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Intervention by Attorney to Deny Fraud: Dodd v. Reese

NOTES AND COMMENTS

INTERVENTION BY ATTORNEY TO DENY FRAUD

Dodd v. Reese

In this case, the plaintiff sued to set aside an adoption order alleging fraud by Dodd, the attorney in the adoption proceeding. Dodd's petition to intervene as defendant to deny fraud by him was denied by the trial court. Held, reversed. Dodd may intervene.[1]

The Indiana code expressly limits intervention to actions for recovery of real and personal property,[2] but it is construed as applicable to all actions on the theory that the court's power in this matter is not limited by statute.[3] The situation is, therefore, that while Indiana has a restrictive statute, the results are in accord with those of jurisdictions with liberal statutes and with what is considered the better view.[4] It is the spirit of the code to let anyone intervene who alleges an interest in the subject matter of the action so that he may protect whatever right he may have.[5] An unreasonable delay after knowledge of the pending suit will, however, justify the court to refuse intervention if no excuse is shown and intervener is not a necessary party.[6]

The situations in which an attorney may intervene in his client's action are limited. There can be no intervention to protect a contingent fee when a client in good faith and without any intent of depriving the attorney of his fees, compromises a suit before judgment; but where the litigants fraudulently and collusively attempt to deprive an attorney of his fees he may intervene and prosecute the action to final judgment in his own behalf and recover compensation.[7] Exceptions are made

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[1] Dodd v. Reese, 24 N. E. (2d) 995 (Ind. 1940).

[2] Burns Ind. Stat. Anno. (1933) §2-222. Intervention by Creditors, §3-534.

[3] Zumbro v. Parnin, 141 Ind. 430, 40 N. E. 1058 (1895); Larue v. American Diesel Engine Co., 176 Ind. 609, 96 N. E. 772 (1911); Gavit, *The New Federal Rules and Indiana Procedure* (1938) 13 Ind. L. J. 239.

[4] CLARK, CODE PLEADING (1938) 287. Indiana cases have permitted intervention in drainage proceedings [Zumbro v. Parnin, 141 Ind. 430, 40 N. E. 1085 (1895)], mortgage foreclosure [Larue v. American Diesel Engine Co., 176 Ind. 609, 98 N.E. 772 (1911)], levee construction [Northern Indiana Land Co. v. Brown, 182 Ind. 438, 106 N. E. 706 (1914)], actions to quiet title [Knots v. Tuxbury, 69 Ind. App. 248, 117 N. E. 282 (1919)], suits to recover insurance [Kirschbaum v. Hanover Fire Ins. Co., 16 Ind. App. 606, 45 N. E. 1113 (1897)], and receiverships [Thayer v. Kinder, 45 Ind. App. 111, 89 N. E. 408 (1909)].

[5] Northern Ind. Land Co. v. Brown, 182 Ind. 438, 106 N. E. 106 (1914); Roszell v. Roszell, 105 Ind. 77, 4 N. E. 423 (1885); Kirschbaum v. Hanover Ins. Co., 16 Ind. App. 606, 45 N. E. 1113 (1897).

[6] Forsythe v. American Maize Products Co., 59 Ind. App. 634, 108 N. E. 622 (1915); Pottlitzer v. Citizens Trust Co., 60 Ind. App. 45, 108 N. E. 36 (1915).

[7] Miedrich v. Rank, 40 Ind. App. 393, 82 N. E. 117 (1907). See Note (1930) 67 A.L.R. 442.

to the latter rule in divorce and separation cases in order that no barrier exist to a reunion of the parties.[8]

An attorney may intervene to recover compensation from a fund in court[9] or to enforce a lien by summary proceedings in the client's actions,[10] but no cases have been found, nor were any cited by the court, which present the exact issue of the principal case. As a practical matter the issue is related to the tort of defamation because words harming a plaintiff in his profession are actionable per se for which the tort-feasor is liable in damages.[11] Should the adoption order be set aside for fraud there would clearly be irreparable damage to intervener's valuable reputation for which the remedy at law is inadequate since statements otherwise actionable are absolutely privileged when made in pleadings filed in judicial proceedings.[12] Permission to appear as an amicus curiae is also an inadequate remedy because the attorney could neither except to nor appeal from adverse rulings. Intervention will neither cause unreasonable delay nor uncertainty and any multiplicity of suits is thereby prevented. The court should be commended not only for reaching a satisfactory result in this case but also for furthering the liberal interpretation of statutes generally.

POWER OF STATE COURT TO RESTRAIN SUIT IN ANOTHER STATE

Pitcairn v. Drummond

Receivers of the Wabash Railway under appointment of the Federal District Court of Missouri sued in Indiana to enjoin defendant from maintaining an action against them in Illinois under the Federal Employers Liability Act to recover for personal injuries occurring in the operation of trains in Indiana. Held, injunction denied. Indiana courts have no jurisdiction to control the setus of actions against federal receivers.[1]

State courts have power to restrain citizens of the state, or other persons within the control of their process, from prosecuting suits in other states or in foreign countries when the prosecution of such suits

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[8] Note (1925) 45 A.L.R. 941.

[9] Phillips v. Edsall, 127 Ill. 535, 20 N. E. 801 (1896); Kellogg v. Winchell, 273 Fed. 745 (1921).

[10] Weicher v. Cargill, 86 Minn. 271, 90 N. W. 402 (1902); Myers v. Miller, 134 Neb. 824, 279 N. W. 778 (1938); Byram v. Miner, 47 F.(2d) 112 (C.C.A. 8, 1931).

[11] HARPER, LAW OF TORTS (1933) Sec. 241.

[12] HARPER, LAW OF TORTS (1933) Sec. 248.

[1] Pitcairn v. Drummond, 23 N. E. (2d) 21 (Ind. 1939).