course may, and often would, produce unjust if not disastrous results, rather than promote that justice which courts are ordained to administer.

Whan v. Hope Natural Gas Co., 81 W.Va. 338, 342, 94 S.E. 365, 367 (1917) (brackets added).

In Berger v. Berger, 177 W.Va. 58, 350 S.E.2d 685 (1986), the Supreme Court dismissed a divorce case in West Virginia because an identical case was pending in North Carolina. The Court reasoned that there is "no better example can be found of the legal chaos that prevails in the United States as the result of fifty conflicting state jurisdictions than the case before us . . .

when there are proceedings on the same subject matter between the same parties" in different states. Berger, 177 W.Va. at 58, 350 S.E.2d at 685. The Court found that the Complaint in the North Carolina action pleads that the defendant was a North Carolina resident and held that "the determination of the defendant's residency is a matter for the North Carolina courts, and until the North Carolina proceeding is resolved, under W. Va. Code, § 56-6-10 [1923], a West Virginia circuit court should stay a West Virginia divorce action between the same parties." Syl. Pt. 2 Berger, *supra*.

Under the same rationale, the present action should be dismissed or stayed until after the New Jersey Court determines the residency of Mr. Morris at the time of his death. For reasons of comity and pursuant to W. Va. Code, § 56-6-10, the Plaintiffs' case in West Virginia should be stayed or dismissed without prejudice "until the decision of some other action, suit or proceeding. . . in another court [New Jersey]." W. Va. Code, § 56-6-10 (brackets added).

The Plaintiffs' request that the Court order Mr. Morris's Will to be probated in Kanawha County, West Virginia, is **DENIED**. If the New Jersey court holds that Mr. Morris's will should have been probated in West Virginia, the Plaintiffs can have the will probated by the Kanawha County Commission in the normal procedure.

The Court Orders that the Defendants are **Dismissed** for lack of personal jurisdiction pursuant to W. Va. R. Civ. P. 12(b)(2) and because essentially, the same issues are being considered by the New Jersey Court.

THEREFORE, based upon the foregoing, it is ORDERED that the Plaintiffs' Complaint is hereby DISMISSED, without prejudice.

Entered: 9-22-15

Charles E. King, Jr.
Charles E. King, Jr., Judge

Submitted by:

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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 23
DAY OF September
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA