[Cite as *Myatt v. Myatt*, 2009-Ohio-5796.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

GEORGE MYATT, et al. Appellees v. DANIEL MYATT, dba DANIEL'S SALON, et al. Appellants	C.A. No. 24606 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2007 12 8610

DECISION AND JOURNAL ENTRY

Dated: November 4, 2009

CARR, Judge.

{¶1} Appellants, Daniel and Denise Myatt, appeal the judgment of the Summit County Court of Common Pleas. This Court reverses.

I.

{¶2} Appellants, Daniel and Denise Myatt, are the son and daughter-in-law of Appellees, George and Celesta Myatt. Daniel Myatt operates a salon, known as "Daniel's Salon," at 325 E. Portage Trial in Cuyahoga Falls, Ohio. Appellee, David Myatt, Daniel's brother, operates a salon of his own, known as "Whisker's Salon," at 301 E. Portage Trial in Cuyahoga Falls, Ohio. At the time the underlying complaint in this case was filed, George and Celesta owned the building and adjacent parking lot at 301 E. Portage Trail in Cuyahoga Falls. The parking lot is adjacent to the property at 325 E. Portage Trial where Daniel operates his salon.

{¶3} On April 9, 2007, George purportedly entered into a lease agreement with Daniel and Denise. The parties signed a document entitled "Parking Lot Lease" under which Daniel would be able to utilize the lot located at 301 E. Portage Trail for a 20-year period for client parking. In exchange, Daniel was to pay $148 per month to his father, George. In early October 2007, George rescinded the agreement on the grounds that it was invalid and prohibited Daniel's clients from using the parking lot. Daniel continued to assert leasehold rights in the parking lot. On October 19, 2007, Daniel received a letter which indicated that the lease agreement was invalid and terminated. The letter also indicated that Daniel was to immediately cease using the lot. Daniel continued to pay the monthly lease fee and continued to use the lot for client parking. In late October, Daniel's payments were returned and he was again told by letter that he was not to use the parking lot.

{¶4} On December 11, 2007, George and Celesta filed a complaint in the Summit County Court of Common Pleas. In the complaint, they sought a declaratory judgment against Daniel and Denise that the parking lot lease was invalid on the grounds that George lacked authority to enter into the agreement. George and Celesta also asserted a claim for trespass against Daniel and Denise and a claim for tortious interference with business relations against Daniel, individually. The complaint further included a claim for breach of lease against Anthony Mastadonna, who was the landlord of the building in which Daniel operated his salon. On January 2, 2008, Mastadonna filed his answer to the complaint in which he asserted several affirmative defenses. On February 14, Daniel and Denise filed their answer to the complaint and asserted numerous affirmative defenses. Additionally, Daniel and Denise filed a counterclaim against George and Celesta in which they alleged tortious interference with business relations; and a cross-claim against Daniel's brother, David, asserting that he maliciously interfered with

the operation of Daniel's salon. On March 20, 2008, David filed his answer to Daniel and Denise's claims and asserted several counterclaims of his own.

{¶5} On April 25, 2008, George and Celesta, as well as David Myatt, filed motions for partial summary judgment. On June 3, 2008, the trial court granted both motions for partial summary judgment, finding the parking lot lease to be invalid as it was not properly witnessed or notarized as required by R.C. 5301.01, et seq., and it was not signed by Celesta Myatt, a co-owner of the subject property. The trial court also found that George and Celesta were entitled to summary judgment on their trespass claim as Daniel and Denise had continued to make use of the parking lot after they had been informed that they did not have a right to do so. In its entry, the trial court noted that the question of damages as well as the claims which remained pending would be addressed at a later date.

{¶6} At a status conference on July 16, 2008, the parties engaged in mediation and settlement negotiations regarding the claims which remained pending. At the conclusion of the day's negotiations, the parties discussed negotiations with the trial judge. On August 27, 2008, the court noted that it had been advised that the parties had reached a settlement and ordered the matter settled and dismissed provided another order was not filed within the next 30 days. On September 9, 2008, counsel for Daniel and Denise moved to withdraw. This motion was granted on September 15, 2008. The next day, on September 16, 2008, George and Celesta, along with David, filed a joint motion to vacate the dismissal entry. In this filing, George, Celesta, and David indicated that Daniel, Denise and Mastadonna had failed to act upon the proposed settlement documents which had been circulated to the parties. Because the parties were unable to execute the proper settlement documents, dismissal entry, and permanent injunction memorializing their agreement, George and Celesta, along with David, moved the court to

reactivate the case. Daniel, Denise and Mastadonna did not respond to the joint motion. On November 3, 2008, the trial court reactivated the case and vacated the dismissal order.

{¶7} Subsequently, on December 5, 2008, Daniel and Denise filed a motion to amend their counterclaims and cross-claims instanter and a request for recusal of the trial court judge. On December 9, 2008, George and Celesta filed a motion to enforce the settlement agreement which had purportedly been reached on July 16, 2008. Daniel and Denise filed briefs in opposition to the motion to enforce the settlement agreement on December 22, 2008. In this filing, Daniel and Denise disputed whether a settlement agreement had been reached and whether the settlement documents accurately reflected the content of the settlement discussions.

{¶8} On January 2, 2009, the trial court entered judgment denying Daniel and Denise's request for recusal and granting George and Celesta's motion to enforce the settlement agreement. In that same judgment entry, the trial court ruled that Daniel and Denise's motion regarding the amended counterclaims and cross-claims was moot.

{¶9} Daniel and Denise have appealed from the January 2, 2009 judgment entry, raising three assignments of error. This Court has rearranged the assignments of error to facilitate review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED WHEN IT GRANTED APPELLEE'S MOTION TO ENFORCE SETTLEMENT AGREEMENT[.]"

ASSIGNMENT OF ERROR III

"THE TRIAL COURT ERRED IN FINDING DEFENDANTS' MOTION TO AMEND MOOT[.]"

{¶10} Daniel and Denise argue that the trial court erred in granting George and Celesta's motion to enforce the settlement agreement. This Court agrees.

{¶11} The Supreme Court of Ohio has held that, "[w]here the meaning of terms of a settlement agreement is disputed, or where there is a dispute that contests the existence of a settlement agreement, a trial court must conduct an evidentiary hearing prior to entering judgment." *Rulli v. Fan Co.* (1997), 79 Ohio St.3d 374, 377. "The result of a valid settlement agreement is a contract between parties, requiring a meeting of the minds as well as an offer and acceptance thereof." Id., citing *Noroski v. Fallet* (1982), 2 Ohio St.3d 77, 79. The terms of the settlement agreement must be reasonably certain and clear. *Rulli*, 79 Ohio St.3d at 376. "Where parties dispute the meaning or existence of a settlement agreement, a court may not force an agreement upon the parties." Id. "To do so would be to deny the parties' right to control the litigation, and to implicitly adopt *** the interpretation of one party, rather than enter judgment based on a mutual agreement." Id. Accordingly, "[a] court cannot enforce a contract unless it can determine what it is." Id. at 376.

{¶12} The record indicates that settlement negotiations took place at the July 16, 2008 status conference. At the conclusion of the negotiating session, the parties met with the trial judge. Whether the negotiations yielded an agreement is contested by the parties. Because the meeting with the trial judge did not take place on the record, the details of the discussion are unclear. Counsel for George and Celesta undertook the task of reducing a purported agreement to writing. On August 27, 2008, the trial court ordered the case settled and dismissed. Upon circulation of the settlement documents to the parties, Daniel, Denise, and Anthony Mastadonna refused to sign the documents as they disputed whether the documents accurately reflected the terms of the purported agreement. On September 16, 2008, George, Celesta, and David moved

to vacate the dismissal and reactivate the case. In the memorandum attached thereto, the parties asked the trial court to either enforce the settlement agreement or set the case for trial. Subsequently, on November 3, 2008, the case was reactivated. On November 24, 2008, the case was set for trial. On December 8, 2008, George and Celesta filed a motion with the trial court to enforce the settlement agreement. Attached to this motion was a sworn affidavit of counsel for George and Celesta indicating that an agreement had been reached, as well as copies of the unsigned settlement documents. Daniel and Denise responded to the motion on December 22, 2008. The motion to enforce the settlement agreement was granted on January 2, 2009. The trial court's judgment entry granting the motion indicated the trial court was familiar with the terms of the agreement because "the terms of the parties' settlement agreement were addressed in great detail" at the July 16, 2008 status conference.

{¶13} These facts indicate that a dispute exits as to whether the parties reached a settlement agreement. If an agreement was, in fact, reached, there is a dispute as to whether the settlement documents accurately reflect the terms of the agreement. Daniel, Denise and Mastadonna have consistently maintained that the language in the settlement documents does not accurately reflect the product of the settlement negotiations. Because the discussions which occurred subsequent to the negotiations on July 16, 2008, did not take place on the record, it is unclear whether an agreement was reached and, if an agreement was reached, whether the settlement documents accurately reflect the agreement. In light of these factual disputes, this case must be remanded to the trial court for an evidentiary hearing. See *Rulli*, 79 Ohio St.3d at 377. It follows that Daniel and Denise's first assignment of error is sustained.

{¶14} Daniel and Denise also argue that the trial court erred in finding that their motion to file an amended counterclaim and an amended cross-claim was moot because a settlement

agreement was never in place. Because this Court holds that it is necessary for the trial court to conduct an evidentiary hearing prior to ruling on the motion to enforce the settlement agreement, the third assignment of error is also sustained.

ASSIGNMENT OF ERROR II

> "THE TRIAL COURT ERRED IN DENYING THE MOTION FOR RECUSAL[.]"

{¶15} Daniel and Denise argue that the trial court erred in denying their motion for recusal. In support of this position, Daniel and Denise note that the trial judge's involvement in settlement negotiations may have jeopardized the ability of the trial judge to preside over further proceedings in an impartial fashion. This Court has stated:

> "R.C. 2701.03 sets forth the procedure by which a party may seek disqualification. The statute requires the party seeking disqualification to file an affidavit of prejudice with the Ohio Supreme Court. This Court, therefore, has no jurisdiction to pass upon this issue[.]" *State v. Ramos* (1993), 88 Ohio App.3d 394, 398. See, also, *Hayne v. Hayne*, 9th Dist. No. 07CA0100-M, 2008-Ohio-4296, at ¶41.

Accordingly, we do not address any issues related to Daniel and Denise's request for recusal of the trial court judge.

III.

{¶16} Daniel and Denise's first and third assignments of error are sustained. This Court declines to address their second assignment of error. The judgment of the Summit County Court of Common Pleas is reversed, and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

SUSAN E. POULOS and A. ELIZABETH CARGLE, Attorneys at Law, for Appellants.

EDWARD SCHNEIDER, Attorney at Law, for Appellee.

MARK SCARPITTI and BLAKE GERNEY, Attorneys at Law, for Appellees.

JOHN CURTIS ALBERTI, Attorney at Law, for Appellee.