

Affirmed in Part, Reversed and Remanded in Part, and Opinion filed December 14, 2000.



In The

Fourteenth Court of Appeals

NO. 14-00-00080-CV

THERESA BARNAS, Appellant

V.

**HISTORIC CROCKETT MANAGEMENT COMPANY, INC.
and FREDERICK ZLOTUCHA, Appellees**

**On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 98-40088**

OPINION

Theresa Barnas appeals the dismissal of her lawsuit for want of jurisdiction on the grounds that her claims against Frederick Zlotucha and Historic Crockett Management Company, Inc. (“Historic Crockett”) were for legal malpractice and breach of contract, respectively, rather than enforcement of a judgment. We affirm in part and reverse and remand in part.

Background

Prior to this lawsuit, a judgment (the “prior judgment”) was entered in the 131st District Court of Bexar County in a wrongful death action filed by Barnas and others against Historic

Crockett (the “prior lawsuit”). Zlotucha was Barnas’s attorney in that lawsuit. In the present case, Barnas sued Historic Crockett in the 269th District Court of Harris County for specific performance or, alternatively, breach of contract, anticipatory breach of contract, and fraudulent concealment. Barnas also sued Zlotucha for fraudulent concealment and inducement, breach of fiduciary duty, and deceptive trade practices in connection with the prior lawsuit. Historic Crockett and Zlotucha each filed a motion to dismiss for lack of jurisdiction, alleging that the present case was merely an action to enforce the prior judgment, which they argued the 131st District Court retained exclusive jurisdiction to enforce. The 269th District Court granted both motions to dismiss.

Jurisdiction over Zlotucha

Barnas’s first issue contends that the trial court had jurisdiction over her claims against Zlotucha because it was not an attempt to enforce the judgment from the prior lawsuit, but was instead a suit for legal malpractice, deceptive trade practices, and fee forfeiture. Barnas argues that the law does not require such a legal malpractice action to be filed in the same court in which the alleged malpractice occurred.

Zlotucha contends that Barnas’s claims against him should be heard in the 131st District Court because the claims are all predicated upon and intertwined with the settlement and judgment in the prior lawsuit. However, although the alleged claims against Zlotucha pertain to actions taken in the prior lawsuit, Zlotucha has cited and we have found no law that would deny the 269th District Court subject matter jurisdiction over such claims. Therefore, we sustain Barnas’s first point of error.

Jurisdiction over Historic Crockett

Barnas’s second issue contends that the trial court had jurisdiction over her claims against Historic Crockett because those claims were not an attempt to enforce the prior judgment, but were for breach of the Rule 11 settlement agreement upon which the prior

judgment was based.¹ In this regard, Barnas's fifth amended petition complains that Historic Crockett breached the settlement agreement by failing to tender a promissory note in the amount of \$270,000. However, the settlement agreement entered in the trial court's record only references a promissory note in the amount of \$900,000 payable to all of the plaintiffs in the prior lawsuit; the \$270,000 promissory note is referred to only in the judgment.² Therefore, Barnas's claims against Historic Crockett are for non-performance of the judgment, not the settlement agreement. Because Barnas does not otherwise challenge the alleged exclusive jurisdiction of the 131st District Court to enforce its judgement in the prior lawsuit, Barnas's second point of error is overruled. Accordingly, the dismissal of Barnas's claims against Historic Crockett is affirmed, and the dismissal of Barnas's claims against Zlotucha is reversed and remanded for further proceedings.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 14, 2000.

Panel consists of Justices Anderson, Hudson, and Edelman.

¹ Because Barnas does not challenge appellees' contention that an action to enforce a judgment is within the exclusive jurisdiction of the court which rendered the judgment, we do not address that contention.

² In oral argument, Barnas argued that her claims were based on a written settlement agreement, which was entered into after the oral settlement agreement was dictated into the record in the 131st District Court, but before the judgment was signed by that court. Although this written settlement agreement was attached by Historic Crockett to a partial summary judgment response in this case, which is not in issue on appeal, it was not referred to in the prior judgment, Barnas's fifth amended petition (filed in response to appellees' motion to dismiss), or Barnas's brief in this appeal. Instead, her petition and brief assert only that her breach of contract claim is based on the oral settlement agreement dictated into the court's record. Therefore, we have no basis to conclude that Barnas's claims against Historic Crockett should not have been dismissed because they were based on the alleged written settlement agreement.

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