

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 12, 2014

JUDY WOODARD v. FARMERS FAMILY RESTAURANT, ET AL.

**Appeal from the Circuit Court for Dickson County
No. 22CC2009CV105 Michael R. Jones, Judge**

No. M2014-00132-COA-R3-CV - Filed February 9, 2015

Plaintiff filed suit against her former employer for sexual discrimination, employer retaliation, intentional infliction of emotional distress, negligent hiring, retention and supervision practices, and workers' compensation retaliation. The parties entered into an agreement which settled Plaintiff's claims; pursuant to the terms of the agreement, the parties submitted an agreed order dismissing the case which was entered by the court. Thereafter, Plaintiff filed a motion to vacate the order of dismissal, and her former employer filed a motion to enforce the settlement. After a hearing on the motions, the court entered an order dismissing the complaint. Plaintiff filed a motion for relief, which the court denied. Finding no error, we affirm the judgment of the trial court.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and W. NEAL MCBRAYER, J. joined.

Judy Woodard, Dickson, Tennessee, Pro Se.

R. Eric Thornton, Dickson, Tennessee, for the appellees, Farmers Family Restaurant Dickson, LLC and Dickson Farmers Operations, LLC.

MEMORANDUM OPINION¹

I. FACTUAL BACKGROUND

On August 20, 2009, Judy Woodard filed a complaint against her former employer, Farmers Family Restaurant Dickson, LLC, and Dickson Farmers Operations, LLC (collectively “Farmers”), for sexual discrimination, employer retaliation, intentional infliction of emotional distress, negligent hiring, retention and supervision practices, and workers’ compensation retaliation. On December 21, 2012, Ms. Woodard and Farmers entered into an agreement that compromised and settled her complaint. Pursuant to the agreement, the court entered an agreed order on January 10, 2013, which dismissed the case with prejudice stating that “all matters in controversy between these parties have been compromised and settled and [Ms. Woodard’s] case should be dismissed.” Ms. Woodard was represented by counsel from the filing of the action through its dismissal.²

On February 8, 2013, Ms. Woodard, proceeding *pro se*, filed a Tenn. R. Civ. P. 60.02 motion to vacate the January 10 order on the ground of fraud. On February 28, Circuit Judge Larry Wallace entered an order setting aside the January 10 order dismissing the case because the order had erroneously been presented to him to enter.³ On June 21, Farmers filed a Motion to Enforce Settlement Agreement, requesting that the court enter the agreed order of dismissal which had been set aside by Judge Wallace; in the alternative, Farmers requested that the court enter its own order dismissing the case with prejudice pursuant to the terms of settlement agreement.

On August 22, 2013, the court entered an order on Farmers’ motion and Ms. Woodard’s response to the motion. The court determined that the issues presented were

¹ Tenn. R. Ct. App. 10 states:

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.

² On February 19, 2013, Ms. Woodard’s counsel moved to withdraw from the representation. On June 24, 2013, the court granted the motion.

³ Judge Wallace’s order recited that the Tennessee Supreme Court had previously appointed Judge Michael R. Jones to hear all matters in the case; accordingly, Judge Wallace set aside the January 10 order and directed that future matters be submitted to Judge Jones.

“limited to the enforcement of the settlement agreement and whether the complaint should be dismissed”; after making certain findings of fact, the court dismissed the complaint.

On September 20, 2013, Ms. Woodard filed a Tenn. R. Civ. P. 60.02 motion for relief from the court’s August 22 order.⁴ In the motion, Ms. Woodard asserted several facts, but did not assert a specific ground to set aside the order dismissing the case. Following a hearing, the court entered an order denying the motion; Ms. Woodard appeals.⁵

II. DISCUSSION

As an initial matter, we acknowledge that Ms. Woodard has articulated four issues for resolution in her brief on appeal.⁶ The record before us, however, presents the sole question

⁴ On the same day, Ms. Woodard filed a document styled “Motion to Suspend the Operation of the Final Order,” citing Rule 60. Such a motion is not recognized under our rules; notwithstanding, we consider this motion in context of the request for relief from the order dismissing the case.

⁵ In our resolution of this case, we are mindful of the following instruction from *Hessmer v. Hessmer*:

Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.

The courts give pro se litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs. Accordingly, we measure the papers prepared by pro se litigants using standards that are less stringent than those applied to papers prepared by lawyers.

Pro se litigants should not be permitted to shift the burden of the litigation to the courts or to their adversaries. They are, however, entitled to at least the same liberality of construction of their pleadings that Tenn. R. Civ. P. 7, 8.05, and 8.06 provide to other litigants. Even though the courts cannot create claims or defenses for pro se litigants where none exist, they should give effect to the substance, rather than the form or terminology, of a pro se litigant's papers.

Hessmer v. Hessmer, 138 S.W.3d 901, 903-04 (Tenn. Ct. App. 2003)(internal citations omitted).

⁶ Ms. Woodard states the following issues:

A. Did the Circuit Court err in dismissing the Complaint of Judy M. Woodard (hereinafter “Ms. Woodard”) in favor of the execution of the Settlement Agreement where the agreement
(continued...)

of whether, applying the standards appropriate to Tenn. R. Civ. P. 60.02, the court erred in denying Ms. Woodard's motion to set aside the August 22 order dismissing the case.⁷

Tenn. R. Civ. P. 60.02 allows the trial court to relieve a party from a final judgment "upon such terms as are just" for a limited number of reasons. A motion for relief under Rule 60 addresses itself to the sound discretion of the trial court, and the scope of review on appeal is whether the trial court abused that discretion. *Toney v. Mueller*, 810 S.W.2d 145, 147 (Tenn. 1991); *Day v. Day*, 931 S.W.2d 936, 939 (Tenn. Ct. App. 1996). In reviewing the trial court's decision on a Rule 60.02 motion, this court will overturn the decision only if the court has abused its discretion. *Lindsey v. Lambert*, 33 S.W.3d 572, 576-77 (Tenn. Ct. App. 2010) (citing *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003)). As noted in *Lindsey*:

"The abuse of discretion standard requires us to consider: (1) whether the decision has a sufficient evidentiary foundation; (2) whether the trial court correctly identified and properly applied the appropriate legal principles; and (3) whether the decision is within the range of acceptable alternatives." The abuse of discretion standard does not allow this Court to substitute the panel's judgment for the judgment of the trial court. We will uphold the decision of a trial court so long as reasonable minds can disagree about its correctness, and

⁶(...continued)

was void on its face due to Farmers Family Restaurant Dickson, LLC and Dickson Farmers Operations, LLC (hereinafter the "LLCs") failure to make a viable offer with valuable consideration?

B. Did the Circuit Court err in failing to compel the LLCs to provide appropriate responses to Ms. Woodard's requests for discovery and production of documents where responses were evasive and non-specific regarding financials, federal and state tax documents and members and/or officers of the Defendant, LLCs?

C. Did the Circuit Court err in failing to pierce the corporate veil in light of the nature of the relationship between the LLCs and their attorney which was in direct conflict and contravened public policy regarding the dissolutions and formations of the LCC entities which would be perceived as an effort to circumvent Ms. Woodard's ability to obtain relief?

D. Did the Circuit Court err in denying Ms. Woodard's motion to amend the complaint to include R. Eric Thornton, the LLCs' attorney, as a Defendant in light of his position as an Officer/President of the LLCs named in this matter, and his involvement in failing to negotiate the settlement agreement in good faith, where no valid offer was made nor valuable consideration given, and the dissolution and formation of multiple LLCs in an effort to prevent any recovery by Ms. Woodard?

⁷ As noted, Ms. Woodard's Rule 60.02 motion filed September 20, 2013 did not specify a ground for relief; we have reviewed the motion and accompanying memorandum and have determined that the pleadings come within the parameters of subsections (2), (4) and (5).

will set aside the court's decision only if the court has applied an incorrect legal standard or has reached an illogical or unreasoned decision that causes an injustice to the complaining party.

Id. at 577 (internal citations omitted).

In the August 22 order the court held that the issues presented were the enforcement of the settlement agreement and whether the complaint should be dismissed. This was a correct statement of the state of the record at the time, where the parties had entered into a settlement agreement in which, among other things, the parties agreed that the terms of the agreement were in compromise and settlement of the suit and that they would enter an agreed order dismissing the suit.⁸ Further, the court made numerous findings of fact, particularly that the settlement contained an enforcement mechanism by which Ms. Woodard retained the ability to seek specific performance of the agreement or damages for its breach.⁹ The order denying the motion recited that the court considered both the motion to suspend and the motion for relief under the standards applicable to motions seeking relief under Rule 60.02, and that the motions were not well taken.

Upon our review of the record, we have determined that the court correctly identified and applied the appropriate legal standards; that it found sufficient facts to support its ruling; and that denying the motion to set aside the dismissal of the complaint was an acceptable alternative given the record presented. Accordingly, the court did not abuse its discretion in denying the Tenn. R. Civ. P. 60.02 motion.

⁸ In this regard, Judge Wallace's February 28, 2013 order setting aside the January 10 order, effectively rendered moot the Rule 60.02 motion Ms. Woodard had filed February 9; thus, the case remained an active case through the court's consideration of Farmers' motion to enforce the settlement agreement.

⁹ The order stated:

Paragraph 7 of the Settlement Agreement is as follows:

7. Notwithstanding any provisions herein, in the event of breach hereof by any party or parties, the non-defaulting party or parties will have the right to seek specific performance of this agreement and/or damages for the breach in any court of law or equity against the defaulting party.

Obviously [Farmers] has breached the contract; [Ms. Woodard] has the right to seek specific performance and/or damages. The court believes that the settlement agreement resulted in an extinguishment of all claims under the Complaints. [Ms. Woodard] retains the right to sue for breach of contract and do whatever else is necessary to find the assets of the defaulting parties.

III. CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

RICHARD H. DINKINS, JUDGE