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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000241-MR

JONES PLASTIC AND
ENGINEERING COMPANY, LLC,
D/B/A WILLIAMSBURG PLASTIC — APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL BRADEN, JUDGE
ACTION NO. 09-CI-00694

JOSEPH VARRO — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, MAZE AND NICKELL, JUDGES.

NICKELL, JUDGE: Jones Plastic and Engineering Company, LLC, d/b/a Williamsburg Plastic ("Jones Plastic") has appealed from an order of the Whitley Circuit Court holding that a Settlement Agreement entered into between Jones

Plastic and Joseph Varro following a mediation conference constituted a final and binding agreement between the parties. We affirm.

Jones Plastic employed Varro as a machine operator from 2004 to 2009. Varro was terminated for violating his employer's policies concerning threatening and intimidating behavior in the workplace. Shortly thereafter, Varro brought an action against Jones Plastic alleging he was fired in retaliation for filing two workers' compensation claims in violation KRS[1] 342.197. On March 19, 2010, the trial court entered an order scheduling the case for a jury trial. Following a failed attempt by Jones Plastic to remove the matter to the United States District Court, the trial court ordered the parties to attempt to mediate a settlement and a mediation conference was scheduled for November 11, 2010.

The mediation was successful and the parties reached an amicable settlement. At the conclusion of the conference, the parties and their attorneys executed a type-written single-page "Settlement Agreement" memorializing the mediated settlement. The Settlement Agreement was a simple document containing three substantive paragraphs regarding the terms of the parties' agreement. The first paragraph called for Jones Plastic to pay a sum of money to Varro and his counsel; the second paragraph required Varro to execute a release of his claims raised in the action against Jones Plastic containing "language of confidentiality, nondisclosure, mutual nondisparagement, and other terms"; and the final paragraph obligated the parties to execute an agreed order dismissing the

[1] Kentucky Revised Statutes.

pending action in the Whitley Circuit Court and for each to bear its own costs. The terms of the Settlement Agreement give rise to the present controversy.

In spite of the successful mediation, four days later on November 15, 2010, Jones Plastic moved for summary judgment. The next day it tendered a ten-page "Settlement and Release Agreement" to Varro's counsel. Varro rejected the proposed agreement stating it contradicted the mediation agreement and requested Jones Plastic tender "a proper settlement" accompanied by a check. The main point of contention was inclusion by Jones Plastic of "global release" language it believed it had negotiated for and which Varro vehemently opposed.[2] On November 19, 2010, Varro moved the trial court to compel Jones Plastic to tender a release complying with the terms of the Settlement Agreement executed after the mediation and for an award of a reasonable attorney's fee. A subsequent motion requested the trial court to "approve and order the mediation agreement shall be the sole release between the parties." Jones Plastic opposed the motions, arguing the Settlement Agreement did not contain all of the terms of the parties' agreement reached during the mediation—especially regarding a global release—and that it was unenforceable as the sole release between the parties.

[2] The tendered document included language purporting to release any and all claims potentially arising from Varro's employment, termination, post-termination events, "or any other event, transaction, contact or communication between Varro, the Company and/or Released Parties before, during or after Varro's employment." The document contained a veritable laundry list of state and federal statutes under which potential claims could be brought that Varro would be releasing. Varro's complaint had raised a claim only for retaliatory termination of his employment.

All of the pending motions came before the trial court at a hearing on December 13, 2010. The trial court made specific rulings on only two of the matters brought before it, as resolution of those issues would be dispositive of the substantive points of contention. The court found that the parties had reached a settlement and reduced their agreement to a binding, written Settlement Agreement. It believed the agreement required Varro to release the claims raised in his complaint, but did not contemplate a global release and indemnification provisions as urged by Jones Plastic.[3] Following the hearing, due to either confusion or legal posturing, no release conforming to the trial court's ruling was prepared nor was a proposed order tendered. On January 10, 2011, at the conclusion of a subsequent hearing convened at Varro's request, a written order memorializing the trial court's December 13, 2010, oral ruling was entered. This appeal followed.

Jones Plastic contends the trial court erred in concluding the parties had reached a final settlement during the mediation as there was a genuine dispute as to the proper language to be included in the release. It further contends the release ordered by the trial court did not reflect the agreement reached in mediation and failed to give effect to the terms of the negotiated settlement. Jones Plastic also argues the terms of the Settlement Agreement are ambiguous and required the

[3] As a result of the trial court's rulings, Jones Plastic's motion for summary judgment was rendered moot and was not addressed. No mention was made of Varro's motion for attorney's fees and sanctions. These matters have not been raised on appeal and require no further comment.

trial court to examine extrinsic evidence to determine the intent of the parties. We disagree with Jones Plastic's assertions and affirm the trial court.

At the conclusion of mediation, the parties executed a document styled "Settlement Agreement."[4] Pertinent to this appeal is the following language of that agreement:

> 2. The plaintiff shall execute a release releasing all claims against the defendant *arising from this action*, containing language of confidentiality, nondisclosure, mutual nondisparagement, and other terms. As to the confidentiality and nondisclosure, the consideration is the mutual agreement of the parties hereto, and there is no monetary consideration.

(Emphasis added).

Settlement agreements are contractual in nature, making their interpretation a question of law, thereby resulting in a *de novo* standard of appellate review of the trial court's analysis. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003). When reviewing the terms of a settlement agreement, the Court:

> must first determine whether the settlement agreement is ambiguous, or "capable of more than one different, reasonable interpretation." If so, then extrinsic evidence may be resorted to in an effort to determine the intention of the parties; if not, then extrinsic evidence may not be resorted to. The criterion in determining the intention of the parties is not what did the parties mean to say, but rather the criterion is what did the parties mean by what they said.

[4] Although Jones Plastic consistently refers to the document as a "Mediation Memorandum," that term appears nowhere in the document. It is clearly styled "Settlement Agreement," in bold capital letters.

> Additionally, if the language of a contract "is unambiguous, the meaning of the language is a question of law, and the intent of the parties must be discerned from the words used in the instrument."

Ford v. Ratliff, 183 S.W.3d 199, 202-03 (Ky. App. 2006) (footnotes omitted).

Here, the issues presented are controlled by the language of the Settlement Agreement. Under the terms of the agreement, the parties agreed in unambiguous terms to release "all claims . . . arising from this action." Thus, only those claims actually asserted by Varro may properly be included in a release. Clearly, under the language of the Settlement Agreement, the parties agreed to specifically include confidentiality, nondisclosure and mutual nondisparagement terms within the release. Although Jones Plastic argues the inclusion of the phrase "and other terms" was intended to encompass the global release language it seeks to impose on Varro, we cannot approve of such a broad reading. The unspecified and perhaps future claims Jones Plastic seeks to include in the release were not raised in the instant action. The clear and unambiguous language of the parties' agreement required Varro to execute a release relating *only to the claims raised in this litigation*; it did not require Varro—contrary to Jones Plastic's contention—to release any and all past, present and future claims against Jones Plastic, its parent, subsidiary, affiliated and related entities, arising under any one of a multitude of statutory provisions, whether those claims be known or unknown. If Jones Plastic sought to leave the mediation with aspirations of obtaining a global release, it would have been easy enough to include such a requirement in the Settlement

Agreement, but alas, that language is conspicuously absent. Jones Plastic's contention that inclusion of the phrase "and other terms" was intended and understood to encompass global release language is without support in the record and does not comport to the plain and unambiguous language of the Settlement Agreement.

Because the plain terms of the Settlement Agreement require Varro to release only those specific claims raised in the instant action, we hold the trial court correctly ruled a narrow release was all that was required and correctly rejected Jones Plastic's urging for inclusion of global release language. "[A]n otherwise unambiguous contract does not become ambiguous when a party asserts —especially *post hoc*, and after detrimental reliance by another party—that the terms of the agreement fail to state what it intended." *Frear*, 103 S.W.3d at 107. The Settlement Agreement called for a narrow release relating to Varro's retaliatory termination claim and nothing further. "In the absence of an ambiguity a written instrument will be enforced strictly according to its terms," *Frear*, 103 S.W.3d at 106 (citing *O'Bryan v. Massey-Ferguson, Inc.*, 413 S.W.2d 891, 893 (Ky. 1966)), and language will be assigned its ordinary meaning without looking to extrinsic evidence. *Id*.

Finally, we note that Jones Plastic's reliance on *Spot-A-Pot, Inc. v. State Resources Corp*., 278 S.W.3d 158 (Ky. App. 2009), in seeking an opposite conclusion is misplaced. In *Spot-A-Pot*, a panel of this Court held that a hand-written, bullet-point document executed following mediation did not include the

entire agreement of the parties. Similar to the case at bar, the executed document called for a formal release and settlement document to be drafted and executed at a later date. However, in *Spot-A-Pot*, as evidenced by subsequent communications, the parties agreed and understood that the bullet-point document was not the complete agreement of the parties, thus requiring a resort to extrinsic evidence to determine the scope and terms of the parties' oral agreement. No such evidence or circumstances are present in the instant matter. The plain language of the typed agreement here reveals no ambiguity as to the intent of the parties in respect to a release. Thus, as we have previously stated, the Settlement Agreement will be enforced according to its terms. *Frear*, 103 S.W.3d at 106.

Accordingly, we reject Jones Plastic's assertions and affirm the decision of the Whitley Circuit Court.

ALL CONCUR.

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