IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs August 2, 2001

MICHAEL DICKERSON, ET AL. v. JACKIE STUART, ET AL.

Appeal from the Chancery Court for Cocke County
No. 99-101 Telford E. Forgety, Jr., Chancellor

FILED OCTOBER 19, 2001

No. E2001-00150-COA-R3-CV

The plaintiff, a prisoner in state custody, filed a complaint *pro se* seeking relief against Jackie Stuart, his wife, Gaye Stuart, and one other[1] based upon an alleged agreement to sell him real property. The trial court dismissed the complaint without a hearing for "fail[ure] to prosecute," finding that the plaintiff had refused the court's offer to present his testimony "via telephone deposition." We vacate the trial court's judgment and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and D. MICHAEL SWINEY, J., joined.

Michael L. Dickerson, Mountain City, Tennessee, *Pro Se*.

David S. Byrd, Morristown, Tennessee, for the appellees, Jackie Stuart and Gaye Stuart.

OPINION

In his complaint, the plaintiff, Michael L. Dickerson, claims that on August 29, 1995, he purchased real property from the defendants and a couple whose last name is O'Neil. He alleges he paid $60,000 for the property and received a receipt for same. There is in the record a receipt dated August 29, 1995, for $60,000, which purports to be signed by the Stuarts and the O'Neils. There is also in the record a copy of a cashier's check to those four parties for $53,284.93. That check is also

[1] The plaintiff's complaint against David B. Hill, an attorney, was dismissed on his motion with prejudice. This action by the trial court is not an issue on this appeal.

dated August 29, 1995. The check reflects the plaintiff as the remitter. Neither the check nor the receipt references a specific transaction.

In this case, the plaintiff filed three motions seeking to be transported to the court for hearings. The trial court denied each of these motions. We find no abuse of discretion in these rulings. *See* ***Logan v. Winstead***, 23 S.W.3d 297, 299 (Tenn. 2000) (holding that a prisoner litigant "has no absolute right...to be present during civil litigation").

The record in this case is sketchy regarding the proposed telephone deposition of the plaintiff. However, it is clear that the trial court gave the plaintiff an opportunity to present his testimony by deposition. It is also clear that the plaintiff refused this opportunity and objected to presenting his case in this manner.

The Supreme Court has addressed the factors to be considered by a trial court when faced with a request for delay from a prisoner. In ***Logan***, the Court opined that

> an abeyance should be granted by the trial court only when reasonable under the circumstances, in light of several countervailing considerations, such as the length of the prisoner litigant's sentence, the difficulty of the prisoner in presenting proof, the burden on the court in maintaining a docket on which such claims will indefinitely remain, the impracticability of litigating a suit many years after its filing because memories fade and witnesses become difficult to locate, and a defendant's right to have claims against him or her timely adjudicated.

Id. at 301.

Although an incarcerated plaintiff does not have an absolute right to have a civil proceeding held in abeyance or an absolute right to personally attend a court proceeding, ***id.*** at 299, there may be times when both are appropriate and necessary. These questions are within the trial court's discretion. ***Id.*** at 302.

We have generally addressed litigation by *pro se* parties as follows:

> While litigants who proceed *pro se* are entitled to fair and equal treatment, "they must follow the same procedural and substantive law as the represented party." ***Irvin v. City of Clarksville***, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). Indeed, a *pro se* litigant requires even greater attention than one represented by counsel. The trial judge must accommodate the *pro se* litigant's lack of legal knowledge without giving the *pro se* litigant an unfair advantage because the litigant represents himself. ***Id.***

Johnson v. Wade, C/A No. W1999-01651-COA-R3-CV, 2000 WL 1285331, at *1 (Tenn. Ct. App. W.S., filed September 6, 2000).

In this case, the plaintiff did not make a specific request to delay a hearing on the merits pending his release from incarceration. However, it is abundantly clear from the record that the plaintiff wants to prosecute his action. While the trial court appropriately exercised its discretion when it refused to allow the plaintiff to be transported to court, there is no indication in the record that the trial court considered delaying this matter until the plaintiff could personally prosecute his action. There is evidence in the record that the plaintiff paid the defendants and the O'Neils $60,000 in connection with some transaction at or about the time the parties were admittedly discussing the sale of real property. While the record does not clearly reflect how all of this is related, it is clear that there was a transaction of some kind among the plaintiff, the defendants, and the O'Neils. This being the situation, we think this is an appropriate case for a remand to the trial court to consider whether or not a hearing on the merits should be postponed pending the release of the plaintiff from incarceration. On remand, the court should consider the factors set forth in ***Logan***. We express no opinion as to whether a trial on the merits should be delayed. This decision is for the trial court in the first instance after a careful review of the pertinent facts.

The judgment of the trial court is hereby vacated and this case is remanded for further proceedings. Costs on appeal are taxed against the appellee.

_____
CHARLES D. SUSANO, JR., JUDGE