RENDERED: AUGUST 23, 2002; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001848-MR

HENSLEY INDUSTRIES, INC. APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 99-CI-03215

RYDER INTEGRATED LOGISTICS, INC. APPELLEE

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

BEFORE: BUCKINGHAM, HUDDLESTON AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Hensley Industries, Inc., has appealed from an opinion and order entered by the Fayette Circuit Court on July 25, 2001, which granted the appellee, Ryder Integrated Logistics, Inc., summary judgment.[1] The entry of summary judgment followed the entry of an opinion and order on March 7, 2000, which had set aside a default judgment. Having concluded that the trial court did not abuse its discretion by setting aside the default judgment, and that there is no genuine issue as to any material

[1]Kentucky Rules of Civil Procedure (CR) 56.02.

fact, and that Ryder was entitled to judgment as a matter of law, we affirm.

In early August 1996, Hensley and Ryder entered into an oral contract. The crux of this agreement was that Ryder would pay Hensley for providing the tractors and drivers necessary to deliver trailers loaded with cargo to Ryder's customers.[2] On March 17, 1998, Hensley and Ryder reduced their oral agreement to writing in a formal written contract.

After entering into the written contract, Hensley's drivers were involved in three separate accidents which either damaged or destroyed three trailers.[3] Ryder subsequently informed Hensley that it was going to hold Hensley liable for the damages to the trailers and the cargo caused by the accidents.[4] Hensley, either by direct payments or as deductions from payments due from Ryder to Hensley for services already performed, eventually paid Ryder $90,163.12 for the damages caused by the

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[2]The delivery of a trailer loaded with freight to a customer is known in the transportation business as a "dropship" delivery. Hensley's drivers would pick up a trailer provided by Ryder which had been loaded with cargo and deliver the loaded trailer to a particular destination, where the driver would then leave the trailer and the cargo for the customer. Hensley's drivers would not load or unload the cargo.

[3]The accidents occurred on May 28, 1998, August 13, 1998, and December 7, 1998.

[4]As will be discussed later, uncontested evidence in the record shows that Ryder did not own the trailers damaged in the accidents. Instead, Ryder had leased those trailers from other entities.

accidents.[5]

On September 13, 1999, Hensley filed a complaint in Fayette Circuit Court claiming that it had "inadvertently paid" Ryder the aforementioned damages. Hensley demanded a judgment from Ryder in the sum of $90,163.12. According to testimony from Robert Fatovic, general counsel for Ryder, his office log in Miami, Florida, indicated that a copy of Hensley's complaint was received on or about September 30, 1999.[6] However, the complaint was apparently mishandled or misrouted, and Ryder's corporate counsel was never notified of its receipt. As a result, Ryder failed to answer Hensley's complaint in a timely manner. Hensley subsequently moved the trial court for a default judgment to be entered against Ryder pursuant to CR 55.01. On November 19, 1999, the trial court granted Hensley's motion and it entered a default judgment against Ryder in the amount of $90,163.12.

According to Fatovic, Ryder first became aware that it was in default on or about January 20, 2000. On January 31, 2000, Ryder moved the trial court to set aside the default judgment pursuant to CR 55.02. The trial court granted Ryder's motion in an opinion and order entered on March 7, 2000.

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[5]Ryder's evidence that the damage to the three trailers was $15,500.00, $34,744.00, and $31,000.00, respectively, has not been challenged. The remaining amount of $8,919.12 was for the damage to the cargo. Hensley is only contesting the $81,244.00 claimed as the damages to the trailers.

[6]Fatovic stated that when complaints from various places in the United States, Canada, Europe, and South America are filed against Ryder, those complaints are routed to the legal department in Miami, Florida.

Subsequently, on April 27, 2001, Ryder filed its motion for summary judgment, arguing that by the plain terms of the March 17, 1998, written contract Hensley was responsible for any damages to the trailers while under Hensley's "care, custody or control." The trial court entered an opinion and order on July 25, 2001, granting Ryder's motion for summary judgment. This appeal followed.

Hensley claims the trial court abused its discretion by setting aside the default judgment. Specifically, Hensley argues:

> Kentucky law on motions to set aside default judgments is very clear. To prevail on such a motion, a moving party must establish each of the following elements to the satisfaction of the Court:
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> 1. A valid excuse for the failure to timely file a responsive pleading.
>
> 2. A meritorious defense to the basic claim set out in the complaint.
>
> 3. The absence of prejudice to the non-defaulting party. Sunrise Turquois, Inc. v. Chemical Design Company, Inc., Ky.App., 899 S.W.2d 856 (1995).
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> [Ryder] makes very little attempt to establish a "valid excuse" for its obvious failure to timely file a responsive pleading. They admit that they received the complaint and summons in their corporate legal department. . . . Nevertheless, the legal department simply "lost" the complaint and failed to respond in a timely fashion. They offer no excuse other than their own negligence or inadvertence. Simply put, under no circumstances can this be found to be a valid excuse for [Ryder's] failure to timely respond.

Hensley argues that since Ryder admitted to being the sole party

at fault in the loss of the complaint, the trial judge "was not within his discretion" in setting aside the default judgment. We disagree.

CR 55.02 provides that a trial court may set aside a default judgment for "good cause" shown in accordance with CR 60.02; and among the grounds for relief listed under CR 60.02 are "mistake" and "excusable neglect." In Kidd v. B. Perini & Sons, Inc.,[7] the former Court of Appeals discussed the broad discretion afforded trial courts in determining whether to set aside default judgments and the standard to be applied by appellate courts in reviewing those decisions:

> [C]ourts "possess and exercise a very large discretion in vacating judgment by default for the purpose of permitting defense to be made on the merits." Freeman on Judgments, 42 Ed. p. 934. We expressed the rule in Wilson v. Rockcastle Mining, Lumber, & Oil Co., 200 Ky. 484, 255 S.W. 88, 90 [(1923)], in the following language: "In granting and refusing new trials, trial courts have a broad discretion, which will not be interfered with, except in case of abuse, and this court is less inclined to set aside a judgment granting than one refusing a new trial."

Further, in Green Seed Co. v. Harrison Tobacco Storage Warehouse, Inc.,[8] this Court stated:

> The law clearly disfavors default judgments. Moreover, the trial court has wide discretion to set aside a default judgment. The moving party, however, cannot have the judgment set aside and achieve his

[7]313 Ky. 727, 731-32, 233 S.W.2d 255, 257 (1950).

[8]Ky.App., 663 S.W.2d 755, 757 (1984).

> day in court if he cannot show good cause and a meritorious defense. Good cause is most commonly defined as a timely showing of the circumstances under which the default judgment was procured [citations omitted].

Clearly, a trial court is given broad discretion to determine whether to set aside a default judgment; and on review, the burden will be even heavier for a party seeking to overturn a trial court's determination to have the case decided on the merits.

After Ryder was notified that it was in default, it promptly took full responsibility for the mistake and explained to the trial court why it had failed to respond to Hensley's complaint. Ryder explained that receipt of the complaint was noted in its legal department's logbook on September 30, 1999, but the complaint was lost and it was never sent to anyone in its legal department for a response. Fatovic stated that this was "the first instance to my knowledge in which our system failed and the complaint was lost."

In its motion to set aside the default judgment, Ryder set forth in detail its argument in support of its meritorious defense. Obviously, the trial court agreed with Ryder's claim of a meritorious defense because it not only set aside the default judgment, but subsequently it granted Ryder summary judgment. Hensley's claim that it was prejudiced because it "has gone from having a judgment in its favor to having [a] judgment entered against it" is not convincing. As Ryder points out, if "loss of the default judgment is undue prejudice sufficient enough to

preclude setting aside a default, then no default judgment could ever be set side." For the foregoing reasons, we cannot say that the trial court abused its discretion in setting aside the default judgment that had been entered against Ryder.

Hensley has also appealed the summary judgment awarded to Ryder. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[9] In Paintsville Hospital Co. v. Rose,[10] the Supreme Court of Kentucky held that for summary judgment to be proper the movant must show that the adverse party cannot prevail under any circumstances. The Court has also stated that "the proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in [its] favor."[11] The standard of review on appeal of a summary judgment is whether the trial court correctly found that there was no genuine issue as to any material fact and that the moving

[9]CR 56.03.

[10]Ky., 683 S.W.2d 255 (1985).

[11]Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991).

party was entitled to judgment as a matter of law.[12] There is no requirement that the appellate court defer to the trial court since factual findings are not at issue.[13] "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in [its] favor."[14]

Hensley argues that there is a "substantial dispute" between the parties as to the meaning of the terms of the written contract. Specifically, Hensley argues:

> [T]he parties entered into an oral contract in 1996. Based on that understanding, [Hensley] began to haul freight for [Ryder]. [Hensley] provided the drivers and the power units. [Ryder] provided the trailers and the freight. . . .
>
> The parties entered into a written contract on March 17, 1998. . . . The written contract is entirely consistent with the oral agreement under which the parties had already been operating.
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> . . .
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> All of Mr. Hensley's[15] testimony was consistent with his position that [Hensley] was not responsible for damages to the trailers owned by [Ryder]. He stated that prior to the time of the written contract, there had been trailer damage for which no reimbursement had been sought.

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[12]Scifres v. Kraft, Ky.App., 916 S.W.2d 779, 781 (1996).

[13]Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992).

[14]Steelvest, supra at 480.

[15]Willie Hensley was the president of Four H Trucking, which ran the trucking business for Hensley Industries, Inc.

Hensley is relying on the parties' prior dealings under the oral contract as a factor to be considered in interpreting the subsequent written contract entered into by the parties on March 17, 1998. This argument ignores the fact that the written contract contained an integration clause, which read as follows:

> This Agreement, together with all schedules, attachments and exhibits hereto, constitutes the entire agreement between Ryder and [Hensley] with respect to the subject matter hereof and shall supersede all prior oral or written representations and agreements [emphasis added].

It is well-established that in such a case, evidence of prior agreements between the parties and/or the prior course of dealing between the parties is ordinarily not admissible when interpreting the meaning of a subsequent written contract.

In City of Covington v. Kanawha Coal & Coke Co,[16] the former Court of Appeals stated:

> [P]arol evidence or usage or custom is admissible to annex incidents or to show what things are to be treated as incidental to the principal thing which is the subject of the contract. . . . "This evidence is admitted on the principle that the parties did not intend to express in writing the whole of the contract by which they were to be bound, but only to make their contract with reference to the known and established usages and customs relating to the subject matter."

However, in the case sub judice, the parties did expressly provide that the written contract would supersede all prior agreements and representations between the parties and that the

[16]121 Ky. 681, 685-86, 89 S.W. 1126, 1127 (1905) (quoting 2 Greenleaf on Evidence § 294).

written contract constituted the "entire agreement." Hence, unless there is an ambiguity in the written agreement, there is no need to resort to the parties' prior dealings to supplement the terms of the written instrument.

In Gibson v. Sellars,[17] the former Court of Appeals stated:

> Extrinsic proof is competent and may be employed in construing language, the meaning of which is obscure or which is susceptible of two or more interpretations. However, because of the inherent danger of the rule, its use is permitted only in those cases where the language to be construed is so ambiguous or obscure in meaning as to defy interpretation otherwise. An extension of the rule would result in chaos and confusion, and it would be impossible to determine the rights of the parties to a contract without viewing all the circumstances surrounding the execution of the document in question.

Therefore, extrinsic evidence, i.e., evidence apart from the four corners of the written instrument, should not be considered in interpreting the contract absent a finding that the terms of the written agreement are "so ambiguous or obscure in meaning as to defy interpretation otherwise." In the instant case, we conclude that the meaning of the contract terms between Ryder and Hensley are clear and unambiguous. Thus, a resort to parol evidence is not necessary.[18]

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[17]Ky., 252 S.W.2d 911, 913 (1952).

[18]See Veech v. Deposit Bank of Shelbyville, 278 Ky. 542, 550, 128 S.W.2d 907, 911 (1939) (holding that "[i]f the contract is so clear and free from ambiguity as to be self-interpretative no construction is necessary but it should stand as it is written and should be enforced according to its express terms in the

(continued...)

Three provisions in the contract lead us to the conclusion that summary judgment in favor of Ryder was proper. First, the "indemnification clause" clearly states that Hensley agreed to indemnify Ryder for costs incurred arising out of "any act" by Hensley, including possible damages to "any property." The clause reads in part:

> [Hensley] agrees to indemnify, defend and hold Ryder and its customers . . . harmless from and against any and all liabilities, damages, fines, penalties, costs, claims, demands and expenses (including reasonable attorneys' fees and costs) of whatever type or nature, including, but not limited to . . . (c) damage or destruction of any property . . . arising out of
>
> > (i) any act or omission by [Hensley], its agents, employees. . . [emphases added].

The uncontested evidence in the record shows that Ryder did not own the trailers which were damaged in the accidents. Instead, Ryder had leased those trailers from other entities. Hence, Ryder was liable to those entities for the damages resulting from the accidents. We hold that the trailers damaged in the accidents fit well within the sweeping language of this "indemnification clause" and that Hensley is bound by the terms of the contract to indemnify Ryder for the damages incurred.

Second, an "insurance clause" placed Hensley on notice that it was responsible for maintaining comprehensive insurance

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[18](...continued)
absence of showing of fraud, mistake, or a plea and showing of grounds for reformation").

coverage. This clause reads in part:

> (a) [Hensley] shall maintain the following types . . . of insurance:
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> . . .
>
> (ii) Comprehensive general liability insurance, including blanket contractual coverage, for bodily injury and tangible property damage in the minimum amount of One Million Dollars ($1,000,000.00) combined single limit per occurrence [emphases added].

Once again, we hold that the trailers damaged in the accidents fit well within this very broad and sweeping language of "tangible property" and that Hensley is bound by the terms of the contract to pay Ryder for the damages incurred.

Finally, Hensley agreed that it would be liable for any property damaged while under its care, custody, and control. The "property damage clause" reads in part:

> [Hensley's] goal is to manage the Transportation Service in a manner which eliminates damage claims. Except as otherwise provided, [Hensley] shall have the sole and exclusive care, custody, and control of all property tendered to [Hensley] for transportation hereunder until delivery to the consignee. [Hensley] shall be liable for the full actual loss, damage or injury to said property while said property is in [Hensley's] care, custody, or control. . . [emphases added].

As mentioned above, Hensley would pick up the cargo-filled trailers at a particular location and deliver them to a certain destination. Both the cargo and the trailers were left at the drop-off point. We hold that the trailers were therefore a part of the "property tendered to [Hensley] for transportation" and

the "property damage clause" mandated that Hensley pay Ryder for any damage to the trailers while under Hensley's care, custody, and control.

Each of the aforementioned provisions, both individually and collectively, lead us to the conclusion that Hensley agreed pursuant to the March 17, 1998, contract to pay for the damage to the trailers. Therefore, since there was no genuine issue as to any material fact and since Ryder was entitled to judgment as a matter of law, summary judgment in favor of Ryder was proper.

For the foregoing reasons, the opinions and orders of the Fayette Circuit Court are affirmed.

ALL CONCUR.

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