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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002225-MR

THOMAS JONES AND
LISA JONES

APPELLANTS

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 07-CI-00257

DIANNE STUCKER AND
ROBERT MYLES

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, NICKELL, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is an appeal of a decision of the Shelby Circuit Court dismissing a party, finding the party was not an indispensable party and should not have been joined. For the following reasons, we affirm.

BACKGROUND INFORMATION

Dianne and Tom (now deceased) Stucker owned a farm comprised of real and personal property in Shelby County, Kentucky. In May of 2004, appellants Thomas Jones and Lisa Jones entered into an agreement to purchase both real and personal property. The agreement stated that the appellants would pay cash for the real property and sign a promissory note for the personalty, which included livestock and farm equipment. No security agreement was filed to secure the Stuckers' interest in the personalty.

The Stuckers were represented by Robert Myles in this transaction. Myles filed a Uniform Commercial Code (UCC)-1 financing statement asserting a lien on the personalty. The appellants contend that the filing was without their knowledge or consent and that this action slandered the title to their property.

Appellants sold the livestock and farm equipment to make payments on the promissory note. Diane Stucker aided in the bringing of criminal charges against Thomas Jones for the sale of these items. The charges were later dismissed and on April 23, 2007, Stucker brought this action asserting breach of contract under the promissory note. On January 3, 2008, the trial court entered judgment against appellants on Stucker's complaint.

The appellants filed counterclaims against Diane Stucker asserting malicious prosecution, libel, slander, abuse of process, and slander of title. The counterclaims are still pending. Appellants then moved to add Myles as an

indispensible party after Stucker contended that her actions were based upon Myles's advice as her counsel.

On September 3, 2008, the trial court granted the appellants' motion to add Myles as a party. On November 17, 2008, Stucker filed a third-party complaint against him. A default judgment was entered against Myles on January 22, 2009. Myles then moved the court to set aside the default judgment and to bifurcate the third-party claim. Myles also filed an answer to the third-party complaint and, on March 30, 2009, the default judgment entered against him was set aside. Myles's motion to bifurcate, however, was denied.

On June 8, 2009, Stucker asked the court to reconsider its decision to add Myles as an indispensable party. She asserted that the court lacked subject-matter jurisdiction to entertain the third-party claim against him. She argued that her claim against Myles was not ripe in that her damages were indefinite and speculative.

On October 1, 2009, the trial court granted Stuckers' motion to reconsider and dismissed the third-party complaint against Myles. This appeal followed.

STANDARD OF REVIEW

We review the trial court's decision under an abuse of discretion standard. The test for abuse of discretion is whether the trial judge's decision was

arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Com. v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Therefore, we affirm the lower court's decision unless there is a showing of some "flagrant miscarriage of justice." *Gross v. Com.*, 648 S.W.2d 853, 858 (Ky. 1983). With this standard in mind, we examine the trial court's ruling.

DISCUSSION

The appellants first argue that the trial court erred in granting Stucker's motion to reconsider and, subsequently, dismissing the third-party complaint against Myles. They assert that a court must employ the test set forth in *Davidson v. Castner-Knott Dry Goods Co., Inc.*, 202 S.W.3d 597 (Ky. App. 2006), to rescind a prior ruling. First, "a judge may reexamine an earlier ruling and rescind it if he has a reasonable conviction that it was wrong and it would not cause undue prejudice to the party that benefited from it." *Id.* at 602 (quoting *Hallahan v. The Courier-Journal*, 138 S.W.3d 699, 705 n.4 (Ky. App. 2004)). Appellants argue that they would suffer undue prejudice and hardship with the dismissal of the third-party complaint and removal of Myles as a party. They contend that the time which passed during which Myles was a party led them to develop their trial strategy, hire experts, research and draft preliminary jury instructions and undertake discovery with the understanding that Myles would be an involved participant. We do not find this a convincing argument.

Kentucky Rules of Civil Procedure (CR) 19 sets forth that it is within the sound discretion of the trial court to make a determination as to whether

additional parties are necessary to ongoing litigation and should be joined. *West v. Goldstein*, 830 S.W.2d 379, 385 (Ky. 1992). This rule provides that a party should be joined where:

(a) in his absence complete relief cannot be accorded among those already parties, or (b) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of his claim interest.

CR 19.01(a)

Here, appellants do not have a case against Myles. The third-party complaint was solely Stucker's. There is no indication as to why the original trial court judge decided Myles was an indispensable party. There is no proof that Myles's absence will subject the appellants or Stucker to the risk of multiple obligations. Thus, we do not believe the appellants are prejudiced in any way by the trial court's dismissal of Myles as a party. We also agree that Stucker's damages are uncertain. If the appellants do not prevail on their counterclaims then Stucker will recover everything that she was entitled to under the promissory note and will have no claim against Myles.

The appellants also argue that the original ruling set forth by Senior Status Judge Tom McDonald was an exercise in sound discretion. They contend that the test set forth in *Davidson*, 202 S.W.3d 597, requires the court find the original ruling to be wrong. Judge McDonald did not issue an opinion regarding

his ruling. The oral ruling with a notation did not set forth his reasoning for joining Myles as an indispensable party. We find that any such reasoning would be flawed and, therefore, agree with the trial court's subsequent dismissal of the action against Myles.

For the foregoing reasons, we affirm the decision of the trial court.

ALL CONCUR.

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