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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 15, 2024 Session

GARY VILES MOTORS, LLC v. SHAWNA M. CHANCE

Appeal from the Chancery Court for Knox County
No. 199347-2 Richard B. Armstrong, Jr., Chancellor

No. E2023-01319-COA-R3-CV

This is an appeal from a jury verdict wherein the jury found that the defendant had met the burden to prove her counterclaims for breach of contract or conversion and a violation of the Tennessee Consumer Protection Act. Following the jury's verdict, the trial court entered an order relative to the remaining motions; however, the order failed to dispose of two of the defendant's counterclaims that had not been presented to the jury. Because these two claims remain outstanding, there is no final judgment entered by the trial court, and this Court lacks subject matter jurisdiction to consider this appeal. Accordingly, we dismiss this appeal and remand the case to the trial court for further action.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

Dale J. Montpelier, Knoxville, Tennessee, for the appellant, Gary Viles Motors, LLC.

Marshall W. Stair, Knoxville, Tennessee, for the appellee, Shawna M Chance.

MEMORANDUM OPINION¹

¹ Tennessee Court of Appeals Rule 10 provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I. Factual and Procedural Background

On December 17, 2019, the plaintiff, Gary Viles Motors, LLC, d/b/a Viles Automotive Group (“GVM”), an automobile dealer, filed a complaint seeking a declaratory judgment and damages, naming Shawna M. Chance as the defendant. In the complaint, GVM averred that Ms. Chance had purchased a 2012 Chevrolet Silverado (“the Vehicle”) from GVM on September 30, 2019, and executed a financing agreement. GVM further averred that Ms. Chance had subsequently refused to make payments associated with the Vehicle. GVM thus sought a judgment declaring that the sales contract was valid, that Ms. Chance had breached the valid financing contract, and that Ms. Chance maintained no right to revoke acceptance of the Vehicle. GVM further sought an assessment of damages owed by Ms. Chance, including storage fees.

In its complaint, GVM claimed that Ms. Chance had executed a finance agreement to finance \$18,199.00, which represented the sales price of the Vehicle minus Ms. Chance’s trade-in allowance and down payment. According to GVM, Ms. Chance had provided incomplete and materially misleading information related to her employment history on her credit application, which ultimately resulted in issues with her financing approval. However, GVM alleged that it had been able to obtain financing for Ms. Chance to purchase the Vehicle and that Ms. Chance had been contacted and asked to return to the dealership to sign additional paperwork.

According to GVM, on October 19, 2019, Ms. Chance returned the Vehicle to GVM and complained of mechanical problems. GVM claimed that Ms. Chance had “abandoned” the Vehicle at the dealership and stated that she no longer wanted it. Ms. Chance also refused to sign any additional paperwork. Furthermore, GVM averred that it sent a letter to Ms. Chance on November 13, 2019, informing her that her payment was due in full or, in the alternative, that financing was still available to her. In addition, GVM requested that she retrieve the Vehicle. Ms. Chance, however, neither made the first required payment nor took possession of the Vehicle.

GVM further averred that on December 12, 2019, Ms. Chance’s counsel sent a letter to GVM, stating that Ms. Chance was revoking her acceptance of the Vehicle. GVM posited, however, that Ms. Chance had accepted the Vehicle “as is” and had executed a valid financing agreement such that she was obligated to pay the indebtedness on the Vehicle. GVM also sought a judgment for storage fees by reason of GVM’s possession of the Vehicle on its lot.

Ms. Chance filed an answer and counterclaim on February 4, 2020. For her answer, Ms. Chance averred that the contract between the parties was void because GVM had been unable to obtain financing on her behalf within the time specified in the contract, which she characterized as the failure of a condition precedent. According to Ms. Chance, the contract attached to the complaint was incomplete because it did not contain the

“Supplement to Purchase Agreement” that Ms. Chance had executed on the date of the Vehicle’s purchase, which stated in pertinent part:

If a retail installment contract is executed as part of this sales transaction, then the buyer(s) and seller intend that the seller assign this contract. In the event the seller is unable to assign this contract (get a credit approval) within three (3) business days of the date hereof, this contract shall be null and void and the buyer, immediately upon notice by the seller, shall do one of the following:

1. Purchase the vehicle from the seller for the cash price thereof; or
2. Return the vehicle described above to the seller and pay the seller the cost of any repairs, damages or excessive mileage occurring to the vehicle while in the buyer’s possession.

Ms. Chance asserted that because GVM had failed to obtain financing for her within three days of the contract’s execution, the contract was null and void. Furthermore, she had returned the Vehicle as provided in option two of the supplement. Based on her postulate that both the sales contract and financing contract were void, Ms. Chance denied owing any payment or storage costs. Moreover, when Ms. Chance returned the Vehicle, she discovered that GVM had previously sold her trade-in vehicle.

Ms. Chance additionally claimed that any inaccuracies in her credit application were GVM’s responsibility because a GVM employee had filled out the credit application on her behalf. In support, Ms. Chance stated that she was not afforded an opportunity to review the application and that her only participation was signing the electronic “digipad.” Ms. Chance propounded that the complaint and contract misrepresented the amount to be financed and her down payment. Ms. Chance also specified several affirmative defenses, including failure of a condition precedent, fraud, misrepresentation, and usury.

For her counterclaims, Ms. Chance alleged breach of contract, conversion of her trade-in vehicle, breach of the implied duty of good faith and fair dealing, fraud, unjust enrichment, violation of the Tennessee Consumer Protection Act (“TCPA”), violation of Tennessee Code Annotated § 55-17-114, usury, and misrepresentation. Ms. Chance thereby sought an award of damages of at least \$150,000.00, including treble damages and reasonable attorney’s fees pursuant to the TCPA. GVM was subsequently permitted to amend its complaint to add a claim of unjust enrichment.

On March 5, 2020, GVM filed a motion to dismiss Ms. Chance’s counterclaims for failure to state a claim upon which relief could be granted. The trial court subsequently entered an order on March 17, 2021, dismissing Ms. Chance’s claims of fraud, intentional and negligent misrepresentation, usury, and violation of Tennessee Code Annotated § 55-

17-114 (regarding vehicle sales licenses). The court declined to dismiss Ms. Chance's remaining counterclaims of breach of contract, conversion, breach of the implied duty of good faith and fair dealing, unjust enrichment, and violation of the TCPA. GVM then sought an award of costs and fees related to the motion to dismiss, pursuant to Tennessee Code Annotated § 20-12-119(c)(1), in the amount of \$1,480.00. GVM also requested permission to sell the vehicle in question in order to mitigate its damages. The court granted this motion on April 14, 2021, concomitantly staying GVM's motion for costs and fees.

GVM subsequently filed a motion for summary judgment, again arguing that the contract was valid and that Ms. Chance was in breach thereof. In support, GVM asserted that financing was approved on the date of sale even though the approval was later revoked by the finance company. GVM further sought entry of summary judgment in its favor concerning Ms. Chance's remaining counterclaims and filed a statement of undisputed facts in support of its motion. Ms. Chance opposed the motion, filing a countervailing statement of additional facts; however, in her response, Ms. Chance attempted to "withdraw" her claims for conversion, unjust enrichment, and breach of the implied duty of good faith and fair dealing. In a reply, GVM argued that Ms. Chance was prohibited from nonsuiting those claims, pursuant to Tennessee Rule of Civil Procedure 41.01, while a motion for summary judgment was pending.

Through its memorandum opinion entered on June 30, 2022, the trial court determined that the contract documents were clear and that the finance company's lack of assent to the financing assignment constituted failure of a condition precedent. Specifically, the court determined that it was the intent of the parties, per the contract, for the transaction to be financed by a "responsible finance company" and that the contract required assignment to that company within three days. The proof demonstrated that such assignment did not occur within the three-day time frame. Accordingly, the court ruled that the contract was rendered null and void due to the failure of the condition precedent. GVM's motion for summary judgment respecting its breach of contract claim was therefore denied.

Regarding Ms. Chance's remaining counterclaims of breach of contract, conversion, breach of the implied duty of good faith and fair dealing, unjust enrichment, and violation of the TCPA, the trial court declined to grant summary judgment concerning those claims in GVM's favor, finding that GVM had not met its burden at the summary judgment stage of demonstrating that Ms. Chance's evidence was insufficient or that GVM was entitled to judgment as a matter of law. The court agreed with GVM, however, that Ms. Chance could not nonsuit any of her counterclaims while a motion for summary judgment was pending. Hence, the court concluded that all five of Ms. Chance's claims remained viable.

On October 21, 2022, GVM filed a notice of nonsuit, voluntarily dismissing its claims pursuant to Tennessee Rule of Civil Procedure 41.01. The trial court entered an

order of voluntary dismissal on October 31, 2022. On November 1, 2022, the trial court commenced a three-day jury trial regarding solely Ms. Chance's breach of contract, conversion, and TCPA counterclaims.

Upon the conclusion of trial, the jury deliberated and ultimately entered a verdict in favor of Ms. Chance. The jury awarded damages for breach of contract "or" conversion in the amount of \$1,157.00 and damages for violation of the TCPA in the amount of \$60,000.00. On November 17, 2022, Ms. Chance filed a motion, pursuant to Tennessee Code Annotated § 47-18-109, seeking treble damages, costs, and attorney's fees predicated on the jury's determination that GVM had violated the TCPA.

On February 3, 2023, the trial court entered a memorandum opinion, finding that an award of treble damages was appropriate because clear and convincing evidence demonstrated that GVM had willfully or knowingly violated the TCPA. The court found that Mr. Viles had testified during trial that the contract was conditioned upon financing and had admitted that (1) Ms. Chance's trade-in vehicle was sold before funding was received from the finance company, (2) GVM had engaged in this practice in the past, and (3) GVM's attorney had sent a letter to Ms. Chance demanding that she tender the balance due on the contract or sign an alternate financing agreement. Moreover, the court noted that pursuant to Tennessee Code Annotated § 55-17-114, GVM knew or should have known that its license could be revoked or suspended for failing to retain possession of a trade-in vehicle until funding was received and for not providing a written conditional delivery agreement to customers. Lastly, the court determined that with knowledge of the licensing requirements, conditional delivery agreement, and pertinent contracts, GVM knew or reasonably should have known that the demand letter did not comport with Ms. Chance's contractual rights and obligations. The court therefore awarded "treble" damages in the amount of \$60,000.00 (in addition to the original compensatory damage award of \$60,000.00) based on the factors listed in Tennessee Code Annotated § 47-18-109(a)(4).² Additionally, by reason of the jury's finding that GVM had violated the TCPA and in consideration of the statutory factors, the court awarded reasonable attorney's fees in the amount of \$41,225.00 and costs of \$4,101.55, for a total judgment of \$166,483.55.

On March 16, 2023, GVM filed motions seeking entry of a final judgment as well as a stay of execution concerning the judgment. GVM claimed that there existed no final judgment in that the court's memorandum opinion entered on February 3, 2023, was not denominated as an "order" or "judgment" and contained no indication that the opinion was intended to be final. GVM further alleged that Ms. Chance's claim for pre-judgment interest remained outstanding. In turn, Ms. Chance filed a response, advancing the position that the trial court had entered a final judgment via its memorandum opinion because the opinion had the force of an order and left no other issues for the court to decide. After

² This amount does not include the \$1,157.00 awarded to Ms. Chance by the jury for breach of contract or conversion.

reviewing the post-trial motions of both parties, the trial court entered an order bearing the title, “Final Judgment,” on April 25, 2023, incorporating its memorandum opinion and awarding judgment to Ms. Chance in the amount of \$166,483.55. In this judgment, the court stated that although it had intended the memorandum opinion to constitute a final judgment, it was granting GVM’s motion for entry of a final judgment based on GVM’s counsel’s contention that he did not believe the previous memorandum opinion to be a final judgment. The court further decreed that Ms. Chance was entitled to post-judgment interest but had waived her claim for pre-judgment interest.

On May 25, 2023, GVM filed a motion for judgment notwithstanding the verdict or, alternatively, for a new trial concerning damages or remittitur of the damages award. GVM claimed, *inter alia*, that the trial court had misinterpreted the law and the contractual documents and that there was insufficient evidence to support the damages award. In Ms. Chance’s response, she posited that the motion was untimely because the trial court’s February 3, 2023 memorandum opinion was a final judgment. In addition, Ms. Chance filed a motion for post-trial attorney’s fees.

On August 21, 2023, the trial court entered another “Final Judgment” wherein the court denied GVM’s post-trial motions. The court granted Ms. Chance’s motion for post-trial attorney’s fees, based on the agreement of the parties, and awarded an additional \$4,900.00 in fees and \$179.00 in discretionary costs. The court incorporated its February 2023 memorandum opinion and its April 2023 “Final Judgment,” awarding Ms. Chance a total judgment of \$171,562.55. The court also restated that Ms. Chance was entitled to post-judgment interest. On September 19, 2023, GVM filed a notice of appeal.

Subsequently, on June 26, 2024, this Court entered an order directing the parties to show cause concerning whether a final judgment existed in this matter, due to the lack of an order or written notice of voluntary dismissal concerning Ms. Chance’s counterclaims of unjust enrichment and breach of the implied duty of good faith and fair dealing. GVM filed a response on July 17, 2024, arguing that Ms. Chance had received her “one trial” and that she had waived any adjudicated claims.

II. Lack of Final Judgment

Although the parties’ respective briefs present a number of issues for our review, Tennessee Rule of Appellate Procedure 13(b) requires that we first consider subject matter jurisdiction. *See Morgan Keegan & Co. v. Smythe*, 401 S.W.3d 595, 601 n.15 (Tenn. 2013) (“Courts have the responsibility to address their own subject matter jurisdiction, even when the parties have not raised the issue.”); *see also Meighan v. U.S. Sprint Commc’ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996) (emphasizing that subject matter jurisdiction cannot be waived). Since neither party has questioned subject matter jurisdiction on appeal, this Court must address the issue *sua sponte*. We specifically consider whether the appealed order constitutes a final judgment.

It is well settled in Tennessee that “[u]nless an appeal from an interlocutory order is provided by the rules or by statute, appellate courts have jurisdiction over final judgments only.” *Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990); *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003). “A final judgment is one that resolves all the issues in the case, ‘leaving nothing else for the trial court to do.’” *Estate of Henderson*, 121 S.W.3d at 645 (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). An order that does not adjudicate all the claims, rights, or liabilities between all the parties is not appealable as of right. *Estate of Henderson*, 121 S.W.3d at 645. Therefore, this Court does not have subject matter jurisdiction to adjudicate an appeal as of right if there is no final judgment. *See Bayberry Assocs.*, 783 S.W.2d at 559.

In the case at bar, our review of the appellate record discloses no final judgment. In addition to the defenses raised in her answer, Ms. Chance raised nine claims through her counter-complaint. After the trial court adjudicated GVM’s pre-trial motions, five counterclaims remained: breach of contract, breach of the implied duty of good faith and fair dealing, conversion, violation of the TCPA, and unjust enrichment. Although Ms. Chance attempted to voluntarily nonsuit the claims of conversion, unjust enrichment, and breach of implied duty of good faith and fair dealing via her response to GVM’s motion for summary judgment, the trial court ruled that she could not do so.

As the trial court expressly determined in its order denying GVM’s motion for summary judgment, “withdrawing” claims in a response to a summary judgment motion is not allowed pursuant to Tennessee Rule of Civil Procedure 41.01(1). Because the trial court denied Ms. Chance’s attempted nonsuit, she was required to file a formal written notice of voluntary dismissal respecting any claims she wished to nonsuit following the trial court’s determination.³ *See* Tenn. R. Civ. P. 41.01, 41.03. However, following the ruling on summary judgment, there appears no notice of voluntary dismissal of these claims in the appellate record. Likewise, there exists no indication that the claims were otherwise resolved. The trial transcript and jury verdict form indicate that the jury was only instructed to consider and make determinations concerning the breach of contract, conversion, and TCPA claims. Thus, the record lacks proof of a proper dismissal of or other disposition concerning the claims of unjust enrichment and breach of implied duty of good faith and fair dealing.

Moreover, we find GVM’s arguments in its response to the show cause order unavailing. We reiterate that a final judgment must resolve all of the issues in the case “leaving nothing else for the trial court to do.” *See Estate of Henderson*, 121 S.W.3d at

³ As this Court has previously noted, Tennessee Rule of Civil Procedure 41.01(1) “is not dependent upon the determination of the trial judge. The lawyer for the plaintiff is the sole judge of the matter and the trial judge has no control over it. . . . All that is required to dismiss prior to the trial . . . is the filing of a written notice of dismissal.” *Rose v. Bushon*, No. E2015-00644-COA-R3-CV, 2016 WL 7786449, at *7-8 (Tenn. Ct. App. Mar. 28, 2016) (quoting *Ricketts v. Sexton*, 533 S.W.2d 293, 294-95 (Tenn. 1976)).

645. Absent an order or notice of voluntary dismissal concerning the outstanding claims, there exists no judgment resolving all issues in the case. Furthermore, the trial court did not certify the judgment as final under Tennessee Rule of Civil Procedure 54.02 such that the appeal could proceed without all claims having been adjudicated.

Inasmuch as the appellate record in this matter demonstrates no final judgment, this Court lacks subject matter jurisdiction to consider the appeal. Accordingly, this appeal is dismissed for lack of a final judgment without prejudice to the filing of a new appeal once a final judgment has been entered.

III. Conclusion

For the foregoing reasons, this appeal is dismissed for lack of subject matter jurisdiction. The record discloses no final judgment in that Ms. Chance's counterclaims of unjust enrichment and breach of the implied duty of good faith and fair dealing were not adjudicated. This case is remanded to the trial court for further proceedings consistent with this opinion. The costs of this appeal are taxed to the appellant, Gary Viles Motors, LLC.

s/Thomas R. Frierson, II

THOMAS R. FRIERSON, II, JUDGE