IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 11, 2023 Session

IN RE ROBERT MCPHAIL HUNT JR.

Appeal from the Chancery Court for Hamblen County
No. 2020-PR-90 Douglas T. Jenkins, Chancellor

No. E2022-00649-COA-R3-CV

This appeal arises out of a settlement agreement between the parties that resolved the distribution of the decedent's estate's assets. Under the settlement agreement, Appellant agreed to receive $1,800,000.00 from a joint brokerage account in his name and the decedent's name. Appellant alleged that he was entitled to $1,800,000.00 outright and was not required to pay the capital gains taxes associated with the disbursement of such funds. Appellant also alleged that he was entitled to post-judgment interest on the $1,800,000.00. The trial court concluded that Appellant was responsible for the capital gains taxes associated with the disbursement and that Appellant was not entitled to post-judgment interest on the same. Discerning no error, we affirm.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and THOMAS R. FRIERSON, II, JJ., joined.

Mark A. Cowan, Morristown, Tennessee, for the appellant, Zulkifli Atim.

Betsy Stibler, Morristown, Tennessee, for the appellees, Robert McPhail Hunt III, Charlotte Hunt, and Laura Hunt Guillaumin.

Lindsey L. Hobbs, Knoxville, Tennessee, for the appellee, Estate of Robert McPhail Hunt, Jr.

OPINION

I. Background

On May 10, 2010, Dr. Robert McPhail Hunt, Jr. ("Decedent") purportedly married Appellant Zulkifli Atim in Canada. The marriage was not disclosed to Decedent's three children, Robert McPhail Hunt, III, Laura Guillaumin, and Charlotte Hunt (the "Children," and together with Decedent's Estate, "Appellees"). On March 23, 2020, Mr. Atim created a Vanguard Group Joint Brokerage Account (the "Account").[1] Mr. Atim funded the Account with Decedent's assets, and he listed himself and Decedent as joint tenants with right of survivorship. The parties dispute whether the creation of the Account was with Decedent's knowledge and consent. On April 20, 2020, Decedent died at the age of 77. Decedent's last will and testament, executed on December 6, 1995, named the Children as the sole beneficiaries of his Estate. This designation led to contentious litigation between the parties.

On April 29, 2020, Decedent's son, McPhail Hunt, as the Personal Representative of his father's Estate, filed a petition for probate of will and granting of letters testamentary in the Hamblen County Chancery Court, Probate Division (the "Probate Court"). On May 12, 2020, Mr. Atim filed a petition for elective share, years support, exempt property and homestead in the Probate Court.

On review of Decedent's financial records, Mr. Hunt discovered a series of changes made to Decedent's financial accounts. These changes spanned from 2019 until a few days before Decedent's death and included the creation of the Account and the transfer of $2,700,000.00 from Decedent's individual accounts into the Account. On July 21, 2020, the Estate and the Children, individually, filed a complaint against Mr. Atim in the Hamblen County Chancery Court (the "Chancery Court") for conversion of Estate assets, conversion of assets of the individual beneficiaries, undue influence, damages arising from the Tennessee Adult Protection Act, imposition of a constructive trust, and for an injunction to prevent Mr. Atim from dissipating additional assets.

Attempts at mediation were unsuccessful, and Appellees' lawsuit against Mr. Atim in the Chancery Court was set for trial in November 2021. On October 20, 2021, counsel for Mr. Atim emailed the Estate's counsel with a final settlement offer. Relevant here, part of the offer provided that Mr. Atim would "receive $300,000[.00] from the Vanguard Roth IRA [(the "Roth IRA")]," in addition to $1,800,000.00 "from Vanguard Brokerage Account," *i.e.*, the Account. On October 25, 2021, the parties executed a mutual release and settlement agreement (the "Settlement Agreement"). Therein, the parties agreed that Mr. Atim would receive, in pertinent part:

[1] The Account was opened under Mr. Atim's social security number.

a. One Million Eight Hundred Thousand Dollars ($1,800,000.00) from The Vanguard Group, Inc. Joint Brokerage Account[];

b. Three Hundred Thousand Dollars ($300,000.00) from The Vanguard Group, Inc. Roth IRA Brokerage Account[];

The parties agreed to a mutual release against each other. All parties were represented by counsel when they entered into the Settlement Agreement.

On October 28, 2021, Mr. Atim filed a receipt and release and notice of resolution of petition for elective share, years support, exempt property and homestead. Also, on October 28, 2021, the Probate Court entered an order on temporary injunction wherein it confirmed the parties' agreement that Mr. Atim would be entitled to $1,800,000.00 from the Account and $300,000.00 from the Roth IRA. That same day, the Chancery Court entered an order of compromise and dismissal, dismissing Appellees' claims against Mr. Atim with prejudice.

Thereafter, the Estate's counsel notified Vanguard of the distribution of assets and asked Vanguard how to best accomplish the distribution. The Vanguard representative responded:

> Due to the allocation entitlements in dollar terms, the parties would need to agree on who's making the determination regarding the specific assets that they'd like to use to approximate the amounts. Regarding joint assets, they would need to identify the security(ies) from which the specified amount is being taken and clarify if the remaining assets are being transferred at a direction of the surviving owner or are to be administered as part of the [E]state.

In response, Mr. Atim's previous counsel suggested the following:

> It seems the easiest way to finalize this would be:
>
> > 1. McPhail, as Executor of the [E]state, instructs Vanguard to cut a check in the amount of $1,800,000[.00] from the brokerage account payable to Mr. Atim.
> >
> > 2. McPhail instructs Vanguard to transfer $300,000[.00] from the Roth IRA to an IRA established or to be established by Mr. Atim.

Appellees proposed:

> 2. . . . [T]he assets in the accounts shall be rolled over into new accounts that shall be owned solely by the Estate of Robert M. Hunt, Jr. Specifically, the Estate shall create (1) an IRA account, (2) a Roth IRA account ("Estate Roth Account"), and (3) a brokerage account ("Estate Brokerage Account").
>
> 3. Immediately upon these funds being rolled over to the new Estate accounts, Vanguard shall make the following distribution and rollover to Zulkifli Atim:
>
> > a. One Million Eight Hundred Thousand and No/Dollars ($1,800,000.00) in cash from the Estate Brokerage Account. The $1,800,000[.00] will be distributed to Atim via electronic funds transfer. His counsel . . . shall provide the account number for this transfer to [Vanguard] in a separate email. After fully stepping up the basis of the accounts to the value as of the date of Robert M. Hunt, Jr.'s death, Zulkifii Atim shall be responsible for the capital gains taxes on this $1,800,000.[00].
> >
> > b. Three Hundred Thousand and No/Dollars ($300.000.00) from the Estate Roth Account. This $300,000 shall be rolled over into a Vanguard account owned by Zulkifli Atim. His counsel . . . shall provide the account number for this rollover to [Vanguard] in a separate email.

In response to the above proposal, counsel for Mr. Atim emailed counsel for Appellees that the proposal was unsatisfactory because "[Mr. Atim's] perspective [was] that he [was] simply entitled to a 1.8 million check from the [E]state and that he would not be participating in the payment of the [E]state's capital gains taxes occasioned by its sale of its assets needed to fund that 1.8 million check."

On January 6, 2022, Appellees filed a joint petition for contempt or, in the alternative, motion to enforce settlement agreement in the Probate Court. In pertinent part, Appellees asked the Probate Court:

> 24. To effectuate the plain intent of the Parties, but to expedite the funds being paid directly to Respondent, Petitioners ask that Vanguard be instructed to issue a check to Respondent for $1,800,000[.00], but only with a designation of securities to liquidate. Once that check is issued, Vanguard will also issue appropriate tax documentation to Respondent associated with the liquidation of the securities.
>
> 25. Petitioners will, likewise, be subject to proportionate tax consequences

associated with the beneficiaries' pro-rata portion of the Vanguard accounts.

26. In other words, Petitioners do not ask Respondent to pay for their taxes. Petitioners simply ask that each Party bear the tax consequences for their share of the contested assets.

Appellees also asked the Probate Court to find Mr. Atim in contempt for his failure and refusal to comply with the order approving the disbursement of assets. In the alternative, Appellees asked the Probate Court to enter an order enforcing the Settlement Agreement and obligating Mr. Atim to accept payment of $1,800,000.00 from the Account. In the petition, Appellees argued that the plain language of the Settlement Agreement states that Mr. Atim is to receive $1,800,000.00, and it "does not require the Estate to first liquidate the holdings of the [Account], bear the burden of any associated taxes with receiving funds from the [Account], then pay Mr. Atim."

Also, on January 6, 2022, Mr. Atim filed a motion for civil contempt, post-judgment interest, and attorney's fees in the Probate Court. Therein, Mr. Atim argued that he should be paid in "dollars" only (rather than stock positions or account holdings) and should not bear the capital gains tax liability. Mr. Atim asked the Probate Court to hold the Estate in civil contempt for its failure to distribute the funds to Mr. Atim as ordered. Mr. Atim also asked the Probate Court to award him post-judgment interest and attorney's fees.

On January 20, 2022, the Probate Court heard the competing petitions/motions. On April 19, 2022, the Probate Court entered an order on Appellees' joint petition for contempt and Mr. Atim's motion for contempt. In pertinent part, the Probate Court ordered that Mr. Hunt, as Personal Representative of the Estate, would have "exclusive authority to direct the proceeds of the [A]ccount to further the administration of the settlement and the Decedent's [E]state[.]" In the order, the Probate Court authorized Mr. Hunt to "direct the disposition and bifurcation of the funds" in the Account, and on bifurcation of the Account, "Vanguard will distribute One Million Eight Hundred Thousand Dollars ($1,800,000.00) of the funds to Mr. Atim[.]" To facilitate such distribution, the trial court ordered the allocation and sale of certain securities totaling $1,800,00.00, the proceeds from which would be distributed to Mr. Atim. The Probate Court directed any remaining funds to be rolled over in-kind to an Estate account. Concerning the $300,000.00 Roth IRA, the Probate Court ordered the allocation and sale of certain securities from the Roth IRA account that would be paid to Mr. Atim. Vanguard was ordered to issue Mr. Atim a check for the foregoing within 30 days of the order, and, if the payments were not placed in the mail within 30 days, the Probate Court ordered that they would bear interest in the amount of 5.25%. Mr. Atim was ordered to "pay all applicable taxes arising from the payments[.]" The Probate Court ordered that each party would bear their own attorney's fees and costs, and it declined to hold any party in contempt.

On April 27, 2022, Mr. Atim filed a motion to alter or amend the judgment asking

the Probate Court to roll over the $300,000.00 in the Roth IRA to another IRA "so that he can continue to receive favorable tax treatment on those funds." On May 18, 2022, the Probate Court entered an agreed order granting Mr. Atim's request.

The Probate Court's orders on the contempt petitions and the motion to alter or amend were also filed in the Chancery Court matter. Mr. Atim filed timely notices of appeal in both cases. By order of August 30, 2022, this Court consolidated the appeals.

In its appellate brief, the Estate notes that, in August 2022, Vanguard initiated transfers to Mr. Atim and to the Estate to fulfill the terms of the Settlement Agreement and the order on the petitions for contempt.

II. Issues

Mr. Atim raises two issues for our review, which we re-state as follows:

1. Whether the Probate Court erred when it ordered Mr. Atim to pay all applicable taxes arising from the sale of securities from the Account.

2. Whether Mr. Atim was entitled to post-judgment interest on the assets awarded to him under the Settlement Agreement.

III. Standard of Review

We review a non-jury case "*de novo* upon the record with a presumption of correctness as to the findings of fact, unless the preponderance of the evidence is otherwise." ***Bowden v. Ward***, 27 S.W.3d 913, 916 (Tenn. 2000) (citing Tenn. R. App. P. 13(d)). The trial court's conclusions of law are reviewed *de novo* and "are accorded no presumption of correctness." ***Brunswick Acceptance Co., LLC v. MEJ, LLC***, 292 S.W.3d 638, 642 (Tenn. 2008).

IV. Analysis

A. Resulting Tax Consequences

As discussed above, the parties entered into the Settlement Agreement to resolve the distribution of the Decedent's Estate. "A settlement agreement made during the course of litigation is a contract between the parties, and as such, contract law governs disputes concerning the formation, construction, and enforceability of the settlement agreement." ***Waddle v. Elrod***, 367 S.W.3d 217, 222 (Tenn. 2012). Because the interpretation of a contract is a matter of law, we review the Settlement Agreement *de novo* with no presumption of correctness. ***Guiliano v. Cleo, Inc.***, 995 S.W.2d 88, 95 (Tenn. 1999).

As the Tennessee Supreme Court has explained,

> [a] cardinal rule of contract interpretation is to ascertain and give effect to the intent of the parties. ***Christenberry v. Tipton***, 160 S.W.3d 487, 494 (Tenn. 2005). In interpreting contractual language, courts look to the plain meaning of the words in the document to ascertain the parties' intent. ***Planters Gin Co. v. Fed. Compress & Warehouse Co.***, 78 S.W.3d 885, 889-90 (Tenn. 2002). [Our] initial task in construing the [Settlement Agreement] at issue is to determine whether the language is ambiguous. ***Id.*** at 890. If the language is clear and unambiguous, the literal meaning controls the outcome of the dispute. ***Id.*** If, however, the words in a contract are susceptible to more than one reasonable interpretation, the parties' intent cannot be determined by a literal interpretation of the language. ***Id.***

Allstate Ins. Co. v. Watson, 195 S.W.3d 609, 611 (Tenn. 2006).

Turning to the Settlement Agreement, as discussed above, the provision at issue provided:

> 1. ***Settlement of Assets***. In exchange for the release of all claims, as set forth below, Robert McPhail Hunt, III, Laura Victoria Hunt Guillaumin, and Charlotte Hunt shall receive all the assets of the Estate, excluding the following, which shall be distributed to Zulkifli Bin Atim:
>
> > a. One Million Eight Hundred Thousand Dollars ($1,800,000.00) from The Vanguard Group, Inc. Joint Brokerage Account [];
> >
> > b. Three Hundred Thousand Dollars ($300,000.00) from The Vanguard Group, Inc. Roth IRA Brokerage Account [];
> >
> > ***
>
> Zulkifli Bin Atim shall not inherit any other assets from the Estate, other than those specifically enumerated above.

On appeal, Mr. Atim argues that the foregoing provision entitles him to "only dollars" and that "[t]here is no mention [in the Settlement Agreement] of stock positions or account holdings being moved into a new account for [Mr.] Atim, only **funds**." (Emphasis in original). Mr. Atim also relies on his previous counsel's email that Mr. Hunt should "cut a check in the amount of $1,800,000[.00] from the [Account] payable to Mr. Atim" to show that "it has always been the parties' expectation that [Mr.] Atim would be paid in dollars

from the [Account] as agreed." Mr. Atim argues that the Probate Court should have declared that the Estate owned the Account and "let tax law take its course[.]" At oral argument, this Court questioned Mr. Atim's attorney as to whether there is any provision in the Settlement Agreement that indicates the Account would be liquidated and that Mr. Atim would be paid $1,800,000.00 from the liquidation. Mr. Atim's attorney answered, "No. We don't care what they pay us. We are just entitled to a dollar amount." When this Court noted that there is no language in the Settlement Agreement concerning the allocation of taxes, Mr. Atim's counsel answered: "Correct. We are just expecting a check." From the foregoing, we deduce that Mr. Atim asks this Court to designate the Estate as owner of the Account and to order the Estate to pay Mr. Atim $1,800,000.00 by cash or check.

The Settlement Agreement provision at issue is clear and unambiguous. Contrary to Mr. Atim's arguments, there is no provision in the Settlement Agreement that entitles him to a $1,800,000.00 check. Rather, under a plain and literal reading of the provision, Mr. Atim was entitled to receive $1,800,000.00 from the Account. The record shows that the Estate's counsel sought Vanguard's assistance in accomplishing this distribution. As discussed above, a representative from Vanguard informed the parties that, "[d]ue to the allocation entitlements in dollar terms, ***the parties would need to agree on who's making the determination regarding specific assets that they'd like to use to approximate the amounts***." (Emphasis added). Concerning joint assets, like the Account, the representative informed the parties that "***they would need to identify the security(ies) from which the specified amount is being taken*** and clarify if the remaining assets are being transferred at a direction of the surviving owner or are to be administered as part of the [E]state." (Emphasis added). To accomplish a division in accordance with the Settlement Agreement and Vanguard's instructions, the Probate Court ordered Vanguard to allocate and sell certain securities from the Account totaling $1,800,000.00. Thereafter, the proceeds from the sale would be distributed to Mr. Atim. We conclude that the Probate Court's order gave effect to the clear intent of the parties as set out in the Settlement Agreement, *i.e.*, that Mr. Atim would receive $1,800,000.00 from the Account. ***Keller v. Gass***, No. E2006-00190-COA-R3-CV, 2006 WL 2842937, at *3 (Tenn. Ct. App. Oct. 4, 2006). The legal requirement that capital gains taxes are owed on the profits of investments is a collateral consequence of the parties' agreement to distribute the Estate's assets. *See* ***Acosta v. Smiley Dental Assocs., Inc.***, No. 3:16-2875, 2018 WL 6588517, at *2 (M.D. Tenn. Sept. 27, 2018), ***report and recommendation adopted***, No. 3:16-CV-02875, 2018 WL 6588515 (M.D. Tenn. Oct. 17, 2018). Although the parties could have contracted for the allocation of the tax consequences, they did not.[2] Despite there being no provision concerning the resulting tax consequences, Mr. Atim effectively asks this Court to create one in his favor. This we decline to do. On our review, we conclude that the Probate Court did not err when

[2] We again note that all parties were represented by counsel during settlement negotiations, and that Mr. Atim was also represented by tax counsel at the time.

it ordered that Mr. Atim would bear the tax burden on the $1,800,000.00 in securities sold and distributed to him.

B. Post-Judgment Interest

Relying on Tennessee Code Annotated section 47-14-122, Mr. Atim also appeals the Probate Court's denial of his request for post-judgment interest. Section 47-14-122 provides that "[i]nterest shall be computed on every *judgment* from the day on which the jury or the court, sitting without a jury, returned the verdict without regard to a motion for a new trial." Tenn. Code Ann. § 47-14-122 (emphasis added). The Tennessee Supreme Court has explained the public policy underlying post-judgment interest, to-wit:

> A party's right to post-judgment interest is based on its entitlement to the use of proceeds of a judgment. The purpose of post-judgment interest is to compensate a successful plaintiff for being deprived of the compensation for its loss between the time of the entry of the judgment awarding the compensation until the payment of the judgment by the defendants. Accordingly, a party who enjoys the use of funds that should have been paid over to another party should pay interest on the retained funds.

State v. Thompson, 197 S.W.3d 685, 693 (Tenn. 2006) (quoting ***Varnadoe v. McGhee***, 149 S.W.3d 644, 650 (Tenn. Ct. App. 2004)). As specified in the statute, the necessary prerequisite to an award of post-judgment interest is a *judgment* from either a jury or a court sitting without a jury. Tenn. Code Ann. § 47-14-122. That prerequisite was not met in this case. As discussed above, the parties never tried the issue of the disbursement of the Decedent's Estate before a court. Rather, the parties entered into the Settlement Agreement, *i.e.*, a contract between the parties, and the Probate Court entered an order affirming the parties' agreement. Mr. Atim argues that this order acted as a judgment. We disagree. Turning to the order, the Probate Court affirmed the parties' agreement that Mr. Atim was "entitled to" $1,800,000.00 from the Account, *i.e.*, he was entitled to a certain portion of specific Estate assets. Nowhere in this order did the Probate Court enter a judgment in the amount of $1,800,000.00 against the Estate in Mr. Atim's favor.[3]

Even assuming, *arguendo*, that the Settlement Agreement acted as a final judgment under the statute, Mr. Atim still is not entitled to post-judgment interest because his own

[3] We note that counsel for Mr. Atim cited ***Erk v. Erk***, No. 5, 1987 WL 16119 (Tenn. Ct. App. Aug. 28, 1987) at oral argument to advance his contention that this Court has awarded post-judgment interest on a settlement agreement. ***Erk*** involved a divorce wherein the sole issue on appeal concerned "whether wife [was] entitled to post judgment interest on the sum of $21,000.00 which husband was to pay to her pursuant to a property settlement agreement." ***Id.*** As discussed above, the Estate was not ordered to pay Mr. Atim $1,800,000.00. Rather, the parties agreed that Mr. Atim was entitled to receive $1,800,000.00 from the Account, to be distributed to him by Vanguard. As such, we conclude that ***Erk*** is distinguishable from the case *sub judice* and is not controlling here.

inaction caused the delay of his receipt of Estate assets. The record shows that Mr. Atim refused to consent to Appellees' proposed designation and sale of securities to complete the transfer of the Account assets to Mr. Atim. Indeed, Mr. Atim's "perspective [was] that he [was] simply entitled to a 1.8 million check from the [E]state and that he would not be participating in the payment of the [E]state's capital gains taxes occasioned by the sale of its assets to fund that 1.8 million check." Had Mr. Atim consented to Appellees' proposal, which the Probate Court adopted, he would have received his share of assets in a timely manner. For the foregoing reasons, we conclude that the Probate Court did not err in denying Mr. Atim's request for post-judgment interest.

For completeness, we note that, in his appellate brief, Mr. Atim asks this Court to order the Estate "to roll over $300,000[.00] to [Mr.] Atim's Roth IRA account to maintain favorable tax treatment." As discussed above, on May 18, 2022, the Probate Court entered an order on Mr. Atim's motion to alter or amend that accomplished the relief Mr. Atim now seeks from this Court. As such, this issue is moot.

V. Conclusion

For the foregoing reasons, we affirm the final order. The case is remanded for such further proceedings as are necessary and consistent with this opinion. Costs of the appeal are assessed to the Appellant, Zulkifli Atim, for all of which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE