



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

AARON JOHNSON,)
)
Petitioner/Appellant,)
)
vs.)
)
HEATHER MITCHELL,)
)
Defendant/Appellee.)

OCT 20 2023

JOHN D. HADDEN
CLERK

Case No. 120,895

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE ALETIA TIMMONS, DISTRICT JUDGE

AFFIRMED

Aaron Johnson
Edmond, Oklahoma

Pro se

Geren Steiner
RUPERT & STEINER
Oklahoma City, Oklahoma

For Defendant/Appellee

Rec'd (date)	10-20-23
Posted	<i>[Signature]</i>
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Publish	yes <input checked="" type="checkbox"/> no <input type="checkbox"/>

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Aaron Johnson appeals a summary judgment of the district court disposing of claims against Heather Mitchell that were related to her administration of the Jack I. Johnson Revocable Trust, and which included the court's summary judgment granting Mitchell contractual liquidated damages. On review, we find that Johnson's claims related to the administration of the trust were barred by the settlement agreement he made with Mitchell and the trust in 2014, his claims as to the validity of that agreement were barred by the

applicable statute of limitations, and that he provides no further appellate arguments as to Mitchell's counterclaim. As such, we affirm the decision of the district court.

BACKGROUND

In May 2022, Aaron Johnson filed a *pro se* petition alleging he was a beneficiary of the Jack I. Johnson Trust, and he had been fraudulently deprived of benefits by his sister and trustee, Heather Mitchell. Aaron Johnson and Heather Mitchell are children of the late Jack I. Johnson. Mitchell filed an answer and counterclaim detailing the following.

Mitchell had been the trustee since 2012. The relationship between Johnson as beneficiary and Mitchell as trustee was apparently difficult from the start. In 2014, Johnson, represented by counsel, allegedly executed a settlement agreement requiring him to release all future claims against the trust and trustee in return for a payment of \$75,000. The agreement further provided that, upon receipt of this money, Johnson would have no further contact with Mitchell or the trust's attorneys. The agreement also contained a provision providing for liquidated damages of \$10,000 if Johnson violated the settlement agreement. Mitchell's counterclaim alleged that this provision had been placed in the settlement because Johnson had previously engaged in a pattern of harassing behavior towards both her and the trust's attorney. She alleged that Johnson had subsequently breached this agreement at least twenty times. She sought \$200,000 in liquidated damages against Johnson as her counterclaim.

In August 2022, Johnson filed a “motion for judgment.” The motion was approximately 120 pages in length, consisting mostly of attachments. Mitchell filed a response and countermotion for summary judgment. The response contained a copy of the settlement agreement between Johnson and the trust, which provided in part that:

FOR AND IN CONSIDERATION OF the sum of seventy-five thousand dollars (\$75,000.00) and other valuable consideration the receipt of which is hereby expressly acknowledged, Aaron Blane Johnson, as an individual, a beneficiary, an heir, and in all other capacities and his heirs, successors and assigns, and his attorney of record, Gerard Dumas (hereinafter collectively referred to as the UNDERSIGNED) do hereby forever fully, completely, knowingly and voluntarily release, forever discharge and acquit Heather Johnson Mitchell and her heirs, successors, assigns and agents individually and in the capacity as the Trustee of the Jack I. Johnson Revocable Trust and as Personal Representative and Executor of the Estate of Jack I. Johnson and her attorney of record, Amy Sine, individually and the firm of Hartzog, Conger, Cason and Neville (herein after collectively referred to as “RELEASEES”) from any and all past and future claims, actions, causes of actions, damages, rights, expenses, costs, interests, their legal or ethical concerns, complaints or allegations, or liabilities whatsoever known and unknown, asserted or unasserted, suspected or unsuspected, fixed, contingent or conditional to the fullest extent permitted by law and equity.

IT IS FURTHER SPECIFICALLY UNDERSTOOD AND AGREED BY THE UNDERSIGNED that this is the compromise of a doubtful and disputed claim of the UNDERSIGNED and liability or wrongdoing of any kind is specifically and strongly denied by RELEASEES and payment of any monies or other valuable consideration to the UNDERSIGNED is not to be construed in any manner or way as an admission of liability or wrongdoing or concession of the facts or legal positions of the RELEASEES.

IT IS FURTHER SPECIFICALLY UNDERSTOOD AND AGREED BY THE UNDERSIGNED that the sum of seventy-five thousand dollars (\$75,000.00) received pursuant to this Settlement Agreement and Release of All Claims shall be the final distribution to Aaron Blane Johnson and his attorney of record from the Jack I. Johnson Revocable Trust and the Estate of Jack I. Johnson; from this date forward the UNDERSIGNED shall no longer have rights or legal

standing as a beneficiary of the Jack I. Johnson Trust or as an heir of the Estate of Jack I. Johnson and the UNDERSIGNED shall owe no funds to the Jack I. Johnson Trust or the Estate of Jack I. Johnson.

IT IS FURTHER SPECIFICALLY UNDERSTOOD AND AGREED BY AARON BLAINE JOHNSON that he will have no further contact of any kind with Heather Johnson Mitchell and any necessary communication with her will be made through his attorney Gerald Dumas or other duly retained attorney on his behalf at his expense.

IT IS FURTHER SPECIFICALLY UNDERSTOOD AND AGREED BY THE UNDERSIGNED that any breach of any term of this Settlement Agreement and Release by the UNDERSIGNED will result in liquidated damages in the amount of Ten Thousand dollars (\$10,000.00) per term breached in as much as said damages for any breach are difficult to quantify and said amount of liquidated damages is reasonably related to the expected harm and damage caused and not intended as a penalty, in addition to the recovery of all costs, interest and attorney's fees incurred by the RELEASEES.

On September 22, 2022, the court made a docket entry that "plaintiff's motion is denied, defendant's counter-motion for summary judgment is sustained as per journal entry." The entry further noted that Johnson had failed to appear at the hearing on his motion for judgment.

Before a journal entry of the summary judgment was filed, Johnson filed a "petition for amendment" seeking to change his claim of fraud to one of breach of fiduciary duty. On October 3, some five months after Mitchell's counterclaim was filed, Johnson filed a belated "response to counterclaim." This pleading raised defenses that Johnson's signature on the settlement agreement had been

forged, and that the settlement was invalidated by “Probate Code § 16004.”¹ Johnson also filed a motion to reconsider, arguing that he had failed to appear at the hearing on his motion because he had been misled as to the date of hearing.² Mitchell filed a response to the motion to reconsider and a “reassertion” of the judgment in her favor.

On November 3, apparently after an in-person hearing that was not transcribed but was attended by both Johnson and Mitchell’s counsel, the court made a journal entry granting Mitchell all her requested relief, and denying all relief requested by Johnson. Johnson now appeals.

STANDARD OF REVIEW

Summary judgment settles only questions of law. *See Pickens v. Tulsa Metro. Ministry*, 1997 OK 152, ¶ 7, 951 P.2d 1079, 1082. The standard of review of questions of law is *de novo*. *Id.* Summary judgment will be affirmed only if the appellate court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.* Summary judgment will be reversed if reasonable people might reach different conclusions from the undisputed material facts or a party is not entitled to judgment as a matter of law. *See Runyon v. Reid*, 1973 OK 25, ¶ 15, 510 P.2d 943, 946. All reasonable inferences are taken in favor of the nonmovant. *Jennings v. Badgett*,

¹ Apparently, a reference to California law, which states in part that a “trustee has a duty not to use or deal with trust property for the trustee’s own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.” Cal. Prob. Code § 16004 (West).

² We will consider this motion made under 12 O.S. § 1031.1.

2010 OK 7, ¶ 4, 230 P.3d 861, 864. We consider the denial of Johnson’s post-decisional motion for an abuse of the court’s discretion. *Matter of Estate of Hughes*, 2004 OK 20, ¶ 8, 90 P.3d 1000, 1003.

ANALYSIS

Summary Judgment Against Johnson’s Claims

Johnson brings thirteen allegations of error. Twelve of them concern various aspects of the administration of the trust and his rights as a beneficiary. The 2014 settlement agreement bars all of these claims unless the agreement is found invalid. The sole allegation of error that challenges the settlement agreement is number eleven—that Mitchell had “forged the signature of the beneficiary on the ‘so called’ release.” The release in the record bears a notarized signature of Johnson and the signature of his attorney.

We first note that the notarization of the allegedly forged signature took place in January 2014. Johnson did not allege or provide any evidence that the release was actually constructed or signed at some later date. The release was also signed by Johnson’s attorney. There was no evidence that the attorney’s signature was forged, or that the attorney had signed at any time except during 2014. Hence, the alleged fraud was committed in January 2014 for the purposes of our inquiry, and Johnson’s petition was not filed until May 2022.

Mitchell raised the statute of limitations as an affirmative defense in her answer and counterclaim. Because the two-year statute of limitations on Johnson’s fraud claim has expired, he was initially required to show that he neither knew, nor should have known with the application of reasonable

diligence, that his signature had been forged until May of 2020 or later. Neither Johnson's petition, nor his motion for judgment, nor his motion to reconsider, argue for tolling of the fraud claim by the discovery rule, or raise any evidence to that effect. As such, we find that Johnson's claim of fraud is barred by the statute of limitations, and all his claims against the trust and Mitchell were released by the 2014 settlement agreement.

Johnson's motion to reconsider also raised claims that he was denied an opportunity to appear at the September 22 hearing on his motion for judgment. Although the docket is somewhat vague as to hearing dates, Mitchell's statement of the case is clear, stating that Johnson's motion for judgment was set for September 22, Mitchell's motion for summary judgment was set for October 6, and the final hearing of the motion to reconsider and Mitchell's re-urging of her previous motion for summary judgment was held on November 3. Johnson apparently failed to appear at the September 22 hearing on his motion for judgment.

Johnson's motion to reconsider argued that his failure to appear on September 22 was caused by Mitchell's counsel. Counsel sent Johnson an email stating that Mitchell's countermotion for summary judgment was to be heard on October 6. Johnson interpreted this as stating that the September 22 hearing of his motion was also reset to October 6. We cannot find that the trial court abused its discretion failing to vacate its decision due to Mr. Johnson's misapprehension of the hearing date.

Summary Judgment in Favor of Mitchell's Claims.

The court also granted Mitchell summary judgment on her counterclaim for \$200,000 in liquidated damages against Johnson, inherently finding that Johnson had committed twenty actionable breaches of the settlement agreement. Johnson's petition in error does not appeal this judgment, except for the claim that Johnson's signature on the settlement agreement that provides for these damages was forged, a theory which we have considered and rejected. We find no further argument from Johnson, either in the district court, or on appeal, regarding the summary judgment on Mitchell's claim for contractual liquidated damages and will, therefore, not consider it further. *See Jordan v. Jordan*, 2006 OK 88, ¶ 13, 151 P.3d 117 (finding that appellate courts are not free to *sua sponte* raise claims or defenses that the parties did not present in the court below).³ Because even the broadest interpretation of Johnson's petition in error does not reveal any appeal of this judgment outside the issues already considered, the validity of the judgment on Mitchell's counterclaim is also affirmed.

AFFIRMED.

FISCHER, J., and HUBER, J., concur.

October 20, 2023

³ Except, of course, when the court must engage in the required determination of its, or the trial court's, jurisdiction. *Indep. Sch. Dist. # 52 of Oklahoma Cnty. v. Hofmeister*, 2020 OK 56, ¶ 52, 473 P.3d 475, 497.