

Commonwealth Of Kentucky

Court Of Appeals

NOS. 1999-CA-000492-MR,
1999-CA-001692-MR, AND 1999-CA-002322-MR

VERNON YOUNG

APPELLANT

v. APPEALS FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
HONORABLE ERNEST A. JASMIN, JUDGE
ACTION NOS. 97-CI-005620 & 99-CI-001955

MAE THOMPSON

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, GUIDUGLI, AND HUDDLESTON, JUDGES.

BUCKINGHAM, JUDGE: Vernon Young appeals from three judgments of the Jefferson Circuit Court arising out of a real estate transaction between him and Mae Thompson. We affirm.

Young initially filed suit against Thompson alleging numerous injuries stemming from the sale of real property. Thompson filed a counterclaim against Young alleging breach of contract for his failure to pay monthly financing payments. The case proceeded to trial where Young represented himself and Thompson was represented by an attorney. A jury was empaneled, and the trial proceeded until it was recessed for the day.

On the following day, the parties reached an agreement which was placed orally on the record and was subsequently reduced to writing and entered as an order of the court on February 12, 1999. The agreement required: (1) Young to pay Thompson \$44,000 for the property; (2) Thompson to deliver the deed free and clear to Young; (3) withdrawal of all lis pendens filed against the property; (4) dismissal of all suits against Thompson's attorney; and (5) that the fuel tank be the sole responsibility of Young. Young subsequently filed a motion to set aside the order, but the motion was denied. Young then appealed from the agreed order.

Following entry of the agreed order and the subsequent denial of Young's motion to set it aside, the trial court entered another order requiring Young to post a supersedeas bond in the amount of \$66,000 within ten days of the order. The order also provided that the matter would be referred to a commissioner for a public sale of the property if the bond was not posted as ordered. Young failed to post the bond, and Thompson's request for a judgment and order of sale was granted. An appeal of that order followed, and the property was sold at auction and purchased by Thompson for \$45,000.

Young then filed a civil action against Thompson seeking money that he had paid to her under a contract for deed for the property. The trial court dismissed that action, and Young also appealed from that order of dismissal.

Regarding the first appeal, the issue is simply whether the original order dismissing the claims of the parties was

proper. Young contends that the oral agreement on the record between the parties was not a judgment and that the court's written order cannot be so enforced by the trial court. Oral agreements entered on the record in open court are enforceable judgments at law. Calloway v. Calloway, Ky. App., 707 S.W.2d 789, 791 (1986). Such agreements can also effect the transfer of real property under an estoppel theory. Id. Further, "[a] judgment is a written order of a court adjudicating a claim or claims in an action or proceeding." CR¹ 54.01. The oral agreement of the parties in this case was entered on the record, memorialized by a written order of the court, and clearly constitutes a judgment which adjudicated the claims of the parties. The February 12, 1999, order of the Jefferson Circuit Court is affirmed.

Young's second appeal relates to the judgment and order of sale. Pursuant to the initial judgment, Young owed Thompson \$44,000 for the property. He failed to post a supersedeas bond to stay the execution of the order while it was on appeal. See CR 73.04(1). Young's argument that the court was without jurisdiction to enter the judgment and order of sale is without merit; therefore, the judgment and order of sale was proper due to Young's failure to post a supersedeas bond. The judgment and order of sale is affirmed.

Young's third appeal is from the trial court's dismissal of a subsequent civil suit that he filed against Thompson for the recovery of money paid to her pursuant to the

¹ Kentucky Rules of Civil Procedure.

contract for deed relating to the sale of the property in the previous law suit. The previous law suit likewise alleged damages arising from that transaction, and those issues were settled in the oral agreement which was subsequently memorialized by the court in writing. The claim asserted by Young in the second suit arose out of the same transaction that was the subject matter of the previous action filed by Young and the counterclaim filed by Thompson. Because Thompson filed a counterclaim against Young in the initial action for money owed on the property, Young was required to assert any claim that he had from money he had paid pursuant to the contract for deed in a counterclaim in that action. See CR 13.01. The June 15, 1999, order of the Jefferson Circuit Court dismissing Young's complaint in the second action is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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