ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-801

NADINE WILSON d/b/a SUNSTONE JUDGMENT RECOVERY APPELLANT V. LAWRENCE VAUGHN d/b/a VAUGHN'S TRUCK & EQUIPMENT REPAIR APPELLEE	**Opinion Delivered** MARCH 4, 2009 APPEAL FROM THE YELL COUNTY CIRCUIT COURT [NO. CV 08-32] HONORABLE DAVID H. MCCORMICK, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

In this one-brief appeal, Nadine Wilson d/b/a Sunstone Judgment Recovery challenges an order from the Yell County Circuit Court, which dismissed her case against Lawrence Vaughn d/b/a Vaughn's Truck and Equipment Repair. According to that order, Wilson was not entitled to recover under an agreement that purported to assign a civil judgment to her. Wilson contends that the evidence showed a valid agreement between the parties and that, pursuant to that agreement, she is entitled to 40% of the amount Wilson collected on a judgment belonging to him. We affirm, as the circuit court did not err in finding that the parties rescinded the agreement.

Factual and Procedural History

Wilson advertises her business as one that "specializes in the enforcement of delinquent judgment claims." On March 23, 2007, she wrote a letter to Vaughn, stating that she could help him collect on a $1,091.97 small-claims judgment that he had against Daniel Warren. On March 27, 2007, Vaughn filed an "Acknowledgment of Assignment of Judgment" in small-claims court, thereby transferring his right to the judgment to Wilson. Vaughn also executed an "Agreement for Assignment." Under the terms of that agreement, Vaughn assigned the judgment and the exclusive right to collect on the judgment, and he would keep 60% of any money Wilson collected.

On April 20, 2007, the small-claims court set aside the Assignment of Judgment, finding that Wilson was acting as a collection agency, which was prohibited from being a party in a small-claims action under Administrative Order No. 18, and that she was not a licensed attorney at law. The court also set aside all garnishments filed by Wilson.[1] On July

[1]Wilson appealed the order and several others to circuit court. In one of those cases, the circuit court ruled that the assignment of judgment was valid. Based on that ruling, Wilson filed a motion to reconsider setting aside the assignment in Vaughn's case. On July 20, 2007, the small-claims court recognized the circuit court's order, but still found that Wilson, who was acting as a collection agency and was not an attorney at law, lacked the authority to practice in small-claims court. At some point, Wilson filed a petition for writ of mandamus against the small-claims court. The pleadings from that petition are not in the record, but on March 11, 2008, the circuit court denied Wilson's petition, finding that as a collection agency she lacked the authority in small-claims court and that, if she wanted to collect judgments, she had to use the civil division of the district court. Our supreme court recently affirmed the circuit court's decision. *See Wilson v. Dardanelle Dist. of the Dist. Ct. of Yell County*, 375 Ark. 294, 290 S.W.3d 1 (2008).

2, 2007, Vaughn sent a letter indicating that Wilson's services were no longer needed. That same day, he filed a request for a writ of garnishment for funds held by the Perryville Police Department, seeking funds owed to Warren. Pursuant to the writ, he received checks from the police department, which would eventually satisfy Vaughn's judgment against Warren.

The instant case began on March 12, 2008, when Wilson filed a complaint against Vaughn, seeking a share of the proceeds he collected on the judgment. The circuit court had a bench trial on the merits on May 13, 2008.[2] Vaughn presented the testimony of Cindy Dixon, who stated that Wilson came into Vaughn's shop one day and told Vaughn that he would have to collect the judgment on his own. Dixon testified that Vaughn asked if he owed any money, to which Wilson replied no. While questioning Dixon, Wilson "testified" that she came to the shop after Wilson collected the judgment to discuss payment terms.

Six days after trial, the circuit court entered an order dismissing Wilson's case. The court made the following findings:

> 2. The exhibits introduced by the Plaintiff reveal no consideration was paid to the Defendant upon either the execution of the "ACKNOWLEDGMENT OF ASSIGNMENT OF JUDGMENT" or the "AGREEMENT FOR ASSIGNMENT." The court therefore finds that the Plaintiff is acting as a collection agency and attempting to collect judgments with a percentage of the total recovery being her fee rather than the total amount of the judgment if there had been in fact a true assignment of the entire judgment.
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> 3. The court further finds that although the "ACKNOWLEDGMENT OF ASSIGNMENT OF JUDGMENT" was acknowledged in the manner and form

[2]The May 13, 2008 trial was supposed to be a hearing on the summary-judgment motion, but the circuit court decided to hear the proof as if there were no motion pending.

required by law for the acknowledgment of deeds as required by Ark. Code Ann. § 16-65-120, the "AGREEMENT FOR ASSIGNMENT" was not so executed.

4. The court further finds that prior to the time that the Defendant collected any amounts on the judgment involved in this action that the parties rescinded the "ACKNOWLEDGMENT OF ASSIGNMENT OF JUDGMENT" and the "AGREEMENT FOR ASSIGNMENT" and that the Defendant was authorized to collect said judgment himself.

Analysis

The sole issue in this appeal is whether Wilson was entitled to collect a portion of Vaughn's judgment. We review a circuit court's findings of fact following a bench trial under the clearly-erroneous standard. *See, e.g.*, *Burke v. Elmore*, 341 Ark. 129, 14 S.W.3d 872 (2000). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that an error has been committed. *Sims v. Moser*, 373 Ark. 491, 284 S.W.3d 505 (2008). Facts in dispute and determinations of credibility are within the province of the fact-finder. *Id.*

In urging this court to reverse the circuit court's order, Wilson discusses the elements of a contract and argues that the parties in this case had a valid contract to assign the judgment to her. She challenges the circuit court's finding that the contract in this case failed for lack of consideration. Wilson also disagrees with the circuit court's characterization of her business as a collection agency, though she argues that she was entitled to 40% of Vaughn's judgment even if her business was a collection agency. Finally, she disputes the circuit court's finding that the parties rescinded the contract. We address the third of these arguments without addressing the first two, as the issue of rescission is dispositive of the

appeal.

Parties to a contract may rescind it by mutual agreement, but the party claiming that the contract has been rescinded has the burden of proving such claim. *Standard Abstract & Title Co. v. Rector-Phillips-Morse, Inc.*, 282 Ark. 138, 666 S.W.2d 696 (1984). Rescission of an executory contract requires no new or independent consideration. *First Nat'l Bank v. Tate*, 178 Ark. 1098, 13 S.W.2d 587 (1929).

The testimony presented supports the circuit court's finding that the parties rescinded the agreement. The evidence shows that Wilson informed Vaughn that he would need to collect the judgment on his own, that she could no longer do it, and that he did not owe her anything on the agreement. Wilson argues that this evidence is insufficient to support a finding of rescission. But because the agreement mandated that she had the exclusive right to pursue collection efforts and the entire purpose of the contract was for her to collect the judgment, a court could reasonably find that the contract was rescinded. Accordingly, we affirm.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.