974 N.E.2d 1167

82 Mass.App.Ct. 1113
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Wayne L. SACCHETTI [1]
v.
Kenneth SACCHETTI.

No. 10–P–2200.
|
Sept. 24, 2012.

By the Court (MILLS, BROWN & SIKORA, JJ.).

MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

***1** Following an eleven-day jury-waived trial, a judge of the Superior Court found that the defendant, Kenneth Sacchetti, breached his fiduciary duty to his father, Evo Sacchetti, defrauded Evo, [2] converted some of Evo's assets, and caused Evo to convey assets to him contrary to Evo's wishes. The judge ordered Kenneth, individually and as trustee of the K.J. Sacchetti Trust dated December 24, 1992, to reconvey title to Evo's home in Milton to Evo and also to convey certain bank and brokerage accounts to Evo. Both parties appeal from the judgment. Evo appeals from the denial of his motion to make additional findings and to amend the judgment, and Kenneth appeals from the denial of his motion for a new trial or to alter or amend the judgment. Evo claims that the judgment failed to require Kenneth to account for certain withdrawals he made from an account adjudicated to belong to Evo, and Kenneth claims that the statute of limitation had expired on some of Evo's claims and that the judge erred in concluding that Kenneth was not the owner of certain funds. We affirm in part and reverse in part. *Background.* We refer the parties to the judge's detailed recitation of the facts and only briefly restate those necessary for our discussion. Evo and his wife, Ethylynn (Lynn), had three children, Kenneth, Wayne, and Ronald. Wayne and Ronald worked with their parents in family businesses, including a card and gift shop originally opened by Lynn and Evo, and in additional stores opened by Lynn, Wayne, and Ronald. Wayne and Ronald had ownership interests in the corporation formed to open the additional stores. Kenneth worked as a teacher from 1974 through 1981 and then as an employee in one of the family stores from 1982–1988. He has not been employed since 1988. Notwithstanding his absence from the workforce, he claims ownership of property and joint accounts with Evo with rights of survivorship amounting to some $4,000,000.

Both Lynn and Evo relied on Kenneth for financial and investment advice. The judge found that Kenneth was considered the most knowledgeable person in the family about matters of finance, taxes, and property, at least in part because he told Evo and others that he worked for the Internal Revenue Service.

During her lifetime, so far as it appears from the record, Lynn handled most of her and Evo's finances. According to Kenneth, at his advice, she put his name as a joint tenant on some of her accounts in an effort to avoid probate. Lynn died in December of 1989. Thereafter, Kenneth claimed ownership of Lynn's joint accounts but later promised to transfer them to Evo. Kenneth assumed control of Evo's finances because, the judge, found Kenneth "engendered in Evo a false sense that Ken was reliable, knowledgeable and could be counted on in financial matters."

Evo suffered a stroke in 2008, and although mentally intact, required nursing home care thereafter to meet his physical needs. During the course of determining whether Evo qualified for Medicaid coverage of nursing home care, Kenneth claimed ownership of certain accounts he held jointly with his father and/or had held jointly with his mother, along with a fifty percent interest in the family home in Milton as a joint tenant with Evo with rights of survivor. Evo commenced this action against Kenneth for breach of fiduciary duty and other torts for manipulating Evo's assets for Kenneth's own benefit over a twenty year period.

***2** *Kenneth's appeal.* The judge found that in 1991 and 1996, when Kenneth sold properties in Florida that had been funded entirely by Evo and Lynn, Kenneth wrongfully retained all of the proceeds of one of the sales and fifty percent of the proceeds of the other sale. Relying on his own bald assertions that Evo knew that he had kept the proceeds of the sales, Kenneth argues the statute of limitation had long since expired before this action was commenced in 2008. Kenneth does not argue that there was no fiduciary relationship between

him and his father with regard to these sales. "[A] cause of action [arising out of a breach of trust or fiduciary duty] does not accrue until the trustee repudiates the trust *and* the beneficiary has actual knowledge of that repudiation." *Demoulas v. Demoulas Super Mkts., Inc.*, 424 Mass. 501, 518 (1997). The judge was not required to believe Kenneth's naked assertions that Evo knew of Kenneth's breach of fiduciary duty. There was no error, therefore, in the judge's conclusion that the statute of limitation did not begin to run until 2008, after Evo had suffered a stroke and his family and financial experts began to review his assets and discovered Kenneth's wrongdoing.

Kenneth argues further that the judge erred in concluding that Evo's name was on the deed to "Kenneth's" Florida condominium and, therefore, the judge's conclusion that Evo was entitled to the proceeds of that sale is clearly erroneous. Kenneth has not included the purchase deed in the record, and relies only on the deed from him to new buyers to support his argument that Evo's name was never on the deed. In the absence of documentary evidence, the judge was not obliged to believe Kenneth's assertions. But even if Evo's name was never on the deed, the evidence permits the reasonable inference that it was Lynn's, or Lynn's and Evo's, money that was used to purchase Kenneth's condominium, and the judge could properly reject Kenneth's contention that a gift to him was intended .[3] We discern no error in the judge's conclusion that the proceeds of the sale belong to Evo.

With regard to the Wachovia account ending in 7540, which the judge ordered Kenneth to convey to Evo, Kenneth concedes that he was handling his father's finances and promised Evo, shortly after Lynn's death in 1989, that he would retitle that account to Evo. Kenneth contends, however, that it was unreasonable for Evo to rely on his assurances because (i) Kenneth had initially asserted the fund belonged to him, (ii) Kenneth later refused to give Evo a copy of his trust, and (iii) at some point, Kenneth refused to allow Evo to open his mail. Although Kenneth contends that "Evo learned directly from Kenneth that he had no intention of ever transferring the Wachovia ... account," the record citations for that proposition are unrelated to any conversation Kenneth had with Evo. Evo clearly trusted Kenneth to do what he said he would do, and nothing in the record suggests that Evo ever learned before 2008 that Kenneth had failed to do so. We discern no error.

***3** Finally, Kenneth contends that the judge erred in concluding that the Wachovia account ending in 7500, held in the name of Kenneth and Evo as joint tenants, was funded by Evo, and ordering Kenneth to return the $114,000 that he had withdrawn from the account on June 25, 2008. Kenneth testified that he went to the nursing home and obtained his father's signature on a transfer slip for this account following a June 19, 2008, meeting where it became apparent that Evo did not agree with Kenneth's understanding as to Kenneth's ownership of the Milton home and other assets. Kenneth, who bore the burden of proving that he did not breach his fiduciary duty to Evo by this transaction, see *Cleary v. Cleary*, 427 Mass. 286, 294–295 (1998), relies only on his own testimony that he provided the funds for this account. A number of factors led the judge to doubt Kenneth's testimony that he funded the 7500 account with his savings from his teaching position, including that he also testified that his teaching savings funded other accounts and $50,000 to purchase a Florida condominium. An adverse inference could be drawn from the timing of the transfer as well. The judge's decision that the account belongs to Evo is the direct result of credibility determinations and the reasonable inferences drawn therefrom, which we see no reason to disturb on appeal.

Evo's appeal. The judge concluded that the Wachovia account ending in 7540 had been funded with Lynn's and Evo's money and ordered Kenneth to transfer the account to Evo. Evo points out, however, that Kenneth made over $1.1 million in withdrawals from that account between September, 2001, and September, 2008. The record reflects that Kenneth concedes that he made these withdrawals and deposited the funds into other accounts, including a withdrawal in the amount of $989,000 on September 1, 2001, which he ultimately deposited into his Weymouth Bank account ending in 8081. While it may be true, as the judge found, that not all of the funds in the Weymouth Bank account derive from Evo's funds, that is irrelevant. Given the finding that Wachovia account ending in 7540 belongs to Evo, Kenneth's concession that he made over $1.1 million in withdrawals from that account, and his failure to demonstrate that the monies were provided to or used for Evo's benefit, Kenneth must return the withdrawn funds to Evo. It was not incumbent on Evo to prove that all of the funds in the Weymouth Bank account belong to him, though that account is a source from which Kenneth may repay the funds he withdrew.

Conclusion. The order denying the plaintiff's motion to amend the findings and judgment is reversed. The judgment shall be amended to include an award to the plaintiff of the monies withdrawn by the defendant from the Wachovia account ending in 7540, and any interest that may be due thereon, and the matter is remanded for further proceedings consistent with this memorandum and order. The judgment is otherwise affirmed. The order denying the defendant's motion for a new trial is affirmed.

***4** *So ordered.*

All Citations

82 Mass.App.Ct. 1113, 974 N.E.2d 1167 (Table), 2012 WL 4325566

Footnotes

1 Wayne L. Sacchetti, in his capacity as temporary special administrator of the estate of Evo J. Sacchetti. Evo died during the course of this appeal and the appeal was allowed to proceed with Wayne as temporary special administrator. For clarity, we continue to refer to the plaintiff as Evo.

2 We use first names because multiple family members have the same surname.

3 While conceding that $100,000 of the purchase price came from his mother, Kenneth argues that the full purchase price was $150,000, and he provided $50,000 of his own funds. Again, Kenneth fails to provide any documentary evidence to support his assertions, and the judge was not required to believe his assertions.