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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002209-MR

JULIANNE MAY YOUNG

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 05-CI-00419

LOU MAY RICHARDSON; CHARLES
M. ORR; CHRISTIE L. ORR;
CLAYTON P. ORR AND
PHIL M. ORR, JR., INDIVIDUALLY,
AS INDEPENDENT EXECUTOR OF
THE ESTATE OF MARTIELE ORR
AND AS TRUSTEE OF THE ORR
FAMILY TRUST; BUENA
VISTA, LLC; ESTATE OF SAM
C. MAY AND MENESE WALL

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; MOORE AND VANMETER, JUDGES.

VANMETER, JUDGE: Appellant¹ appeals *pro se* from the Marion Circuit Court order entered on February 23, 2010, which vacated a partial summary judgment order entered on April 11, 2003. For the following reasons, we affirm.

The procedural history of this case is lengthy, including two prior appeals to this court. The underlying action concerns the propriety of a transfer of assets from two inter vivos trusts that were established in 1991 by Appellant's parents, Sam C. May and Julia May. Appellant and her sisters, Lou Mary Richardson and Martiele Orr, were the beneficiaries of the trusts. (The Orrs who are parties to the present appeal are the offspring of Martiele Orr, who died in April 2000).

Julia died in 1998. In 1999, Sam created a limited liability company, Buena Vista, LLC, and shortly thereafter transferred assets from Julia's trust to Buena Vista. Sam made a few other transfers and in 2001, Appellant attempted to transfer assets. In response, Richardson and Philip Orr filed a declaratory judgment action against Appellant, and Buena Vista was joined as a third party defendant. Appellant counterclaimed and on April 11, 2003, the trial court entered a partial summary judgment in her favor, holding, in relevant part, that Sam lacked legal authority to transfer certain assets since he had resigned as trustee. On appeal, this court affirmed the trial court's ruling. *See Richardson v. Young*, 2005 WL 1050569 (Ky.App., May 6, 2005). Appellees² filed a petition for rehearing,

¹ Julianne May Young.

² Lou May Richardson; Charles M. Orr; Christie L. Orr; Clayton P. Orr and Phil M. Orr, Jr., Individually, as Independent Executor of the Estate of Martiele Orr and as Trustee of the Orr Family Trust; Buena Vista, LLC; Estate of Sam C. May and Meneese Wall.

which this court denied. On August 9, 2005, Appellees filed a motion for discretionary review with the Kentucky Supreme Court.

On December 7, 2005, while their motion before the Kentucky Supreme Court was pending, Appellees filed a petition in the Marion Circuit Court seeking relief from the April 11, 2003, judgment pursuant to CR³ 60.02(f) and CR 60.03. Appellees asserted that important documents relating to Sam's legal authority to transfer the trust assets were not considered by the trial court and if considered, would have compelled a different result. Based on this new evidence, the trial court vacated its April 11, 2003, judgment by order entered September 27, 2006. Appellant filed a motion to alter, amend or vacate that judgment, which the trial court denied. Appellant then filed a notice of appeal on November 22, 2006.

On November 15, 2006, the Kentucky Supreme Court entered an order denying discretionary review of this court's May 6, 2005, opinion affirming the trial court's April 11, 2003, partial summary judgment. In an opinion rendered July 25, 2008, this court addressed Appellant's appeal from the trial court's September 27, 2006, order which granted CR 60.02(f) and CR 60.03 relief and vacated its April 11, 2003, judgment. *Young v. Richardson*, 267 S.W.3d 690 (Ky.App. 2008). In that appeal, Appellant claimed that the trial court lacked subject matter jurisdiction to enter the September 27, 2006, order because the motion for discretionary review of this court's opinion affirming the April 11, 2003, judgment was then pending before the Kentucky Supreme Court. *Id.* at 694.

³ Kentucky Rules of Civil Procedure.

This court held that despite the pendency of the motion for discretionary review before the Supreme Court, the trial court retained narrow jurisdiction to rule on the CR 60.02(f) and CR 60.03 motion. *Id.* at 696. However, because the trial court's September 27, 2006, order failed to substantively address the equitable grounds advanced under CR 60.02(f) and CR 60.03, and instead concerned the equitable power of the court to effectuate the settlement agreement of the parties, under reasons which this court determined were neither "extraordinary" as required by CR 60.02(f) nor "appropriate" within the meaning of CR 60.03, this court held that the requirements of CR 60.02(f) and CR 60.03 were not met and remanded the case to the trial court for further proceedings. *Id.* at 696-98.

On remand, the trial court entered an order on February 23, 2010, vacating its April 11, 2003, judgment pursuant to CR 60.02(f) and CR 60.03 and later amended that order to make it final and appealable. This appeal followed.

On appeal, Appellant claims that the trial court abused its discretion by vacating its April 11, 2003, judgment pursuant to CR 60.02(f) and CR 60.03 since Appellees' claims of "mistake" and "newly discovered evidence" fall under CR 60.02(a) or (b) and were required to have been asserted within one year after entry of the judgment, which Appellees failed to do. Appellant further claims that Appellees did not satisfy the requirements for relief under CR 60.02(f) and CR 60.03. We disagree.

A trial court's decision concerning a CR 60.02 motion is reviewed on appeal for an abuse of discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky.App.

2000). An abuse of discretion occurs when a “trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000) (citation omitted).

CR 60.02(f) aims “to provide relief where the reasons for the relief are of an extraordinary nature.” *U.S. Bank, N.A. v. Hasty*, 232 S.W.3d 536, 541 (Ky.App. 2007) (citation omitted). CR 60.02(f) is the “catch-all” provision of CR 60.02 and allows a party to request relief from a judgment based on “any other reason of an extraordinary nature justifying relief.” Relief under CR 60.02(f) is only available if the asserted grounds for relief are not recognized under subsections (a) – (e) of the rule. *Alliant Hosp., Inc. v. Benham*, 105 S.W.3d 473, 478 (Ky.App. 2003). Request for relief under CR 60.02(f) must be made “within a reasonable time[,]” rather than within one year from the date of the judgment as required under CR 60.02(a),(b) and (c). Since we desire to accord finality to judgments, courts should invoke CR 60.02(f) “only with extreme caution, and only under most unusual circumstances.” *Cawood v. Cawood*, 329 S.W.2d 569, 571 (Ky. 1959).

Appellant first argues that the trial court abused its discretion by relying on CR 60.02(f) to vacate the April 11, 2003, judgment since Appellees’ requested relief was based on “mistake” and “newly discovered evidence,” grounds which Appellant argues must be raised within one year from the date of judgment under CR 60.02. In its order, the trial court acknowledged that Appellees cited “mistake” as cause for not previously presenting the documents for the court’s

consideration, but nonetheless held that its April 11, 2003, judgment did not result in a just outcome and vacated it under CR 60.02(f) and CR 60.03.

CR 60.03 provides:

Rule 60.02 shall not limit the power of any court to entertain an independent action to relieve a person from a judgment, order or proceeding on appropriate equitable grounds. Relief shall not be granted in an independent action if the ground of relief sought has been denied in a proceeding by motion under Rule 60.02, or would be barred because not brought in time under the provisions of that rule.

The trial court found it probable that when the parties filed competing motions for summary judgment in 2002, they had possession of the documents which purportedly established Sam May's legal authority to transfer the trust assets at issue. The court further found it extraordinarily unusual that none of the parties or their attorneys produced these documents for the court's consideration at that time. The court noted its jurisdiction and duty to enforce trusts and its authority to review the intent of the settlor by his official acts as such, and that this duty is thwarted if evidence of the settlor's acts is withheld by inexcusable neglect, misrepresentation to the court, deception, obstruction or intentional failure to disclose a material fact. The court held that the partial summary judgment entered April 11, 2003, did not result in a just outcome and that the court's decision to vacate that judgment did not prejudice either party. Based on our extensive review of the record, we conclude that the trial court did not abuse its discretion by vacating its April 11, 2003, judgment pursuant to CR 60.02(f) and CR 60.03.

The order of the Marion Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Julianne May Young, *Pro se*
Bryan, Texas

BRIEF FOR APPELLEE:

D. Kevin Ryan
Louisville, Kentucky