IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1145

Filed: 16 May 2017

Forsyth County, No. 13 CVS 7369

LANNIE DALE MILLS and KAREN LYNN MILLS MYERS, as Co-Executors of the Estates of THOMAS C. MILLS, deceased, and DOROTHY Y. MILLS, deceased, Plaintiffs,

v.

JETHRO BARNES MAJETTE, III, STANISLAWA J. MAJETTE, and MARGO PRESCOTT MAJETTE, Defendants.

Appeal by defendants from order entered 3 June 2016 by Judge Susan E. Bray in Forsyth County Superior Court. Heard in the Court of Appeals 20 April 2017.

Davis and Hamrick, L.L.P., by Jason L. Walters and Ann C. Rowe, for plaintiff-appellees.

Law Office of Paul H. Bass, PLLC, by Brian W. Tyson and Paul H. Bass, for defendant-appellants.

TYSON, Judge.

Jethro Barnes Majette, III, Stanislawa J. Majette, and Margo Prescott Majette ("Defendants") appeal from an order granting Plaintiffs' motion to enforce the settlement agreement. We affirm in part, reverse in part, and remand.

I. Factual Background

A. Property Overview

On 28 June 1961, Thomas Mills and Dorothy Mills ("the Mills") purchased property located on Jenkins Road Extension. A strip of land, approximately 30 feet by 200 feet, runs across the front of the Mills' house between their property and Jenkins Road Extension. Since the Mills never owned that property, they relied upon an ingress and egress easement to get to their property. Over the years, the Mills had installed a paved eastern driveway from Jenkins Road Extension to their carport and a western driveway that was paved down to Jenkins Road Extension.

Around 2004, Margo Majette purchased property adjacent to the Mills' property. This property included Creeson Lake, Creeson Dam and all of Jenkins Road Extension. Margo Majette is the mother of Jethro Barnes Majette, III ("Jeff Majette"), who is married to Stanislawa Majette. Margo Majette eventually deeded at least a portion of her property to Jeff Majette.

Jeff Majette later purchased an approximately ten-acre tract of land, which is adjacent to and located directly north of the Mills' property. In June 2014, Jeff Majette deeded a portion of his property, which contains the Creeson Dam and the 30 feet by 200 feet strip of land in front of the Mills' house, to Marcos Alvarez via quitclaim deed. Marcos Alvarez is not a party to this lawsuit.

B. 2010 Lawsuit

From 2005 through 2010, the North Carolina Department of Environment and Natural Resources ("DENR") sent various Notices of Deficiency and Inspection to Margo Majette and Jeff Majette regarding deficiencies at Creeson Dam and needed repairs. In April 2010, Defendants brought suit against the Mills and alleged they were partly responsible for any repairs to the Creeson Dam due to their use of Jenkins Road Extension ("2010 Lawsuit"). During the 2010 Lawsuit, Defendants moved seven large concrete culverts into the approximately 30 feet by 200 feet strip of land directly in front of the Mills' house.

In November 2011, the parties settled the 2010 Lawsuit with a Mutual Release and Settlement Agreement. The agreement created a Determinable Sight Easement ("DSE") for the approximately 30 feet by 200 feet strip of land in front of the Mills' house to maintain an unobstructed view of the edge of Jenkins Road Extension. Defendants agreed to "expeditiously install" the concrete culverts currently in the DSE. The Mills agreed to pay $25,000 toward the Creeson Dam repairs.

C. 2012-2015

During 2012 and 2013, the Defendants worked with DENR, contractors, and engineers to repair the Creeson Dam. Repairs to the Creeson Dam required the installation and use of large concrete culvert pipes. These culverts were stored along the Jenkins Road Extension, while work on the Creeson Dam was being completed. On 10 October 2013, the Defendants received a letter from DENR stating the repairs

to the Creeson Dam appeared to be substantially completed; however, DENR had discovered a new hazardous condition, which required the Defendants to initiate additional remediation efforts.

On 27 November 2013, the Mills commenced this action in Forsyth County Superior Court and alleged breach of contract, breach of covenant in determinable sight easement, breach of covenant in deed, trespass, nuisance, and punitive damages. During the repairs, the Mills alleged the asphalt at the end of their driveways had been removed and additional concrete culverts had been placed in the DSE. One of the culverts blocked their eastern driveway, which caused the driveway to be closed from June 2013 to February 2014.

In November 2014, the parties scheduled mediation in this case. The Mills allege while they were attending the court-ordered mediation, Defendants blocked the eastern driveway with four upended concrete culverts. The four concrete culverts remained in that state for a year.

This case was noticed for hearing in June 2015, at which Defendants failed to appear. The court issued an order setting the trial date for 26 October 2015. On 17 October 2015, Jeff Majette received notice of the trial date.

D. Alleged Settlement Discussions and Agreement

On or about 19 October 2015, Jeff Majette called the Mills' attorney, Jason Walters, to discuss the upcoming trial and whether there was a possibility of a settlement. Defendants were proceeding *pro se* during this point in the litigation.

On 20 October 2015, Walters sent an email to Jeff Majette with an initial demand from the Mills for $10,000 cash, removal of all the concrete culverts from the DSE, specific easements to both driveways, and the transfer of the ten-acre tract north of the Mills' property. The next day, Jeff Majette responded to the initial demand with a counter proposal to divide the property so that both parties had access out to Manningwood Drive. Walters responded to Defendants' counter proposal, stated the Mills were considering it, and asked for permission to inspect the property. Jeff Majette granted Walters permission to inspect the property.

On 22 October 2015 at 9:04 a.m., Walters responded to Defendants' counter proposal with a new compromised settlement offer. The email read:

> Jeff: I spoke with the Mills and they have authorized me to submit this compromised settlement demand. I've included a little more detail so there is no question as to the terms of the settlement. Please let me know if you agree and can obtain Mr. Alvarez's approval regarding the specific easements and permission to repair the driveways discussed below.
>
> > 1. $10,000 cash for the Mills to repair their driveways and for the cost already incurred from replacing their septic lines. Your payment must be received within 7 days. Please make the check payable to Davis & Hamrick and mail to my attention at the address below. The Mills will pay for

> the repair and replacement of their two driveways in the Determinable Sight Easement area, if they so choose. Please obtain Mr. Alvarez's approval for the Mills to repair their driveways and have him send me an email that he agrees that the Mills can put the driveways back into their prior condition.
>
> 2. All concrete culverts pipes removed from the Determinable Sight Easement area by November 22. You will pay for the cost to remove the pipes and can put them anywhere you would like on your property.
>
> 3. Specific easements to both driveways (one to the carport and one to the out building). We will need Mr. Alvarez's agreement to this as he is the current owner. Please obtain Mr. Alvarez's approval and have him send me an email that he agrees to these two specific easements.
>
> 4. Transfer approximately 1/2, of the 10+ acre tract of land north of the Mills land to the Mills. The division of the property will begin at the northeast corner of the Mills lot and go due north to the northern boundary of the current 10 acre tract. You will grant a specific easement across your portion of the current 10 acre tract to allow the Mills access out to Manningwood Drive. We will need a surveyor to survey the property so that it can be divided appropriately. The Mills are willing to split al1 fees associated with obtaining this division - i.e. surveyor fees, permit fees, and titling fees.
>
> 5. You agree to obtain all necessary signatures (including Mr. Alvarez's) and work with us to get the easements in place.

Please let me know if all these conditions can be met. If so, I can report to the court on Monday that the case has been resolved. If not, we will be prepared to go forward with the trial.

On 22 October 2015 at 9:20 a.m., Jeff Majette responded to this offer and stated, "I agree. I do not anticipate any issues with Mr. Alvarez's approvals, but will contact him today. Jeff." Later on 22 October 2015 at 10:25 a.m. Walters responded, "I look forward to getting confirmation from Mr. Alvarez that he is on board. Once I receive that confirmation, I will consider this case settled and will report our agreement to the court on Monday." That evening, Jeff Majette responded to Walters that "Alvarez is agreeable with everything we have discussed and I will help coordinate any required signatures."

On the morning of 23 October 2015, Jeff Majette emailed Walters asking if Walters had received independent confirmation from Alvarez. Ten minutes later, Walters responded he had received confirmation from Alvarez and then stated that "this case has now been settled. I will report to the court on Monday that we have resolved all the issues." In this same email, Walters asked for confirmation on a particular surveyor to conduct the survey and divide the property. Jeff Majette responded back, "Sure[.]"

Walters appeared before the court at the 26 October 2015 calendar call. He informed the trial court that a settlement had been reached between the parties and that all issues had been resolved. None of the Defendants appeared at the calendar call or filed any objections.

Following the alleged settlement, Defendants failed to pay the $10,000 to the Mills within the designated time period. On 2 November 2015, Walters emailed Jeff Majette requesting an update on the settlement funds. He responded, "I am still getting funds together[.]" On 13 November 2015, Jeff Majette emailed Walters that "[m]y funds are in my 401K which I thought were more accessable [sic] and I have requested those also. I will advise as soon as I get them." Regarding the removal of the concrete culverts from the DSE, Defendants paid a contractor to remove the culverts prior to 22 November 2015.

E. Trial Court's Order Enforcing the Settlement Agreement

Around December 2015, Defendants no longer agreed the case had been settled. Plaintiffs filed the Motion to Enforce Settlement on 11 March 2016. Both of the Mills had died in early 2016. On 23 May 2016, the co-executors were substituted as named parties for the Mills.

On 16 March 2016, Defendants filed a motion for summary judgment. Defendants also filed a brief in response and opposition to Plaintiffs' motion to enforce the settlement agreement. In the brief, Defendants argued there was no meeting of the minds as to all essential terms and Jeff Majette did not have authority to bind the other two Defendants. Jeff Majette and Stanislawa Majette both submitted affidavits to the court.

The trial court granted Plaintiffs' motion to enforce the settlement on 3 June 2016. The court concluded "[t]he Parties entered into a binding contract regarding the settlement of the lawsuit and there was a meeting of the minds among the Parties on all settlement terms." The court concluded "[t]he settlement agreement was made on behalf of all Defendants." Defendants appeal.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b) (2015).

III. Issues

Defendants argue the trial court erred when it granted Plaintiffs' motion to enforce the settlement agreement. They assert a genuine issue of material fact exists regarding whether the settlement discussions between Plaintiffs' counsel and Jeff Majette resulted in a meeting of the minds of all essential terms. Defendants further argue, Jeff Majette did not have the authority to bind all Defendants and a third party to the provisions of the settlement agreement.

IV. Standard of Review

For the purposes of appellate review, this Court treats a motion to enforce settlement agreements as a motion for summary judgment. *Hardin v. KCS Int'l, Inc.,* 199 N.C. App. 687, 695, 682 S.E.2d 726, 733 (2009) (citation omitted); *see also McKinnon v. CV Industries, Inc.,* 213 N.C. App. 328, 333, 713 S.E.2d 495, 500 (2011)

("Courts may enter summary judgment in contract disputes because they have the power to interpret the terms of contracts.").

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2015). The moving party bears "the burden of demonstrating the lack of any triable issue of fact and entitlement to judgment as a matter of law." *Hardin,* 199 N.C. App. at 695, 682 S.E.2d at 733. On appeal, this Court views the evidence in the light most favorable to the nonmoving party. *Williams v. Habul*, 219 N.C. App. 281, 289, 724 S.E.2d 104, 109 (2012).

V. Meeting of the Minds

Defendants concede the email exchange between Jeff Majette and Walters contains both an adequate property description and consideration for the transfer of property. Defendants also concede Jeff Majette executed the emails in accordance with the Uniform Electronic Transactions Act by typing his name at the end of the emails to Walters. *See* N.C. Gen. Stat. § 66-312(9) (2015). However, Defendants argue the trial court's findings of fact and Jeff Majette's affidavit demonstrate genuine issues of material fact exist regarding whether the exchange reflects a meeting of the minds between Jeff Majette and Plaintiffs.

"A settlement agreement is a contract governed by the rules of contract interpretation and enforcement." *Williams*, 219 N.C. App. at 289, 724 S.E.2d at 110. The statute of frauds requires certain contracts to be memorialized in writing "to guard against fraudulent claims supported by perjured testimony; [the statute of frauds] was not meant to be used by defendants to evade an obligation based on a contract fairly and admittedly made." *House v. Stokes*, 66 N.C. App. 636, 641, 311 S.E.2d 671, 675, *cert. denied*, 311 N.C. 755, 321 S.E.2d 133 (1984); *see* N.C. Gen. Stat. § 22-2 (2015).

"It is a well-settled principle of contract law that a valid contract exists only where there has been a meeting of the minds as to all essential terms of the agreement." *Northington v. Michelotti*, 121 N.C. App. 180, 184, 464 S.E.2d 711, 714 (1995). Our Supreme Court has stated:

> If the minds of the parties meet upon a proposition, which is sufficiently definite to be enforced, the contract is complete, although it is in the contemplation of the parties that it shall be reduced to writing as a memorial or evidence of the contract; but if it appears that the parties are merely negotiating to see if they can agree upon terms, and that the writing is to be the contract, then there is no contract until the writing is executed.

Horton v. Humble Oil & Refining Co., 255 N.C. 675, 680, 122 S.E.2d 716, 719-20 (1961) (citation and quotation marks omitted); *see Boyce v. McMahan*, 285 N.C. 730, 734, 208 S.E.2d 692, 695 (1974) ("If any portion of the proposed terms is not settled,

or no mode agreed on by which they may be settled, there is no agreement." (citation omitted)).

This Court has held summary judgment is improper where "[t]he materials submitted by the parties present a genuine issue as to whether the [submitted] document reflected a 'meeting of the minds' between the parties as to all essential terms of their agreement or whether it merely amounted to an 'understanding' or an 'agreement to agree.'" *Northington*, 121 N.C. App. at 184-85, 464 S.E.2d at 714; *see Chappell v. Roth*, 353 N.C. 690, 693, 548 S.E.2d 499, 500 (2001) (holding the trial court properly denied the motion to enforce where no meeting of the minds occurred between the parties because they failed to agree to the terms of the release); *Smith v. Young Moving and Storage, Inc.*, 167 N.C. App. 487, 493, 606 S.E.2d 173, 177-78 (2004) (holding the trial court properly granted the motion to enforce the settlement agreement where the agreement reflected a meeting of the minds).

Here, the email exchange presented to the trial court demonstrates Plaintiffs proposed a settlement offer, which included all essential terms of the agreement, and that Jeff Majette accepted this offer. In the 22 October 2015 email including the proposed settlement agreement, Walters explicitly stated, "I've included a little more detail so there is no question as to the terms of the settlement." Jeff Majette did not present any counter-offers or raise any additional terms following this proposed

settlement agreement, but simply stated "I agree." Further, on appeal Defendants do not argue which "essential terms" of the contract are missing.

Regarding whether the settlement agreement reflected a "meeting of the minds," Jeff Majette's affidavit asserts he believed the settlement would be later presented in a more formal written document. The record does not support his contention. Throughout the emails, Walters stated several times he considered the matter settled and would report the settlement to the court on 26 October 2015. Nothing in the record indicates Jeff Majette contested the characterization of the case as being fully settled, anticipated further negotiations were required, or requested the settlement agreement be produced in a more formal written document.

Jeff Majette contacted Alvarez, who emailed Walters separately and agreed to the terms. Neither Defendants nor Alvarez appeared in court on 26 October 2015 to contest the case being represented as fully settled or filed any objections with the court. After this matter was reported as settled, subsequent emails indicate Jeff Majette began fulfilling the terms of the settlement agreement.

The trial court's recitations of fact are extensive. Unlike in *Northington*, we find no genuine issue of material fact exists regarding whether the settlement agreement between Jeff Majette and Plaintiffs "reflected a 'meeting of the minds' between the parties as to all essential terms of their agreement[.]"*Northington*, 121 N.C. App. at 184, 464 S.E.2d at 714. After reviewing the pleadings, affidavits, and

exhibits presented, the trial court correctly concluded Jeff Majette and Plaintiffs entered into a binding and enforceable settlement agreement.

VI. Actual or Apparent Authority

Defendants argue Jeff Majette did not have actual or apparent authority to bind his wife Stanislawa Majette, his mother Margo Majette, and Alvarez to any purported settlement agreement reached by Jeff Majette and Plaintiffs.

N.C. Gen. Stat. § 22-2 (2015) provides:

> All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them . . . shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

"One who seeks to enforce against an alleged principal a contract made by an alleged agent has the burden of proving the existence of the agency and the authority of the agent to bind the principal by such contract." *Albertson v. Jones,* 42 N.C. App. 716, 718, 257 S.E.2d 656, 657 (1979). The marital relationship raises no presumption that one spouse may act for the other, "and if such agency is relied upon, it must be proved." *Id.*

"Actual authority is that authority which the agent reasonably thinks he possesses, conferred either intentionally or by want of ordinary care by the principal." *Manecke v. Kurtz*, 222 N.C. App. 472, 475, 731 S.E.2d 217, 220 (2012) (citations and quotation omitted). Whereas, apparent authority:

> is that authority which the principal has held the agent out as possessing or which he has permitted the agent to represent that he possesses. . . . Pursuant to the doctrine of apparent authority, *the principal's liability is to be determined by what authority a person in the exercise of reasonable care was justified in believing the principal conferred upon his agent*.

Id. at 477, 731 S.E.2d at 221 (emphasis supplied) (internal citations and quotation marks omitted).

Where an individual acts with no authority or beyond the authority given, the supposed principal, upon discovery of the facts, may ratify or reject the contract. *Id*. at 478, 731 S.E.2d at 222. Ratification of an unauthorized transaction occurs when, "(1) . . . at the time of the act relied upon, the principal had full knowledge of all material facts relative to the unauthorized transaction, and (2) . . . the principal had signified his assent or his intent to ratify by word or by conduct which was inconsistent with an intent not to ratify." *Id*. (citation and quotation marks omitted).

This Court has noted:

> The law of apparent authority usually depends upon the unique facts of each case. Thus, in a case where the evidence is conflicting, or susceptible to different reasonable inferences, the nature and extent of an agent's authority is a question of fact to be determined by the trier of fact. Where different reasonable and logical inferences may not be drawn from the evidence, the question is one of law for the court.

Bookman v. Britthaven Inc., 233 N.C. App. 454, 458, 756 S.E.2d 890, 894 (2014).

The only record evidence to support Plaintiffs' contention that Walters exercised "reasonable care" in relying on Jeff Majette's authority to bind all Defendants are Jeff Majette's alleged initial representation to Walters that he represented all Defendants, and Defendants' close familial relationships. Nothing in the record indicates Walters confirmed with Jeff Majette that Stanislawa Majette and Margo Majette had reviewed and consented to the proposed settlement agreement, or that Walters had communicated directly with the two women to confirm their agreement. Rather, Stanislawa Majette's affidavit submitted stated, "I was not a party to, was not aware of, nor did I take any affirmative action to consent to any settlement offers or negotiations other than the 2011 Settlement Agreement."

The burden rests upon Plaintiffs to demonstrate Jeff Majette had the authority to bind all Defendants to the settlement agreement. *See Albertson,* 42 N.C. App. at 718, 257 S.E.2d at 657. A close familial relationship standing alone does not create a presumption that Jeff Majette possessed such authority. *See id.*

The record shows Walters separately communicated with Alvarez to confirm his consent to the terms of the settlement agreement. Alvarez is not a party to this action.

The record demonstrates the material facts are "conflicting, or susceptible to different reasonable inferences." *Bookman*, 233 N.C. App. at 458, 756 S.E.2d at 894. The nature and extent of Jeff Majette's authority, or Stanislawa Majette and Margo

Majette's assent to the agreement, are questions of fact to be determined by the trier of fact. *See id*. We reverse the trial court's order to enforce the settlement agreement solely to the extent that it holds Stanislawa Majette and Margo Majette bound to the agreement as a matter of law. We remand for further proceedings to determine whether Jeff Majette had the actual or apparent authority to bind all Defendants or whether the remaining Defendants expressly or impliedly assented to the agreement.

VII. Conclusion

Alvarez is not a party to this case, and our decision has no impact on the agreement regarding his interests.

The record demonstrates no genuine issue of material fact exists regarding whether the settlement agreement negotiated by Walters and Jeff Majette reflected a meeting of the minds and agreement to all the essential terms. Defendants concede Jeff Majette's signature at the end of the emails conformed to the provisions of UETA. To the extent the trial court's order binds Jeff Majette and Plaintiffs, the trial court's order is affirmed.

Conflicting evidence exists regarding Jeff Majette's actual or apparent authority to bind all Defendants to the settlement agreement, or whether Stanislawa Majette and Margo Majette expressly or impliedly assented to the agreement. To the extent the trial court's order to enforce the agreement binds Stanislawa Majette and Margo Majette, we reverse the order and remand for further proceedings in

accordance with this opinion. The trial court's order is affirmed in part, reversed in part, and remanded. *It is so ordered*.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Chief Judge McGEE and Judge DILLON concur.

Report per Rule 30(e).