

STATE OF VERMONT  
COUNTY OF CALEDONIA, SS.

FILED

FEB 16 1998

SOPHIE BEER and LYNETTE SHUFELT, )  
individually and as co-administrators )  
of the Estate of Merlyn Walter Bandy, )  
Plaintiffs )  
v. )  
EARL STETSON and THE VERMONT )  
AGENCY OF TRANSPORTATION, )  
Defendants. )

CALEDONIA  
SUPERIOR COURT

CALEDONIA SUPERIOR COURT  
DOCKET NO. 217-9-96 Cacv

OPINION AND ORDER

This case involves a claim for wrongful death pursuant to 14 VSA § 1492 against Defendants Earl Stetson and the Vermont Agency of Transportation. The case is currently before the Court on Defendant's, Vermont Agency of Transportation, Motion to Dismiss for Lack of Subject Matter jurisdiction pursuant to V.R.C.P. 12(b)(1).

On September 6, 1996, Plaintiffs filed a Petition to Reopen an Intestate Estate and to Reappoint Interim Administrators in order to pursue a wrongful death claim against Earl Donovan Stetson. As a result, the Probate Court appointed Plaintiffs as special co-administrators with the limited authority to institute a claim against Defendant Stetson.

Subsequently, Plaintiffs filed the instant action against Earl Stetson and the Vermont Agency of Transportation (State). Then in May, the State filed the current motion to dismiss on the grounds that Plaintiffs lacked the authority to sue under 14 VSA § 1492.

As a result, plaintiffs filed a motion under V.R.P.P. 60(b) in the Probate Court to amend their powers. On August 12, 1997, that motion was denied by the Probate Court. An appeal was taken to the Caledonia Superior Court. There, the Court affirmed the Probate Court finding that the attorney's inattention to the pleadings did not constitute excusable neglect as envisioned by V.R.P.P. 60(b). The co-administrators are therefore, left with the limited authority to sue only Earl Stetson in this wrongful death action.

14 VSA § 1492(a) requires that a wrongful death action be instituted by "the personal representative of such deceased person . . ." 14 VSA § 1492(a). Here, Plaintiffs were appointed as limited personal representatives with the authority to sue Earl Stetson only. Accordingly, they are not vested with the authority to sue the State.

ORDER

WHEREFORE, because Plaintiffs lack the authority to pursue a claim against the State of Vermont under 14 VSA § 1492(a), the State's Motion to Dismiss is GRANTED.

SO ORDERED. Dated at St. Johnsbury, Vermont this ~~10~~ 11 day of February, 1998.

CALEDONIA SUPERIOR COURT

Mary Miles Teachout

Hon. Mary Miles Teachout,  
Presiding Judge