IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 7, 2022 Session

ST. PAUL COMMUNITY LIMITED PARTNERSHIP ET AL. v. ST. PAUL COMMUNITY CHURCH N/K/A GREEN HILLS COMMUNITY CHURCH

Appeal from the Chancery Court for Davidson County
No. 15-0918-I Patricia Head Moskal, Chancellor

No. M2021-01548-COA-R3-CV

This third appeal in a long-running landlord/tenant dispute presents the question of the proper amount of an attorney's fees award. The tenant, John T. Rochford, III, and several business entities owned or controlled by Mr. Rochford (collectively "Rochford"), sued the church now known as Green Hills Community Church ("Church"), claiming among other things that Church breached a lease agreement. Following a second appeal in which this Court held that an award of attorney's fees in favor of Church was warranted, the trial court awarded Church $343,535.07 in attorney's fees and expenses, which reflected a rate of $295 per hour. The trial court declined Church's request for 10% yearly interest starting from the date of the filing of the complaint, July 30, 2015, finding it unwarranted by the terms of the lease. Church appeals, arguing that it should have been awarded attorney's fees at a rate of $450 per hour and interest. We affirm.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which ANDY D. BENNETT and JEFFREY USMAN, JJ, joined.

M. Taylor Harris, Jr. and L. Marshall Albritton, Nashville, Tennessee, for the appellant, Green Hills Community Church.

W. Scott Sims and William L. Harbison, Nashville, Tennessee, for the appellees, St. Paul Community Limited Parnership, John T. Rochford, III, and Rochford Realty & Construction Co.

OPINION

I. BACKGROUND

In the first appeal, *St. Paul Cmty. Ltd. P'Ship v. St. Paul Cmty. Church*, No. M2017-01245-COA-R3-CV, 2018 WL 5733288 (Tenn. Ct. App. Oct. 31, 2018) ("*St. Paul I*"), this Court affirmed summary judgment in favor of Church on the issue of whether Church was contractually bound to allow Rochford's attempt to obtain a mortgage loan insured by HUD for repairs and improvements to the leased property. *Id.* at *2, 4.

Following our remand in *St. Paul I,* Church asked for an award of $448,605 in attorney's fees, calculated at $450 per hour for 996.9 hours, and $4,563.90 in expenses. The trial court denied Church's request for fees and expenses, resulting in the second appeal of this case. *St. Paul Cmty. Ltd. P'Ship v. St. Paul Cmty. Church*, No. M2020-00272-COA-R3-CV (Tenn. Ct. App. Jan. 5, 2021) ("*St.Paul II*").[1] We reversed the trial court's decision, stating as follows in pertinent part:

> The Church . . . sought attorney's fees pursuant to Paragraph 21 of the lease, which provides as follows:
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> > ATTORNEY'S FEES AND INTEREST. In the event that it becomes necessary for [Church] to employ an attorney to enforce collection of the rents herein agreed to be paid, or to enforce compliance with any of the covenants and agreements herein contained, [Rochford] shall be liable for all reasonable attorney's fees costs and expenses so incurred by [Church]; and in addition, [Rochford] shall be liable for interest at ten per cent (10%) per annum on any sum which a court of competent jurisdiction shall finally determine to be due from lessee by reason of a breach of this Lease, such interest to run from the date of the breach.
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> Prior to the court's ruling, the Church voluntarily dismissed its counter-complaint, with the exception of its request for attorney's fees.
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> * * *
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> [W]hile [Rochford] may have originally filed a declaratory judgment action, the complaint was later amended to include claims of (1) breach of settlement agreement and (2) breach of the lease agreement. As pertinent to this appeal, [Rochford] argued that the requested financing was anticipated in the lease

[1] The *St. Paul II* opinion has not been available on Westlaw as of the date of this writing.

> agreement and that the Church's refusal to acquiesce was an anticipatory repudiation of its obligations and a breach of the lease. The Church argued that the HUD financing clause was null and void as evidenced by the 1998 addendum to the lease agreement. The Church claimed that the lease did not require continued acquiescence to HUD financing and current underwriting requirements for [Rochford's] benefit and to its detriment. In sum, [Rochford] sought to enforce compliance with the 1988 lease, while the Church sought to enforce compliance with the 1998 addendum to the lease.
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> In consideration of the foregoing, we hold that attorney's fees are warranted pursuant to the terms of the lease agreement. Exercising our discretion in such matters, we affirm the request for attorney's fees on appeal and remand for a determination of the reasonable amount of such fees at the trial court level and now on appeal.

St. Paul II, No. M2020-00272-COA-R3-CV, at p. 5, 7 (italics in original omitted).

In its thorough final judgment order, the trial court stated as follows regarding what happened after the second remand:

> The Church filed . . . its amended fee application on May 26, 2021. The original application included affidavits of two representatives of the Church, excerpts of the trial court record, and the affidavit of the Church's attorney, with a list of litigation expenses and attorney time entries for the period July 22, 2015 to November 13, 2018. None of the attorney time entry records included the corresponding hourly rates charged or the dollar amounts billed. The Church requested a fee award of $448,605, based on an hourly rate of $450 for 996.90 hours, plus expenses of $4,563.90. The Church's attorney stated that, of the total award requested, the Church should recover $301,384.90, with the excess "to be assigned to counsel."
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> The Church's attorney later submitted a Rule 72 Declaration in further support of the original application and, for the first time, provided a copy of the August 1, 2015 signed engagement letter between the attorney's law firm and the Church. The engagement letter states:
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> > **Fees and Expenses**. Our fee for services will be based on time expended at $295 per hour for my time and the current rates not exceeding that for any other attorney or paralegal that may assist. . . . We will be entitled to be reimbursed for any out-of-pocket expenses incurred on your behalf. . . .

Also attached to the attorney's declaration was a copy of an email dated October 6, 2015, in which the attorney stated:

> If we are able to successfully defend this lawsuit and the court allows us to apply for an award of attorney fees, I would apply for payment at a higher hourly rate than the $295/hour that I'm billing the church. If the court were to award less than the church has paid me, all of what we received from Rochford to comply with the court's order would of course be paid to the church to reimburse its expense. If the court were to award more than the church had paid my firm, after reimbursing the church what it had paid my firm the amount above that would benefit my firm without affecting the church.
>
> This is not spelled out in the "engagement letter" you signed for the church. Please reply to this email just to confirm this as part of our engagement understanding so the court will be aware of it in connection with a fee application if we are able to file one. . . .

Id. The Church's representative replied to the email, stating "I understand this part of our 'engagement' of your firm's representation . . . ." *Id.*

* * *

All told, the Church now requests an award of $515,655 in attorney fees, based on an hourly rate of $450 for 1,145.90 total hours, and a total of $5,394.57 in expenses. In addition, the Church requests interest in the amount of $301,046, which it calculated at the rate of 10% per annum beginning July 30, 2015 (the date of filing the lawsuit) through of May 26, 2021 (the date of the amended fee application), with interest continuing to accrue thereafter at $141.27 per day. The total award applied for by the Church, including interest, is $822,095.57.

(Footnote and citations to record omitted).

The trial court found that the $295 hourly rate was reasonable under the applicable legal principles and the terms of the lease, reasoning as follows:

> Under the plain language of th[e] attorney's fee provision of the Lease, [Rochford] "shall be liable for all reasonable attorney's fees, costs and

> expenses so ***incurred***" by the Church (emphasis added). The reasonable fees "incurred" by the Church are those attorney's fees for legal services that the Church was obligated to pay relating to this Lease dispute.
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> * * *
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> The issue presented is not the reasonableness of the fee "customarily charged for similar legal services" in the abstract, but is centered on the parties' engagement letter and the fees "***incurred***" by the Church for the legal services under paragraph 21 of the Lease. The Partnership and Rochford accept that the Church can recover its fees "incurred" at the hourly rate of $295, as set forth in the Lease and written engagement letter, but oppose the higher hourly rate of $450 (a difference of $155 per hour). Notably, the engagement letter does not describe the $295 hourly rate as a "reduced rate fee," as now characterized by the Church's attorney. And, while there is email correspondence between the Church and its attorney suggesting that counsel would apply for a "higher hourly rate" in the event attorney's fees are to be awarded, there is no written agreement between the Church and its attorney specifying the higher hourly rate or obligating the Church to pay it.
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> The Tennessee Supreme Court recognizes that "Tennessee allows an exception to the American rule only when a contract *specifically* or *expressly* provides for the recovery of attorney fees." *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 309 (Tenn 2009) (emphasis in original). The Court finds that the Lease "specifically" and "expressly" allows the Church to recover the attorney's fees "***incurred***," and further finds that the engagement letter supplies the specific hourly rate of $295. The engagement letter was not modified to provide for the higher hourly rate of $450 because the email correspondence did not specify any higher hourly rate. It is not reasonable to award an hourly rate higher than the $295 hourly rate agreed to and not "incurred" by the Church, under the terms of the engagement letter and paragraph 21 of the Lease, where the higher hourly rate was never specified, was not put in writing, and was not charged to or paid by the Church. For these reasons, the Court determines that the reasonable amount of the Church's attorney's fee award should be based on the $295 hourly set forth in the engagement letter.

(Footnote omitted).

Regarding Church's claim for interest starting from the date of the lawsuit, the trial court found that Rochford could only be liable under the lease for interest "on any ***sum***

which a court of competent jurisdiction shall finally determine to be ***due*** from [Rochford] ***by reason of a breach of this Lease***, and such interest to run from the date of the breach." (Emphasis in original trial court's order). Because no court ever awarded Church a judgment based on a breach of the lease, the trial court denied the interest claim.

II. ISSUES PRESENTED

Church raises the following issues:

1. Whether the trial court erred in awarding Church attorney's fees at the hourly rate of $295 instead of the $450 rate applied for by Church's attorney.

2. Whether the trial court erred by declining to award Church interest on the attorney's fees award from the date of filing the lawsuit.

III. STANDARD OF REVIEW

As stated by our Supreme Court,

> In a non-jury case such as this one, appellate courts review the trial court's factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We review the trial court's resolution of questions of law de novo, with no presumption of correctness.

Kelly v. Kelly, 445 S.W.3d 685, 691-92 (Tenn. 2014). There are no factual findings in contention on this appeal. A court's role in interpreting a contract is to ascertain the intention of the parties. "The intention of the parties is based on the ordinary meaning of the language contained within the four corners of the contract. The interpretation of a contract is a matter of law, which we review de novo with no presumption of correctness." *MLG Enters., LLC v. Johnson*, 507 S.W.3d 183, 186 (Tenn. 2016) (quoting *84 Lumber Co. v. Smith*, 356 S.W.3d 380, 383 (Tenn. 2011)); *see also, e.g., Kyle v. J.A. Fulmer Trust*, No. W2008-00220-COA-R3-CV, 2008 WL 5156306 at *4 (Tenn. Ct. App. Dec. 9, 2008) ("This case involves the interpretation of a lease – a question of law").

We review a trial court's decision concerning attorney's fees applying an abuse of discretion standard. *Tenn. State Bank v. Mashek*, 616 S.W.3d 777, 792 (Tenn. Ct. App. 2020) (citing *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011); *In re Estate of Greenamyre*, 219 S.W.3d 877, 886 (Tenn. Ct. App. 2005) ("[A] trial court will be found to have 'abused its discretion' only when it applies an incorrect legal standard,

reaches a decision that is illogical, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party.")).

IV. ANALYSIS

In *Cracker Barrel Old Country Store v. Epperson*, 284 S.W.3d 303, 308 (Tenn. 2009), the Supreme Court reiterated that the American rule prevails in Tennessee and provides that "a party in a civil action may recover attorney fees only if: (1) a contractual or statutory provision creates a right to recover attorney fees; or (2) some other recognized exception to the American rule applies, allowing for recovery of such fees in a particular case." In the present case, the claim for attorney's fees is based on contract – the lease agreed to by the parties. As the *Epperson* Court held:

> In the context of contract interpretation, Tennessee allows an exception to the American rule only when a contract *specifically* or *expressly* provides for the recovery of attorney fees. [*House v. Estate of Edmondson*, 245 S.W.3d 372, 377 (Tenn. 2008)] ("The American rule provides that a party in a civil action may not recover attorney's fees absent a *specific* contractual or statutory provision providing for attorney's fees ....") (emphasis added); *Pullman Standard*, 693 S.W.2d at 338 ("We continue to adhere to the rule in Tennessee that attorneys' fees are not recoverable in the absence of a statute or contract *specifically* providing for such recovery ....") (emphasis added); *Pinney v. Tarpley*, 686 S.W.2d 574, 581 (Tenn. Ct. App. 1984) ("In the absence of an *express* agreement to pay attorney's fees for enforcement of a contract, such are not recoverable in Tennessee.") (emphasis added). If a contract does not specifically or expressly provide for attorney fees, the recovery of fees is not authorized.

Id. at 309.

As already noted, paragraph 21 of the lease provides that if it is necessary for Church "to employ an attorney . . . to enforce compliance with any of the covenants and agreements herein contained, [Rochford] shall be liable for all reasonable attorney's fees[,] costs[,] and expenses *so incurred by*" the Church. (Emphasis added). The engagement letter sent to Church by its attorney states that "[o]ur fee for services will be based on time expended at $295 per hour for my time." In a later email, Church's attorney said that if "the court allows us to apply for an award of attorney fees, I would apply for payment at a higher hourly rate than the $295/hour that I'm billing the church." The "higher hourly rate" is unspecified, and thus entirely vague. As observed by the trial court, the rate of $450 per hour was never mentioned and was not expressly agreed upon in writing.

The parties agreed that Rochford would be liable for reasonable attorney's fees incurred by Church. The term "incur" is defined as "to suffer or bring on oneself (a liability or expense)." Black's Law Dictionary (11th ed. 2019). In *Terminix International Co. Ltd. Partnership v. Tennessee Insurance Guaranty Association.*, 845 S.W.2d 772, 776 (Tenn. Ct. App. 1992), this Court stated:

> The word "incur" has a well accepted meaning which is "to become liable or subject to." The American Heritage Dictionary, p. 653 (2nd. College Ed.).
>
> In *Hermitage Health and Life Insurance Co. v. Cagle*, 57 Tenn. App. 507, 420 S.W.2d 591, 593 (1967), this Court held that "incur" means "to become liable for." In *Cagle*, this Court interpreted the word in the context of a provision of a health insurance policy obligating the insurer to pay for expenses incurred and held that medical expenses are incurred when the patient becomes liable to pay for them.

Accord Ernest v. USAA Cas. Ins. Co, No. 3:08–CV–72, 2009 WL 803106 at *3 (E.D. Tenn. Mar. 25, 2009) ("It is clear that the term 'incurred' means 'to become liable for' or 'to be legally obligated to pay'").

In this case, there is nothing in the record suggesting that Church was ever charged, billed, or became liable for legal work done at a rate of $450 per hour. The $338,040.50 that was actually charged and paid by Church reflects a rate of $295 per hour. Any additional fees would not be an award to compensate or reimburse Church, but would go directly to Church's attorney. This is evident by the attorney's email to Church in which he stated, "[i]f the court were to award *more than the church had paid my firm*, after reimbursing the church what it had paid my firm the amount above that would benefit my firm *without affecting the church*." (Emphasis added). Because Church did not incur attorney's fees at a rate greater than the agreed-upon and charged $295 per hour, the trial court did not err in interpreting the lease to require only that amount of attorney's fees.

A trial court called upon to assess the reasonableness of an attorney's fee must consider the factors set forth in Tennessee Supreme Court Rule 8, RPC 1.5, which provides:

> The factors to be considered in determining the reasonableness of a fee include the following:
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> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
(8) whether the fee is fixed or contingent;
(9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
(10) whether the fee agreement is in writing.

Ellis v. Ellis, 621 S.W.3d 700, 708-09 (Tenn. Ct. App. 2019). Here, the trial court properly made findings and conclusions regarding each of the pertinent factors. As the court correctly noted, the analysis did not involve an assessment of an hourly rate in the abstract, nor a disagreement about the necessity and reasonableness of the number of hours worked, but largely turned on what was agreed upon by the parties in the lease. As already discussed, the lease only authorized the payment of fees incurred by Church, which were charged and paid at the $295 rate pursuant to the written engagement letter.

Church argues that the trial court's decision contravened either one of its own earlier orders, or this Court's mandate in *St. Paul II*, which it suggests somehow established a *res judicata* effect approving the higher $495 hourly rate. In *St. Paul II*, we "remand[ed] for a determination of the reasonable amount of such fees at the trial court level and now on appeal." No. M2020-00272-COA-R3-CV, at p. 7. Obviously implicit in this mandate is the recognition that reasonable fees in this case had not yet been adjudicated. The trial court thus did exactly what this Court mandated in *St. Paul II*.

Regarding interest payments, the lease provides that Rochford "shall be liable for interest at ten per cent (10%) per annum on any sum which a court of competent jurisdiction shall finally determine to be due from lessee by reason of a breach of this Lease, such interest to run from the date of the breach." The trial court noted that "Church requests $301,046 in interest, based on a projected fee award of $515,655, at ten percent (10%) interest beginning July 30, 2015, the date the lawsuit was filed." The trial court found that "[n]either the trial court nor the Court of Appeals awarded the Church any "sum" of compensatory damages resulting from a breach of the Lease. Indeed, the Church voluntarily dismissed its counterclaims for breach of the Lease without any finding by the Court that the Lease was breached by [Rochford]."

Church's argument that the trial court erred hinges on its contentions that "Rochford breached the Lease by claiming in its July 30, 2015 original complaint and in its amended complaint a nonexistent right to HUD financing" and "[i]t goes without needing to use the

word "breach" that [the trial court's] orders found that Rochford's lawsuit claiming new HUD financing rights breached that 1998 Lease amendment." We decline to hold that the mere filing of a lawsuit alleging a breach of a lease and asking the trial court to construe its terms itself amounts to a breach of the lease in the absence of an agreed term in the lease so providing. *See Cracker Barrel v. Epperson*, 284 S.W.3d at 309 ("a party should not be penalized for merely bringing or defending a lawsuit") (quoting *House v. Estate of Edmondson*, 245 S.W.3d 372, 377 (Tenn. 2008)).

V. CONCLUSION

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant, Green Hills Community Church, for which execution may enter if necessary.

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KRISTI M. DAVIS, JUDGE