RENDERED: APRIL 22, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001991-MR

SONNY JOSEPH BOLT — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 02-CI-503515

TIFFANY MICHELE BOLT — APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: BUCKINGHAM, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: The first issue concerns setting aside admissions made by appellant in his failure to answer or deny interrogatories. We opine the trial court did not abuse its discretion in not setting aside appellant's admissions. Therefore, we affirm that part of the judgment.

The second issue on appeal is whether or not there was a negotiated property settlement agreement in a divorce

proceeding. We opine the circuit court erred in enforcing the agreement because the issue of the insurance proceeds was never agreed upon. Therefore, there was no agreement, and that part of the judgment must be reversed and remanded for further proceedings.

The appellant, Sonny Joseph Bolt, was originally represented by counsel in the divorce action with appellee, Tiffany Michele Bolt. On January 27, 2003, Interrogatories and Request for Production of Documents had been sent to appellant, with a response due by March 1, 2003. However, prior to filing a response, appellant's counsel filed a motion to withdraw, on February 24, 2003. The court granted the motion to withdraw and granted the appellant seven days to retain substitute counsel. Before retaining new counsel, appellant attempted to reach a settlement with appellee's counsel. By fax sent March 20, 2003, appellant made a settlement proposal awarding the appellee the Honda Accord vehicle if appellee agreed there would be no need for appellant to respond to the Interrogatories and Request for Production of Documents. On March 21, 2003, appellee's counsel counter-offered, agreeing to the proposed settlement if appellant assumed the debt on the vehicle and awarded appellant the insurance proceeds for damages to the vehicle. On March 26, 2003, appellant sent a fax rejecting the counter-offer.

On April 9, 2003, appellee's counsel filed a motion to compel answers to the earlier discovery of January 27, 2003. On April 14, 2003, the trial court granted the request but allowed the appellant five additional days to comply. On April 28, 2003, appellee's counsel moved for a show cause order to determine why appellant should not be held in contempt for not complying with the discovery requests. On May 14, 2003, appellee's attorney filed a request for admissions of the previously unanswered interrogatories. On May 19, 2003, the trial court entered an order deeming the following as admitted:

> 1. That the Respondent without the Petitioner's knowledge or consent, requested, obtained, and/or used the Petitioner, Tiffany Bolt's Consumer Report (as said term is defined in the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et. seq.); and
>
> 2. That in doing so, Mr. Bolt used the resources of his employer, PNC Bank; and
>
> 3. That the Respondent in requesting, obtaining and/or using such information, had no permissible purpose (as said term is defined in the Federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et. seq.).

Subsequently, appellant obtained new counsel who moved the trial court to reconsider the admissions, on the grounds that appellant was not represented by counsel, he did not have a full understanding of the way the discovery process worked and that appellant had sufficient legal reasons to justify his refusal to answer. Said motion to reconsider was denied.

On June 10, 2003, appellant's new counsel sent an offer to appellee's counsel concerning issue two, the property settlement. In the offer, appellant agreed appellee would get the Honda Accord and appellant would pay off the vehicle debt. Nothing was mentioned about the insurance proceeds. However, on June 16, 2003, at an unrelated motion docket, appellant's new counsel's partner was discussing the proposed settlement with appellee's counsel, when the issue of the insurance proceeds first arose between counsel. When appellant's counsel's partner heard about the insurance proceeds, he (the partner) agreed that it sounded reasonable that the insurance proceeds would follow the Honda Accord. Nothing was put in writing nor was the proposed change reviewed by the appellant or agreed to by the attorney representing the appellant. On June 19, 2003, appellant's attorney faxed a letter to appellee's attorney indicating that that June 10 offer would remain open until the close of business on June 20, 2003. No reference was made about including or excluding the insurance check. The same day, appellee's attorney faxed an acceptance "with the understanding that the check which your client received from the insurance company . . . is to be awarded to my client." Nothing happened until after the deadline of June 20, 2003. Appellee takes the position that there was an agreed settlement. Appellant contends the June 19 acceptance contained additional terms which

converted it to a counter-offer. The trial court concluded there was an acceptance, not a counter-offer.

Appellant's first argument on appeal is that the trial court erred in not vacating or amending the order as to the admissions. CR 36.01(2) requires written answers to a request within 30 days or the matter is admitted. The court has discretion to allow more time. More importantly, "[a] party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37.03, deny the matter or set forth reasons why he cannot admit or deny it." Id. Appellant did nothing. He sat on the request. Granted, he tried to settle the case, but after he rejected the counter-offer on March 26, 2003, he still made no effort to answer the request for admissions. Nor did he give any reason why he could not admit or deny, until well after the thirty-day period provided in the rule. In Harris v. Stewart, 981 S.W.2d 122, 124 (Ky.App. 1998), a panel of this Court stated, "[o]nce a party has been served with a request for admissions, that request cannot simply be ignored with impunity." And, "the trial court retains wide discretion to permit a party's response . . . to be filed outside the 30 or 45-day time limit . . . ." Id. Part of appellant's argument for the trial court to reconsider the admissions is due to the

alleged defense appellant would have in refusing to answer – his assertion of the Fifth Amendment right against self-incrimination in a separate action. That argument is also without merit because under CR 36.02, "[a]n admission made by a party under Rule 36 is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding." Id. Considering the limited scope of the admissions and the length of time it took the appellant to respond, after numerous opportunities, the trial court did not abuse its discretion in not vacating or amending the order as to the admissions.

The second issue is whether or not there was a negotiated property settlement agreement. More specifically, was the appellee's attorney's fax of June 19, 2003, an acceptance of a prior offer, or was it a counter-offer. Settlement agreements are governed by contract law. Frear v. P.T.A. Industries, Inc., 103 S.W.3d 99, 105 (Ky. 2003); Cantrell Supply, Inc. v. Liberty Mutual Insurance Co., 94 S.W.3d 381, 384 (Ky.App. 2002). "With respect to compromise or settlement of a claim, final decision-making authority rests with the client." Clark v. Burden, 917 S.W.2d 574, 575 (Ky. 1996). The Clark Court determined "that in ordinary circumstances, express client authority is required. Without such authority, no enforceable settlement agreement may come into existence." Id. at 576. In

our case, it is clear that the appellant did not approve the settlement which included the insurance check following the vehicle. That same offer was made earlier and rejected. After appellant hired a new attorney, the offer was made again, without mention of the insurance check.

In discussions between appellee's attorney and appellant's attorney's partner, the partner agreed that it sounded reasonable that the insurance proceeds follow the vehicle. Clark, 917 S.W.2d at 577, makes it clear that a client may give his attorney authority to settle the case and is thereafter bound by any settlement. See also, Ford v. Beasley, 148 S.W.3d 808 (Ky.App. 2004). However, we do not believe the parties in our case went beyond negotiations for a settlement. The June 10, 2003, offer of settlement did not mention the insurance check. On June 16, 2003, the appellee's attorney discussed the insurance check with the partner of appellant's attorney. If the partner was acting on behalf of appellant's attorney, the statement that a proposal sounds reasonable is not an acceptance, but an offer to seek client approval of the additional term. See Venters v. Stewart, 261 S.W.2d 444, 446 (Ky. 1953) wherein the court held "[a]n acceptance of an offer must be unequivocal in order to create a contract." "It is not enough that there are words or acts which imply a probable acceptance." Id. The June 10, 2003, offer was never amended to

reflect the insurance check which both sides were now aware of. The attempted acceptance of June 19, 2003, contained an additional item (disposition of the insurance check) which was not included in the June 10, 2003, offer nor agreed to in the June 16, 2003, discussion. Under contract law, an acceptance which includes additional terms than in the offer, constitutes a counter-offer. A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc., 998 S.W.2d 505, 511 (Ky.App. 1999); General Motors Corp. v. Herald, 833 S.W.2d 804, 807 (Ky. 1992). Therefore, that part of the judgment must be reversed.

For the foregoing reasons, the judgment of the Jefferson Family Court is affirmed in part, reversed in part, and remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

Wallace N. Rogers
Louisville, Kentucky

BRIEF FOR APPELLEE:

Linda Y. Atkins
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