

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHRISTOPHER A. WRIGHT

RESPONDENT,

v.

**BARTIMUS FRICKLETON
ROBERTSON & GORNY PC, ET AL.,**

RESPONDENT;

THE HERSHEWE LAW FIRM

APPELLANT.

DOCKET NUMBER WD72614

DATE: September 20, 2011

Appeal From:

Jackson County Circuit Court
The Honorable Ann Mesle, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Christopher Wright, Respondent Pro Se.

Susan Ford Robertson and J. Zachary Bickel, Kansas City, MO, for appellant The Hershewe Law Firm.

James P. Frickleton and Kip Robertson, Leawood, KS, for respondent Bartimus, Frickleton, Robertson & Gorney, P.C.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Jackson County

Before Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

The Hershewe Law Firm appeals from the trial court's grant of summary judgment in favor of Bartimus, Frickleton, Robertson & Gorney. The trial court ruled that a declaratory judgment action addressing an attorney's lien asserted by the Hershewe Law Firm was barred by the doctrine of res judicata because the validity and amount of the Hershewe Law Firm's lien had already been determined in the personal injury action where the lien arose. The Hershewe Law Firm contends that the trial court erred because the Hershewe Law Firm was not a party to the personal injury action, there is no identity of parties between the personal injury action and the declaratory judgment action, and the court in the personal injury action lacked personal jurisdiction over the Hershewe Law Firm.

Reversed.

Division Two holds:

(1) A collateral attack on a judgment is appropriate when the judgment in question is void.

(2) Attorneys may affirmatively submit themselves to the personal jurisdiction of a court in an original proceeding for the purpose of having an attorney's lien determined by mere motion or other affirmative filing with the court. The Hershewe Law Firm had not undertaken to enforce its lien by either recognized means.

(3) There is no authority that suggests that an attorney's unfiled assertion to be made part of a settlement approval process is sufficient, standing alone, to constitute the attorney's entry of appearance in a case or a binding undertaking to litigate in court. Thus, the Hershewe Law Firm's unfiled written demand for notice of the settlement hearing was not an affirmative filing in the original proceeding sufficient to submit it to the personal jurisdiction of the court, or to bind it to an election to have its lien determined in the personal injury action.

(4) A court cannot enter a final, conclusive judgment determining an attorney's lien based solely on a motion filed by the client or another party unless the attorney asserting the lien

voluntarily appears in response to the motion, or unless the attorney has affirmatively filed a motion or document with the court constituting the attorney's election to have its lien determined.

(5) A statute requiring approval of a settlement and of the payment of attorney's fees from the settlement res affords a court the power to determine such matters, but does not supplant the need to gain personal jurisdiction over any attorney asserting a lien in the settlement res as a condition of determining that lien in a final and binding manner.

(6) The trial court erred in entering summary judgment on the declaratory judgment action on the basis that said action was barred by res judicata because the court in the personal injury action which had earlier determined the attorney's lien lacked personal jurisdiction over the Hershewe Law Firm rendering that judgment void, and thus subject to collateral attack in the declaratory judgment action.

Opinion by Cynthia L. Martin, Judge

September 20, 2011

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