

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cecil & Geiser, LLP formerly	:	
The Plymale Partnership, LLP,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-398
	:	(C.P.C. No. 09CVH-05-6776)
Ronald E. Plymale et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	
	:	

MEMORANDUM DECISION

Rendered on January 29, 2013

Cooper & Elliott, LLC, Rex H. Elliott and Charles H. Cooper, Jr., for appellant.

John M. Alton & Co., LPA, and John M. Alton, for appellees.

ON APPLICATION FOR RECONSIDERATION

TYACK, J.

{¶ 1} Appellant Cecil & Geiser, LLP, has filed a document entitled "Application for Reconsideration and/or En Banc Consideration."

{¶ 2} The document, treated as an application for reconsideration, asserts a conflict which does not exist between our most recent appellate decision and a prior decision of this court. Attorney Ronald Plymale may have contemplated retirement from the practice of law, but he did not actually retire. He continued to practice law in Florida and resumed the practice of law in Ohio after a hiatus.

{¶ 3} Further, the parties to the agreement about Plymale's hiatus in his Ohio practice of law did not comply with the numerous requirements for the sale of a law

practice, at least as far as can be told from the record before us. The right to use the Plymale name does not equate to the sale of a law practice.

{¶ 4} The record before us also does not indicate that Plymale & Dingus, LLC as an entity interfered with the license agreement between Ronald Plymale and the Plymale Partnership. Ronald Plymale's own actions resulted in a judgment for over \$200,000 against him. The LLP of which he eventually became a member was not a party to the license agreement and took no action separate from Plymale's own actions. No evidence in the record before us indicates that Plymale & Dingus, LLC acted with any sort of malice or otherwise met the requirement for a tortious interference with contract claims.

{¶ 5} Further, for the reasons fully explained in the trial court's opinion, the license agreement was not enforceable so as to bar an entity such as Plymale & Dingus, LLC from coming into existence and so as to prevent its members the right to pursue a practice of law. A claim for tortious interference in a contract cannot be based upon interference with an unenforceable contract.

{¶ 6} Simply put, the document filed on behalf of Cecil & Geiser, LLP does not assert a legitimate basis for reconsideration or a legitimate basis for en banc consideration. The application for reconsideration is denied.

Application for reconsideration denied.

BRYANT and SADLER, JJ., concur.
