IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
October 1, 2002 Session

WALTER A. FARRIS, ET AL. v. WILLIAM S. TODD, ET AL.

Appeal from the Circuit Court for Sullivan County
No. C32494(L) William H. Inman, Senior Judge

FILED JANUARY 16, 2003

No. E2002-0445-COA-R3-CV

Walter A. Farris ("the client") and his brother, Gordon Farris, filed an amended complaint against the client's former attorneys, William S. Todd and Thomas D. Dossett (collectively "the Lawyers"), seeking a declaratory judgment that the plaintiffs are the "sole owners" of certain – mostly art – items, including a valuable painting entitled "The Duke of Mantua" ("the Duke of Mantua painting"). The Lawyers filed a motion for summary judgment relying upon an agreement dated June 27, 1997 ("the Agreement"), executed by the four parties to this litigation. The Lawyers contend that the ownership of the personalty in question is as indicated in the Agreement. The plaintiffs, on the other hand, argue that the Agreement is not supported by new consideration and that the Lawyers failed to advise the client, before the plaintiffs executed the Agreement, "that any claim [the Lawyers] might have against [the client] for attorney fees had long since expired pursuant to the statute of limitations." The trial court granted the Lawyers summary judgment, finding that the Agreement "is valid, binding and enforceable among all parties hereto, in all respects, in accord, satisfaction and settlement of all claims existing between the parties." The plaintiffs appeal, contending that the trial court erred in granting the Lawyers summary judgment. We affirm.

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

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS and D. MICHAEL SWINEY, JJ., joined.

Larry Clayton Vaughan, Knoxville, Tennessee, and Emmit F. Yeary, Abingdon, Virginia, for the appellants, Walter A. Farris and Gordon R. Farris.

Thomas L. Kilday and Thomas J. Garland, Greeneville, Tennessee, for the appellees, William S. Todd and Thomas D. Dosset, individually and doing business as Todd & Dosset, P.C.

OPINION

I.

The core facts of the dealings between the plaintiffs and the Lawyers are essentially undisputed. These facts, as set forth in an earlier opinion of this Court,[1] are as follows:

> Over a period of 25 years, William S. Todd and Thomas D. Dossett represented Walter Farris in various legal matters. Walter Farris signed an "Acknowledgment of Fee" document in 1970 and 1977. In the 1970 "Acknowledgment of Fee" document, Walter Farris agreed that Todd and Dossett's legal fees would be 25% of the value of the items recovered by their legal representation. In the 1977 "Acknowledgment of Fee" document, Walter Farris reaffirmed the legal fees owed to Todd and Dossett for various representation. In 1983 and 1987, Walter Farris assigned and sold a total of 50% interest in the "Duke of Mantua" painting to Todd and Dossett. On June 27, 1997, Walter Farris, Gordon Farris,[2] William S. Todd and Thomas D. Dossett entered into an agreement. The [A]greement distributed certain works of art among the parties, except for the "Duke of Mantua" painting, and purported to be a "complete and final settlement of all matters between the parties." The [A]greement stated that each party owned 25% of the "Duke of Mantua" painting, but Mr. Todd would have the exclusive right and authority to sell the "Duke of Mantua" painting pursuant to irrevocable powers of attorney executed by the other parties simultaneously with the [A]greement.

Farris v. Todd, No. E1999-1574-COA-R3-CV, 2000 WL 528408, at *1, 2000 Tenn. App. LEXIS 284, at *2-*3 (Tenn. Ct. App. E.S., filed May 3, 2000). The record in the instant case reflects that the Lawyers' initial understanding with the client was that their fee would be contingent upon success and that the fee would be 25% of the value of any of the art items that they were ultimately able to recover for him. As a result of their efforts, the client secured the return of what is described in the record as more than a room full of "manuscripts, paintings and other art objects."

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[1] In the earlier appeal, we affirmed the trial court's judgment in part, holding that the plaintiffs' tort claims in the original complaint were barred by the one-year statute of limitations. *See* Tenn. Code Ann. § 28-3-104(a)(2) (2000). However, we vacated the judgment in part and remanded the case to the trial court based upon our determination that the lower court had erred in denying the plaintiffs' motion to amend their complaint to seek a declaratory judgment regarding the ownership rights of the parties in the art alluded to in the complaint. On remand, the trial court, following oral argument, filed its memorandum opinion and entered a judgment, granting the Lawyers summary judgment.

[2] As previously indicated, Gordon Farris is the brother of the client. His involvement is based upon the fact that the client, at some point prior to the execution of the Agreement, conveyed half of his interest in the Duke of Mantua painting to his brother.

II.

In seeking summary judgment, the Lawyers contended below, and contend now, that they and the plaintiffs entered into the Agreement by executing same as a comprehensive, universal settlement of all matters between them. A copy of that document is attached as an appendix to this opinion. The preamble to the Agreement recites that the parties' agreement is "in consideration of the exchange and delivery of items hereinafter set forth."

The Agreement recites that the plaintiffs will "pick up" specified pieces of personalty, which were then in the possession of one or both of the Lawyers. It goes on to provide that the Lawyers will retain other items of personal property, being oil paintings and a deed signed by Thomas Jefferson. The Agreement further recites that when the plaintiffs pick up the items alluded to in the Agreement, the plaintiff Gordon R. Farris will deliver to defendant Todd certain paperwork pertaining to the Duke of Mantua painting. The Agreement then provides as follows:

> All of the parties agree that the delivery of the items hereinabove set forth shall constitute a complete and final settlement of all matters between the parties, including but not limited to, sums owed for attorney fees, services and reimbursements of expenses owed by [the client] to [the Lawyers], except for the painting "The Duke of Mantua", which is owned jointly by all of the parties, that is, twenty-five percent (25%) of said painting belonging to each [of the four parties to this litigation].

In the Agreement, the parties further contracted that the plaintiffs and the defendant Dossett "will execute and deliver" to the defendant Todd "Irrevocable Powers[3] of Attorney" to facilitate the sale of the Duke of Mantua painting. The Agreement concludes by reciting that the client "promises and agrees to deliver to Veda H. Dossett..., the two Queen Anne chairs which he took to sell for her;" and that if he fails to do so, he will pay Ms. Dossett $5,000 with interest from the date of the Agreement. The client also agreed to pay back to Ms. Dossett $2,500 that he borrowed from her, again with interest, and agreed that she would have a lien on one of the paintings to secure the payment of the loan.

The plaintiffs contend that the Agreement is invalid and/or unenforceable. In response to the Lawyers' filings, the plaintiffs filed the affidavit of the client. They attempt to create disputed issues of material facts by the following under-oath statements[4] in the affidavit:

* * *

[3]The Agreement apparently contemplates that each will sign his own separate Power.

[4]While there were other statements in the affidavit, the ones set forth in this opinion are the only ones that added anything new to the facts before the trial court and now before us.

> ...no legal work was performed on my behalf by [the Lawyers] since 1987.
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> * * *
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> In June, 1997, [the Lawyers] drew up a paper which they asked me, my brother Gordon, and them to sign. This paper was allegedly to take care of any attorney fees I owed to them. They did not advise me that any claim they might have against me for attorney fees had long since expired pursuant to the statute of limitations in Tennessee. Any contractual relationship I may have had with them for work they performed for me had been over ten (10) years. Both of these attorneys have practiced over 40 years and were totally competent and aware that I no longer legally owed them anything. Notwithstanding that, they told me nothing but fraudulently induced me into signing a document giving away my valuable property rights.
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> The actions of Todd & Dossett in June 1997 in not telling me that I did not have a legal obligation to them anymore and convincing me to sign this paper was fraud on their part, either expressed fraud or fraud by silence. These fraudulent acts and conduct by Todd & Dossett occurred less than one (1) year prior to my filing a COMPLAINT against them.

(Capitalization in original; numbering in original omitted).

The plaintiffs argue that they have made out genuine issues of material fact that are germane to their contentions, said contentions being that there was no "new" consideration for their promises and undertakings in the Agreement and that the Lawyers failed to advise them that the Lawyers' claim for attorney's fees was barred by the statute of limitations.

The trial court concluded that the contract, on its face, reflects consideration. The court noted that while the affiant claimed not to have understood earlier documents presented to him by the Lawyers,[5] he did not state that he did not understand the Agreement. The court opined that the client's assertion that he was fraudulently induced to sign the Agreement was "conclusory and of no probative value." Finding that the affidavit does not have the legal effect of creating a genuine issue

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[5]This portion of the client's affidavit provides as follows:

> At various times, Todd & Dossett had furnished legal documents to me, requesting that I sign same, which documents I did not really understand. The wording was either too complicated or too vague for me to comprehend everything given to me to sign by Todd & Dossett. I do not believe they even understood everything that was given to me to be signed.

of material fact, the trial court found the Agreement to be a complete bar to the plaintiffs' suit and granted the Lawyers summary judgment.

III.

Since we are dealing in this case with a grant of summary judgment, we are called upon to decide anew "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. We "must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence." ***Byrd v. Hall***, 847 S.W.2d 208, 210-11 (Tenn. 1993). Since a motion for summary judgment presents a pure question of law, our review is de novo with no presumption of correctness as to the trial court's judgment. ***Whitaker v. Whirlpool Corp.***, 32 S.W.3d 222, 228 (Tenn. Ct. App. 2000).

In ***Byrd***, the Supreme Court discussed what constitutes a *material* fact:

> A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed. Therefore, when confronted with a disputed fact, the court must examine the elements of the claim or defense at issue in the motion to determine whether the resolution of that fact will effect the disposition of any of those claims or defenses. By this process, courts and litigants can ascertain which issues are dispositive of the case, thus rendering other disputed facts immaterial.

Byrd, 847 S.W.2d at 215. In order to prevail on a request for summary judgment,

> the party seeking summary judgment must carry the burden of persuading the court that no genuine and material factual issues exist and that it is, therefore, entitled to judgment as a matter of law. Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery materials, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth *specific facts* showing that there is a genuine issue of material fact for trial.

Id. at 211 (emphasis in original) (citations omitted).

IV.

Under the summary judgment genre, we initially focus on the movants' filings, particularly the Agreement, its purpose, and the intent of the parties as expressed in that document. "In 'resolving disputes concerning contract interpretation, our task is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the contractual language.'" ***Planters Gin Co. v. Federal Compress & Warehouse Co.***, 78 S.W.3d 885, 889-90 (Tenn. 2002) (quoting ***Guiliano v. Cleo, Inc.***, 995 S.W.2d 88, 95 (Tenn. 1999)). We hold the Agreement, on its face, reflects in clear terms that it was intended as a "complete and final settlement of all matters between the parties." The clear purpose of that document is to set forth what steps are to be taken by each of the parties in "the exchange and delivery" of the items of personalty mentioned in the Agreement and to recite other ancillary undertakings of the parties. For the most part, the items of personalty mentioned in the Agreement – notably the Duke of Mantua painting – are the same items of which the plaintiffs seek a declaration, by way of their amended complaint, that they are the "sole owners." The plaintiffs, through their attorney, conceded at trial that if the Agreement is valid and enforceable, they are not entitled to the declaration sought in the amended complaint, *i.e.*, that they are the "sole owners" of the property.

We hold that the Agreement, if left unchallenged, is a complete bar to the plaintiffs' amended complaint in that it shows, *on its face,* that the plaintiffs are *not* the "sole owners" of the subject personalty and hence *not* entitled to the relief sought in the amended complaint. The Agreement, again on its face, shows that *no* declaration by the court is necessary; the Agreement is a declaration in itself – one that is stated in clear and unmistakable language. The ownership of the subject personalty is as stated in the Agreement. It is undisputed that each of the parties signed the Agreement. The plaintiffs do not claim that they were prevented from reading what they assented to by virtue of their signatures.

The Lawyers have shown that they are entitled to summary judgment. This places the onus on the plaintiffs to show that there is a genuine issue of material fact rendering a grant of summary judgment inappropriate. ***Byrd***, 847 S.W.2d 215. We now turn to the plaintiffs' contentions and, more importantly, the *facts* that they have put in front of us to make out their position that summary judgment is not proper.

V.

A.

The plaintiffs contend that the Agreement fails for lack of consideration. They correctly point out that, generally speaking, consideration is required for a binding contract. ***Campbell v. Matlock***, 749 S.W.2d 748, 751 (Tenn. Ct. App. 1987). They contend, in so many words, that, in the Agreement, they have contracted to pay attorney's fees for legal work performed by the Lawyers that pre-dates the execution of the Agreement by some ten years. They argue this is *past*

consideration and cannot support their present promises and undertakings. *See* ***Gilman v. Kibler***, 24 Tenn. (5 Hum.) 19, 24 (1844).

The plaintiffs' quasi-syllogistic argument starts with the premise that the Lawyers had not provided any legal services to them during the ten-year period immediately preceding the execution of the Agreement. As we have noted, this fact is established by the client's affidavit and, in this summary judgment analysis, must be accepted by us as true. ***Byrd***, 847 S.W.2d at 215. The plaintiffs next point out that the Agreement provides that among the matters settled by its terms are the "sums owed for attorney fees, services and reimbursement of expenses owed by [the client] to [the Lawyers],...." The plaintiffs conclude from this, and urge us to hold, that the Agreement's validity, as far as the plaintiffs' undertakings and promises are concerned, is based upon the Lawyers' release of their claim for fees for legal services performed some ten years prior to the execution of the Agreement. If this be the case, so the plaintiffs argue, they are not bound to perform under that document because there was *new* consideration supporting their contractual commitments.

The language of the Agreement belies the plaintiffs' contention. The Agreement states that it is "for and in consideration of the exchange and delivery of items hereinafter set forth." It further recites that it "shall constitute a complete and final settlement of all matters between the parties." While the Agreement alludes to "attorney fees" among the matters settled, it is much broader than that. It clearly aims to settle "*all* matters between the parties." (Emphasis added). The plaintiffs' assertion that the Lawyers' past legal services is the consideration for the Agreement is simply not correct. On the contrary, as pointed out by the trial court, the Agreement recites specific *new* consideration to be provided to the plaintiffs. The Agreement provides that "[the plaintiffs] shall pickup from the residence of [the defendant Todd,]...all of the prints and engravings in drawers on the third floor of said residence...." The Agreement goes on to identify other items of personalty the plaintiffs are to receive from the Lawyers. A few additional items are acknowledged as the plaintiffs' property by a writing added to the Agreement and initialed by the parties. The language of the Agreement clearly indicates that the plaintiffs did receive consideration as stated in the Agreement for their promises and undertakings in that document. "'Consideration may be either a benefit to the promisor or a detriment to or obligation upon the promisee.'" ***Galleria Assoc., L.P. v. Mogk,*** 34 S.W.3d 874, 876 (Tenn. Ct. App. 2000) (quoting 7 Tenn. Jur. *Contracts* § 28 (1997)). We hold that the plaintiffs' arguments with respect to the issue of consideration and the facts presented in support of them are not sufficient to blunt the material filed by the Lawyers in support of their request for summary judgment. Contrary to the plaintiffs' assertion, the question of what the Lawyers were to receive as a fee for their successful efforts on behalf of the client had been addressed by the affected parties in numerous documents over a number of years predating the execution of the Agreement. The "exchange and delivery" embodied in the Agreement was the final step in a process that had extended over a long period of time.

B.

The clients also seek to invalidate the Agreement by the client's verified statement that the plaintiffs' execution of that document was induced by the fraud of the Lawyers in failing to advise

them that their "claim" for attorney fees was barred by the applicable statute of limitations. We respectfully disagree with the trial court's statement that the client's "testimony that he was fraudulently induced to sign the Agreement is conclusory and of no probative value." On the contrary, we hold that the plaintiffs' assertion of fraudulent inducement is facially supported by the client's affidavit testimony that the Lawyers failed to advise the plaintiffs that their claim for attorney's fees was legally barred. For this reason, we will further explore this aspect of the plaintiffs' case.

Assuming, without deciding, that the Lawyers owed the plaintiffs a duty to inform them that any debt related to legal fees was no longer enforceable when the Agreement was executed, that failure to advise, even if true, as we must assume it is at this stage of the proceedings, is not material to this litigation. As ***Byrd*** instructs, a factual dispute is only material if it is dispositive regarding an element of a claim or defense at issue. In the present case, the plaintiffs argue that the existence of a duty to disclose and the failure to honor that duty are material to determining ownership of the personalty. The plaintiffs contend that because, in their view, the Agreement is related to the settlement of legal fees, the Lawyers had a duty to inform the client that a debt associated with those legal fees was no longer enforceable because of the statute of limitations. However, as previously noted, the Lawyers' attempt to rebuff the amended complaint is not based on their entitlement to fees but rather on the fact that there is in existence a comprehensive, universal settlement agreement that was executed by the parties putting to rest, once and for all, all disputes between them, including, most importantly, all issues of ownership to the personalty in question. Simply stated, the Lawyers are not seeking to assert a claim for fees. They are defending the plaintiffs' amended complaint by a document clearly showing that *all matters relative to the ownership of the subject personalty has already been settled.*

The Agreement provides for the distribution of interests in property, which interests were established by previous agreements and dealings of the parties. The Lawyers had already been paid for their legal work. Much, if not all, of this compensation took the form of interests in the personalty at issue in the instant appeal. The plaintiffs and the Lawyers are presently of one mind – there were no legal fees due at the time the parties executed the Agreement. The fact that the Agreement makes reference to "attorney fees" does not make it a *new* contract to settle a claim for legal fees. It is reasonable to assume that the "attorney fees" language was added to the Agreement for the benefit of the plaintiffs – an assurance to them that the Lawyers could not assert any further claim for attorney's fees. When we give the language of the Agreement its "usual, natural, and ordinary meaning," ***Planters Gin Co.***, 78 S.W.3d at 889-90, we conclude that the Agreement was not intended as a resolution of a claim for legal fees. Those matters were settled long before the Agreement was executed. Therefore, even assuming the Lawyers had a duty to inform the plaintiffs that any claim for attorney's fees was then barred by the statute of limitations, that information, and the failure to impart it, are not *material* to the issues in this case because the Agreement is not a settlement of an attorney's fee claim but rather a distribution of interests in personalty established by earlier agreements of the parties.

VI.

The *material* facts are not in dispute. They show conclusively that the Lawyers are entitled to summary judgment as to the plaintiffs' amended complaint. The Supreme Court has stated that "[a] decision on whether to entertain a declaratory judgment falls squarely within a trial court's discretion, which has been described by this Court as 'very wide.'" ***State v. Brown & Williamson Tobacco Corp.***, 18 S.W.3d 186, 193 (Tenn. 2000) (quoting ***Southern Fire & Cas. Co. v. Cooper***, 200 Tenn. 283, 286, 292 S.W.2d 177, 178 (1956)). We certainly find no abuse of that discretion in this case.

VII.

The judgment of the trial court is affirmed. Costs on appeal are taxed to Walter A. Farris and Gordon Farris. This case is remanded to the trial court for collection of costs assessed there, in accordance with applicable law.

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CHARLES D. SUSANO, JR., JUDGE