RENDERED: DECEMBER 6, 2002; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002586-MR

BERNARR TARTER — APPELLANT

v.

APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 77-CI-00115

WILLIAM F. HANSFORD,
D/B/A TARTER'S FEED MILL — APPELLEE

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

BEFORE: GUIDUGLI, HUDDLESTON, KNOPF, JUDGES.

KNOPF, JUDGE: In July 1977, William Hansford, doing business as Tarter's Feed Mill, sued Bernarr Tarter to recover an alleged debt to the feed mill of $4,899.34. Hansford also sought six-percent annual interest on the debt beginning February 20, 1976. On September 17, 1985, the Casey Circuit Court entered a default judgment against Tarter awarding Hansford his claimed principal plus costs and "interest at the legal rate from February 20, 1976, until paid." Hansford did not seek to execute upon the judgment until September 12, 2000. In November 2000, he obtained an order of garnishment on a trust account in which Tarter had an

expectancy. And in October 2001, after Tarter's expectancy had ripened into possession, he obtained a renewed order of garnishment for more than $58,000.00 in principal and accrued interest. In response, Tarter moved to have the 1985 default judgment set aside. The trial court denied his motion by order entered November 21, 2001. The same order directed the garnishee to satisfy Hansford's claim. It is from that order that Tarter has appealed. He maintains that the default judgment is void and that Hansford's long delay both in moving for a judgment and in seeking to enforce the judgment he obtained should preclude enforcement now. We are persuaded by none of these contentions and so affirm the trial court's order.

As noted, Hansford's original complaint sought interest at six percent compounded annually. In August 1985, Hansford filed an amended complaint in which he incorporated his prior allegations but sought interest at the legal rate. In 1980, the General Assembly had increased the legal rate from six to eight percent. Tarter did not receive notice of the amended complaint. He correctly observes that if the amended complaint asserted new or additional claims for relief, then he was entitled to notice.[1] If, on the other hand, the amendment merely clarified the original pleading and brought it up to date, then notice was not required.[2] The trial court found that the amendment was of this latter kind, and we agree. The original claim for relief was for

[1]CR 5.01.

[2]*Id.* Roadrunner Mining, Engineering & Development Company v. Bank Josephine, Ky., 558 S.W.2d 597 (1977); Combs v. Coal & Mineral Management Services, Inc., 105 F.R.D. 472 (D. D.C. 1984).

a liquidated principal debt plus interest at the rate--the maximum legal rate--ordinarily allowed on such debts.[3] The claim in the amended complaint was precisely the same, albeit the new complaint demanded legal-rate interest explicitly rather than implicitly. The trial court did not err, therefore, by ruling that Tarter's lack of notice of the amendment did not render the default judgment invalid.

The law disfavors default judgments, and under CR 55.02 and CR 60.02 the trial court has broad discretion to set such a judgment aside.[4] Ordinarily, the party moving for relief from a default judgment will attempt to show that there was good cause for the default and that he was possessed of a meritorious defense.[5] Tarter has eschewed this usual form of argument, however, and contends instead that Hansford's delay in moving for a default judgment and then his delay in seeking to enforce the judgment amount to circumstances extraordinary and inequitable enough to warrant relief under CR 60.02(f).[6] He correctly notes that prejudicial delay--laches--will sometimes estop a party from asserting what otherwise would be his right.[7] He fails to explain, however, how Hansford's delay has prejudiced him. To be

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[3]Nucor Corporation v. General Electric Company, Ky., 812 S.W.2d 136 (1991).

[4]Green Seed Company v. Harrison Tobacco Storage Warehouse, Inc., Ky. App., 663 S.W.2d 755 (1984).

[5]*Id.*

[6]That subsection of the rule permits the trial court to reopen a final judgment for "any other reason of an extraordinary nature justifying relief."

[7]Denison v. McCann, 303 Ky. 195, 197 S.W.2d 248 (1946).

sure, a significant amount of interest has been added to Hansford's damages, and if Hansford had pressed his claim earlier perhaps Tarter would have paid it before so much interest had accumulated. Hansford's delay, however, can not be said to have caused or induced Tarter's failure to satisfy the judgment in a more timely manner, and usually some such cause or inducement must be shown before laches or estoppel will apply.[8] Tarter concedes that he received notice in 1977 of Hansford's original complaint and that he never filed an answer. He believed, he asserts, that his father had settled the matter. He does not, however, accuse Hansford of somehow creating that impression, and he further admits that he never enquired about the case's status, although obviously he might have done so at any time.

Rather, noting that parties have sometimes been estopped from belatedly complaining about wrongful building construction when, because of the complainant's unreasonable silence, the construction has become costly to undo,[9] Tarter contends that Hansford had a duty to assert the alleged default more promptly than he did and before the interest damages had mushroomed. The construction analogy seems to us weak. Tarter's failure to pay his debt or to enquire about Hansford's law suit is hardly comparable, despite the accumulation of interest, to continued investment in a building. Aside from this dubious analogy, Tarter cites no authority for the proposition that

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[8]Plaza Condo Association v. Wellington Corporation, Ky., 920 S.W.2d 51 (1996); Farnworth v. Jensen, 217 P.2d 571 (Utah 1950).

[9]Chapman v. Bradshaw, Ky., 536 S.W.2d 447 (1976); Silliman v. Falls City Stone Company, Ky., 305 S.W.2d 322 (1957).

Hansford had a duty to speak up more promptly than he did about Tarter's alleged default. CR 41.02 and CR 77.02 permit the trial court to dismiss claims that have grown stale for lack of prosecution, but those rules are not self-effecting, and of course a lax plaintiff is under no legal duty to bring them down upon himself.

Once the default judgment was entered, moreover, KRS 413.090[10] and KRS 426.035[11] obliged Hansford, if he would keep his judgment alive, to do no more than attempt execution within fifteen years.[12] Tarter concedes that Hansford met this requirement. Where the General Assembly has said that Hansford has fifteen years in which to assert his right, it is generally not for the courts to tell him he must have asserted it sooner or to scrutinize his motives for waiting as long as he did.[13] Tarter has suggested no reason to depart from that rule here.

In sum, it is clear that Tarter's own careless disregard of the original complaint is the root from which his current misfortune has grown. "Carelessness by a party . . . is not reason enough to set [a default judgment] aside."[14] We cannot say that the trial court abused its discretion by denying

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[10]This statute creates a fifteen-year limitations period for actions on a judgment.

[11]KRS 426.035 provides that "[a]n execution may be issued upon a judgment at any time until the collection of it is barred by the statute of limitations."

[12]Slaughter v. Mattingly, 155 Ky. 407, 159 S.W. 980 (1913); Gotee v. Graves, 153 Ky. 26, 154 S.W. 386 (1913).

[13]Plaza Condo Association v. Wellington Corporation, Ky., 920 S.W.2d 51 (1996).

[14]Perry v. Central Bank & Trust Company, Ky. App., 812 S.W.2d 166, 170 (1991) (citation and internal quotation marks omitted).

Tarter's motion for relief from his default. Accordingly, we affirm the November 21, 2001, order of the Casey Circuit Court.

ALL CONCUR.

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