

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001946-MR

SAM HOLMES

APPELLANT

v. APPEAL FROM McCracken Circuit Court
HONORABLE RON DANIELS, JUDGE
ACTION NO. 98-CI-00036

JOHNNY GRIMM

APPELLEE

OPINION
REVERSING IN PART AND REMANDING
** **

BEFORE: BARBER, KNOFF, AND TACKETT, JUDGES.

KNOFF, JUDGE: Sam Holmes appeals from a July 8, 1999, judgment of the McCracken Circuit Court dismissing his counter-claim in a landlord-tenant dispute. Holmes maintains that the trial court misapplied the doctrine of laches. We agree and so reverse the pertinent portion of the judgment.

Our review of this matter is limited by the fact that we have been provided neither a transcript of the evidence presented to the trial court nor a narrative statement by the parties in lieu thereof (CR 75.13). We are obliged in these circumstances to presume that the evidence supports the trial court's findings. The University of Kentucky v. Courier-Journal

& Louisville Times Company, Ky., 830 S.W.2d 373 (1992); Porter v. Harper, Ky., 477 S.W.2d 778 (1972).

From those findings and the parties' pleadings it appears that, in May 1996, Holmes rented a residence--a house trailer--from Johnny Grimm, the appellee. When Holmes failed to pay rent for July, August, and September 1997, Grimm terminated the lease and instituted forcible detainer proceedings. At about the same time, on September 16, 1997, Grimm filed a complaint in the small-claims division of McCracken District Court for delinquent rent and late fees totaling slightly less than \$1,000.00. On September 27, 1997, Holmes was lawfully evicted from the trailer. On October 9, 1997, he filed a counter-claim to Grimm's action for rent. The counter-claim alleged that Grimm had breached an option he had given Holmes to purchase the trailer¹ and that Grimm had converted personalty left in the trailer when Holmes was evicted. Upon Holmes's motion, the district court, in October 1997, transferred the matter to the circuit court.

The circuit court record commences in January 1998, with the filing of the transferred district court materials, but the next entry was not until February 1999, when the court ordered both parties to show cause why their respective claims should not be dismissed for lack of prosecution. The parties duly responded, and the matter was tried without a jury in May 1999. In the meantime, apparently, Grimm had retained Holmes's

¹The trial court found that Holmes had never exercised the option; that ruling has not been challenged on appeal.

belongings until the end of September 1998, first in the trailer then in a rented storage space. On October 5, 1998, he had sold them at a yard sale for approximately \$450.00. Following trial, the court found for Grimm on his complaint for rent and late fees, but set off the yard-sale proceeds from Grimm's recovery.

In dismissing Holmes's counter-claim for conversion, the trial court concluded as follows:

3. . . . that the actions of Plaintiff, Johnny Grimm, in holding the personal property of Defendant, Sam Holmes, were contrary to KRS 383.010. However, the Court finds that Defendant, Sam Holmes, is estopped by the doctrine of laches from claiming any wrongdoing on the part of Plaintiff, Johnny Grimm, since he waited fourteen (14) months to assert his rights herein.

4. It would be inequitable to reward the Defendant after he failed to move out of the premises as Ordered by the Court, and Plaintiff was forced to pay the cost of storing Defendant's property while losing the economic value of his mobile home.

It is this ruling from which Holmes appeals.

Laches is an equitable defense based on laxness, on a claimant's unreasonable delay in asserting his or her rights. The doctrine serves to bar claims when the unreasonable delay has so harmed or disadvantaged the party asserting the defense that it would be inequitable to permit the claim to go forward. Both elements--unreasonable delay and prejudice--are necessary. Plaza Condominium Association, Inc. v. Wellington Corporation, Ky., 920 S.W.2d 51 (1996); Card Creek Coal Co. v. Cline, 305 Ky. 473, 204 S.W.2d 571 (1947); Barrowman Coal Corporation v. Kentland Coal & Coke Co., 302 Ky. 803, 196 S.W.2d 428 (1946). Although laches has been applied where the delay has been a failure to prosecute

a pending claim rather than a failure to bring the claim in the first instance, that application of the doctrine is disfavored, particularly where the claim is a legal as opposed to an equitable one and where, as here, there is no doubt as to the claim's legal timeliness. Harris' Executrix v. Chesapeake & Ohio Railroad Co., 304 Ky. 840, 202 S.W.2d 154 (1947). CR 41.02, after all, provides an adequate remedy for lax prosecution.

Notwithstanding the scant record before us, we are persuaded that, as a matter of law, the trial court erred in its application of laches to bar Holmes's claim for conversion-based damages. Even if we grant that Holmes's delay in asserting his counter-claim was unreasonable, despite the plaintiff's like delay, we do not agree that Grimm was prejudiced thereby. On this point the trial court's ruling is inconsistent, for if Grimm unlawfully detained Holmes's possessions, as the court found, then he could not have been "forced" to store them, and obviously he was not forced to sell them. He could, and apparently should, simply have returned them to Holmes.

Even if the circumstances somehow made it reasonable for Grimm to store the possessions, moreover, he was not obliged to store them until Holmes acted on his counter-claim; Grimm was capable of having the matter resolved whenever he wished merely by acting on his own claim. If the storage to that point had been reasonable, Grimm's complaint could have been amended to include the amount expended therefor. In short, if Grimm has been harmed or disadvantaged, that harm or that disadvantage was

not a result of Holmes's delay. Holmes's apparently meritorious counter-claim, therefore, should not have been dismissed.

For these reasons, we reverse that portion of the July 8, 1999, judgment of the McCracken Circuit Court dismissing the defendant's counter-claim for conversion-based damages and remand for additional proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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