

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOVETTA WILSON, Administratrix : CIVIL ACTION
of the Estate of Harlan Wilson, Jr., :
EVANDER WILSON, and HARLENE :
BRICKUS :
 :
v. :
 :
CHESTER COUNTY PRISON, :
CORRECTIONAL OFFICER MURPHY, :
CORRECTIONAL OFFICER JOHN DOE :
EMSA CORRECTIONAL CARE :
DIVISION : NO. 98-1755

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

September 28, 1998

Plaintiff is the Administratrix of the Estate of Harlan Wilson, Jr., who died while incarcerated at the Chester County Prison, located at West Chester, Pennsylvania. Plaintiff has alleged that defendants, who are officials at Chester County Prison, were deliberately indifferent to the medical needs of Mr. Wilson and this nonfeasance caused Mr. Wilson's death. Plaintiff further claims that defendant EMSA Correctional Care Division ("EMSA"), which provided medical services to the inmates at the prison, was negligent in providing medical care to Mr. Wilson.

EMSA answered the complaint and asserted a counterclaim alleging that plaintiff's action is barred because allegedly EMSA and plaintiff entered into a settlement agreement on September 26, 1997, whereby EMSA agreed to pay plaintiff \$50,000 in settlement of all claims she has alleged against EMSA in this action.

The parties consented to this Magistrate Judge deciding the counterclaim in a nonjury trial. A trial on the counterclaim was held on September 8, 1998. Pursuant to Fed. R. Civ. P. 52, the court makes the following Findings of Fact and Conclusions of Law¹:

FINDINGS OF FACT

1. Harlan Wilson, Jr. died on or about December 6, 1996 while incarcerated at Chester County Prison.

2. In approximately January, 1997, plaintiffs were represented by G. Hampton Brown, Esquire.

3. Thereafter, plaintiffs engaged Gregg L. Zeff, Esquire, of Frost & Zeff, to represent them with respect to the possibility of bringing legal action against the defendants.

4. Frost & Zeff were retained on a contingent fee basis.

5. All of plaintiffs' communications were with Mr. Zeff; plaintiffs never spoke to his partner, Mark B. Frost, Esquire.

6. Mr. Frost conducted all of the negotiations with EMSA.

7. On September 26, 1997, Mr. Zeff called plaintiff Dovetta Wilson on the telephone and informed Ms. Wilson that EMSA had made a settlement offer of \$50,000. During this telephone call, Ms. Wilson rejected EMSA's settlement offer as too low. Mr. Zeff told plaintiff to think about the settlement offer and to call him back.

8. Ms. Wilson called Mr. Zeff later that same day and initially told him that she would accept the offer. Mr. Zeff then stated that he wanted to place some of the settlement

¹ The parties did not order the notes of testimony therefore the court is relying on its recollection of the testimony.

monies in escrow to fund the litigation against the remaining defendants. Ms. Wilson hesitated, told Mr. Zeff that she had a problem with the situation, and asked him to wait until she thought about it some more. Ms. Wilson told Mr. Zeff that she would call him back.

9. After this conversation, Mr. Zeff informed Mr. Frost that he had authority to accept EMSA's settlement offer. Mr. Frost accepted EMSA's settlement offer on September 26, 1997.

10. Ms. Wilson called Mr. Zeff several more times that day and left messages for him to return her call.

11. When Mr. Zeff returned Ms. Wilson's telephone call, she informed Mr. Zeff that she would not accept EMSA's settlement offer. Since that day, September 26, 1997, was a Friday, Mr. Zeff told Ms. Wilson to think about it over the weekend and he would call her on the following Monday.

12. Mr. Zeff made several attempts to call Ms. Wilson on Monday, September 29, 1997, but was unable to reach her.

13. By letter dated October 7, 1997, Mr. Zeff urged Ms. Wilson to accept EMSA's settlement offer. (Stip. Ex. F.) This letter corroborates Ms. Wilson's testimony that she did not authorize Mr. Zeff to accept EMSA's settlement offer on September 26, 1997. Mr. Zeff does not state in this letter that Ms. Wilson had previously accepted the settlement offer.

14. At some point thereafter, but prior to October 9, 1997, Mr. Frost informed EMSA's counsel, Jacqueline Carolan, Esquire, by telephone that he was having a problem with his client and the settlement.

15. Notwithstanding this telephone conversation, Ms. Carolan sent Mr. Frost a letter dated October 9, 1997, confirming his client's acceptance of the settlement offer, and stating that a release was being sent under separate cover. (Stipulations for Trial on the Counterclaim ("Stip.") Ex. A.)

16. By letter dated October 10, 1997, Ms. Carolan sent Mr. Frost a "Full and Complete Joint Tortfeasor Release" for his client's signature as part of the settlement. (Stip. Ex. B.)

17. A check in the amount of \$50,000 was made payable to Ms. Wilson and Mr. Frost and dated October 29, 1997. (Stip. Ex. C.) The check was not cashed and promptly returned.

18. By letter dated December 4, 1997, Mr. Frost informed Ms. Carolan that Frost & Zeff no longer represented plaintiffs, and that Adrian J. Moody, Esquire, was plaintiffs' new counsel. (Stip. Ex. D.) In this letter, Mr. Frost also stated that "we have agreed on a settlement of \$50,000.00 against EMSA only". Id.

19. By letter dated December 11, 1997, Mr. Moody informed Ms. Carolan that Ms. Wilson did not agree to a settlement of \$50,000. (Stip. Ex. E.)

CONCLUSIONS OF LAW

1. "A strong public policy exists in favor of settlements." Edwards v. Born, 792 F.2d 387, 390 (3d Cir. 1986). In determining whether a settlement has occurred, state law governs. Tierman v. DeVoe, 923 F.2d 1024, 1032-33 (3d Cir. 1991).

2. As a general rule, "[t]he law in [Pennsylvania] is quite clear that an attorney must have express authority to settle a cause of action of the client." Rothman v.

Fillette, 503 Pa. 259, 264, 469 A.2d 543, 545 (1983) (citing cases). See also Tiernan, 923 F.2d at 1033 (“Express authority empowers an attorney to settle a client’s claim; it does not arise merely from the fact of representation, but must be the result of explicit instructions regarding settlement.”); Newton v. Supermarkets General Corp., 1989 WL 144104, at *2 (E.D. Pa. Nov. 29, 1989) (“Pennsylvania law quite clearly requires an attorney to have express authority from a client before he can consummate a binding settlement agreement.”)²

3. This court finds that Frost & Zeff did not have express authority to settle plaintiffs’ claim against EMSA by accepting EMSA’s \$50,000 settlement offer. Ms. Wilson credibly testified that she rejected EMSA’s settlement offer during her first telephone conversation with Mr. Zeff on or about September 26, 1997. She initially accepted the offer during her second telephone conversation with Mr. Zeff on or about September 26, 1997, but again rejected the offer at the end of that telephone conversation.

4. Mr. Zeff’s letter dated October 7, 1997, urging Ms. Wilson to accept EMSA’s settlement offer, corroborates Ms. Wilson’s testimony that she did not authorize Mr. Zeff to accept EMSA’s settlement offer on September 26, 1997. (Stip. Ex. F.) Mr. Zeff stated, in pertinent part, as follows:

As you know from our conversations, I highly recommended that you accept this partial settlement in this matter. . . . You have indicated to me that Fifty

² There is some confusion as to whether implied or apparent authority might also suffice to enforce a settlement agreement. See Tiernan, 923 F.2d at 1035; Farris v. J.C. Penney Co., 2 F.Supp.2d 695 (E.D. Pa. 1998). Implied authority “is the result of a principal’s [the client’s] conduct toward his agent [the attorney].” Tiernan, 923 F.2d at 1034. Apparent authority “has as its source the client’s conduct toward another party in the litigation.” Id. The parties concede that apparent authority is not an issue in this case. Moreover, this court finds, after considering all of the circumstances in this case, that Frost & Zeff did not have implied authority to settle plaintiffs’ case against EMSA by accepting the \$50,000 settlement offer.

Thousand Dollars (\$50,000.00) is just not enough money to settle a portion of your case. You have also indicated that you want this firm to request the sum of One Hundred Thousand Dollars (\$100,000.00). As I stated to you, our initial demand was One Hundred Thousand Dollars (\$100,000.00) which was rejected. . . . I will be glad to again ask for One Hundred Thousand Dollars (\$100,000.00) from the health service providers but believe there is virtually no chance of getting another Fifty Thousand Dollars (\$50,000.00).

Id.

5. EMSA's reliance on Rothman v. Fillette, *supra*, is misplaced. The issue in Rothman was which of two innocent parties should bear the loss after the attorney for plaintiff forged his client's signature on a release and settlement check and absconded with the money. In Rothman, the defendant would have suffered an irreparable loss had the court discarded the settlement agreement. "[I]n cases where there is fraud, and where the defrauded party bears a loss, no express authority is necessary." Tiernan, 923 F.2d at 1035.

6. In this case, there is no allegation that plaintiffs' attorney defrauded EMSA, and EMSA has no tenable claim for loss. Consequently, Rothman is inapplicable. *See* Tiernan, 923 F.2d at 1035-36; and Newton, 1989 WL 144104, at *3-4 (both distinguishing Rothman and finding that the holding in Rothman is limited to cases where there is fraud and the defrauded party suffers a loss.)

7. There have been no allegations that witnesses or other evidence have disappeared, and no settlement proceeds have been irretrievably forwarded. Counsel for EMSA took some steps to finalize the alleged settlement, including drafting her October 9, 1997 letter and the release sent to Mr. Frost by letter dated October 10, 1997. It appears, however, that these steps were taken after Mr. Frost notified Ms. Carolan that he was having difficulty with his client and the settlement. Regardless, these steps were minimal.

8. Since Ms. Wilson did not expressly authorize Mr. Zeff or Mr. Frost to settle her case against EMSA, this court cannot enforce the alleged settlement between plaintiffs and EMSA.

9. “The policy in favor of voluntary settlement of legal claims is not so strong as to deprive a party of [her] day in court if [she] insists upon having it because of a purported settlement which [she] never authorized and by which the opposing party has not been prejudiced.” Newton, 1989 WL 144104, at *3.

For all the above reasons, judgment will be entered in favor of plaintiff and against EMSA on EMSA’s counterclaim. An appropriate order follows.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

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JUDGMENT ORDER

AND NOW, this 28th day of September, 1998, upon consideration of the counterclaim of EMSA Correctional Care Division, and all pleadings relating thereto, and after a hearing on September 8, 1998, it is

ORDERED

that judgment is hereby entered in favor of plaintiffs and against defendant EMSA Correctional Care Division on all claims asserted in EMSA Correctional Care Division's counterclaim.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge