

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 18, 2014 Session

**DORIS GUYEAR, HEIR OF LEROY GUYEAR, DECEASED v. JOEY
BLALOCK, ET AL.**

**Appeal from the Circuit Court for Grundy County
No. 8179 J. Curtis Smith, Judge**

No. M2012-01562-COA-R3-CV - Filed July 23, 2014

The owner of a promissory note died, and his widow filed a complaint in the name of his estate to collect the unpaid balance, even though her late husband's estate had never been opened. She subsequently amended her complaint to designate herself as the plaintiff in her capacity as her late husband's wife and next friend. The obligors on the note filed a motion for dismissal, contending that the widow had not demonstrated that she was a proper plaintiff or that she had any right to collect on the note. The trial court granted the motion to dismiss. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

BEN H. CANTRELL, SR. J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Ralph M. Bard, Tullahoma, Tennessee, for the appellant(s), Doris Guyear, Heir of Leroy Guyear, Deceased.

Russell Leonard, Winchester, Tennessee, for the appellee(s), Joey Blalock, et al.

OPINION

I. A SUIT ON A NOTE

Leroy "Bud" Guyear and Doris Guyear, a married couple, owned and operated Bluffside Greenhouse in Monteagle, Tennessee. On October 29, 2004, they entered into a contract for the sale of the business and its inventory to Joey and Teresa Blalock. The bill

of sale described the property included in the sale as “all inventory, fixtures and equipment related to the operation of Bluffside Greenhouse.” Neither document mentioned the real property that was the site of the business, and the parties agree that the contract did not include the Guyears’ real property,

The contract recited a total price of \$220,000, with \$132,000 down, and the remainder of the purchase price, \$88,000, to be secured with a promissory note. Leroy Guyear signed the contract as “Owner/Seller” and the bill of sale as “Seller.” The contract also included a non-compete clause that barred the Guyears from competing with Bluffside’s new owners for five years. In accordance with the contract, the Blalocks executed an \$88,000 Promissory Note to Leroy Guyear with interest at the rate of 6 % per year, to be paid over the course of five years. The Blalocks made the first seven monthly payments, but then stopped making payments in June of 2005. Leroy Guyear subsequently attempted to obtain payment on the note but was unsuccessful. He died suddenly and unexpectedly in January of 2007.

On January 19, 2010, Doris Guyear filed a Complaint for breach of contract against the Blalocks in the Grundy County Circuit Court in an effort to collect the amount due on the Promissory Note. Her initial Complaint was brought in the name of “Estate of Leroy Guyear.” However, an estate had never been opened for Leroy Guyear. The complaint sought damages in the total amount of \$85,987.06 and included claims for conversion, bad faith, and interference with business relationships as well as for breach of contract.

Two months after filing her initial complaint, Ms. Guyear filed an Amended Complaint that recited the same claims but identified the plaintiff as “Leroy Guyear, deceased, by his Wife and Next Friend, Doris Guyear.” On April 19, 2010, the Blalocks filed an answer in which they admitted making only seven payments on the note, but asserted that the Guyears had themselves breached the contract by preventing the Blalocks from coming on the property and taking some of the inventory that was included in the sale.

The major sticking point was apparently a greenhouse which the Blalocks wanted to take down and move to their own property. The Guyears had insisted that the greenhouse was a fixture attached to the realty, and that since the realty was not a part of the sale, neither was the greenhouse. As we noted above, however, the contract of sale stated that it included “all inventory, fixtures and equipment related to the operation of Bluffside Greenhouse.” The Blalocks also asserted that the Guyears had breached the non-compete clause.

On July 26, 2010, Doris Guyear filed a motion for summary judgment with an attached memorandum of law, a statement of undisputed material facts, and an affidavit by the Guyears’ daughter, Vanessa Rawling. Ms. Guyear asserted that the promissory note at issue was a negotiable instrument, and that as the holder of the note, she was entitled to

collect on it. The Blalocks admitted that the note was a negotiable instrument. But they asserted that Doris Guyer was not entitled to summary judgment because she was not a holder in due course without notice, see Tenn. Code Ann. § 47-3-302, and thus that she took possession of the instrument subject to all the viable defenses to payment, including in this case, breach of contract, fraud, fraudulent inducement and failure of consideration.

II. THE PROPER PARTY

The trial judge raised a critical issue in this case when he sent the parties a letter on October 1, 2010 stating that he was ready to rule on the motion for summary judgment, but that there had been a “non-joinder and misjoinder of parties in this case.” The letter explained that *Gibson’s Suits in Chancery* identified a “next friend” as “a sort of self-appointed guardian who brings a suit on behalf of a person under some disability legal or natural.”

Since Leroy Guyer was deceased, the court concluded that Doris Guyer could not sue as his “next friend.” Instead, the court explained, “if a suit is to recover a debt for a decedent then his personal representative must be the party.” The judge closed the letter by directing the parties to notify him when the proper parties were before the court, and stating that he would then rule on the motion for summary judgment.¹ Ms. Guyer subsequently made several attempts to find a way to satisfy the trial court’s concerns without opening Leroy Guyer’s estate, which she was apparently unwilling to do for reasons that are unclear from the record.

On November 12, 2010, Doris Guyer filed another motion to amend her complaint, which we designate here for purposes of clarity as “the second amended complaint. The caption on the motion and the complaint attached to it designated the plaintiff as “Doris Guyer, heir of Leroy Guyer, deceased and on his behalf.” Ms. Guyer contended in that pleading that she was entitled to sue under Tenn. Code Ann. § 20-5-104, which declares that “[i]f no person will administer the estate of a deceased plaintiff or defendant, the suit may be revived by or against the heirs of the decedent.”

The Blalocks responded by asking the trial court to dismiss the second amended

¹ The trial court’s letter stated another example on non-joinder or misjoinder in Ms. Guyer’s complaint. She designated “Bluffside Greenhouse” as a party defendant, but did not identify it as a corporation or a partnership. The court reasoned that if it was not either, it was not a legal entity and could not be a party for or against whom relief could be granted. However, the disposition of this appeal turns only on the plaintiff’s standing or capacity to sue, so we need not further address the legal status of Bluffside Greenhouse.

complaint. They asserted that Tenn. Code Ann. § 20-5-104 was inapplicable because by its terms it only permitted an heir to revive a suit that had been brought by the decedent prior to his death. They noted that in this case Leroy Guyear did not bring suit on the note before he died. The trial court nonetheless granted the motion to amend and denied the Blalocks' motion to dismiss.

Doris Guyear subsequently filed an amended motion for summary judgment with a memorandum in support of the motion that incorporated still another theory to establish her right to sue on the note. She alleged that she and her late husband had been business partners, that as the only surviving member of the partnership she had become the sole owner of the note and that she was therefore entitled to collect on it in her own name and/or on behalf of the partnership.

The Blalocks responded by observing that nowhere in any of the complaints Doris Guyear filed did she assert her partnership theory. They further noted that she did not present any evidence of the alleged partnership, such as tax returns or partnership agreements, and that all the documentation associated with the transaction at issue, such as the contract of sale, the bill of sale and the promissory note, refer only to Leroy Guyear as the seller.

At that point, the proceedings took an even stranger turn when Ms. Guyear filed another version of her second amended complaint without asking the leave of the court, as is required by Tenn. R. Civ. P. 15.01.² The caption of the document still described the plaintiff as "Doris Guyear, heir of Leroy Guyear, deceased, and on his behalf." The body of the complaint repeated her claim that she was entitled to sue under Tenn. Code Ann. § 20-5-104, but added an allegation "in the alternative" that she and Leroy Guyear had been business partners.

The trial court conducted a hearing on October 18, 2011 and ordered the parties to submit arguments and materials as to how a partnership debt is collected after the death of one partner. Both parties submitted briefs or writings to the court. On May 3, 2012, the trial court entered an "Order Dismissing Plaintiff's Original Complaint." The court reasoned that the promissory note had been the individual property of Leroy Guyear, and that "[c]ases going back more than 100 years in Tennessee jurisprudence hold that such a note is an asset of the deceased's estate and can only be collected by the properly appointed personal representative of the estate." Since Doris Guyear had not qualified to administer her late husband's estate, the court concluded that she was not entitled to sue on the note.

² That pleading is titled "Second Amended Complaint." Doris Guyear referred to it on appeal as the "substitute Second Amended Complaint," while the Blalocks referred to it at oral argument as the "second Second Amended Complaint."

Ms. Guyear filed a motion to alter or amend the court's judgment. She observed that while the court dismissed her original complaint, it had not addressed any of her amended complaints, thereby implying that those complaints were still active. On June 18, 2012, the trial court amended its own judgment to make it clear that the entire case was dismissed. This appeal followed.

III. A QUESTION OF STANDING

The trial court dismissed Doris Guyear's complaints because of the pleading situation: she did not present her claim to the court in a manner that was sufficient to establish her standing to collect on her late husband's promissory note. No question was raised as to the authenticity of the note, and it was undisputed that the Blalocks did not pay Leroy Guyear every installment that came due on the note before he died, although they contended that they had a meritorious defense to payment.

The primary focus of a standing inquiry is on the party, not on the merits of the claims asserted. *Foster Business Park, LLC v. J & B Investments, LLC*, 269 S.W.3d 50, 56 (Tenn. Ct. App. 2008)(citing *Cox v. Shell Oil Co.*, 196 S.W.3d 747, 758 (Tenn. Ct. App. 2005)). See, also, *Flast v. Cohen*, 392 U.S. 83, 99 (1968). "Standing is a judge-made doctrine which is used to refuse to determine the legal merits of a legal controversy irrespective of its correctness where the party advancing it is not properly situated to prosecute the action." *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976).

Tenn. R. Civ. P. 17.01 establishes that only the real party in interest has standing to sue. It also gives a plaintiff who has mistakenly brought suit in the name of someone other than the real party in interest the opportunity to correct the pleading by making a timely amendment:

Every action shall be prosecuted in the name of the real party in interest . . . No action shall be dismissed on the ground that it was not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification or commencement by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

There can be no doubt that as the wife of Leroy Guyear, Doris Guyear possessed certain rights to property that they owned in common. As his widow, she also had the legal right to inherit at least part of the property he owned at the time of his death, whether or not

he left a valid will. *See*, Tenn. Code Ann. § 30-2-101 to 102. But she could not be his sole heir in the absence of a probated will, because under the laws of intestacy, the parties' adult daughter would have been entitled to a portion of his property. *See*, Tenn. Code Ann. § 31-2-104(a)(2). Because she did not establish her ownership over the note in question, she can not be the real party in interest.

The proper way to establish the respective rights of Leroy Guyear's heirs to his property would have been through the administration of his estate. If Doris Guyear had been appointed as the administrator, then she would have had the right, and perhaps even the duty, to sue on behalf of his estate in order to collect any debts that were owed to her late husband. *See*, *State v. Anderson*, 84 Tenn. 321, 338 (1886); *Carr v. Lowe's Executor*, 54 Tenn. 84, 90 (1871); *State v. Fulton*, 49 S.W. 297, 301 (Tenn. Ch. App. 1898). The trial judge alerted Ms. Guyear to the necessity of opening the estate and becoming its administrator if she wished to bring suit in its name, but she chose not to do that for whatever reason, and rather to amend her complaint by bringing it in her own name and as her late husband's "next friend."

The laws of probate exist for the orderly administration of the estates of decedents. *Williams v. Bridgford*, 383 S.W.2d 770, 775 (Tenn. Ct. App. 1964). As the trial court correctly pointed out, a "next friend" is someone acting for the benefit of an infant or a party that is suffering from some sort of legal or natural disability. *See, for example, Williams v. Gaither*, 202 S.W. 917, 918 (Tenn. 1918); *In re Blessing*, 01A01-9712-CH-00691, 1998 WL 862480 (Tenn. Ct. App. Dec. 14, 1998) (citing *Bradford v. Am. Nat. Bank*, 158 S.W.2d 366, 368 (Tenn. Ct. App. 1941)). The power to sue as a next friend is not meant to be used as a way to bypass the probate process. Thus, the trial court did not err in declining to rule on the merits of the amended complaint brought by Doris Guyear as her late husband's next friend.

IV. THE ALLEGATION OF PARTNERSHIP

Doris Guyear argues that the trial court's order incorrectly implies that every decedent's estate must be probated, when that is clearly not the case. She points to a law review article that focuses on the many ways that the property of decedents may devolve to their heirs and beneficiaries without having to go through the probate process. John H. Langbein, *The Nonprobative Revolution and the Future of the Law of Succession*, 97 HARVARD L. REV. 1108 (1984). We agree that there were many methods available to Leroy Guyear outside of the probate process to ensure that the ownership of the disputed promissory note would pass to his wife after his death. But he did not follow any of those methods, thereby leaving the ownership of the note uncertain.

Doris Guyear implicates one of those methods by arguing that the promissory note was an asset of the business that she and her late husband operated as partners. Although she

acknowledges that there was no formal partnership agreement, she correctly argues that a partnership can exist in the absence of such an agreement if it can be proved that two or more parties have agreed to carry on as co-owners of the business for profit. Tenn. Code Ann. § 61-1-105(a).

As we discussed above, however, Ms. Guyear never filed a valid complaint in her capacity as the purported business partner of her late husband. Her initial Complaint was brought in the name of “Estate of Leroy Guyear.” Her first amended complaint identified the plaintiff as “Leroy Guyear, deceased, by his Wife and Next Friend, Doris Guyear.” Her second amended complaint changed that to “Doris Guyear, heir of Leroy Guyear, deceased and on his behalf.”

She did not even mention the theory of partnership until she filed an amended motion for summary judgment. The first time the theory appeared in a document meant to serve as a pleading was when Ms. Guyear filed another version of her second amended complaint without first asking the leave of the court, in violation of the Tennessee Rules of Civil Procedure. Even then, the style of the document still described the plaintiff as “Doris Guyear, heir of Leroy Guyear, deceased, and on his behalf.” But even if she had filed in her capacity as a partner in the purported partnership, by amending her complaint under these circumstances without first obtaining the permission of the trial court, she has rendered that amended complaint a nullity. We accordingly affirm the trial court.

V.

The judgment of the trial court is affirmed. We remand this case to the Circuit Court of Grundy County for any further proceedings necessary. Tax the costs on appeal to the appellant Doris Guyear.

BEN H. CANTRELL, SR. JUDGE