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Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001552-MR

RUBY MAE GOODLETT AND
WILLIAM A. JOHNSON — APPELLANTS

APPEAL FROM BULLITT CIRCUIT COURT
v. HONORABLE EDWIN A. SCHROERING JR., SPECIAL JUDGE
ACTION NO. 94-CI-00324

HUGHIE LEE GOODLETT, JAMES I. SMOTHERS, ROSE C. SMOTHERS, JAMES F. CRENSHAW, BETTY L. CRENSHAW, JAMES C. CRENSHAW, LEIGHANA CRENSHAW, PEOPLE'S BANK OF MT. WASHINGTON, LIBERTY NATIONAL BANK & TRUST CO., AND THE UNITED STATES OF AMERICA (ON BEHALF OF ITS AGENCY THE RURAL ECONOMIC DEVELOPMENT SERVICES F.K.A. FARMER'S HOME ADMINISTRATION) — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BUCKINGHAM, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: Ruby Mae Goodlett and her former attorney William A. Johnson appeal from a June 2, 1999, judgment of the Bullitt Circuit Court dismissing their suit to enforce a lien on real property in Bullitt County, Kentucky. They maintain that the

June 1999 judgment is void because it was entered after the trial court had lost jurisdiction to modify or vacate a prior judgment in their favor. Being persuaded that the trial court retained jurisdiction over the earlier judgment and that its revocation thereof did not constitute an abuse of discretion, we affirm.

In 1975, Ruby Goodlett won a $22,301.40 judgment in Spenser (Kentucky) Circuit Court against Hughie Lee Goodlett, appellee herein, for damages arising from an automobile accident. Attorney Johnson represented Ruby in that action on a contingent-fee basis. That judgment remained unsatisfied as of June 1979 when Hughie and his wife purchased a house in Bullitt County. Within a few days of the purchase, Ruby and Johnson filed an execution lien on the property, and that lien is the basis for their present action. Two weeks after Ruby's lien was filed, Hughie petitioned for relief in bankruptcy. He obtained a discharge in February 1980.

In acquiring the Bullitt County realty, Hughie subjected it to a mortgage in favor of the Farmer's Home Association (now the Rural Economic Development Services (RD)). According to RD, when Hughie and his wife sold the property in 1981, they realized approximately $3,800.00. They sold the property to James I. and Rose C. Smothers, appellees, who also subjected the property to a Farmer's Home Association mortgage. Attorney John Wooldridge represented the agency in this transaction and rendered a title opinion. He did the same, apparently, in 1994 when, in conjunction with the Smotherses' bankruptcy, the United States Marshal sold the property to James

F. and Betty Crenshaw and James C. and Leighana Crenshaw, appellees herein.

On the day the Marshal's sale was approved, June 14, 1994, Ruby and Johnson filed the present action in Bullitt Circuit Court. With interest, the value of Ruby's judgment had grown, they alleged, to more than $200,000.00. They demanded that the property be sold and the proceeds applied to that obligation. They named as defendants, in addition to Hughie, the Smotherses, and the Crenshaws, The People's Bank of Mt. Washington, Liberty National Bank & Trust Co., and the United States of America (on behalf of RD).

In December 1995 the trial court dismissed the suit on the ground that Ruby's judgment was void. The court concluded that Hughie had been under a disability (incompetency) during the 1975 proceedings and that those proceedings had not included various protections to which he had thus been entitled. Ruby and Johnson appealed, and this Court reversed: Ruby's judgment was voidable, the Court found, but not void.[1] On remand, the trial court held a status conference on April 25, 1997. At the conclusion of that conference the court scheduled an evidentiary hearing for August 22, 1997, and granted ten days' leave for the filing of additional pleadings. The United States timely moved to file a third-party complaint against John Wooldridge, the attorney who had rendered title opinions approving the transfers of the subject realty from Hughie and his wife to the Smotheres and from the Smotheres to the Crenshaws. The trial court granted

[1]Goodlett v. Liberty National Bank & Trust Company, 1996-CA-000301-MR (02/07/97).

the motion, and summons was served on Wooldridge on May 19, 1997. Wooldridge served his answer on the United States, but contrary to CR 5.01 he failed to serve it on the other parties.

The only parties represented at the August 22, 1997, evidentiary hearing were the plaintiffs and the United States. We have not been provided with a transcript of that hearing, and it is unclear whether the United States resisted Ruby and Johnson's claim. In any event, the United States asserted a right to indemnification, should it be found liable, from the absent Wooldridge. A week later, on August 29, 1997, a judgment was entered in favor of Ruby and Johnson. Their lien was valued at more than $200,000.00, and their interest in the Bullitt County realty was adjudged superior to that of the various defendants. The property was ordered sold by the Commissioner of the Bullitt Circuit Court, with proceeds in excess of the costs of the sale to be applied to the lien. The judgment also provided that

> third-party plaintiff, United States of America, is awarded judgment against third-party defendant, John W. Wooldridge, on its claim for contribution and/or indemnity, in the sum of $ **reserved**.00, with interest thereon at the legal rate from date hereof, together with its costs herein.

That very day, August 29, 1997, the Crenshaws and The Peoples Bank of Mount Washington together served a motion seeking, in effect, to have the judgment modified to provide that The United States would hold them harmless "for any sums recovered under the judgment in this matter." Five days later, on September 3, 1997, Wooldridge served a motion seeking to have

the default judgment against himself set aside. He pointed out that he had been brought into the case after the court's April 25, 1997, status conference and had not, at least as reflected by the record, been notified of either the deadline for filing pleadings or the date of the evidentiary hearing. Default was an excessive sanction for his alleged breach of CR 5, he asserted, and default was unjust because he could establish meritorious defenses. Finally, on September 11, 1997, thirteen days after entry of the judgment, the United States served a motion to have the judgment amended. The United States sought to introduce evidence purportedly establishing the (modest) value of Ruby and Johnson's lien, satisfaction of which would not require, it was asserted, an enforced sale of the realty.

On October 2, 1997, an order was entered vacating the August 29, 1997, judgment.[2] The matter was referred to a commissioner, and then on March 5, 1999, the court conducted a new bench trial. Following the trial, Ruby and Johnson were accorded an opportunity to file additional documentary evidence and memoranda. Finally, on June 2, 1999, as noted above, a new judgment was entered dismissing Ruby and Johnson's complaint. It is that judgment from which Ruby and Johnson have appealed. They maintain that, of the three post-judgment motions filed in response to the judgment in their favor, two addressed indemnification among the other parties while only the third, the September 11, 1997, motion by the United States, truly attacked

[2]The October 2 order "specifically vacates" the court's order "entered herein on August 21, 1997." It is clear from the record, however, and Ruby and Johnson do not seriously dispute that the "order" meant to be vacated was the judgment of August 29, 1997. *See* CR 60.01.

the portion of the August 29, 1997, judgment pertaining to the lien. Because the post-judgment attack on their lien was untimely, Ruby and Johnson insist that the trial court's authority to reconsider its prior judgment was not properly invoked.

The parties have assumed that the August 29, 1997, judgment was final[3], and it is true, as the appellants maintain, that a trial court loses jurisdiction to alter, amend, or vacate a final judgment ten days after entry thereof, unless a motion for a new trial or one to revisit the judgment is served by a party or by the court itself within that ten-day period. CR 59. James v. Hillerich & Bradsby Company, Inc., Ky., 299 S.W.2d 92 (1956). This rule is to be construed strictly. Kentucky Farm Bureau Insurance Company v. Gearhart, Ky. App., 853 S.W.2d 907 (1993). An untimely motion, moreover, is not entitled to consideration even if another party's timely motion has otherwise preserved the trial court's jurisdiction. Kentucky Farm Bureau Insurance Company v. Gearhart, *supra*; Hertz Corporation v. Alamo Rent-A-Car, Inc., 16 F.3d 1126 (11th Cir. 1994) (discussing the very similar federal rule); McNabola v. Chicago Transit Authority, 10 F.3d 501 (7th Cir. 1993) (same). We agree with the appellants, therefore, that the United States' untimely motion of

[3]The propriety of declaring this judgment final under CR 54.02 is questionable given the host of unsettled issues among the defendants and the third-party defendant. Murty Bros. Sales, Inc. v. Preston, Ky., 716 S.W.2d 239 (1986); Alexander v. Springfield Production Credit Association, Ky. App., 673 S.W.2d 741 (1984). Our disposition of the issues raised directly by the appellants, however, makes it unnecessary to consider this question of finality.

September 11, 1997, did not invoke or in any way expand the trial court's authority to reconsider the August 29, 1997, judgment.[4]

We do not agree, however, that the court therefore lacked authority to vacate the judgment and proceed as it did. As noted, third-party defendant Wooldridge and defendants Crenshaw and The Peoples Bank of Mount Washington served timely motions to modify or to reconsider the August judgment. Wooldridge in particular moved that the judgment be vacated with respect to himself.[5] The court's jurisdiction over the judgment remained in force, therefore, so the question raised by the appellants becomes not whether the court exceeded its authority under CR 59, but whether it abused its discretion under that rule in granting relief.

The purpose of CR 59 is to give trial courts an opportunity to correct their own errors, "sparing the parties and appellate courts the burden of unnecessary appellate proceedings." Charles v. Daley, 799 F.2d 343, 348 (7th Cir. 1986) (citation omitted). At the same time, the rule is meant to comport with the parties' and society's expectations concerning

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[4]The United States asserts that it preceded its tardy written motion with a timely oral one. If it is to be effective, however, a motion under CR 59 must be served in writing within the ten-day period. Dave Kohel Agency, Inc. v. Redshaw, Inc., 149 F.R.D. 171 (E.D. Wis. 1993).

[5]None of the parties cited the civil rules or any other authority for his or its motion, as a concern for good practice would seem to have dictated, but post-judgment motions are to be construed according to their purposes and functions rather than their forms. Cargo Truck Leasing Company v. Piper, Ky., 394 S.W.2d 472 (1965); Simmons v. Ghent, 970 F.2d 392 (7th Cir. 1992). Wooldridge's motion seeking relief from a default judgment implicates CR 55.02 and CR 60.02, but because it was filed within the initial ten-day post-judgment period it implicates CR 59 as well. *Cf.* Mingey v. Cline Leasing Service, Inc., Ky. App., 707 S.W.2d 794 (1986); Charles v. Daley, 799 F.2d 343 (7th Cir. 1986).

the finality of judgments, as reflected in the rule's strict time limitation. Hidle v. Geneva County Board of Education, 792 F.2d 1098 (11th Cir. 1986). In general, relief under CR 59 is appropriate only upon a showing of one of the following grounds:

> (1) an intervening change in controlling law,
> (2) the availability of new evidence not previously available, and
> (3) the need to correct a clear error of law or prevent manifest injustice.

Atkins v. Marathon LeTourneau Company, 130 F.R.D. 625, 626 (S.D. Miss. 1990) (citations omitted). Although we agree with the appellants that the trial court's discretion under this rule is limited, particularly where the right to relief is grounded upon considerations remote from those raised in a timely motion,[6] the trial court nevertheless enjoys broad discretion to expand upon issues properly raised and to grant CR 59 relief on the basis of considerations directly related to, albeit not expressed in, the CR 59 motion.[7]

We are not persuaded that the trial court abused this discretion. Wooldridge's motion in particular seems to us to justify the trial court's full reconsideration of the August judgment. Wooldridge's excuse of his default was plausible and

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[6]Sanders v. Drane, Ky., 432 S.W.2d 54 (1968); Spears v. Burchett, Ky., 289 S.W.2d 731 (1956); Hopkins v. Ratliff, Ky. App., 957 S.W.2d 300 (1997); Kentucky Farm Bureau Insurance Company v. Gearhart, *supra*; McNabola v. Chicago Transit Authority, *supra;* Sun-Tek Industries, Inc. v. Kennedy Sky Lites, Inc., 848 F.2d 179 (Fed. Cir. 1988); Hidle v. Geneva County Board of Education, *supra.*

[7]Carpenter v. Evans, Ky., 363 S.W.2d 108 (1962); Varley v. Tampax, Inc., 855 F.2d 696 (10th Cir. 1988); Charles v. Daley, *supra;* United States v. Hollis, 424 F.2d 188 (4th Cir. 1970); *see* Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2817 nt. 17 (1995); *and cf.* Henry Clay Mining Company, Inc. v. V & V Mining Company, Inc., Ky., 742 S.W.2d 566 (1987) (discussing the similar relief available under CR 52).

thus raised a genuine concern that an injustice would result from denying him an opportunity to present his case. (*See* ground (3) above and *cf.* Cox v. Rueff Lighting Co., Ky. App., 589 S.W.2d 606 (1979).) Once given that opportunity, Wooldridge, as one allegedly liable to indemnify the United States, was entitled to raise defenses to the United States' underlying liability, including attacks upon the appellants' lien, even if the United States had initially waived those defenses. Wooldridge's motion, therefore, even if it did not expressly question or deny the validity and value of the appellants' lien, raised those issues by direct enough implication to bring them within the scope of the court's CR 59 review. The court's error-correcting role was properly invoked, that is to say, and the errors it eventually discovered were among those to which Wooldridge's motion could be expected to lead. The trial court's timely and reasonable decision to reconsider a judgment in which it had lost confidence did not compromise the appellants' countervailing interest in the finality of that judgment. Accordingly, the trial court did not abuse its discretion when it vacated the August 29, 1997, judgment in its entirety and the retried appellants' claim.

For these reasons, we affirm the June 2, 1999, judgment of the Bullitt Circuit Court.

BUCKINGHAM, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS.

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