

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 2079

STATE OF LOUISIANA

IN THE MATTER OF THE MINORITY OF EMIL JOHN GEIGER
AND AMY NICOLE GEIGER

Judgment Rendered: September 14, 2007

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 53,792

Honorable Donald R. Johnson, Judge

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Company of Illinois

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

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GUIDRY, J.

The parents and former tutors of the plaintiff appeal a summary judgment ordering them to restore workers' compensation death benefits to the plaintiff that they allegedly wrongfully continued to receive on his behalf after the plaintiff turned eighteen. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

In 1986, while working in Indiana in the course and scope of his employment as an engineer with the Wells Services Division of Schlumberger Technology Corporation (Schlumberger), Steven Ray Geiger suffered fatal injuries in a car accident. He was survived by his wife, Sandra Milam Geiger, and their two children, Emil John Geiger (Emil) and Amy Nicole Geiger. Shortly after the accident, The Travelers Insurance Company (Travelers),¹ as Schlumberger's workers' compensation carrier, began paying workers' compensation death benefits to Steven Geiger's survivors.

On March 19, 1988, Sandra Geiger married Dennis Raymond Howard, and later that same year, she filed suit against Schlumberger, Travelers, and State Farm Mutual Automobile Insurance Company² for uninsured motorist benefits. The suit was filed by Mrs. Howard in her individual capacity and as the natural tutrix of her then minor children. Later, Mrs. Howard filed a petition to be confirmed as the natural tutrix of her children and their property and to have her husband appointed as undertutor. The trial court signed an order confirming her as natural tutrix and appointing Mr. Howard undertutor on October 10, 1990. Concurrent with the

¹ "The Travelers Insurance Company" and the "Travelers Indemnity Company" will be referred to throughout this opinion as "Travelers."

² Travelers also provided motor vehicle liability and uninsured motorist liability insurance coverage for Schlumberger. Upon proof that Travelers provided such coverage for Schlumberger, Schlumberger was dismissed from the suit. State Farm Mutual Automobile Insurance Company provided uninsured motorist coverage for Steven Geiger. The suit was originally filed in the Nineteenth Judicial District Court of Louisiana, but was later removed to the U.S. District Court for the Middle District of Louisiana, and then transferred to the U.S. District Court for the Southern District of Indiana, Indianapolis Division.

filing of the tutorship petition, Ms. Howard also filed a "Petition for Authority to Settle Minors' Claim" against Schlumberger and Travelers, wherein the recommended undertutor concurred. The trial court authorized the settlement in a judgment rendered the same date.

Pursuant to this judicial authorization, the parties executed a settlement agreement, entitled a "Covenant Not To Sue," on October 11, 1990. The covenant expressly provided that Mrs. Howard would dismiss the claims then pending against Schlumberger and Travelers and that she would not commence, prosecute, or maintain any future claims, of any nature, against Schlumberger and Travelers, either individually, as tutrix of her minor children's estate, or as the personal representative of the estate of Steven Geiger. In exchange, Schlumberger and Travelers agreed, "to continue to pay weekly workers' compensation death benefits in favor of Sandra Milam's two minor children in accordance with the provisions of Illinois law." The parties additionally stipulated that the covenant would be governed and interpreted in accordance with the laws of Indiana.³

On April 4, 2000, Emil turned eighteen; however, it was not until over two years later that he filed an *ex parte* motion to formally terminate the judgment of tutorship rendered on October 10, 1990. In the motion, Emil stated that he had executed a "receipt and release," which was attached to the motion, averring "that the tutrix has provided a full and complete accounting of all property, securities, effects and cash" that she had held on behalf of Emil. The trial court signed an order granting the motion on September 4, 2002. Nevertheless, on June 23, 2003, Emil filed a petition against the Howards seeking an accounting of all workers'

³ The trial court later granted the Howards authority to settle the minors' claims against State Farm Mutual Automobile Insurance Company pursuant to a separate judgment. Mrs. Howard had also filed suit against the driver and owner of the other vehicle involved in the accident in which Steven Geiger was killed in the U.S. District Court for the Southern District of Indiana and later compromised the claims of her minor children, with court authorization, with respect to that suit as well.

compensation benefits paid to Mrs. Howard on his behalf and demanding recovery of all benefits paid to Mrs. Howard on his behalf after he attained the age of eighteen and any other sums legally due him.

The Howards initially filed an answer generally denying the demands contained in Emil's petition; however, after conducting some discovery and unsuccessfully moving for the dismissal of Emil's petition, the Howards filed a second answer with a reconventional demand against Emil seeking compensation for fulfilling their duties as tutors, the costs of providing a final accounting, and all court costs incurred in the proceedings. The Howards later filed a third-party demand against Travelers seeking indemnification for any sums the Howards might be found to owe Emil in his claim for the post majority workers' compensation payments disbursed to Mrs. Howard on Emil's behalf. The Howards additionally alleged that Travelers' act of discontinuing payment of the workers' compensation benefits to Mrs. Howard was in breach of "a certain contract of workers' compensation insurance with Schlumberger" and reconvened for the balance of the payments allegedly owed under that contract.

Thereafter, Emil amended his petition to limit his request for an accounting to those workers' compensation death benefits paid to Mrs. Howard on his behalf after he had attained the age of majority and to claim damages against Travelers⁴ for improperly disbursing the disputed workers' compensation payments to Mrs. Howard. Travelers raised several defenses and exceptions in answer to the Howards' third party demand and Emil's amended petition, in addition to generally denying the claims of both pleadings. Travelers later re-urged the objection of no right of action raised in its answer to the third-party demand filed by the Howards by separately filing a pleading entitled "Exception of No Right of Action and/or

⁴ In both the Howards' third-party demand and Emil's amended petition, "The Travelers Insurance Company" and the "Travelers Indemnity Company" are named as defendants.

Motion for Summary Judgment." Travelers also re-urged the objection of prescription raised in its answer to Emil's amended petition by separately excepting to claims asserted by Emil in the amended petition.⁵

On May 15, 2006, Emil filed a motion for summary judgment seeking judgment in his favor on the demands asserted against the Howards and Travelers in his original and amended petitions. The Howards filed a cross motion for summary judgment seeking: dismissal of Emil's claims against them; judgment against Travelers for an award of workers' compensation payments owed after March 13, 2003, or indemnification for any sums they might be found to owe Emil; and a declaration that the Illinois Workers' Compensation Act governed a determination of payment and ownership of the disputed workers' compensation death benefits.

On July 10, 2006, the trial court considered the motion for summary judgment filed by Emil, the cross motion for summary judgment filed by the Howards, and the "Exception of No Right of Action and/or Motion for Summary Judgment" filed by Travelers. In a judgment signed July 14, 2006, the trial court rendered rulings:

- Granting Emil's motion for summary judgment against the Howards and awarding him the sum of \$37,842.40, plus legal interest from the date of demand until paid;
- Denying the Howards' motion for summary judgment and denying their claims for annual compensation, costs for rendering an accounting, and for special and general court costs;
- Overruling the exception and denying the motions for summary judgment and for costs⁶ filed by Travelers;
- Assessing the Howards with all costs of the proceedings.

⁵ Various other motions and rulings were made in these proceedings that are not pertinent to this appeal and thus are not recounted herein.

⁶ Travelers filed a "Motion for Security for Costs" on March 24, 2005, requesting that the trial court require the Howards to give security for the costs Travelers expected to incur to defend the third-party complaint.

The Howards have suspensively appealed that judgment.⁷

ASSIGNMENTS OF ERROR

The Howards contend that the trial court committed the following errors in rendering the judgment appealed:

1. The Trial Court committed legal error by basing its decision on [a prior judge's] earlier opinion that Louisiana tutorship laws governed the determination of Emil's claims.
2. The Trial Court's Judgment is contrary to the applicable law, namely the Illinois Workers['] Compensation Act which prohibited any change in payment of death benefits without the prior approval of the Illinois Workers['] Compensation Commission.

STANDARD OF REVIEW

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. Fagan v. LeBlanc, 04-2743, p. 5 (La. App. 1st Cir. 2/10/06), 928 So. 2d 571, 574. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B).

The initial burden of proof is on the movant. However, if the movant will not bear the burden of proof at trial, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim. La. C.C.P. art. 966(C)(2). Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there

⁷ On December 19, 2006, this court issued a rule to show cause why the appeal should not be dismissed for failure to comply with La. C.C.P. art. 1915(B). Thereafter, the trial court issued an order designating the judgment as final, and a panel of this court recalled the rule and maintained the appeal.

is no genuine issue of material fact, and the motion should be granted. La. C.C.P. art. 966(C)(2).

On appeal, summary judgments are reviewed *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. Sunrise Construction and Development Corporation v. Coast Waterworks, Inc., 00-0303, p. 4 (La. App. 1st Cir. 6/22/01), 806 So. 2d 1, 3, writ denied, 01-2577 (La. 1/11/02), 807 So. 2d 235.

DISCUSSION

Since in their second assignment of error, the Howards question the authority of the trial court to decide the issues presented, as well as assert that the trial court's decision was in derogation of the parties' stipulations in the "Covenant Not To Sue," we will begin our discussion with this assignment of error. The Howards assert that because the workers' compensation death benefits were paid in accordance with Illinois Workers' Compensation Act,⁸ it is improper for a court of this state to determine the issues presented herein. In support of this assertion, the Howards rely on certain pronouncements in the following cases: Jerry v. Young's Well Service, 375 So. 2d 186 (La. App. 2d Cir. 1979); Smith v. Globe Indemnity Co., 243 So. 2d 882 (La. App. 1st Cir. 1971), abrogated in part by Fox v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, 576 So. 2d 978 (La. 1991); Woodham v. Travelers Insurance Company, 161 So. 2d 368 (La. App. 3d Cir.), writ denied, 246 La. 88, 163 So. 2d 360 (1964). In each of those cases, there was an attempt to have a Louisiana court award benefits pursuant to another state's workers' compensation act. Only the court in

⁸ The parties do not dispute that the workers' compensation death benefits were to be paid in accordance with Illinois law. Further, as the parties expressly stipulated in the "Covenant Not To Sue" that the payments would be made "in favor of Sandra Milam's two minor children in accordance with the provisions of Illinois law," applying Illinois law to determine whether Travelers could apportion payment of the benefits directly to Emil would be proper under a Louisiana conflicts of law analysis. See La. C.C. arts. 3515, 3537 and 3540; Gill v. Matlack, Incorporated, 94-2546, pp. 4-5 (La. App. 1st Cir. 10/6/95), 671 So. 2d 395, 397-398.

Smith found it proper to determine a claimant's right to benefits under another state's worker's compensation act. In that case, the appellate court found that the claim for workers' compensation pursuant to Tennessee's Workers' Compensation Act was not so inextricably bound with the administrative procedure of Tennessee as to prohibit a Louisiana court from determining whether the claimant had established a compensable claim under Tennessee law. Smith, 243 So. 2d at 887-888.

In Jerry and Woodham, however, the courts held the cause of action for workers' compensation benefits was so inextricably connected with the other states' administrative procedure that a Louisiana court lacked jurisdiction to determine whether the workers' claims were compensable under the other states' workers' compensation act. See Jerry, 375 So. 2d at 188-189; Woodham, 161 So. 2d at 371-373. We, however, find the cited cases are distinguishable from the matter at hand in one critical respect – Emil does not seek to have a court of this state award or determine his right to an award of workers' compensation benefits under the laws of Illinois. Rather, he seeks only a determination of his right to recover from his former tutors amounts paid to his tutors on his behalf as a result of an *extrajudicial* act that was homologated in a judgment from a court of this state. Thus, we find no basis for holding that a court of this state lacks jurisdiction to determine whether the workers' compensation payments could be apportioned under Illinois law.

Further, we do not find the trial court's determination to be contrary to or in derogation of Illinois law. The Howards allege that under Illinois law, apportionment or payment of the workers' compensation benefits directly to Emil would require the advance order of the Illinois Workers' Compensation Commission. To the contrary, such a mandate only arises when the Commission or an Arbitrator thereof orders or awards "payment to the parent or grandparent of

a child for the latter's support the amount of compensation which but for such order or award would have been paid to such child as its share of the compensation payable." 820 Ill. Comp. Stat. § 305/7(e). In such instances, Section 7(e) further provides that the "order or award may be modified from time to time by the Commission in its discretion with respect to the person to whom shall be paid the amount of the order or award remaining unpaid at the time of the modification."

In the matter before us, the payment of the workers' compensation benefits was not made payable to Mrs. Howard pursuant to an award or order from the Illinois Workers' Compensation Commission or an Arbitrator thereof, but were paid pursuant to the "Covenant Not To Sue." Hence, there exists no award or order rendered by the Illinois Workers' Compensation Commission or arbitrator for the Commission to modify. Further, the "Covenant Not To Sue" contains no mandate that the benefits be paid to Mrs. Howard, but simply states that "Travelers and Schlumberger agree to continue to pay weekly workers' compensation death benefits in favor of Sandra Milam's two minor children in accordance with the provisions of Illinois law."⁹

The cases cited by the Howards do not support their assertion that the award was wrongfully apportioned. As observed by the court in Mid-American Lines, Inc. v. Industrial Commission, 82 Ill.2d 47, 58, 411 N.E.2d 254, 259, 44 Ill. Dec. 285, 290 (1980), non-apportionment of the workers' compensation award and payment of the entire award to the surviving spouse for the use and benefit of the

⁹ In their appellate brief, the Howards make further reference to the fact that under Illinois law, Mrs. Howard, individually, would be entitled to workers' compensation death benefits for life because at the time she remarried, her children were still entitled to compensation benefits under the Illinois Workers' Compensation Act. See 820 Ill. Comp. Stat. § 305/7(a). However, we observe that the "Covenant Not To Sue" never provided for payment of benefits to Mrs. Howard either individually or jointly with her children, but only provided for payment of benefits in favor of the children. Thus, these allegations by the Howards speak more to an error in the provision of the contractual agreement itself than in the determinations of the court in interpreting the agreement.

spouse and children is appropriate when the spouse and the children live together.

The court further declared:

Upon reconsideration, we reaffirm Swift[& Co. v. Industrial Commission, 288 Ill. 132, 123 N.E. 267 (1919)] and Beckemeyer Coal[Co. v. Industrial Commission, 370 Ill. 113, 18 N.E.2d 182 (1938)] and hold that the Commission, in its discretion, can award a section 7(a) widow *with custody of a section 7(a) child* the entire death benefit. The contrary language in Snyder[v. Industrial Commission, 42 Ill.2d 18, 244 N.E.2d 601 (1969)] should not be deemed to have overruled Swift and Beckemeyer Coal sub silentio. Snyder holds that where such an award to a section 7(a) widow is inappropriate (*in that case because widow and child lived apart*), it must be divided equally and sent to each section 7(a) dependent.

Mid-American Lines, Inc., 82 Ill.2d at 60, 411 N.E.2d at 260, 44 Ill. Dec. at 291 (emphasis added). As Emil no longer resided with nor was provided for by Mrs. Howard at the time the disputed workers' compensation benefits were disbursed to her, the purpose of non-apportionment would not be fulfilled under those circumstances. Thus, we find no merit in this assignment of error.

In the Howards' remaining assignment of error, they contend that the trial court erred in considering Louisiana tutorship law to decide Emil's claims, and as such the judgment should be reversed and Emil's claims dismissed. We find no merit in this assertion of error. Our *de novo* review of this matter reveals that the grant of summary judgment was appropriate.

Louisiana is a fact-pleading state, and plaintiffs are not required to allege a theory of recovery; rather, recovery may be granted under any legal theory supported by the facts. La. C.C.P. arts. 854 and 891; Griffin v. BSFI Western E & P, Inc., 00-2122, p. 12 (La. App. 1st Cir. 2/15/02), 812 So. 2d 726, 736. According to Emil's amended petition, he seeks recovery of those workers' compensation benefits paid to his mother, on his behalf, after he attained the age of majority. Further, in his motion for summary judgment, Emil expressly pled that he was entitled to judgment "under all other theories that may appear from the facts of this matter including, but not limited to, unjust enrichment or the tort of conversion, as

well as for reasons set forth more fully in the supporting memorandum." As the evidence presented established that Ms. Howard continued to receive workers' compensation benefits on behalf of Emil until March 2003, long after Emil had attained the age of majority, the record reveals no genuine issue regarding the material facts pled by Emil in support of his claim for conversion.

The tort of conversion is committed when one wrongfully does any act of dominion over the property of another in denial of or inconsistent with the owner's rights. Alvarez v. Clasen, 06-304, p. 3 (La. App. 5th Cir. 10/31/06), 946 So. 2d 181, 183. Any wrongful exercise or assumption of authority over another's goods, depriving him of the possession, permanently or for an indefinite time, is a conversion. Ultra Fabricators, Inc. v. M C Bank and Trust Company, 97-1947, p. 7 (La. App. 1st Cir. 9/25/98), 724 So. 2d 210, 214, writ denied, 98-2682 (La. 12/18/98), 732 So. 2d 1238. Although the defendant may have rightfully come into possession of another's goods, the subsequent refusal to surrender the goods to one who is entitled to them may constitute conversion. Aymond v. State, Department of Revenue and Taxation, 95-1663, p. 4 (La. App. 1st Cir. 4/4/96), 672 So. 2d 273, 276.

Louisiana civil law conversion is committed when any of the following occurs: 1) possession is acquired in an unauthorized manner; 2) the chattel is removed from one place to another with the intent to exercise control over it; 3) possession of the chattel is transferred without authority; 4) possession is withheld from the owner or possessor; 5) the chattel is altered or destroyed; 6) the chattel is used improperly; or 7) ownership is asserted over the chattel. Snow v. Weyant, 04-1438, p. 5 (La. App. 1st Cir. 8/3/05), 923 So.2d 34, 37-38.

Emil's allegations that Mrs. Howard wrongfully withheld workers' compensation benefits paid to her on his behalf after he had attained the age of majority is properly viewed as an assertion that Mrs. Howard withheld possession

of these funds from Emil as the proper owner or possessor of the funds. The Howards themselves argue that the disputed funds were not subject to the tutorship. Accordingly, we find that Emil pled sufficient facts to assert a cognizable basis for his right of recovery and that he carried his burden on summary judgment that there is no genuine issue regarding those facts. Thus, Emil is entitled, as a matter of law, to the granting of his motion for summary judgment, and we therefore reject this assignment of error.

CONCLUSION

Accordingly, we affirm the summary judgment and, in so ruling, assess all costs of this appeal to the appellants, Sandra Milam Howard and Dennis Raymond Howard.

AFFIRMED.