

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

NATHANIEL CRICHTON COMER, SR.,	:	
Plaintiff-Appellee,	:	CASE NO. CA2003-07-061
v.	:	<u>OPINION</u>
EARLY AUCTION COMPANY, et al.,	:	4/26/2004
Defendant-Appellant.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2000 CVH 0060

Rodney L. Drinnon, 312 Walnut Street, Suite 3200, Cincinnati, Ohio 45202 for plaintiff-appellee

Christopher D. Comer, 11 Henry Drive, Belchertown, Massachusetts 01007, defendant-appellant, pro se

WOLFF, J. (By Assignment)

{¶1} Christopher Comer (“Christopher”) appeals, pro se, from a judgment of the Clermont County Court of Common Pleas which enforced a settlement agreement that he had signed.

{¶2} For several years, the Comer family had been fighting about what assets were included in the estate of the late Billie Tackett Comer (“Billie”), about the distribution

of those assets, about who would act as attorney in fact for Nathaniel Crichton Comer, Sr. (“Comer”), and about Comer’s assets. Comer had been married to Billie for 54 years, and the couple had two sons: Nathaniel Crichton Comer, Jr. (“Nathaniel”) and Christopher. Nathaniel was Comer’s attorney in fact, and Christopher was the executor of his mother’s estate.

{¶3} In 2002, Comer filed a complaint against Christopher in the Clermont County Court of Common Pleas regarding personal property located in Clermont County.¹ Christopher filed a motion to dismiss for lack of subject matter jurisdiction based on his views that the courts of Kenton County, Kentucky, had jurisdiction over all matters concerning Billie’s estate and that the personal property at issue belonged to the estate. Comer maintained, however, that the property in question had never been part of the estate. The trial court overruled Christopher’s motion to dismiss for lack of subject matter jurisdiction.

{¶4} In response to the trial court’s decision, Christopher sought a writ of prohibition in the Twelfth District Court of Appeals. The Twelfth District referred the matter to mediation, and the parties agreed to enter into mediation through the court. As a result of this mediation, Comer, Christopher, and Nathaniel entered into a settlement agreement, which was memorialized in a handwritten document while the parties were present, with the understanding that a more formal document would be drafted based on the handwritten one, to be signed by the parties at a later date.

{¶5} Once the formal agreement had been drafted, Christopher refused to sign it.

¹None of the parties appear to have lived in Ohio, but some disputed property came to be in Ohio when Christopher hired an Ohio auctioneer to dispose of it.

Comer brought an action in the trial court to enforce the settlement agreement, and a hearing was held on June 24, 2003. After the hearing, the trial court filed an order to enforce the handwritten agreement.

{¶6} Christopher raises seven assignments of error on appeal. We will address these assignments in the order that facilitates our discussion. As a preliminary matter, we address an argument that Christopher raises under several assignments of error challenging the subject matter jurisdiction of the trial court.

{¶7} It is undisputed that Kentucky law controlled the administration of Billie's estate because she was a Kentucky resident. Christopher contends that the trial court lacked subject matter jurisdiction because Kentucky law clearly requires that actions involving Kentucky estates be brought in Kentucky. Even assuming, for the sake of argument, that this is an accurate statement of Kentucky law, it was not dispositive of the Clermont County case because the parties obviously disputed whether the property at issue belonged in Billie's estate. Because the personal property was located in Clermont County, Ohio, and no other court had ruled that it must be included in Billie's estate, it is our view that Ohio courts - and the Clermont County court in particular - had subject matter jurisdiction to determine the rightful ownership of the property.

{¶8} Christopher also argues that the trial court should have "terminate[d] the Ohio litigation" because the issues had already been settled in a Kenton County, Kentucky, case. The record does not support this contention. The judgment entry from the Kenton County court to which Christopher refers indicates that Christopher and Comer "voluntarily withdrew" their claims against one another. The court did not resolve the issues on the merits. Moreover, the Kenton County court expressly stated that it did "not pass on the

conscionability of the *** proported settlement agreement as that issue [was] moot based upon the mutual withdrawals of the claims.” Because the Kenton County court did not resolve the dispute on the merits, its judgment did not preclude litigation in Ohio.

{¶9} We now turn to Christopher’s assignments of error, beginning with the sixth assignment.

{¶10} “6. [The] Court of Common Pleas erred in granting Motion to Enforce Settlement and Denying Motion for Recission of Settlement.”

{¶11} At the hearing, Christopher admitted that the formal agreement comported with what the parties had agreed upon at the mediation with the exception of paragraph seven of the handwritten document. In the handwritten agreement, paragraph seven originally read:

{¶12} “Both Christopher Comer, Nathaniel Comer & Nathaniel C. Comer II shall execute mutual releases of all pending claims, as well as known and unknown future claims as may arise from the distribution of assets of Estate Billie T. Comer.”

{¶13} By crossing out some language and inserting some new language in a different handwriting, the agreement ultimately read:

{¶14} “Christopher Comer, Nathaniel Comer & Nathaniel C. Comer II shall execute mutual releases of all pending claims, as well as known and unknown future claims, including release of all agents and attorneys.”

{¶15} Comer asserted that these changes had been made during the mediation and before Christopher had signed the handwritten settlement agreement. Thus, he urged the trial court to enforce the handwritten agreement. At the hearing, Comer offered an affidavit from Christopher’s attorney, James L. Nieberding, stating that the revisions to

which Christopher objected had been negotiated and agreed upon at the mediation before he had signed the agreement. Comer's attorney and Nathaniel also testified that these changes had been made before Christopher signed the agreement.

{¶16} Christopher claimed that the release of the agents and attorneys had not been part of the parties' agreement. In support of his objection to the settlement agreement, Christopher testified that he had not seen the "illegible scribbled passage" and would not have been able to read it even if he had seen it. Christopher also claimed that he had specifically asked his attorney, Nieberding, whether there was anything in the handwritten agreement that "would let [his father's attorney or his own former attorney] off the hook" and that Nieberding had assured him that no such provision was included. Therefore, Christopher "assumed" that this provision had been added "under the table" after he had signed the handwritten agreement. Christopher admitted, however, that he was not certain whether the release of agents and attorneys had been included in the agreement when he signed it. He also admitted that the mediator's copy of the handwritten settlement agreement had included the disputed language.

{¶17} Based on the evidence presented, the trial court could have reasonably concluded that the release of agents and attorneys had been included in the handwritten agreement when Christopher signed it and that Comer was therefore entitled to enforce the agreement.

{¶18} Under this assignment of error, Christopher also suggests that his attorneys committed malpractice and engaged in self-dealing in their handling of the settlement negotiations. Christopher's allegations in support of this claim are contradicted by the testimony of others who were present at the negotiations and by his attorney's affidavit.

The trial court reasonably credited the testimony of the other witnesses in this case.

{¶19} The sixth assignment of error is overruled.

{¶20} Christopher raises several assignments addressing alleged procedural errors in the lower court proceedings, as follows:

{¶21} “1. [The] Court of Common Pleas erred in granting Motion to Continue.”

{¶22} “2. [The] Court of Common Pleas erred in allowing Appellee to file Amended Complaint naming Appellant as defendant.”

{¶23} “3. [The] Court of Common Pleas erred in denying Appellant’s Motion to Dismiss Amended Complaint Rule 12(B) [sic].”

{¶24} “4. [The] Court of Common Pleas erred in resetting a ‘definite’ hearing date.”

{¶25} Under these assignments of error, Christopher alleges numerous procedural deficiencies. Many of the procedural issues raised in Christopher’s brief were waived or rendered moot when Christopher entered into the settlement agreement. Christopher specifically claims that the trial court erred in granting several continuances and in failing to require compliance with the local and state rules of practice relative to applications for continuances. Further, he contends that the trial judge violated the Ohio Code of Judicial Conduct in granting lengthy continuances because he did not “dispose of all judicial matters promptly, efficiently, and fairly.” Christopher also asserts that the trial court erred in allowing Comer to file an amended complaint and that the court showed bias in favor of Comer’s attorney by granting continuances and other favorable rulings. All of these alleged errors pre-date the settlement agreement and are not relevant to it. Moreover, Christopher has failed to show that he was prejudiced by any of the alleged errors. Because these issues have no bearing on the settlement agreement, they did not entitle

Christopher to avoid the enforcement of the agreement.

{¶26} The first, second, third, and fourth assignments also raise the issue of subject matter jurisdiction. We discussed this issue above, and we will not address it further herein. Christopher also contends that the judge was biased and violated the Code of Judicial Conduct. Because these arguments are raised more specifically under the fifth and seventh assignments of error, we will address them therein.

{¶27} The first, second, third, and fourth assignments of error are overruled.

{¶28} “5. [The] Court of Common Pleas erred in being biased in favor of Appellee’s counsel Drinnon.”

{¶29} “7. [The trial court judge] Ringland erred in failing to disqualify himself.”

{¶30} Christopher asserts, without elaboration, that the trial court judge should have disqualified himself pursuant to Ohio Code of Judicial Conduct Canon 3(E)(1), which states that a judge shall disqualify himself in a proceeding in which the judge’s impartiality might reasonably be questioned. Christopher presents no specific argument, however, apart from his recitations of the judge’s procedural rulings, that calls the judge’s impartiality into question. In our view, the trial court’s rulings on procedural matters do not reflect a lack of impartiality.

{¶31} Christopher also claims that the trial judge decided a jurisdictional issue in Comer’s favor without even reading the case law cited by Comer. This argument is based on comments by the judge in the transcript relating to a Kentucky case, *Knox v. Trimble* (1959), 324 S.W.2d 130. Comer’s attorney relied on the case for the proposition that, under Kentucky law, a presumption arises that personal property that is physically located on property owned by the husband belongs to the husband. The judge commented,

“[A]ssuming that Knox says what it says and I assume – and counsel’s represented that it does, and frankly I have not researched it. If that is the case and the presumption is set, I think [Comer’s attorney’s] argument makes sense.” The judge denied Christopher’s Civ.R. 12(B) motion immediately thereafter. Based on this comment, Christopher claims that the trial judge “relinquished his judicial role and allowed the attorney, who had a financial issue in the case, to decide the issue of jurisdiction.” Christopher further states that *Knox*, “it turns out, has nothing to do with the issue of jurisdiction.”

{¶32} Although the judge’s failure to look at the case himself is somewhat disappointing, the fact of the matter is that Comer’s attorney had accurately represented the *Knox* holding to the court. Therefore, Christopher was not prejudiced by the judge’s reliance on the attorney’s representation. Moreover, although *Knox* itself did not involve a jurisdictional dispute, its holding was certainly relevant to the jurisdictional dispute in this case, which focused on whether certain personal property properly fell within the wife’s estate. The holding in *Knox* strengthened Comer’s argument that the disputed property did not belong in his wife’s estate.

{¶33} The fifth and seventh assignments of error are overruled.

{¶34} In his reply brief, Christopher further claims that his due process rights were violated when this court refused to grant a writ and referred his case to mediation. This court refused to grant a writ because the prohibition action had “been arguably resolved by way of [the] mediation agreement” and because it involved parties who were not involved in the appeal. Entry Denying Motion for Issuance of Writ, Sept. 16, 2003. This court properly denied the writ. Moreover, insofar as Christopher’s participation in mediation appears to have been voluntary, his due process rights were not violated.

{¶35} The judgment of the trial court will be affirmed.

{¶36} Finally, we note that, on October 22, 2003, Christopher filed a motion to overturn an order of the trial court which struck from the appellate record statements that he had offered to supplement the record pursuant to App.R. 9(C). Insofar as a transcript of the proceedings was available to the parties in this case, the trial court properly struck Christopher's statements. Numerous other issues raised in the motion have already been addressed in this opinion. As such, the motion will be overruled.

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FAIN and GRADY, JJ., concur.

Wolff, Fain, and Grady, JJ., of the Second Appellate District, sitting by assignment of the Chief Justice pursuant to Section 5(A)(3) of the Ohio Constitution.