

RENDERED: DECEMBER 24, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

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Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001852-MR

RACHEL NETHERY

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 97-CI-00437

VERLINDA K. KEELING, EXECUTRIX
OF ESTATE OF HERMAN LEE NETHERY,
DECEASED

APPELLEE

OPINION

VACATING AND REMANDING

** ** * * *

BEFORE: BARBER, McANULTY, AND TACKETT, JUDGES.

McANULTY, JUDGE. Rachel Nethery appeals the order of the Shelby Circuit Court which granted the Motion to Enforce the Agreement of the Parties to Settle filed by Verlinda Keeling, executrix of the estate of Herman Lee Nethery. Rachel Nethery (hereinafter appellant) argues on appeal that the court should not have entered the order because Keeling's (hereinafter appellee) acceptance was too late and it occurred after she made a

counteroffer. Additionally, she argues the settlement agreement could not be enforced because it was not in writing. We agree that the trial court erred in entering an order to impose the settlement, and we vacate and remand.

The pertinent facts of the case are as follows:

In 1997, appellant filed a petition in the Shelby Circuit Court for dissolution of her marriage from Herman Nethery. Appellant and Herman entered into a written Partial Settlement Agreement, which specifically reserved certain property issues for future resolution. However, Herman died before he and appellant resolved those issues which remained. Appellee, Herman's daughter, was substituted as a party, as executrix of his estate, and the parties continued to litigate the remaining issues.

On April 12, 2001, the trial court conducted a settlement conference. Appellant verbally offered to settle all her remaining claims for the sum of \$35,000. Appellee did not accept the offer. That same day, appellee wrote a letter to appellant indicating that she would pay \$20,000 to settle the claims. Appellant did not respond to the counteroffer. The litigation continued, including discovery and further negotiations.

On September 24, 2001, appellee sent a letter to appellant to state that she would accept the original offer of

\$35,000 in settlement of all claims. Appellant's attorney responded that he would inform appellant of the letter, and he indicated that he would begin preparation of final settlement documents. But, on January 30, 2002, in open court, appellant stated that she rejected appellee's acceptance as not being timely.

On February 10, 2002, appellee filed a motion to enforce the agreement. Appellee argued that appellant did not place a time limitation on the offer, and never revoked it. Appellee informed the court that the standard when a time limit was not set was whether the offer was accepted within a reasonable time. In response, appellant raised objections to the motion. She stated that there was no written agreement. She contended that appellee's failure to accept the offer in a timely fashion -- that is, prior to discovery and additional litigation -- constituted a rejection of the offer. Appellant maintained that, in any event, whether the offer was accepted within a reasonable time was a question of fact which made the case unsuitable for summary disposition.

The trial court's order of August 6, 2002, granting appellee's motion concluded that the offer was accepted prior to its withdrawal. The court found that appellant did not place a time limitation on the offer, and that the lapse of time between the offer in April and appellee's acceptance in September was

not unreasonable due to the "complex nature of this litigation." Therefore, the court ordered settlement of the parties' remaining claims for the sum of \$35,000. It is from this order that appellant appeals.

First, the fact that the proposed settlement was not in writing is not determinative of whether an agreement was reached. It is well-settled in Kentucky that the fact that a compromise agreement is verbal and not yet reduced to writing does not make it any less binding. Motorists Mut. Ins. Co. v. Glass, Ky., 996 S.W.2d 437, 445 (1997). If the minds of the parties meet regarding a compromise settlement, it is enforceable even though not in writing. Barr v. Gilmour, 204 Ky. 582, 265 S.W. 6, 9 (1924). Furthermore, because this was a settlement agreement, and not a separation agreement between divorcing spouses, we conclude that KRS 403.180 does not apply to require that the settlement be in writing.

Nonetheless, we agree with appellant that it was error for the trial court to enter the order since there is a factual dispute about whether a settlement agreement was reached. An agreement to settle legal claims is essentially a contract subject to the rules of contract interpretation. Cantrell Supply, Inc. v. Liberty Mut. Ins. Co., Ky. App., 94 S.W.3d 381, 384 (2002). Thus, a settlement agreement is valid if it satisfies the requirements associated with contracts generally,

i.e., offer and acceptance, full and complete terms, and consideration. Id. See also Hines v. Thomas Jefferson Fire Ins. Co., Ky., 267 S.W.2d 709, 711 (1954). As with a contract, the primary object in construing a compromise settlement agreement is to effectuate the parties' intentions. Cantrell Supply, 94 S.W.3d at 384.

If the parties do not reach a final conclusion and their minds do not meet upon a compromise, then neither party is bound, and the proposition of a compromise settlement is of no effect. Barr, 265 S.W. at 9. But, if the parties agree upon all the terms of the compromise agreement, neither party can withdraw from it. Id. If a dispute exists as to whether an oral agreement was reached, the issue is to be resolved by a jury. Glass, 996 S.W.2d at 445; Barr, 265 S.W. at 9. In the case at bar, there are disputes as to whether the acceptance in this case was within a reasonable time, and whether the initial offer was still valid after appellee made a counteroffer and continued negotiations. While we note the worthy attempt of the trial court to finally resolve matters between the parties, we conclude that the resolution of these questions of fact was improper, as these were jury issues. Thus, the trial court's order was not valid.

For the foregoing reasons, we vacate the trial court's order imposing a settlement in this case, and remand for further proceedings consistent with this opinion.

ALL CONCUR.

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