

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001404-MR

CONNIE MARSHALL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
CIVIL ACTION NO. 03-CI-007666

ARVEL WISE, JR.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, JUDGE; HUDDLESTON AND PAISLEY, SENIOR JUDGES.¹

HUDDLESTON, SENIOR JUDGE: On July 9, 2003, Connie Marshall filed suit against her landlord, Arvel Wise, Jr., in the Small Claims Division of Jefferson District Court. Marshall claimed that Wise had violated the housing code and had been guilty of trespass, and she sought to recover damages in the sum of \$1,500.00. Marshall later amended her complaint to increase the amount of damages claimed to \$10,359.00. Because the damages

¹ Senior Judges Joseph R. Huddleston and Lewis G. Paisley sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580

claimed exceeded the jurisdictional limits of the district court, the case was transferred to Jefferson Circuit Court. The amended complaint also added a count claiming illegal eviction.

On July 9, 2004, Marshall and Wise entered into an oral agreement to settle the case. In substance, the agreement provided that the parties would not pursue litigation against one another regarding "the fact situation as identified in the previous pleadings in this case." At a hearing held on that date, the parties acknowledged in open court that a settlement of all matters had been reached. Counsel for Wise was to draft a written agreed order to be signed by the parties and submitted to the circuit court. For some reason not apparent from the record, the order was not timely prepared. When the agreed order was finally presented to Marshall, she refused to sign it.²

On August 24, 2004, Marshall filed a *pro se* "Motion for Judgment Against the Defendant." The motion conceded that "[o]n July 9, 2004, the Plaintiff and the Defendant's Attorney entered an oral agreement in this court." According to Marshall, however, by failing to timely prepare a written agreed order, Wise had breached the parties' oral agreement, and she was entitled to judgment upon her original complaint. Wise

² According to Wise, Marshall was mailed a copy of the written settlement agreement for her signature on September 1, 2004, and again on November 19, 2004.

responded that the parties had a valid settlement agreement and sought its enforcement.

Following an evidentiary hearing, on June 3, 2005, the circuit court determined that the parties had a valid and enforceable settlement agreement providing that each party would not pursue litigation against the other on the matters at issue in this action.

On appeal, Marshall contends that the circuit court erroneously determined that the parties had a valid oral agreement to settle this litigation because Wise breached the agreement when he failed to timely draft a written agreed order memorializing their agreement.

A settlement agreement, like any other contract, is governed by contract law.³ “[U]nder contract law, an oral contract is ordinarily no less binding than one reduced to writing.”⁴ “When parties have agreed on the essential terms of a settlement, and all that remains is to memorialize the agreement in writing, the parties are bound by the terms of the oral agreement.”⁵ “It is elementary that a contract may not be rescinded unless the non-performance, misrepresentation or

³ *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003).

⁴ *Id.*

⁵ *Re/Max International, Inc. v. Realty One, Inc.*, 271 F.3d 633, 646 (6th Cir. 2001) (noting that the validity of the oral settlement agreement is not affected by the fact that it has not yet been documented in writing).

breach is substantial or material. Generally, courts do not favor rescission, which will not be permitted. . . . The court does not look lightly at rescission, and rescission will not be permitted for a slight or inconsequential breach.”⁶

Marshall concedes that the parties entered into an oral agreement to settle the litigation on July 9, 2004. The issue before us, then, is whether Wise’s delay in preparing a written agreed order was a material breach of the contract so as to excuse performance by Marshall.

Simply put, the provision that counsel for Wise would prepare an agreed order was not a material term of the parties’ agreement. The intent of the agreement was to settle litigation between the parties, and any agreement concerning who would prepare the written order or when it would be prepared was collateral to this essential purpose. As there was no material breach by Wise, Marshall remains bound by the oral agreement. Consequently, the circuit court properly determined that the parties had a valid oral agreement, and did not err in requiring its enforcement.

The judgment is affirmed.

ALL CONCUR.

⁶ *Fay E. Sams Money Purchase Pension Plan v. Jansen*, 3 S.W.3d 753, 757 (Ky. App. 1999), citing *Evergreen Land Co, v. Gatti*, 554 S.W.2d 862, 865 (Ky. App. 1977).

BRIEF FOR APPELLANT:

Connie Marshall, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Stephen T. Porter
Louisville, Kentucky