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FILED
Dec 14 2010, 9:42 am
CLERK
of the supreme court, court of appeals and tax court

IN THE COURT OF APPEALS OF INDIANA

SHF ENTERPRISES, Inc.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-0910-CV-962
	)	
RICHARD D. HAILEY and	)	
ANDREA E. HAILEY,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David J. Dreyer, Judge
Cause No. 49D10-0110-CP-014036

December 14, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff SHF Enterprises, Inc. (SHF), appeals the trial court's order correcting the amount of damages owed by appellees-defendants Richard and Andrea Hailey on SHF's complaint for breach of lease and confirming its intent to deny SHF's requests for attorney fees and prejudgment interest. SHF raises a number of arguments on appeal, one of which we find dispositive: that the trial court did not have jurisdiction to modify the original judgment after the judgment had become final. Finding that the trial court was without jurisdiction to modify its original, final judgment, we reverse.

FACTS

The dispute herein began when the Haileys and SHF entered into a lease agreement pursuant to which SHF would lease a horse owned by the Haileys for most of the year 2000. After the horse had significant medical difficulties, SHF terminated the lease and demanded that the Haileys return $20,394.32 pursuant to the terms of the lease.

The Haileys refused to pay SHF, so on February 23, 2001, SHF filed a complaint against the Haileys for breach of the lease. On December 22, 2003, the trial court granted summary judgment in SHF's favor. On appeal, this court affirmed. Hailey v. SHF Enters., Inc., No. 49A02-0401-CV-64 (Jan. 25, 2005).

On September 26, 2005, SHF filed a motion for proceedings supplemental. The Haileys filed a motion to quash SHF's motion. On November 2, 2005, the trial court granted the motion to quash, explaining that a hearing for damages was necessary because, while this court ruled as to liability, the amount of SHF's damages was yet to be determined.

On March 22, 2006, the Haileys made an offer of judgment to SHF in the amount of $20,395. SHF refused the offer. Throughout the next three years, the parties conducted discovery and the trial court developed a case plan with the goal of holding a hearing on damages.

In April 2009, there were a number of substantive motions pending before the trial court, including SHF's requests for attorney fees and prejudgment interest. A damages hearing was scheduled for April 27, 2009, but ten days beforehand, on April 17, 2009, the trial court entered judgment for SHF:

> Comes now the Court upon [SHF's] Motion to Enter Judgment on Damages and the Court being in all things duly advised, HEREBY GRANTS said Motion and enters judgment in this matter in the amount of [$57,928.03], with such Judgment to accrue post-judgment interest at the rate of $12.70 per day from the date of this Order.

Appellant's App. p. 543. The total damages amount represents the underlying amount owed—approximately $20,000—plus prejudgment interest and attorney fees. The trial court also, however, entered a separate order regarding SHF's requests:

> [SHF] moves for attorney fees and pre judgment interest to be awarded with judgment. The Court finds:
>
> 1. Judgment has been entered by separate Order.
> 2. Plaintiff's Motion for Attorneys' fees is denied.
> 3. Plaintiff's Motion for Pre-Judgment interest is denied. Post judgment interest is already accorded by operation of statute from date of judgment.

Id. at 544.[1] SHF interpreted this order to mean that its motions had been denied as moot, inasmuch as the amounts requested therein were included in the final damages calculated by the trial court. The Haileys, however, believed that the trial court had made a mistake, intending to deny SHF's requests for attorney fees and prejudgment interest and merely inserting the incorrect figure in its final judgment order.

On April 24, 2009, the Haileys filed a motion to set aside and/or to correct error. The trial court did not rule on this motion, and it was deemed denied on June 8, 2009, pursuant to Indiana Trial Rule 53.3(A). The Haileys did not appeal the April 17 order within thirty days as required by Trial Rule 53.3(A); consequently, the order became final on July 8, 2009.

On August 10, 2009, SHF filed a motion for proceedings supplemental, which the trial court granted. On September 1, 2009, the Haileys filed a motion to correct the recorded judgment amount and to dismiss the motion for proceedings supplemental. SHF filed its response to the Haileys' motion on September 18, 2009.

Although the trial court did not receive SHF's response until September 21, 2009, and did not hold a hearing in this matter, on September 18, the trial court entered a Corrected Order of Judgment:

> COMES NOW the Court and having reviewed the parties' Motions and the Court record finds as follows:
>
> 1. [SHF] is GRANTED damages in the amount of $20,316.46;

[1] The order bears a file stamp indicating that it was filed on April 17, 2009, but the order itself is dated April 27, 2009.

2. [SHF's] Motion for Pre-judgment interest is DENIED;

3. [SHF's] Motion for Attorney Fees and Costs is DENIED;

4. Post judgment interest at a rate of 8% per annum or $4.45 per day will accrue from the date of this judgment.

Id. at 28. On September 21, 2009, Hailey tendered to the trial court $20,316.46 plus three days of post-judgment interest, and the trial court entered a Satisfaction of Corrected Judgment on the same day. On September 21, 2009, SHF filed a motion to reconsider, which the trial court denied the next day, by way of an order clarifying its September 18 order:

1. On April 17, 2009, the Court signed two Orders for final judgment for [SHF] (entered April 29, 2009 by Clerk):

   a. One Order was a draft submitted by [SHF] in the amount of $57,928.03 including pre-judgment interest and attorneys fees.

   b. One Order was separately drafted by the Court and stated in part: "Judgment has been entered by separate order. [SHF's] motion for attorneys' fees is denied. [SHF's] motion for pre-judgment interest is denied."

2. In early September 2009, [the Haileys] filed their Motions . . . and argued that the judgment entry of $57,928.03 was erroneous since it conflicts with the separate Order denying pre-judgment interest and attorneys' fees.

3. On September 18, 2009, the Court determined that the judgment entry of $57,928.03 was erroneous because the Court failed to correct the amount on [SHF's] submitted draft after it separately found [SHF] was not entitled to pre-judgment interest or attorneys' fees.

4. On September 18, 2009, the Court accordingly granted [the Haileys'] motion to correct the judgment amount, but denied their motions to dismiss the proceedings supplemental.

5. [SHF's] Motion for Reconsideration and Vacation of the September 19 [sic], 2009 Order should be denied.

Id. at 31-32 (emphasis original). SHF now appeals.

DISCUSSION AND DECISION

SHF argues, among other things, that the trial court had no authority to modify its April 17 judgment after the Haileys chose not to appeal and the judgment became final. Initially, we note that the trial court's order was entered in the context of proceedings supplemental. Our Supreme Court has explained that proceedings supplemental are intended to help judgment creditors enforce judgments. Rose v. Mercantile Nat'l Bank of Hammond, 868 N.E.2d 772, 775 (Ind. 2007). Therefore, "[a] plaintiff may move for a proceeding supplemental in the court where judgment has been rendered by alleging that the plaintiff's judgment will not be satisfied and that the defendant or another party has property that ought to be applied toward the judgment." Id. The Haileys do not argue that the trial court's action was authorized by the rules governing proceedings supplemental, and we find no authority suggesting that to be the case.

Instead, the trial court "corrected" its April 17 order pursuant to Indiana Trial Rule 60(A), which provides as follows:

> Of its own initiative or on the motion of any party and after such notice, if any, as the court orders, clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the Notice of Completion of Clerk's Record is filed under Appellate Rule 8.

Therefore, so long as no appeal has been filed, a Trial Rule 60(A) motion is appropriate at any time the error or omission is discovered. First Bank of Madison v. Bank of Versailles, 451 N.E.2d 79, 81 (Ind. Ct. App. 1983).

In the context of Trial Rule 60(A), "clerical error" has been defined as "a mistake by a clerk, counsel, judge, or printer that is not a result of judicial function and cannot reasonably be attributed to the exercise of judicial consideration or discretion." KeyBank Nat'l Ass'n v. Michael, 770 N.E.2d 369, 375 (Ind. Ct. App. 2002). It is well established that "'in the case of clearly demonstrable mechanical errors the interests of fairness outweigh the interests of finality which attend the prior adjudication. On the other hand, where the 'mistake' is one of substance the finality principle controls.'" Rosentrater v. Rosentrater, 708 N.E.2d 628, 631 (Ind. Ct. App. 1999) (quoting Sarna v. Norcen Bank, 530 N.E.2d 113, 115 (Ind. Ct. App. 1988)).

In other words, if the error is purely mechanical, the trial court retains the authority, by virtue of Rule 60(A), to modify its erroneous order. If, however, the error is substantive, a Trial Rule 60(A) motion may not be used to correct it. See KeyBank, 770 N.E.2d at 375 (finding that amendment to CCS to change appearance of an attorney was substantive rather than clerical, so Rule 60(A) did not apply); Rissler v. Lynch, 744 N.E.2d 1030, 1033 (Ind. Ct. App. 2001) (finding that amount of judgment was substantive issue not subject to Rule 60(A) modification); Hurst v. Hurst, 676 N.E.2d 413, 415 (Ind. Ct. App. 1997) (finding that modification of dissolution decree that initially excluded an asset from the marital estate and then included and valued it but set

it aside was a substantive change, so Rule 60(A) did not confer authority for the amendment); First Bank of Madison, 451 N.E.2d at 82 (finding that Rule 60(A) did not confer authority to trial court to alter specific sum stated in a final judgment because change was substantive rather than clerical).

Here, the trial court entered two relevant orders in April 2009. First, it entered a final judgment in favor of SHF in the amount of $57,928.03 plus post-judgment interest. The dollar figure represented the amount owed by the Haileys plus attorney fees and prejudgment interest, though the order was silent as to those issues. Second, the trial court entered an order referring to the final judgment order and denying SHF's requests for attorney fees and prejudgment interests. SHF interpreted the inconsistency to mean that the trial court was denying the attorney fee and prejudgment interest requests as moot, inasmuch as those figures had been incorporated into the final judgment.

The Haileys, on the other hand, believed that the trial court intended to wholly deny SHF's requests for fees and prejudgment interest, and had merely included the wrong figure in its final judgment order. Thus, they filed a motion to set aside and/or to correct error. When the trial court failed to rule on the motion within forty-five days, it was deemed denied and the Haileys had thirty days to appeal. They chose, for whatever reason, not to do so. Consequently, the judgment became final.

Five months after the initial orders were entered, the trial court "corrected" its final judgment order and then entered another order "clarifying" its correction. It proceeded to deny SHF's requests for fees and prejudgment interest and reduce the

overall damages awarded to $20,316.46 plus post-judgment interest. Although we do not doubt that this was an honest and inadvertent error made by the trial court, we cannot countenance its after-the-fact attempt to fix the mistake. This "correction" reduced SHF's award by 65% and denied its requests for attorney fees and prejudgment interest. We can only find such a radical alteration of the original order to be substantive, rather than clerical. Consequently, the trial court was without jurisdiction to amend the judgment pursuant to Trial Rule 60(A), and the original April 17, 2009, order must stand as is.

To the extent that this result may cause concern that we are hampering trial courts' ability to fix their mistakes, we note that the bottom line herein would have been the same even if we found that the trial court had authority to issue its corrected judgment. Had we found that to be the case, SHF argues that it was erroneous to deny its requests for costs, prejudgment interest, and attorney fees, and as briefly set forth below, we would have agreed. The end result, therefore, would have been the same—a return to the terms of the original order.

As for costs, in Indiana an award of costs is mandatory to the prevailing party. Ind. Code § 34-52-1-1. Consequently, the corrected order is erroneous to the extent it denies SHF costs.

Next, we note that an award of prejudgment interest is mandatory if the terms of the contract make the amount of the claim ascertainable. Town of New Ross v. Ferretti, 815 N.E.2d 162, 170 (Ind. Ct. App. 2004). Here, the Lease specifies a precise

mathematical formula for calculating the amount due. Consequently, the amount of the claim is ascertainable and the corrected order is erroneous to the extent it denies SHF prejudgment interest.

Next, our Supreme Court has found that an award of attorney fees is proper and warranted in the case of a recalcitrant defendant "who made a contract . . . and through . . . unjustified refusal to comply with clear obligations proceeded to refuse to honor the agreement, even after a lawsuit was brought to enforce it." Mitchell v. Mitchell, 695 N.E.2d 920, 924-25 (Ind. 1998). Here, the trial court and this court found that summary judgment in SHF's favor was warranted. Our Supreme Court denied transfer in 2005. In the calculation of damages phase, the Haileys filed five motions to continue and two lazy judge motions, resulting in a delay of nearly four years. They have filed four motions to reconsider—including a motion to reconsider the trial court's ruling on a motion to reconsider. They have refused to comply with discovery orders.

They have continued to assert objections to personal jurisdiction and service of process on Andrea many years after those objections were waived. Indeed, the trial court explicitly noted the "ethical problems" of counsel's decision to continue to pursue this argument, observing that "[i]t sounds like somebody's law license may be on the table." Mar. 23, 2006 Tr. p. 37, 49. Additionally, the Haileys have made repeated objections to SHF's corporate status that are groundless and frivolous, and have continued to make a patently false assertion that SHF never tendered any funds to them as required by the lease. Finally, even though this court found against the Haileys on their counterclaim,

they continued to press the issue and attempt to re-litigate it for years after this court's decision was issued. Given these facts and the nearly six-year delay in the execution of a judgment that was granted in SHF's favor, we would have found the Haileys' continued defense of this matter to be frivolous and groundless and held that it was erroneous for the trial court to deny SHF's request for attorney fees.

Finally, in reviewing the corrected judgment order, we would have found it erroneous to have changed the accrual date for post-judgment interest from April 17, 2009, to September 18, 2009. There is simply no authority supporting this change, and we would have reversed it.

Consequently, although we find herein that the trial court was without jurisdiction to issue the corrected order, even if we had reviewed the corrected order, we would have reversed the "corrections" made to the original order. In either case, justice prevails.

The judgment of the trial court is reversed.

BARNES, J., concurs.

DARDEN, J., concur in result.