

ARKANSAS FOUNDRY COMPANY v. POE.

Opinion delivered April 7, 1930.

1. ATTORNEY AND CLIENT—CONTRACT OF ADMINISTRATOR—RATIFICATION.—Evidence *held* to show that a father ratified the appointment of an administrator of his deceased son's estate and the employment of such administrator of attorneys to prosecute a damage suit.
2. ATTORNEYS AND CLIENT—RIGHT TO COMPENSATION.—Where a client agreed to pay attorneys a fee of fifty per cent., defendant, settling with the client for a stipulated sum and agreeing to pay the attorneys, must pay the attorneys a like sum.

Appeal from Pulaski Circuit Court, Third Division;
Marvin Harris, Judge; affirmed.

STATEMENT OF FACTS.

This appeal involves the amount of attorney's fee recoverable in a personal injury suit which was compromised and settled without the attorney's consent.

On December 22, 1927, Orby King, an employee of the Arkansas Foundry Company, sustained personal injuries which resulted in his immediate death. His injuries were received while in the discharge of his duties, and it was claimed that they resulted from the negligence of his employer. On January 19, 1928, letters of administration were granted upon the estate of said Orby King by the Pulaski Probate Court to B. C. Barnes, and on the same day the probate court approved a contract entered into between B. C. Barnes, as such administrator, and Sam T. and Tom Poe to represent him in a suit for

damages by reason of the negligence of said Arkansas Foundry Company, which caused injuries resulting in the death of Orby King. We copy from the contract the following:

“Party of the first part hereby agrees to pay parties of the second part fifty (50) per cent. of all sums hereafter collected from the Arkansas Foundry Company, or any other person, firm or corporation for it by reason of the said claim for damages, whether by suit, compromise or otherwise.”

Orby King was unmarried, and his sole heir at law was his father, Jimmie King, who lived in the State of Tennessee. On January 18, 1928, Sam T. and Tom Poe filed a suit under their contract to recover damages against the Arkansas Foundry Company for the death of Orby King. B. C. Barnes and Sam T. Poe went to the State of Tennessee; and according to their testimony, Jimmie King there ratified the appointment of B. C. Barnes as administrator of the estate of Orby King, deceased, and his contract with Sam T. and Tom Poe to bring said damage suit. Tom Poe also testified that Jimmie King came to Little Rock with Sam T. Poe and B. C. Barnes, and that, after he arrived there, he ratified the employment of Sam T. and Tom Poe to represent B. C. Barnes, administrator, in the damage suit.

Sam Johnson, an attorney residing in the State of Tennessee, testified that Jimmie King brought Sam T. Poe and B. C. Barnes to his office and talked to him about the accident which resulted in the death of Orby King. Mr. Poe informed witness that Barnes had been appointed administrator of the estate of Orby King, deceased, and that they had come to Tennessee to consult with Jimmie King about bringing a suit for damages. Witness did not become employed in the case, because his professional engagements prevented him from going to the State of Arkansas at that time.

On January 21, 1928, H. H. Morris, at the request of Jimmie King, applied for letters of administration upon

the estate of Orby King, deceased. Upon January 6, 1928, the probate court of Pulaski County removed B. C. Barnes as administrator of the estate of Orby King, and appointed H. H. Morris in his stead. This order also revoked the contract between Barnes and Sam T. and Tom Poe. Barnes appealed to the circuit court. On February 9, 1928, a motion was filed to dismiss the complaint of B. C. Barnes for damages. On April 30, 1928, Jimmie King executed a release to the Arkansas Foundry Company for all his damages in the sum of \$2,500.

H. H. Morris and Jimmie King both testified that in addition to the sum of \$2,500 to be paid Jimmie King, the Arkansas Foundry Company agreed to pay any sum that he would have been required to pay under the contract of B. C. Barnes, administrator, with Sam T. and Tom Poe. They both testified in positive terms that it was represented to Jimmie King that if anything was to be paid Mr. Barnes or his attorneys the Arkansas Foundry Company would pay it. It knew that B. C. Barnes was administrator of the estate of Orby King, and that he had hired Sam T. and Tom Poe to represent him in the damage suit for personal injuries. Other facts will be stated in the opinion.

The circuit court rendered judgment in favor of Sam T. and Tom Poe against the Arkansas Foundry Company in the sum of \$2,500. It also rendered judgment in favor of B. C. Barnes, administrator, on his appeal from the order of the probate court discharging him as administrator of the estate of Orby King, deceased, and appointing H. H. Morris in his stead. These two cases were consolidated and heard together in the circuit court, and the consolidated cases is here on appeal.

Buzbee, Pugh & Harrison, for appellant.

Sam T. Poe, Tom Poe and McDonald Poe, for appellee.

HART, C. J., (after stating the facts). It is first insisted that the judgment of the probate court removing B. C. Barnes as administrator of the estate of Orby King

and substituting in his place H. H. Morris, and abrogating the contract whereby B. C. Barnes, as administrator, had made a contract with Sam T. and Tom Poe to file and prosecute a damage suit against the Arkansas Foundry Company was correct, and that Sam T. and Tom Poe no longer had any right to represent the plaintiff in the damage suit.

We cannot agree with counsel in this contention. B. C. Barnes was duly appointed administrator of the estate of Orby King, and his contract with Sam T. and Tom Poe was approved by the probate court. Sam T. Poe then went to the State of Tennessee to see Jimmie King who was the father of Orby King, and his sole heir at law about the matter. They both testified in positive terms that Jimmie King ratified the appointment of Barnes and his contract with the appellees. Their testimony was corroborated by that of the attorney of Jimmie King in the State of Tennessee. He stated that Poe and Barnes came to his office with Jimmie King and told him all about the appointment of Barnes as administrator, and the suit which Poe had brought for damages. This attorney approved of the suit and advised Jimmie King and his brother to go to the State of Arkansas to see about the prosecution of the suit. According to the testimony of Tom Poe, after they arrived here, they ratified the appointment of Barnes as administrator and his contract with them to prosecute the damage suit.

It is true that this testimony is contradicted by that of Jimmie and Quinton King, his brother, who both testified that they did not know of the appointment of Barnes as administrator, and his contract employing Sam T. and Tom Poe to represent him in the damage suit. Their testimony, however, is inconsistent in itself. There could be no reasonable ground upon which to base the action of Barnes and Poe in going to the State of Tennessee and consulting him about the prosecution of the damage suit if they were not in some way interested in it. Jimmie King was the father of Orby King, and the sole

beneficiary of his estate. He was entitled to all of the proceeds of the suit, because there were no creditors of his son's estate. Then, too, the testimony of Jimmie King is weakened on cross-examination. He testified that he did not remember Barnes and Poe saying anything about the appointment of Barnes as administrator and Poe as his attorney when they came to Tennessee to see him. We think the evidence in the record clearly shows that Jimmie King ratified the appointment of Barnes as administrator of his son's estate and Barnes' employment of attorneys to prosecute the damage suit. Therefore, the decision of the circuit court on this branch of the case was correct. *St. Louis Southwestern Ry. Co. v. Terral*, 178 Ark. 475, 11 S. W. (2d) 763.

The undisputed evidence shows that Jimmie King was to recover the sum of \$2,500 for signing a release of his claim for damages against the Arkansas Foundry Company, and that the company agreed to pay in addition whatever sum he would be required to pay Sam T. and Tom Poe or to Barnes. In other words, the effect of the evidence is that the defendant in the damage suit settled the case by paying Jimmie King the sum of \$2,500, and also agreeing to pay his attorneys in the case.

This brings us to a consideration of the amount the attorneys were entitled to under their contract. We have copied that part of the contract in our statement of facts and need not repeat it here. B. C. Barnes, as administrator, agreed to pay Sam T. and Tom Poe fifty per cent. of all sums collected from the Arkansas Foundry Company or from any other person for it by reason of the claim for damages whether by suit, compromise, or otherwise.

In *Louisville, Evansville & St. Louis Rd. Co. v. Wilson*, 138 U. S. 501, 11 S. Ct. 405, the court quoted with approval the following: "The principle has long been established that a party should not run away with the fruits of a cause without satisfying the legal demands of his attor-

neys by whose industry and expense these fruits were obtained.”

Counsel for appellant claim that the case falls within the rule announced in *St. L. I. M. & So. Ry. Co. v. Hays & Ward*, 128 Ark. 471, 195 S. W. 28, and cases cited. In that case it was held that a plaintiff has the right to settle a suit; but in making the settlement he must take into consideration that his attorney has a lien upon the cause of action, and under our statute may enforce it so that the plaintiff may not settle and deprive him of his rights under the contract with his client. In that case the client settled the suit without the consent of his attorneys, but there was no agreement upon the part of the railroad company to pay in addition the attorney's fee. Hence, the court held that the attorneys were only entitled to recover one-half of the amount that the client had received in the compromise settlement, because that was the amount of attorney's fee to which they were entitled under their contract.

Here the facts on this point are essentially different. We have a case where the defendant settled by paying the client a sum of money, and in addition agreeing with him that he would also pay his attorneys. On this question the cases are in conflict. All of them recognize the rule to be that the amount for which the parties agreed in good faith to settle is binding on the attorney, but they differ as to what this amount is. Case notes to 3 A. L. R. 481, and 40 A. L. R., p. 1533.

The leading case relied upon by appellant is *Proctor v. Louisville, Nashville Rd. Co.*, 156 Ky. 465, 161 S. W. 518, 3 A. L. R. 461. In that case, it was held that an amount which an attorney having a contract for a contingent fee on the percentage basis may recover in cases like this is to be computed as though the amount paid by way of compensation constituted the entire recovery. The court said that the amount the attorney was entitled to receive was absolutely fixed by the amount paid to the client. It was further said that, if the attorney

received one-half of the amount his client received, it does not concern him whether he was paid that amount by his client or by any other person.

The leading case on the other side of the question is *Johnson v. Great Northern Rd. Co.*, 128 Minn. 365, 151 N. W. 125, L. R. A. 1917B, 1140. It was there said that the agreement to pay the attorney was part of his settlement, and that the amount to be paid the client was not the whole of the settlement but only the client's part thereof. Therefore, it was held that the whole amount of the settlement on which the attorney's percentage is to be computed is that amount bearing such a proportion to the amount paid to the client as the whole bears to the portion representing the client's part. We think the rule there announced is in accord with the better reasoning.

In the case at bar, the defendant in the damage suit settled with the plaintiff for the sum of \$2,500 with the agreement at the time that the company would pay B. C. Barnes, administrator, or Sam T. and Tom Poe, his attorneys, under the terms of their contract which had been approved by the probate court. The defendant had notice of this contract and the rights of the attorneys under it and expressly agreed to settle with the plaintiff and pay the attorneys whatever they were entitled to under the contract. Jimmie King, the beneficiary under the contract, did not attempt to settle the whole liability against the defendant. As we have already seen, the defendant knew that the attorneys were entitled to fifty per cent. of all sums collected from the defendant, and the release recites that it is executed in consideration of the payment of \$2,500 to Jimmie King, and also releases all claims that he may have as the father and sole heir at law of the said Orby King, deceased, on account of the injuries which led to the death of Orby King, while he was working for the defendant. In addition, the defendant agreed to pay whatever amount was due the attorneys. The defendant knew that the client and the attorneys both had rights under their contract; and,

when it settled with the client for a stipulated sum to be paid him for his release, it also became liable for a like amount to the attorneys. Neither party was mistaken as to the facts of the case. The defendant knew the terms of the contract, and cannot be heard to interpose its erroneous interpretation of it as a defense to this action. The contract required that the fee should equal the amount of the client's share of the proceeds of any settlement, and it was evidently the intention of the parties that each receive an equal amount, so that when the defendant settled with the client for \$2,500 and agreed to pay the attorneys' fees, it must be deemed to have agreed to pay them the same amount which it had paid the client. Therefore, the judgment will be affirmed.
