RENDERED: NOVEMBER 16, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-001497-MR

MARY CLAYVILLE — APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 04-CI-00417

GEORGIA WELLMAN HUFF — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: HOWARD AND MOORE, JUDGES; GUIDUGLI,[1] SENIOR JUDGE.

MOORE, JUDGE: This is an appeal by Mary Clayville from the circuit court's denial of her motion to set aside a contract for the sale of real property as null and void.[2] Upon review, we affirm.

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[1] Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

[2] We note that Appellant's brief fails to meet the requirements of Kentucky Civil Rule 76.12 (c)(i)-(c)(iii). However, because Appellant's brief, on its merits, is sufficient for the Court's review, we will not strike it.

I. FACTUAL AND PROCEDURAL BACKGROUND

Mary Clayville, in her capacity as attorney-in-fact for her mother, Flora Wellman (Wellman), entered into a contract with Georgia Wellman Huff (Huff) on November 13, 2003, for the sale of a parcel of real property owned by Wellman.[3] The parties agreed to transfer the property by January 2004. A provision of the contract stated that "[t]he sale of the property is being conducted so as to comply with Medicaid rules and/or regulations and/or laws applicable to nursing home residents in Kentucky, as such laws pertain to the sale of realty owned by a person receiving Medicaid benefits in Kentucky."[4]

Wellman died on November 29, 2003. Clayville was appointed executrix of Wellman's estate. Clayville moved the Laurel District Court for an order allowing her to sell the real property mentioned above in accordance with the terms of the contract. Clayville's motion stipulated that $42,000.00, the sale price of the parcel, was 100% of the actual value of the property. This figure was the assessed value of the property according to the Laurel County Property Valuation Administrator (PVA). The Laurel District Court entered an order permitting the sale.

After the district court permitted the sale, it came to Clayville's attention that Medicaid would be imposing a lien greater than the sale price of the property. Clayville then sought to set aside the contract as null and void. Huff sought to enforce the contract and filed suit in the Laurel Circuit Court. Clayville then filed a motion for an

[3] Clayville and Huff are daughters of Wellman.

[4] Wellman had been a long-time resident of a nursing home in Laurel County, Kentucky.

order permitting public auction of real estate and a motion to declare as null and void the purported contract for sale of realty.[5]

In August 2003, Clayville had met with a Medicaid representative and discussed upcoming changes in Medicaid rules. Medicaid would require the sale of Wellman's home within six (6) months of September 1, 2003, to pay for Wellman's health care until the time of her death. Clayville asserts that she was informed in this meeting that, under the new guidelines, the assessed tax value of the property would be an acceptable sale price. In her affidavit, she did not claim that the assessed tax value would be the highest amount Medicaid would require to be reimbursed. However, Clayville's motion stated that she was led to believe that she would not have to pay back any more than the assessed tax value of $42,000.00. There is no evidence in the record to substantiate this belief. Medicaid's bill for Wellman's care was $84,615.31.

In an attempt to permit auction of the realty to potentially obtain a greater sales price to enable the payment of debts, Clayville contended that there was a mutual mistake regarding the basis of the contract for sale of the property. In the alternative, she contended that there was a unilateral mistake. Huff asserted that no mutual mistake existed, as she had no misconception about how much Medicaid would recover. Also, Huff asserted that the test for unilateral mistake was not satisfied. The circuit court found that if any mistake was made, it was unilateral; however, Clayville had not met the burden of proof to rescind the contract on the grounds of unilateral mistake.

[5] Clayville filed a general affidavit in the Laurel Circuit Court subsequent to her motion for an order permitting public auction of real estate and declaring as null and void the purported contract for sale of realty.

Clayville filed a motion to alter, amend, or vacate the court's order. Huff filed a motion for summary judgment. The circuit court denied Clayville's motion and granted Huff's, finding that there were no genuine issues of material fact to be disputed. Clayville now appeals the denial of her motion for an order permitting public auction of real estate and her motion to declare as null and void the purported contract for sale of realty.

II. ARGUMENTS

As she argued below, Clayville claims that the contract should be rescinded on grounds of mutual or unilateral mistake, thereby enabling the property to go to auction. Huff argues that no mutual mistake existed and Clayville did not meet her burden of proof regarding unilateral mistake. Furthermore, Huff argues that any mistake by Clayville was a mistake of law and therefore, did not affect the enforceability of the contract.

Relying on her affidavit below, Clayville asserts that there was confusion about application of the new Medicaid rules. She mistakenly interpreted the regulation regarding how much money Medicaid would be reimbursed. This is a mistake of law--an erroneous conclusion respecting the legal effect of known facts--and it will not affect enforceability of an agreement, except where the mistake was induced by fraud, undue influence, or abuse of confidence. *Sadler v. Carpenter*, 251 S.W.2d 840, 842 (Ky. 1952). None of those exceptions exists here. Only a mistake of fact will affect the enforceability

of a contract, not a mistake of law. *Murphy v. Torstrick*, 309 S.W.2d 767, 770 (Ky. 1958); *Raisor v. Burkett*, 214 S.W.3d 895, 906 (Ky. App. 2006).

Clayville places the blame on Medicaid, claiming that it provided her inaccurate information. Only in Clayville's motion can it be found that Medicaid stated it would claim only the amount of the tax assessment. This assertion is not supported by any evidence. Clayville's own erroneous conclusion about the legal effect of the Medicaid regulations was a mistake of law which did not affect the enforceability of the contract.

Next, we turn to Clayville's arguments regarding a mutual and unilateral mistake. A mutual mistake is one in which both parties to a contract participate by each laboring under the same misconception. *Fields v. Cornett*, 70 S.W.2d 954, 957 (Ky. 1934); *Coleman v. Ill. Life Ins. Co.*, 82 S.W. 616, 617 (Ky. 1904). Relief from mutual mistake is an equitable matter. *Bradshaw v. Kinnaird*, 319 S.W.2d 475, 477 (Ky. 1959); *Hemphill v. New York Life Insurance Company*, 243 S.W. 1040, 1042 (Ky. 1922). "The cancellation of an executed contract is the exertion of the most extraordinary power of a court of equity, which ought not to be exercised, except in a clear case and on strong and convincing evidence." *Lossie v. Central Trust Co. of Owensboro*, 292 S.W. 338, 340 (Ky. 1926) (citations omitted).

Clayville alleges that the misconceptions, under which both parties labor, are the "basis of the contract for sale" and the "misunderstanding generated by erroneous information given by Medicaid as to the lien it would assert against the estate." A

provision of the contract itself established the basis for sale of the realty, reading "[i]t is mutually agreed by and between the parties hereto as follows: [t]he sale of the property is being conducted so as to attempt to comply with Medicaid rules and/or regulations and/or laws." Clayville's self-serving affidavit reveals why she sold the property: "Medicaid forced the sale of [Wellman's] property. Otherwise, the property would have never been for sale during her lifetime." Clayville explained in her affidavit that a new Medicaid regulation, with which the parties were attempting to comply, required Wellman's home to be sold within six (6) months of September 1, 2003. The basis for the contract was to comply with Medicaid's requirement that the property be sold within the six (6) month time period. Clayville does not contend that the property did not have to be sold. Thus, Clayville's argument on appeal that both she and Huff were laboring under some mutual mistake regarding the basis of the contract is completely unsupported. There was no error as to the basis for the contract of sale.

In addition, Clayville contends that there was a mutual mistake regarding a "misunderstanding generated by erroneous information given by Medicaid as to the lien it would assert against the estate." There is no evidence to support this contention either. Nothing in the record suggests that Huff was under any impression whatsoever as to the lien Medicaid would impose. Clayville's self-serving affidavit does not allege that Huff had any involvement in dealing with Medicaid. The affidavit also does not allege that Huff had any beliefs about the recovery to be sought. The circuit court, finding no mutual mistake, stated:

> [Clayville] contends that the parties both were mistaken as to the amount Medicaid would claim. [Clayville], however, offers no support for this assertion. [Clayville] places all the blame for this confusion at the feet of Medicaid. [Clayville] does not claim that [Huff] was in any way responsible for [Clayville's] confusion about the amount Medicaid would claim. Furthermore, it was [Clayville] and not [Huff], who was her mother's power of attorney. [Clayville], then, was solely responsible for handling her mother's affairs.

We agree with the circuit court that a mutual mistake was not present. There was no error as to the basis for the contract of sale, and Huff was not laboring under any misconceptions. The circuit court is hereby affirmed as to the issue of mutual mistake.

We will now consider Clayville's alternative argument that the contract should be void on the basis of unilateral mistake.

> Equitable relief may, however, be given from a unilateral mistake by a rescission of the contract. Essential conditions to such relief are: (1) The mistake must be of so grave a consequence that to enforce the contract as actually made would be unconscionable. (2) The matter as to which the mistake was made must relate to a material feature of the contract. (3) Generally the mistake must have occurred notwithstanding the exercise of ordinary diligence by the party making the mistake. (4) It must be possible to give relief by way of rescission without serious prejudice to the other party except the loss of his bargain. In other words, it must be possible to put him in statu[s] quo.

Fields, 70 S.W.2d at 957; *see Jones v. White Sulphur Springs Farm, Inc.,* 605 S.W.2d 38 (Ky. App. 1980); *Green et al. v. Collett*, 21 S.W.2d 252 (Ky. 1929).

An unconscionable contract is one which no promisor with any sense, and not under a delusion, would make, and which no fair and honest promisee would accept.

Black's Law Dictionary 75 (8th ed. 1999). The courts use the unconscionability doctrine to police the excesses of certain parties who abuse their right to contract freely. It is directed against one-sided, oppressive and unfairly surprising contracts, and not against the consequences per se of uneven bargaining power or simply an old-fashioned bad bargain. *Louisville Bear Safety Service, Inc. v. South Central Bell Tel. Co.*, 571 S.W.2d 438 (Ky. App. 1978) (citing *Willie v. Southwestern Bell Telephone Co.*, 549 P.2d 903 (Kan. 1976)).

Clayville asserts that the contract is unconscionable because, if enforced, it would not carry out the payment of all just debts as provided in Wellman's will. Huff claims that the contract is not unconscionable on the grounds that $42,000.00 was a fair price and that Clayville moved the circuit court to order the sale of the property for that amount. Clayville's motion to sell the real property provided that the assessed tax value of $42,000.00, that being 100% of the property's actual value, was to be the sale price. The circuit court found this to be a reasonable price. Only after Clayville learned that Medicaid would be seeking a greater recovery did she seek to void the contract.

Clayville is simply trying to get out of her own bad bargain. The contract was not one-sided, oppressive, or unfairly surprising. Both parties understood the agreement. Clayville even reaffirmed her support of the contract by petitioning the court to order the sale. We find, therefore, that enforcement of the contract was not unconscionable.

If Clayville had acted with ordinary diligence, she could have resolved her own misinterpretations regarding the new Medicaid regulations prior to entering into the contract for sale of realty. If Clayville sought to achieve the payment of Wellman's debts from the sale of the real property, she should have ascertained the amount Medicaid would seek before entering into the contract. Clayville claims that the error (caused by erroneous information from Medicaid officials) could not have been discovered any earlier because the information was not supplied by Medicaid earlier. We find this unpersuasive. Prior to the contract, Clayville could have requested that Medicaid send documentation of the amount of reimbursements it would require. Clayville claims that she exercised "extreme diligence" when she tried to achieve voluntary cancellation of the contract. Clayville's attempt to void the contract is not extreme diligence. Any error on Clayville's part could have been resolved by the exercise of ordinary diligence prior to entering into the sales contract.

Because we have already determined that Clayville has not satisfied elements required to prove unilateral mistake, it is unnecessary for us to go into detail about the prejudice or lack thereof that might result to Huff. Thus, we will not address this element.

For the reasons stated, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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