

RENDERED: OCTOBER 5, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000758-MR

RONALD BEIER

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 09-CI-00258

NEW FALLS CORPORATION

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; KRAMER AND NICKELL, JUDGES.

CLAYTON, CHIEF JUDGE: Ronald Beier appeals from a Kenton Circuit Court order entered on April 7, 2017, denying his motion to set aside a non-wage garnishment based on a deficiency judgment entered in favor of New Falls Corporation on August 15, 2014.

In January 23, 2009, New Falls filed a foreclosure complaint against Beier in Kenton Circuit Court, alleging he had defaulted on a promissory note secured by a mortgage on his residence. Beier responded with a letter to the circuit court claiming that the allegations he owed money to New Falls were false. The letter stated that he needed at least ninety days to secure legal representation because he could not afford a lawyer. He asked the court to help him find legal counsel and send him information on who was available.

On April 22, 2009, New Falls moved for a default judgment against Beier who still had not filed an answer to the complaint. Beier filed a document captioned "Re-Notice of Hearing" stating he needed more time to obtain free legal counsel. He explained that he was checking with Legal Aid but had not had much time because he had been out of town. He stated that he should be ready by May 18, 2009.

On October 29, 2009, New Falls moved for judgment on the pleadings. A pre-trial conference was held by the Deputy Master Commissioner who ordered the parties to attempt to resolve their differences regarding the amount owing. The effort was apparently unsuccessful. The record contains a letter from Beier to the Master Commissioner, dated and filed November 23, 2009, which claims New Falls rejected Beier's offer of \$1,200 to settle the matter.

On September 7, 2010, the circuit court entered a judgment and order of sale. In the judgment, the court noted that Beier had appeared and requested additional time but failed to file an answer or to deny the indebtedness. According to Beier, he went to the wrong courtroom and missed the hearing on the motion. He claims that he spoke with the judge afterwards but found her unhelpful. He claims she should have held an evidentiary hearing and informed him about filing deadlines. Beier did not appeal from the 2010 judgment.

The sale of the residence was thereafter delayed because Beier filed a Chapter 13 bankruptcy petition. The petition was later dismissed for his failure to make payments under the bankruptcy plan. The residence was ultimately sold in November 2013.

The sale proceeds from the residence left the judgment unsatisfied. New Falls moved for a deficiency judgment, seeking \$2,123.99. Beier responded by arguing that the original judgment from 2010 was infirm because he had not been present in the courtroom and the facts had not been correctly presented. He challenged the amount New Falls was seeking and offered to pay \$1,123.99 to satisfy the judgment, claiming he had already paid \$1,000.

A hearing was held on the matter on March 24, 2014, and the circuit court ordered another hearing before the Master Commissioner. His findings stated in pertinent part as follows:

Plaintiff [New Falls] produced evidence of its Judgment entered by this Court on September 7, 2010. It appears that the proceeds from Master Commissioner sale held on November 12, 2013 will be exhausted in paying the costs of sale and the delinquent taxes and no amount will be available to be applied to Plaintiff's judgment. Plaintiff also stated that it had incurred attorney fees and costs for which it seeks recovery. . . .

Defendant [Beier] stated his position that the [2010] judgment was unfair and incorrect. The Master [Commissioner] stated that the civil rules provide the basis for setting aside a judgment and that such motion was not currently before the court. Mr. Beier advised that he made payments both immediately prior to and through his Chapter 13 bankruptcy for which he should receive credit.

By letter dated December 19, 2012 attached to Defendant's June 6, 2013 filing, Plaintiff's counsel stated that the principal and interest due as of December 17, 2012 was \$4,625.67 consisting of \$2,123.99 in principal and \$2,501.68 in accrued but unpaid interest. Defendant acknowledges that no payments were made since December 17, 2012.

The Master Commissioner calculated the total amount of the deficiency including interest as \$5,448.29.

More than ten days later, after the Master Commissioner filed his amended report, Beier filed a document seeking to amend the motion to confirm the report, in which he requested the judgment to be set aside because New Falls had not proved that he owed anything. A hearing was held at which the circuit

court pointed out to Beier that the deadline for challenging the 2010 judgment had long passed.

On August 15, 2014, the circuit court entered the deficiency judgment on New Falls' behalf and an order denying Beier's motion to vacate the original judgment, finding no reason in conformity with the civil rules which would provide the court with the jurisdiction to set aside the judgment. Beier did not appeal from either the deficiency judgment or the order denying his motion to vacate. He filed a motion to set aside the default judgment, in which he referred to both the original 2010 judgment and the August 15, 2014, deficiency judgment. New Falls responded that the motion was untimely under Kentucky Rules of Civil Procedure (CR) 60.02 and also failed to allege adequate grounds for relief. It appears that Beier's motion was not properly noticed for a hearing and he did not pursue the matter.

In November 2014, Beier paid \$9,350 to exercise his right of redemption on the residence.

Two years later, New Falls identified a PNC bank account belonging to Beier and proceeded to serve a garnishment order on the Bank. On January 20, 2017, Beier challenged the garnishment, arguing that the judgment had been satisfied over a year before and accusing New Falls of harassment. He also requested more time to obtain legal counsel. New Falls responded that the source

of the debt was the unsatisfied August 15, 2014, deficiency judgment. The trial court entered an order denying Beier's motion to set aside the garnishment. This appeal by Beier followed.

Although Beier's appeal is taken from the order denying his motion to set aside the garnishment of his bank account, he also argues that the original judgment for New Falls, entered on September 7, 2010, and the deficiency judgment of August 15, 2014, should be vacated under CR 55.02, CR 59.07, CR 60.02, CR 62.01, and CR 65.08, as well as under Federal Rules of Civil Procedure (FRCP) 55 (c).

Beier does not explain why he failed to file timely direct appeals challenging the earlier judgments. His pleadings in the record contain only requests for more time, assurances that he will seek legal counsel in the future, and repeated excuses based on going to the wrong courtroom or missing a critical date.

Because Beier is acting pro se, "he is not subject to the same standards as litigants represented by counsel. However, the judiciary's conciliatory attitude toward unrepresented parties is not boundless." *Cardwell v. Commonwealth*, 354 S.W.3d 582, 585 (Ky. App. 2011) (citing *Beecham v. Commonwealth*, 657 S.W.2d 234, 236 (Ky. 1983)). "While we are willing to overlook inartful pleading by a *pro se* litigant, we are not willing to create an argument for him." *Grant v. Lynn*, 268

S.W.3d 382, 391 (Ky. App. 2008) abrogated on other grounds by *Walker v. Blair*, 382 S.W.3d 862 (Ky. 2012).

At the time Beier filed his appeal, seven years had passed since the entry of the judgment and order of sale. Four years had passed since the entry of the deficiency judgment. Under these circumstances, a court may exercise its discretion to invoke the group of rules known as the “law of the case,” which is founded on the “general principle that a court addressing later phases of a lawsuit should not reopen questions decided by that court or by a higher court during earlier phases of the litigation.” *Brown v. Commonwealth*, 313 S.W.3d 577, 610 (Ky. 2010). “These rules serve the important interest litigants have in finality, by guarding against the endless reopening of already decided questions, and the equally important interest courts have in judicial economy, by preventing the drain on judicial resources that would result if previous decisions were routinely subject to reconsideration.” *Id.*

Our review of the record indicates that Beier was provided with numerous opportunities to present his claims and to challenge the trial court’s orders and judgments but failed to do so in a timely manner. “The Civil Rules prescribe a practical pattern for the conduct of litigation and the effective administration of justice. To this end reasonable compliance is necessary. The proper application and utilization of those Rules should be left largely to the

supervision of the trial judge, and we must respect [her] exercise of sound judicial discretion in their enforcement.” *Naive v. Jones*, 353 S.W.2d 365, 367 (Ky. 1961). Beier provides no persuasive explanation for his dilatoriness and failure to comply reasonably with the rules of civil procedure. Under these circumstances, the trial court did not abuse its discretion in denying his motion.

For the foregoing reasons, the Kenton Circuit Court order denying the motion to set aside the garnishment is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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