

COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
February 27, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

VICTOR D. BUNCH,) C/A NO. 03A01-9708-CV-00231
)
Plaintiff-Appellee,)
)
)
v.) APPEAL AS OF RIGHT FROM THE
) ANDERSON COUNTY CIRCUIT COURT
)
)
)
LOUIS A. LLOYD,)
) HONORABLE JAMES B. SCOTT, JR.,
Defendant-Appellant.) JUDGE

For Appellant

For Appellee

ROBERT W. KNOLTON
Kramer, Rayson, Leake,
Rodgers & Morgan
Oak Ridge, Tennessee

HARRY LILLARD
Oak Ridge, Tennessee

OPINION

REVERSED AND REMANDED

Susano, J.

The issues before us arise out of an award of discretionary costs. Following the entry of an order of compromise and dismissal, the settling plaintiff timely filed a motion for discretionary costs pursuant to Rule 54.04(2), Tenn.R.Civ.P. The defendant opposed the motion. The trial court awarded the plaintiff discretionary costs of \$794, and the defendant appealed, asserting the following issues, as taken verbatim from his brief:

1. Did the trial judge abuse his discretion in awarding discretionary costs pursuant to Rule 54.04, T.R.C.P., under the circumstances?
2. Where the parties have settled in a tort case, and an accord and satisfaction is reached as to such settlement without any agreement or understanding concerning payment of discretionary costs, is it error for the trial court to award discretionary costs thereafter?

I. *Facts*

The plaintiff's civil action arose out of a two-vehicle accident involving automobiles driven by the parties. In this rear-end collision case, the plaintiff sought damages for personal injuries. The *ad damnum* clause in the complaint is as follows:

Wherefore, the Plaintiff, Victor D. Bunch, sues the Defendant for personal injuries in the sum of...\$212,250 in addition to court costs and *discretionary costs*,...

(Emphasis added). In due course, the defendant filed an answer controverting the allegations of the complaint.

The parties, through their counsel, conducted discovery, and the plaintiff's counsel took the deposition of his treating physician for proof. The plaintiff, again through his counsel, and a claims adjuster for the defendant's liability insurance carrier, State Farm Mutual Automobile Insurance Company ("State Farm"), engaged in settlement discussions both before and after the doctor's deposition was taken. These discussions ultimately led to a settlement, by the terms of which State Farm paid the plaintiff \$50,000¹ for his personal injuries and \$3,891 for property damage. On May 14, 1997, the plaintiff executed a release. His signature was witnessed by his counsel. The release is a printed form with blanks, which form was designed by or for State Farm and filled in by its claims adjuster. The release, as completed, is as follows:²

For the Sole Consideration of fifty-three thousand eight hundred ninety one Dollars, the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges Louis Alan Lloyd his heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or, who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or

¹This was the limit of State Farm's personal injury liability for an individual claim under the policy.

²The portion of the release containing the signatures of the plaintiff and his counsel has been excluded.

may in the future develop from an accident which occurred on or about the 27th day of November, 1995 at or near Oak Ridge, TN. This release expressly reserves all rights of the parties released to pursue their legal remedies, if any, against the undersigned, their heirs, executors, agents and assigns.

Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

The defendant's attorney, who apparently had not been directly involved in settlement discussions, was advised of the parties' settlement. He prepared an order of compromise and dismissal, reciting that "all matters in controversy [had] been settled and compromised." The proposed order provides that the plaintiff's cause of action would be dismissed with full prejudice and then recites as follows:

It is further ORDERED, ADJUDGED and DECREED that the Court costs only of this cause, *not discretionary costs*, are taxed against the Defendant, for which execution may issue if necessary.

(Emphasis added). Plaintiff's counsel objected to the italicized language, relying on the admitted fact that he and the adjuster did not discuss the plaintiff's claim for discretionary costs. The plaintiff's counsel advised the defendant's attorney that he intended to seek discretionary costs pursuant to the provisions

of Rule 54.04(2), Tenn.R.Civ.P. The parties subsequently agreed to a new draft of the order of compromise and dismissal without the objected-to language. The order was entered, after which the plaintiff filed his motion seeking discretionary costs of \$794,³ which motion was granted *in toto*. This appeal followed.

II. *Parties' Contentions*

The plaintiff contends that the release was not intended by him to include discretionary costs; that the release, when construed most strongly against its drafter -- the defendant's agent -- does not, in fact, encompass discretionary costs within its terms; and that the release cannot be construed to include a relinquishment of the plaintiff's claim for discretionary costs because the claims adjuster who negotiated the settlement was not a lawyer, and, so the argument goes, could not have settled a claim for discretionary costs because to do so would have been to engage in the unauthorized practice of law.

The defendant, on the other hand, contends that Rule 54.04, Tenn.R.Civ.P., does not apply where the parties enter into an order of compromise and dismissal before trial; that the release, by its terms, settled all of the plaintiff's claims, including his claim for discretionary costs; and that the plaintiff's contention regarding the unauthorized practice of law is without merit.

³The costs sought in the motion were the court reporters' charges for the depositions, and the expert witness fee of the deposed treating physician.

III. *Applicable Law*

The resolution of this appeal depends upon the proper interpretation of the release executed by the plaintiff. The scope and extent of a release was addressed in the Supreme Court case of **Cross v. Earls**, 517 S.W.2d 751 (Tenn. 1974):

Generally speaking, the scope and extent of a release depends on the intent of the parties as expressed in the instrument. A general release covers all claims between the parties which are in existence and within their contemplation; a release confined to particular matters or causes operates to release only such claims as fairly come within the terms of the release. (Citations omitted).

Id. at 752. See also **Jackson v. Miller**, 776 S.W.2d 115, 118 (Tenn.App. 1989); **Richland Country Club, Inc. v. CRC Equities, Inc.**, 832 S.W.2d 554, 557 (Tenn.App. 1991); **Louis Dreyfus Corp. v. Austin Co., Inc.**, 868 S.W.2d 649, 654 (Tenn.App. 1993).

"Because the release is a contract, rules of construction for interpreting a contract are used in construing a release." **Jackson**, 776 S.W.2d at 117. The cardinal rule of construction provides that a court is to determine the intention of the parties. **Richland Country Club, Inc.**, 832 S.W.2d at 557. The words of a release, like any other contract, are to be "given their usual, natural and ordinary meaning." **Rainey v. Stansell**, 836 S.W.2d 117, 119 (Tenn.App. 1992). In determining the intention of the parties, we consider the language of the release in the context of "what was within the contemplation of the parties when the release was executed." **Jackson**, 776 S.W.2d at

118 (citing 66 Am.Jur.2d Release § 30 (1973)). As a corollary to this principle, a release generally does not cover "a demand of which a party was ignorant when the release was given." **Jackson**, 776 S.W.2d at 118 (citing 76 C.J.S. Release § 52 (1952)).

IV. *Analysis*

The plaintiff argues that even if his other contentions are without merit, he is entitled to an affirmance of the trial court's award of discretionary costs because the language of the release is ambiguous as to whether discretionary costs fall within its ambit. He relies upon the well-known principle of law that "ambiguous language in a contract will be construed most strongly against the author of the language." See **Fuller v. Orkin Exterminating Co., Inc.**, 545 S.W.2d 103, 107 (Tenn.App. 1975).

We find absolutely no ambiguity in the terms of this general release, *in the context in which it was executed*. In fact, we find that the parties' intention, as demonstrated by the language of the document before us, is clear beyond any doubt.

The plaintiff's complaint expressly sought discretionary costs. This was clearly a part of the plaintiff's "claim" as expressed in the complaint, the document that is designed to express a plaintiff's claims. See Rule 8.01, Tenn.R.Civ.P. When he signed the release, the plaintiff *released* "any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever" which "resulted...from

[the subject] accident." When we give these broad and expansive words their usual and ordinary meaning, as we are required to do, we reach the inescapable conclusion that the parties intended, as evidenced by this language, to settle, once and for all, all claims to recover money from the defendant -- including the plaintiff's claim for discretionary costs -- arising out of the accident.⁴ The latter claim, even if not discussed, was clearly "within the contemplation of the parties when the release was executed." See **Jackson**, 776 S.W.2d at 118. We do not understand how the plaintiff can argue that a claim expressly stated in the complaint was not within the contemplation of the individuals who negotiated the settlement. We find that it clearly was. The criteria at hand is what was within the contemplation of the parties, and not necessarily what was the subject of discussion between them.

In view of our holding that the language of the release clearly and unmistakably includes the plaintiff's claim for discretionary costs, we do not find it necessary to reach the plaintiff's other arguments, including his assertion regarding the unauthorized practice of law. For the same reason, we do not reach the defendant's contention that Rule 54.04(2), Tenn.R.Civ.P., can never be invoked by a settling party.

⁴At oral argument, plaintiff's counsel contended that this finding would mean that the release applies to his claim for the regular costs of the clerk since this claim is also expressly stated in the complaint. See Rule 54.04(1), Tenn.R.Civ.P. The obvious, if not the only, answer to this argument is that the defendant agreed that the clerk's costs would be taxed against him, and hence no one who was adversely affected by that portion of the appealed order is arguing the point on this appeal.

The order of the trial court awarding discretionary costs is reversed. Costs on appeal are taxed against the appellee. This case is remanded to the trial court for the collection of costs assessed below, pursuant to applicable law.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

William H. Inman, Sr.J.