

VERMONT SUPERIOR COURT
RUTLAND UNIT
CIVIL DIVISION

DAVID BENT,
Plaintiff

v.

DIANE BENT, et al.,
Defendants

FILED

AUG 18 2020

VERMONT SUPERIOR COURT
RUTLAND

Docket No. 168-4-20 Rdcv

RULING ON PLAINTIFF'S MOTION TO DISQUALIFY COUNSEL

This is a declaratory judgment action to determine the enforceability of a final stipulation for divorce. At issue is the ownership of premises at 81 Terounzo Road in Pittsford, Vermont. The premises were owned by the Defendant Diane Bent and her late husband as tenants by the entirety. She claims that she automatically became the sole owner of the premises upon her husband's death. However, Diane and her husband were in the midst of a divorce at the time he died, and just prior to his death she had entered into a stipulation in the divorce action in which she agreed that he would be awarded sole ownership of the premises. David Bent claims that, by virtue of the divorce stipulation, his father was the sole owner of the premises at the time of his death and that he inherited the premises from his father upon his death. Therefore, he contends that he owns the premises.

Presently before the court is David's motion to disqualify Diane's attorney, Peter F. Langrock, Esq., from continuing to represent Diane in this case. David contends that Attorney Langrock has a conflict of interest that precludes him from continuing to represent Diane in this dispute because other attorneys in Langrock's law firm are currently representing Ms. Dawn Hill,

his live-in girlfriend, who would also be evicted from the premises, along with her young children, if Diane prevails in this case.¹ Diane opposes the motion.

The court held a hearing and took evidence on the motion on August 11, 2020. Based upon the exhibits that were admitted into evidence, Ms. Hill's testimony, and the factual stipulations of the parties, the court makes the following findings, conclusions and orders.

Peter F. Langrock, Esq. is a member of the law firm Langrock Sperry & Wool, LLP, with offices in Middlebury and Burlington, Vermont. Other members of the firm include Emily J. Joselson, Esq. and James W. Swift, Esq.

In October of 2016, Attorney Joselson agreed to represent Ms. Dawn Hill and her two children as a result of injuries they sustained in an automobile collision that occurred on October 22, 2016 (Exhibits 7 and 8). Attorney Joselson also undertook to represent Ms. Hill in obtaining Probate Court appointment as the financial guardian of her two children with respect to any settlement they might obtain in the case (Exhibits 3 and 4).²

The 2016 accident was the fault of a Ms. Jamie Segarra, who was insured by GEICO. Attorney Joselson demanded that GEICO tender its \$100,000 limit of auto liability coverage to Ms. Hill, in full settlement of her personal injury claim against Segarra, and GEICO agreed to do so (Exhibits 7 and 9). On April 29, 2019, Attorney Swift sent Ms. Hill an accounting of the funds that Langrock Sperry & Wool, LLP had received from GEICO (Id.). All the proceeds of the settlement have been distributed, except possibly for the \$5,000 that was held in escrow to cover

¹ In addition, David contends that Ms. Hill will be a witness at the trial of this matter and that Attorney Langrock must also be disqualified because he cannot cross-examine his firm's own client. The court does not need to address this issue, however, because Attorney Langrock has acknowledged that, if Ms. Hill is called to testify in this matter, an outside attorney, independent from Langrock's firm, will be hired to cross-examine her.

² The guardianship proceedings in Probate Court were closed on March 12, 2018,

a medical payment lien claimed by Allstate Insurance Company, which was Ms. Hill's UIM carrier (Id.).

On May 13, 2019, Attorney Swift sent Allstate a letter making a settlement demand of \$75,000 on behalf of Ms. Hill under her UIM coverage (Exhibit 10). Allstate rejected the demand, so on August 15, 2019, Attorney Joselson filed a law suit against Allstate on Ms. Hill's behalf (Exhibit 1). The lawsuit was removed to federal court and was resolved in October of 2019.

In July of 2019, David's father's will was filed with the Probate Court. On September 27, 2019, Attorney Langrock entered his appearance in the Probate Court proceeding as counsel for Diane. At that point in time, Attorney Langrock understood that Diane, his client, had a conflict with David, her son. There is no evidence, however, that Langrock knew at that time that Ms. Hill resided with David or that his partners (Attorneys Joselson and Swift) were representing Ms. Hill in a personal injury action.

In the meantime, Ms. Jamie Segarra, the tortfeasor, was charged with a number of criminal offenses in connection with the October 2016 accident (Exhibit 2). On November 21, 2019, Segarra pled guilty to driving under the influence and negligent operation of a motor vehicle with serious injury resulting, and a sentencing hearing was scheduled for June 17, 2020 (Id.). Attorney Joselson assisted Ms. Hill, apparently as a favor and without a fee, in the drafting of a victim impact statement to be submitted in connection with the sentencing hearing (Exhibits 5 and 6). In addition, Attorney Joselson, also without a fee, conferred with Ms. Hill and the victim advocate at the state's attorney's office about attempting to obtain an order from the criminal court requiring Segarra to pay restitution to Ms. Hill (Id.). Attorney Joselson did not enter an appearance in the criminal case (Id.). The sentencing hearing took place on June 17, 2020; but no restitution was ordered.

Ms. Hill and her children have lived with David at the 81 Terounzo Road premises in Pittsford since April of 2019. On February 2, 2020, Attorney Langrock commenced an action on Diane's behalf in this court seeking to eject David from the premises. By that time, Ms. Hill's personal injury claims arising out of the October 2016 motor vehicle accident had been fully resolved, except possibly for the final distribution of the \$5,000 of funds escrowed for Allstate's med pay lien.

The Vermont Rules of Professional Conduct provide that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest" unless "each affected client gives informed consent, confirmed in writing." *Id.* Rule 1.7(a) and (b)(4). Under the Rule, "[a] concurrent conflict of interest exists if ... the representation of one client will be directly adverse to another client...." *Id.* 1.7(a)(1). Thus, "absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represent in some other matter, even when the matters are wholly unrelated." Comment 6 to Rule 1.7. Moreover, "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule[] 1.7...." *Id.* Rule 1.10(a).

As noted earlier, David contends that Attorney Langrock has a concurrent conflict of interest because Ms. Hill is has been, and continue to be represented by his partners (i.e., Attorneys Joselson and Swift) in another matter (i.e, Ms. Hill's personal injury claim), and because Ms. Hill will be adversely affected (i.e, evicted) if Langrock's client (Diane Bent) prevails in these cases. David's contention is not supported by the facts as found by the court.

While it is true that Ms. Hill will be adversely affected if Attorney Langrock's client prevails in these cases, it is not true that Attorney Langrock has a "concurrent conflict" with Ms. Hill. Ms. Hill is no longer a client of Attorney Langrock's firm. Her personal injury matter was

finally resolved in October of 2019, months before the first of these suits was even filed. Moreover, there is no evidence that Attorney Langrock knew that Ms. Hill resided with David when the ejectment suit was filed; indeed, the Complaint that Attorney Langrock filed on behalf of Diane in the ejectment case did not even name Ms. Hill as a party. Because Attorney Langrock does not have a concurrent conflict with Ms. Hill, he does not need her consent to continue representing Diane Bent in this case. Therefore, disqualification under Rule 1.7 is not warranted.

At the hearing on this motion, Ms. Hill testified that it is her belief that Attorney Joselson continues to represent her in connection with her personal injury claim because: she is not sure that all the funds in the above-mentioned escrow account have been fully distributed; Attorney Joselson “represented” her in the criminal case as recently as June of 2020; and she is not sure whether it may still be possible to pursue a further recovery from the tortfeasor. For several reasons, this testimony does not provide a persuasive basis for disqualifying Attorney Langrock.

It is undisputed that Ms. Hill’s personal injury claim was fully resolved as of October 2019. It is highly unlikely that an escrow account created in April of 2019, to cover a med pay lien then asserted by Allstate, would still exist today (16 months later); Allstate’s med pay lien would almost certainly have been resolved by October of 2019, when Ms. Hill closed on her final settlement with Allstate. It is also highly unlikely that Ms. Hill could recover anything further from the tortfeasor at this point in time; GEICO most certainly would have insisted that Ms. Hill sign a release of all further claims against Ms. Segarra, before paying over its \$100,000 coverage limits. Lastly, the fact that Attorney Joselson, apparently as a favor and without a fee, agreed in June of 2020 to help Ms. Hill draft a victim impact statement in the hope of receiving restitution in the criminal case, is not sufficient to justify disqualifying Attorney Langrock from continuing to represent Diane Bent in these cases. The decision whether to disqualify an attorney is a matter

within the discretion of the court, and, in the exercise of its discretion, the court “must be solicitous of a client’s right freely to chose his counsel and mindful that client may suffer loss of time and money in finding new counsel, as well as benefit of counsel’s familiarity with case.” In re Bruyette, 2014 VT 33, ¶¶ 34, 37), 196 Vt. 261 (citation and internal quotation marks omitted).

For the foregoing reasons, David Bent’s Motion to Disqualify Counsel is *denied*.

SO ORDERED this 13th day of August, 2020.



Robert A. Mello, Superior Judge