
IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI,
ex rel. Jay Nixon, Attorney General,)
Plaintiff-Appellee,)
vs.)
LORNE BASS,) **Nº SC89666**
Defendant,)
and)
HANRAHAN TRAPP, P.C.,)
Intervenor-Appellant.)

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY
THE HONORABLE RICHARD G. CALLAHAN, CIRCUIT JUDGE

ON TRANSFER FROM THE MISSOURI COURT OF APPEALS, Nº WD68662

APPELLANT'S SUBSTITUTE REPLY BRIEF

Respectfully submitted,

HANRAHAN TRAPP, P.C.

by: WILLIAM P. NACY, MBE #52576
522 E. Capitol Ave.
Jefferson City, MO 65101
Telephone (573) 635-0282
Facsimile (573) 556-6340
pete.nacy@hanrahantrapp.com
Appellant

CONTENTS

	<u>Page</u>
AUTHORITIES	ii
REPLY ARGUMENT	1
As to Plaintiff's Point I	1
As to Plaintiff's Point II	4
CONCLUSION	5
CERTIFICATE OF COMPLIANCE	6
CERTIFICATE OF SERVICE	7

AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Greater K.C. Baptist & Community Hosp. Ass'n, Inc., v. Businessmen's Assurance Co.</i> , 585 S.W.2d 118 (Mo. App. W.D. 1979)	1, 2
<i>State ex rel. Nixon v. Karpierz</i> , 105 S.W.3d 487 (Mo. 2003)	3
<u>Statutes (Mo. Rev. Stat.)</u>	
§ 217.837	3

REPLY ARGUMENT

I. As to Plaintiff's Point I.

In this Court, Plaintiff reiterates *verbatim* the very argument which he made at summary judgment and which had long-ago been rejected by the Missouri Court of Appeals, namely that the authorization Bass signed on April 13, 2006, "merely authorizes the release of funds for a specific purpose." (Pl. br. 7). See Greater K.C. Baptist & Community Hosp. Ass'n, Inc., v. Businessmen's Assurance Co., 585 S.W.2d 118, 119 (Mo. App. W.D. 1979) (authorization signed by insured for payment to be made to hospital found a clearly valid assignment of insurance money to hospital). We will not re-argue this issue herein beyond addressing Plaintiff's apparent assertion that Greater K.C. Baptist is inapposite. (Pl. br. 10).

Plaintiff's reasoning in this regard is fraught with what appears to be an intentional misrepresentation as to what the court in Greater K.C. Baptist held; namely, that it allegedly holds that "an assignment, no matter how poorly worded, gives the assignee the authority to maintain an action for retrieval of those funds, citing Greater K.C. Baptist at 119. (Pl. br. 10). First, an "assignment" is the legal effect of completing an act of intentionally transferring something to another. Second, Greater K.C. Baptist holds nothing of the sort for which Plaintiff argues, but in fact holds that language clearly evidencing an intent to assign "will be sufficient to vest the property therein in the assignee." Id. Bass' authorization plainly assigned the funds effective April 13, 2006. (L.F. 45; 47, ¶ 9). Bass plainly had divested himself of all interest in the funds because the language of the assignment reserves

all of the funds for us and nothing for him. (*Id.*). The court in Greater K.C. Baptist held that virtually identical language comprised an assignment sufficient to divest the owner thereof of all interest in the property. *Id.* at 119. Bass' statement in the authorization speaks for itself, as does the opinion in Greater K.C. Baptist.

Plaintiff is mistaken by arguing that Bass made only a "contingent" assignment by allegedly not having yet hired us at the time of the assignment. (Pl. br. 8). This argument is belied by the record. In fact, it is clear that Bass hired us on April 7, 2006. (L.F. 37, ¶ 6). It is also clear that Bass made the assignment on April 13, 2006. (L.F. 38, ¶ 9). Both of these facts are actually undisputed facts which Plaintiff does not deny in his brief. This is just as well because Plaintiff failed to controvert them and admitted that Bass signed the authorization, and affirmatively relied on Bass' affidavit which states that Bass signed it on April 13, 2006. (Appx. A7; Appx. A9, ¶ 9; L.F. 38, ¶ 9; L.F. 47, ¶ 9; L.F. 53, ¶ 4; L.F. 70, ¶ 9).

Plaintiff argues that he had a priority over the funds superior to ours at the time he filed his petition. (Pl. br. 9). Plaintiff is again mistaken. Section § 217.837.4 provides, in pertinent part, that "[t]he State's right to recover the cost of incarceration *pursuant to an order issued pursuant to the provisions of section 217.835* shall have priority" Mo. Rev. Stat. 217.837.4 (emphasis added). The statute would clearly grant Plaintiff such a priority only *after* he obtained a judgment on his petition. (Pl. br. 9). At the time Plaintiff first made this argument, the judgment at issue had yet to be entered. Now, the case is before this Court on appeal to decide whether the judgment is erroneous. Until this Court's decision is issued, Plaintiff will

continue to have no more priority to the funds than us.

As at the summary-judgment stage, Plaintiff misapprehended this Court's decision in State ex rel. Nixon v. Karpierz, 105 S.W.3d 487 (Mo. 2003).¹ (Pl. br. 10). Here, as in Karpierz, the funds were indeed the result of our efforts because, but for our negotiations with the State to secure Bass' testimony, the forfeiture action would have gone forward and the funds would not have been available to Plaintiff. Unfortunately for Plaintiff, the funds remain unavailable because Bass had assigned them to us prior to Plaintiff filing his petition.

We refer the Court to our argument in its opening brief regarding the other issues addressed in Plaintiff's brief on this point. Based on the foregoing and on our argument in our opening brief, Plaintiff cannot establish the essential element of his claim that the funds at issue belonged to Bass at the time Plaintiff filed his petition without evidence regarding how much of the money we earned prior to Plaintiff filing his petition.

II. As to Plaintiff's Point II.

Plaintiff mis-states the substance of Appellant's argument regarding whether it may have earned the entirety of its fee by claiming that we are now arguing that we in fact earned the same. (Pl. br. 12). In our opening brief, we argued against the grant of summary judgment because there was no evidence that we had not earned it

¹ For at least the third time during this litigation, Plaintiff has ascribed Karpierz to the Missouri Court of Appeals rather than this Court, despite having the benefit of this error being brought to his attention each time.

such that it was not clear that Bass was entitled to any of it. (App. op. br. 21 (Point II)). This issue was not advanced by anyone until the Court of Appeals brought it up and decided it against us without any evidence to support the same. This issue was a substantial basis on which we argued for transfer to this Court, and presumably the Court considered it when granting transfer and intends to address it in deciding this matter. Based on the record, the Court should address it and remand the matter to the circuit court for the development of evidence thereof.

CONCLUSION

As a matter of law, Plaintiff was not entitled to judgment where the funds at issue were not indisputedly an asset belonging to or due Bass at the time Plaintiff where we may have earned the entirety thereof prior to Plaintiff filing his petition. Based on the foregoing, the Court should reverse the circuit court and remand this case for the development of evidence regarding how much of the money at issue we earned prior to the filing of the MIRA petition.

Respectfully submitted,

HANRAHAN TRAPP, P.C.

by:

WILLIAM P. NACY, MBE #52576
522 E. Capitol Ave.
Jefferson City, MO 65101
Telephone (573) 635-0282
Facsimile (573) 556-6340
pete.nacy@hanrahantrapp.com

Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with Mo. Ct. R. 84.06(c) in that:

1. It contains 1,084 words, as calculated by the undersigned's word-processing program;
2. A copy of this brief is on the attached 3½-inch diskette; and that
3. The diskette has been scanned for viruses by the undersigned's anti-virus program and is free from any virus.

WILLIAM P. NACY

CERTIFICATE OF SERVICE

I hereby certify that I did, on February 4, 2009, forward true copies of the foregoing brief, as required, by 1st class U.S. mail, postage prepaid, to:

Jay Nixon, Attorney General
Paul Harper, Asst. A.G.
P.O. Box 899
Jefferson City, MO 65102
paul.harper@ago.mo.gov

Plaintiff

Lorne Bass, #1143300
Boonville Correctional Center
1216 E. Morgan St.
Boonville, MO 65233-1300

Defendant

WILLIAM P. NACY