
IN THE COURT OF APPEALS OF THE STATE OF KANSAS

SHELBY DEVELOPMENT, LLC, a)	
Missouri limited liability company,)	
)	
Plaintiff/Appellant,)	Appellate Court Case No. 22-125299-A
)	Appeal from the District Court of
v.)	Shawnee County Case No. 2019-CV-
)	000845
SHAWNEE COUNTY, KANSAS, <i>et</i>)	The Honorable Thomas G. Luedke,
<i>al.</i> ,)	Judge
)	
Defendants/Appellees.)	

APPELLANT'S REPLY BRIEF

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I. Shelby’s claim of damages survives summary judgment.

Appellees incorrectly assert that Shelby Development, LLC (“Shelby”) “concedes” the stipulated valuation and therefore cannot prove damages. The very basis of the claims asserted is that the stipulated value was the product of the County’s actively hiding vital information which led to the stipulation, an inflated value, and damages described in Plaintiff’s Petition.

A. The summary judgment standard of review requires no genuine issue of material fact to grant summary judgment which was clearly not met.

Appellees concede Shelby is not required to prove its damages at the summary judgment stage, and then assert that merely stating that Shelby has not suffered damages is sufficient for the District Court to grant summary judgment on the matter by arguing they cannot prove the absence of a fact. As pointed out in Shelby’s Brief, Appellees never even questioned Christopher Payne regarding damages in the matter, despite taking his deposition. Likewise, Appellees never deposed Shelby’s expert witness who concluded that Chris Williams’ valuations appeared to be the result of undue influence, with the change of methodology on the fourth iteration of his valuation being wholly unexplainable. Likewise, Payne was never questioned as to his belief of the value of the property at issue in the litigation, despite his being competent to testify as to the same. As such, the absence of damages could be proven by Appellees if they would have asked Payne questions regarding valuation and if Payne had answered consistent with the stipulation. That did not occur. Furthermore, Appellees’ arguments completely ignore Williams’ own statements, because Williams informed Payne that the valuation of \$10.4 Million was “not

his number,” and informed Payne that it was the County who pushed him to elevate his number. These three (3) categories of evidence clearly negate the District Court’s findings in summary judgment and illustrate the District Court’s attempt to shift the burden at this stage in the litigation to Shelby, improperly.

B. Williams’ statements are highly relevant and do illustrate the existence of damages.

In continuing to set up straw houses to knock down, Appellees argue that even if true, Williams’ statements do not illustrate damage. That is patently untrue, as illustrated in the hearing transcript (Tr. 57:7–61:3). The stipulated value is improper because it was based off of the Appellees’ intentional inflation of the only appraisal provided to Shelby. According to the evidence in the record, that sum is nearly double the initial valuation placed by Williams on the property. If the Appellees had not forced an increase in valuation nor hid the initial valuations until after the stipulation had reached and the nefarious conduct discovered, the stipulation would have never been entered.

II. Shelby did not fail to exhaust its administrative remedy because the withholding of essential evidence precludes an adequate remedy.

Appellees argue that they get to skirt procedural requirements by not stating affirmative defenses in their pleadings and that they properly withheld essential evidence until reaping the benefits, while in the same section argue Shelby is precluded from bringing this cause of action. The District Court agreed with Appellees that they did not violate KORA in withholding the documents, making the documents wholly undiscoverable in the course of the BOTA action—making the assertion that Shelby could litigate those issues in the BOTA action impossible. It is important to reiterate the

exception held in *Beshears*, “the law recognizes certain exceptions to the exhaustion doctrine. If no administrative remedy is available or if it is inadequate to address the problem at issue, exhaustion is not required.” *Colorado Interstate Gas Co. v. Beshears*, 18 Kan. App. 2d 814 (1993) (internal quotations omitted). “Where, there are no issues raised to which lend themselves to administrative determination and only issues present ... require judicial determination ..., it follows that plaintiffs should be permitted to seek court relief without first presenting the case to the administrative agency.” *Id.* The facts of this case and the claims asserted herein cannot be redressed before BOTA.

III. Shelby’s claims are not barred by res judicata.

Shelby’s claims are not barred by the doctrine of res judicata because its claims were not, nor could they have been, raised before BOTA, because these claims are not within BOTA’s purview. Appellees fail to point to any law which asserts BOTA had the expanded authority in which to hear the claims before the District Court. *Beshears* does not support the position asserted by Appellees because the issues asserted in this cause of action are different than those of valuation or assessment issues. And, furthermore, those issues could not have been raised, because the facts giving rise to those claims were, as Appellees assert, properly withheld from Shelby. Appellees are literally arguing that they can prevent the discovery of facts and information giving rise to a claim, and then preclude future claims at a later date when they “voluntarily” release the information giving rise to the claims.

Appellees attempt to expand the concept of *res judicata* through cross application between district courts using *Beshears*. The only interrelation between *Beshears* and a district court is that *Beshears*’ BOTA dismissal was appealed to the District Court. Here,

there is no such interrelation. Rather, “[r]es judicata precludes a second administrative proceeding when the first administrative proceeding provides the procedural protections similar to court proceedings with an agency is acting in a judicial capacity.” *Winston v. State Dept. of Soc. & Rehab. Services*, 274 Kan. 396, 413, 49 P.3d 1274, 1285 (2002). *In re Tax Application of Fleet*, 293 Kan. 768, 779, 272 P.3d 583 (2012) illustrates how the withholding of information can defeat a *res judicata* defense. In *Fleet*, the County sought to appeal to the District Court a second BOTA appeal on the same valuation. *Fleet* specifically found there was no “claim the owners withheld relevant details or acted in a misleading or deceptive manner with either BOTA or the County.” *Id.* at 770. Here, there is abundant evidence illustrating the withholding of information and the County acting in a deceptive manner.

Shelby’s claims could not have been raised before the BOTA during the prior appeal because they were not known to Shelby. Appellees continue to assert that the information was available because the existence of a prior draft appraisal was known, yet they say the withholding of the information was proper. Appellees cannot have it both ways—either it was available for discovery or it was properly withheld. The District Court’s determination regarding the stipulated value and that the challenge to the process related to the stipulated value are separate and distinct is incorrect. Shelby is not arguing that it did not agree to the value—it is the argument that Shelby was misled and deceived in reaching the stipulated value.

IV. Shelby did not waive its claims.

In order to waive a claim a party must know that a claim exists and intends to relinquish that claim. Both Appellee and the District Court's positions rely on the false premise that Shelby had adequate information to assert the challenges it does in this action—that Shelby had knowledge of the prior draft appraisal. There is no dispute that information regarding the prior appraisal was withheld. Appellees take the position that their withholding of the information was proper under the law, admitting that Shelby had no real access to the withheld information. Moreover, additional subsequent information from Williams brought light to the falsity of the appraisals themselves. This information would not have been discoverable in the course of the BOTA action because, as Appellees have already identified, they properly withheld similar information from Shelby. Shelby has lost the argument that the appraisals should have been provided in the initial KORA requests and through the course of discovery. The ultimate discovery of that information after the call between Williams and Payne illustrates that there was, at the very least, a genuine issue of material fact as to whether the waiver was knowingly and voluntarily relinquished.

A deposition of *Acord v. Porter*, 58 Kan.App.2d 747, 769, 474 P.3d 665, 684 (2020). The only “disclosed” opinion was the valuation at \$10.4 Million. Any other opinion, including draft opinions, would have been not have been disclosed, not subject to questioning, and there would have been no foundation for the questioning, as the other report had been hidden. Likewise, conversations between the County and Williams would have also been protected under K.S.A. § 60-226(b)(5) limiting the discovery of such

information. The District Court's determinations that the County did not violate KORA by failing to provide the draft documents and information related to Williams' retention as an expert witness, and then arguing on behalf of the County that Shelby should have received the information sufficient to make a valid challenge in Williams' deposition defies logic. The District Court has allowed the County to withhold documents without punishment, and then benefit from the withholding of those documents by excluding Shelby's cause of action.

V. Breach of Contract.

Shelby's claim for breach of contract survives summary judgment. Appellees make three arguments in their Brief. First, that there was no breach because Shelby cannot show the appraisal of \$10.4 Million was inaccurate and Shelby cannot justifiably rely on the appraisal. Second, that Shelby can prove no damages for the same reasons as addressed above. And, in compliance with the Kansas Rules of Appellate Procedure and the Local Rules, the latter will not be addressed because it has been previously addressed above.

The record is replete with evidence regarding the inaccuracy of the appraisal, even if the District Court and Appellees do not believe it to be true. Williams' statements to Payne show that the appraisal amounts varied wildly, and each and every time Williams certified those appraisals were true and accurate. Remarkably, the appraisals jump millions of dollars after five-minute telephone conversations between Williams, Steve Bauman and Stacy Berry—without any explanation as to what caused that effect whatsoever. Williams alters his method of valuation on the fifth appraisal without explanation. Williams cannot recall any details about the appraisal and what processes he used. Williams cannot negate

that he told Payne that the County kept pushing him for higher and higher numbers and that the appraisal was not “his number.” All of this is before Shelby’s expert disclosure shows that Williams’ appraisal appears to be the product of undue influence. These are facts to be weighed by a jury, the factfinder, and certainly overcome summary judgment.

Appellees hid the information that would have allowed Shelby to beat back the appraisal and then argue it could not have relied on that information because it was challenged. The challenge and the resulting compromise was premised off of a good faith statement by the County Appraiser’s Office, whose mission statement is to provide uniform, fair, and equitable appraisals in compliance with the laws and guidelines of the state of Kansas and within uniform standards of appraisal practices. The County utilized Williams final, inflated appraisal to issue its valuation. As such, when the County Appraiser’s office places its approval on an appraisal, a property owner who is a citizen of that County has a most definite right to rely on them performing their functions in compliance with Kansas law, the USPAP, and their own mission statement. To argue that the challenge of a valuation negates the ability to rely on such a statement ultimately frees a governmental officeholder of all wrongdoing, including that of an intentional nature, is abhorrent. Providing a challenge to a statutory valuation does not result in a no holds barred matchup favoring a governmental entity which can then use the statutes it is sworn to uphold as cover for hiding information. “That a person is held to a representation made or a position assumed, where otherwise inequitable consequences would result to another who, having the right to do so under all of the circumstances of the case, has, in good faith, relied thereon. Such an estoppel is founded on morality and justice.” *Cramer v.*

Wohlgemuth, 195 Kan. 622, 625, 408 P.2d 644, 647 (1965). Williams' appraisal contains certifications, attestations, and statements of its truth and accuracy. The County Appraiser's office, in adopting that appraisal and in compliance with state statute, has certified that the real property was actually appraised at fair market value, the value thereof to be determined by the appraiser from actual view and inspection of the property. *K.S.A. § 79-501*. Here, Shelby had every right to rely on the accuracy of the \$10.4 Million appraisal, because all of the information that would have actually been able to allow it to negate that appraisal was hidden.

VI. Breach of the Duty of Good Faith and Fair Dealing.

The District Court based its granting of summary judgment on the Breach of the Duty of Good Faith and Fair Dealing on the premise that there was no breach of contract and they are tied together in analysis. Because the District Court erred in entering summary judgment on the breach of contract claim, that error extends to the judgment on the breach of the duty of good faith and fair dealing.

VII. Fraud, Fraud in the Inducement, and Negligent Misrepresentation.

Appellees argue that these claims are deficient because (1) the assertions were not "false;" (2) Shelby did not rely on those representations because it disagreed with them in filing its BOTA appeal; and (3) that Shelby was not damaged. Items 2 and 3 have been previously briefed and will not be reiterated herein. The first, however, is a new assertion which cannot hold water. The evidence in the record shows, at least from a summary judgment standpoint, the \$10.4 Million appraisal wrecks of undue influence. As addressed above, the changes to the appraisals and Williams' own statements to Payne illustrate that

the appraisal was ultimately false. And, if Appellees had not hidden that information in the course of the BOTA litigation, this matter would not have been even before this Court.

VIII. Civil Conspiracy.

Appellees take the position that the Civil Conspiracy claim fails for three reasons: (1) lack of an unlawful act; (2) lack of damages; and (3) the claim is barred by the intra-corporate conspiracy doctrine. The District Court ruled only that the claim failed for lack of showing damages—a matter briefed. Appellees then provide no further analysis on the two matters which it raises.

IX. Constitutional Claims.

Appellees again argue that Shelby agrees or is “satisfied” with the stipulated value—which is untrue and unsupported by the record and, in fact, directly contradicted in the record. In order for adequate due process to have existed, Shelby essentially had to have a fair shot to have challenged Williams, an impossible challenge when Berry and Bauman had no recollection of the conversations or of the values associated with the one prior valuation. And then the years-long battle of whether or not the information was subject to disclosure, with the County coming out victorious—there is no sound basis to assert that Shelby had an adequately protected right to process. What Appellees are effectively arguing is that they can rig the process, lie, cheat, and steal, and there is no recourse to recover damages from the County, and that is not the law. Then, to add insult to injury, Appellees rub the hidden facts in Shelby’s face.

Berry and Bauman are not entitled to judgment as a matter of law, because the facts of this case are clear that there are statutes governing the conduct of the appraisers, for

which they were acutely aware. They violated those statutes—but most importantly, they did so in a manner that was intentional and wanton. They manipulated an appraiser to increase the value of Heartland Park, continued to push him to raise the value of the property higher and higher, and then took actions to intimidate him after the truth was outed, and finally took actions to cover up their clear and unequivocal violations of state law. Bauman understood his obligations and authority granted to him by statute—that is why he believed he had the authority to hire Williams in the first place.

X. The property damage claim survives.

Again, Appellees give the District Court more credit than due. The District Court’s decision was based solely on the element of damages, a matter already briefed.

XI. CONCLUSION

When viewing the record in the light most favorable to Shelby, drawing inferences from the evidence in favor of Shelby Development, LLC, and removing the District Court’s weighing of said facts, it is clear that genuine issues of material fact exist in this case and that the District Court’s Memorandum Decision and Order should be reversed, and the matter remanded to the District Court for a trial on all counts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above was served as indicated below on this 21st day of February, 2023, to:

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