

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000102-MR

BINGHAM GREENEBAUM DOLL, LLP

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE KATHLEEN LAPE, JUDGE
ACTION NO. 13-CI-01620

MEREDITH LAWRENCE

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, MAZE, AND STUMBO, JUDGES.

CLAYTON, JUDGE: Meredith Lawrence was suspended from the practice of law due to federal convictions in 2012 for tax-evasion crimes. To defend himself in that matter, Lawrence hired attorneys from the firm of Bingham Greenebaum Doll, LLP (“BGD”). Multiple letters were executed by both Lawrence and BGD regarding fee agreements. Then, on June 21, 2012, the parties executed a

Promissory Note that BGD had proposed, incorporating by reference all previously-due sums. The Note provided that Lawrence would pay a sum not to exceed \$650,000 to BGD for Lawrence's legal representation. The Note referenced the letters that had been exchanged by the parties. It also provided that, "All sums due under this Note, both principal and interest, if not sooner paid, shall be due and payable in full on December 31, 2013"

Before the Note became due, however, Lawrence initiated a lawsuit against his criminal lawyers alleging legal malpractice. On September 20, 2013, BGD filed a Counterclaim alleging that Lawrence was indebted to BGD pursuant to the Note's terms. When Lawrence did not answer or otherwise respond to the Counterclaim, BGD filed for default judgment. On September 20, 2014, the trial court granted the default judgment motion.

More than a year later, Lawrence filed a motion pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 and 55.02 to have the default judgment set aside as void because the Note was not yet due when BGD filed the counterclaim. On January 6, 2016, the trial court granted the motion, agreeing with Lawrence that no justiciable claim existed when the counterclaim was filed because the Note was not yet due. Thus "the court lacked subject matter jurisdiction and the default judgment is void." Order, p. 7. The trial court reasoned that because a right of action is not ripe until the payor fails to discharge his obligation by the date of a note's maturity, *Gould v. Bank of Independence*, 94 S.W.2d 991 (Ky. 1936), and an unripe claim is not justiciable, *Doe v. Golden & Walters, PLLC*, 173 S.W.3d

260 (Ky. App. 2005), then the trial court never had jurisdiction over the counterclaim as it was filed before the date of the Note's maturity. Order, pp. 8-9.

BGD now appeals. Having reviewed the record and the relevant law, we affirm the trial court's order. The standard of review for CR 60.02 and 55.02 claims is abuse of discretion. *First Horizon Home Loan Corp. v. Barbanel*, 290 S.W.3d 686, 688-89 (Ky. App. 2009). A trial court abuses its discretion when its decision is "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004) (quoting *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000)).

Subject matter jurisdiction refers to the "kind of case" over which a court has authority. *Harrison v. Leach*, 323 S.W.3d 702, 705 (Ky. 2010) (quoting *Duncan v. O'Nan*, 451 S.W.2d 626, 631 (Ky. 1970)). Said jurisdiction cannot be waived "because it goes to the very heart of a court's ability to determine an issue in controversy[.]" *Id.* "The court has subject matter jurisdiction when the 'kind of case' identified in the pleadings is one which the court has been empowered, by statute or constitutional provision, to adjudicate." *Daugherty v. Telek*, 366 S.W.3d 463, 467 (Ky. 2012) (citing *Gordon v. NKH Hospitals, Inc.*, 887 S.W.2d 360 (Ky. 1994)).

To determine whether the court has subject matter jurisdiction, "the pleadings should be examined and taken at face value." *Daugherty*, 366 S.W.3d at 467. If the "pleadings reveal that it is the kind of case assigned to that court by statute or constitutional provision[.]" then the court is vested with subject matter

jurisdiction over the case and does not lose said jurisdiction simply by “misconstruing or erroneously overlooking a statute or rule governing the litigation.” *Id.*

Additionally, the claim must be justiciable, and for a claim to be justiciable, it has to be ripe. *Nordike v. Nordike*, 231 S.W.3d 733, 739 (Ky. 2007). Under the ripeness doctrine, if the claim presents an issue that may never arise or is purely advisory, then the claim is unripe and not justiciable. *Id.* (citing *Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. App. 2005) and Ky. Const. §112(5) (“The Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court.”)). *See also W.B. v. Com., Cabinet for Health and Family Services*, 388 S.W.3d 108, 116 fn. 6 (Ky. 2012) (reiterating that an unripe claim is not justiciable, and the circuit court has no subject matter jurisdiction over an unripe claim); *Berger Family Real Estate, LLC v. City of Covington*, 464 S.W.3d 160, 166 (Ky. App. 2015) (same).

In the instant case it is undisputed that the Note did not mature until more than two months after BGD filed its counterclaim. Thus, BGD’s right of action on the Note had not yet accrued because Lawrence was not in default. Though the Circuit Court has general jurisdiction over such claims as that presented by BGD, because Lawrence still had time on the clock in which to pay the Note the inherent problem with the instant case is that the claim on its face was unripe when the counterclaim was filed. *Cf. McGee v. Taylor*, 242 S.W.2d 621 (Ky. 1951). Because the claim was unripe, it was also not justiciable, and, as such,

the Circuit Court lacked subject matter jurisdiction over the non-justiciable claim.

Nordike, supra; Golden & Walters, PLLC, supra.

To counter the dearth of ripeness, BGD argues that the legal fees that accrued before the Note was signed were due and payable prior to the Note's maturation. This averment does not alter the Note's express terms and the due date thereon. Lawrence does appear to have incurred legal fees prior to the Note's maturation, however, the Note expressly subsumed all of those prior due legal fees into one Note that was not due until December 31, 2013. That there were previous unpaid legal bills that were subsumed into the Note does not alter the Note's due date. *Cf. Castleman v. Holmes*, 4 J.J.Marsh. 1, 27 Ky. 1 (1830) ("When a debt is continued by renewing notes, each renewal is to be regarded as a new contract."). At the very least, the Note, which purports to contain all legal fees due for the past and future legal representation, facially is not due and payable until after the counterclaim was filed. And it is from the Note's face that the trial court was tasked with determining whether a cause of action had accrued. *Daugherty*, 366 S.W.3d at 467. Given that the Note did not mature until more than two months after BGD filed its counterclaim alleging default, it does not appear a cause of action could be sustained.

Accordingly, the claim was not ripe and the issue not justiciable. The trial court is correct that it lacked subject matter jurisdiction over the claim. *W.B., supra; Nordike, supra; and Golden & Walters, PLLC, supra.* Without subject matter jurisdiction, any order granting a default judgment to BGD was *void ab*

initio. Hisle v. Lexington-Fayette Urban County Government, 258 S.W.3d 422, 431 (Ky. App. 2008).

We note that by affirming the trial court we do not address merits of the counterclaim. This appeal concerns only whether the trial court abused its discretion by granting the CR 60.02 and 55.02 motions. We cannot say that under these facts the trial court's order is arbitrary, unreasonable, or unsupported by sound legal principles. As we are affirming the trial court's order, Lawrence's multiple alternative arguments are rendered moot.

Accordingly, we AFFIRM the trial court's order.

ALL CONCUR.

BRIEF FOR APPELLANT:

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