NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

GALE ROSSI, Executrix of the Estate of Robert T. Rossi, Sr., Deceased, AND GALE ROSSI,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellants	:	
v.	:	
MILTON S. HERSHEY MEDICAL CENTER,	:	
Appellee	:	No. 303 MDA 2012

Appeal from the Order entered on January 10, 2012
in the Court of Common Pleas of Dauphin County,
Civil Division, No. 2002 CV 1894

BEFORE: MUSMANNO, OLSON and STRASSBURGER*, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: January 24, 2013

Gale Rossi ("Rossi"), executrix of the estate of Robert T. Rossi, Sr., appeals from the Order decreeing that Rossi and Milton S. Hershey Medical Center ("the Medical Center") had reached a settlement agreement in favor of Rossi in the amount of $7,500.00. We affirm.

The trial court set forth the pertinent history of this case, which we adopt for the purpose of this appeal. ***See*** Trial Court Opinion, 1/10/12, at 1-4. Rossi filed a timely appeal of the trial court's Order of January 10, 2012. Although not ordered to do so by the trial court, Rossi filed a Concise Statement of matters complained of on appeal on February 9, 2012.

Rossi raises the following issue on appeal:

*Retired Senior Judge assigned to the Superior Court.

> Whether the trial court erred in enforcing a purported settlement agreement where the applicable four[-]year statute of limitations expired prior to the attempted enforcement of the purported settlement agreement?

Brief for Appellant at 4.

Rossi contends that the lapse of more than six years from the date when the parties entered a settlement agreement precludes enforcement of such agreement. Rossi cites the four-year statute of limitations set forth at 42 Pa.C.S.A. § 5525 in support of her argument.

Rossi further contends that the Medical Center never filed a petition to enforce the settlement agreement, and the issue of enforcement of the agreement was not raised until the Medical Center filed its Status Report with the trial court on June 27, 2011, more than four years after the parties entered the settlement agreement. Rossi also asserts that Rossi's failure to follow through with the settlement agreement was an implied repudiation of that agreement.

Our standard of review of Rossi's claims is as follows:

> The enforceability of settlement agreements is determined according to principles of contract law. Because contract interpretation is a question of law, this Court is not bound by the trial court's interpretation. Our standard of review over questions of law is *de novo* and to the extent necessary, the scope of our review is plenary as [the appellate] court may review the entire record in making its decision. With respect to factual conclusions, we may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record.

Mastroni-Mucker v. Allstate Ins. Co., 976 A.2d 510, 517-18 (Pa. Super. 2009) (citations omitted).

"The statute of limitations begins to run on a claim from the time the cause of action accrues." ***S.T. Hudson Engineers, Inc. v. Camden Hotel Dev. Assocs.***, 747 A.2d 931, 934 (Pa. Super. 2000). "In general, an action based on contract accrues at the time of breach." ***Id.*** Under 42 Pa.C.S.A. § 5525, actions based upon contracts have a four-year statute of limitations. ***See*** 42 Pa.C.S.A. § 5525(a)(3), (8).

"Where a settlement agreement contains all of the requisites for a valid contract, a court must enforce the terms of the agreement. ***Step Plan Servs., Inc. v. Koresko***, 12 A.3d 401, 409 (Pa. Super. 2010).

In the instant case, the trial court determined that, in March 2005, the parties entered into a binding, enforceable settlement agreement. ***See*** Trial Court Opinion, 1/10/12, at 5. Rossi argues on appeal that the trial court erred in enforcing the settlement agreement because the statute of limitations set forth at 42 Pa.C.S.A. § 5525 had expired. However, Rossi fails to provide any pertinent analysis or citation to case law to explain when the alleged cause of action in contract arose. ***See*** Pa.R.A.P. 2119(a). Nevertheless, upon review, we conclude that this claim lacks merit.

The record before us demonstrates that Rossi caused the delay in performance of the settlement agreement. After the parties exchanged letters regarding the settlement agreement in March 2005, Rossi never

informed the Medical Center that Rossi intended to dishonor or repudiate the parties' agreement.[1] At the same time, Rossi did nothing to advance the underlying cause of action after March 2005. Thus, the trial court, on January 16, 2008, issued a Notice of proposed termination of the case. On March 6, 2008, Rossi filed a Notice of intention to proceed with the action. Such filing was the first explicit indication that Rossi did not intend to comply with the settlement agreement. Despite Rossi's Notice of intention to proceed with the action, Rossi in fact did not do so, causing the trial court to issue again a Notice of proposed termination on January 31, 2011. Although Rossi again indicated an intention to proceed, Rossi failed to do so. Thus, the trial court, on June 6, 2011, required the parties to submit status reports. In its Status Report, the Medical Center claimed that the case had settled in March 2005, and requested enforcement of the agreement.

The record thus shows that the first explicit indication that Rossi did not intend to comply with the agreement occurred on March 6, 2008. The Medical Center's request to enforce the settlement agreement was set forth in its June 27, 2011 Status Report. This occurred within four years of Rossi's

[1] Rossi asserts baldly that Rossi had impliedly repudiated the settlement agreement "within a few months" after the settlement conference which had produced the settlement agreement. However, Rossi fails to cite any authority to support this argument. ***See*** Brief for Appellant at 10. Therefore, we deem this issue waived. ***See Umbelina v. Adams***, 34 A.3d 151, 161 (Pa. Super. 2011) (holding that, where an appellate brief fails to provide discussion of a claim with citation to relevant authority, the claim is waived); ***Korn v. Epstein***, 727 A.2d 1130, 1135 (Pa. Super. 1999) (holding that arguments in an appellate brief lacking citation to pertinent legal authority are deemed waived).

first indication of intending to breach the settlement agreement. Thus, there is no merit to Rossi's statute of limitations argument.

In addition, we rely on the trial court's well-reasoned Opinion in support of our determination that Rossi's claim lacks merit. ***See*** Trial Court Opinion, 1/10/12, at 5-6.

Order affirmed.

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GALE ROSSI, EXECUTRIX OF THE ESTATE OF ROBERT T. ROSSI, SR., DECEASED AND GALE ROSSI Plaintiff	:	IN THE COURT OF COMMON PLEAS, DAUPHIN COUNTY, PENNSYLVANIA
v.	:	NO. 2002 CV 1894
MILTON S. HERSHEY MEDICAL CENTER, Defendant	:	CIVIL ACTION - LAW

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MEMORANDUM OPINION

This matter involves claims for damages arising out a slip and fall case wherein Robert T. Rossi fell at the rear entrance of the Milton S. Hershey Medical Center (hereinafter Defendant) on October 4, 2000, after being treated by physicians at the Medical Center.

Procedural History

Gale Rossi, Executrix of the estate of Robert T. Rossi (hereinafter Plaintiff) filed a Complaint on April 25, 2002. On May 30, 2002, Defendant filed an Answer with New Matter. On August 19, 2002, Plaintiffs filed their Reply to New Matter.

On January 2, 2004, Defendant filed a Motion to Compel Plaintiff's Answers to Discovery. In said Motion, Defendant avers that they served Interrogatories and Request for Production of Documents on April 9, 2003. By letter dated December 9, 2003, Plaintiff's Counsel advised that they will have the responses to Defense Counsel by early next week. Thereafter, on January 21, 2004, Defendant's Counsel filed a Notice of Intent to Seek Discovery Sanctions for failing to respond to their request for production of documents. On March 2, 2011, Defendant filed a Motion for Sanctions after receiving no response to their Notice.

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On March 9, 2004, Plaintiff filed a Certificate of Service that Plaintiff's Answers to Defendant's First Set of Interrogatories as well as Plaintiff's Response to Defendant's Request for Production of Documents have been served. Thereafter, a Hearing was held on the Motion for Sanctions on March 25, 2004, at which the Court found there to be an inadvertent and not intentional violation of the discovery provisions.

On February 3, 2005, Defendant filed for a Status Conference. As a result of said conference, on March 14, 2005, Plaintiff's Counsel wrote a letter to Defense Counsel that stated as follows:

> I write to confirm our settlement with regard to the above matter, as represented to Judge Hoover, on Friday, March 11, 2005, in the amount of $7,500.00. You indicated that you would prepare a release and send it to me for my client's signature. Additionally, I assume that you will send me a Praecipe for discontinuance for my signature.

(Defendant's Status Report 6/27/2011, Exhibit "A"). That same day, Defense Counsel wrote a letter to Plaintiff's Counsel that stated as follows:

> This will confirm that the above captioned matter has settled for the sum of $7,500.00. I am enclosing two originals of the Release that I request that you have your client sign and return to me as soon as possible. Please also provide me with documentation that Mrs. Rossi is the appropriate person to act on behalf of the estate. I am also enclosing the Praecipe to Discontinue that I request that you sign as attorney for Plaintiff and return to me so that I may file it as soon as I forward the settlement check to you. I have ordered the settlement check from my clients. I will forward the settlement check to you as soon as I receive the executed Release and the Praecipe to Discontinue.

(Defendant's Status Report 6/27/2011, Exhibit "B").

On January 16, 2008, the Court issued a notice of proposed termination due to no activity for at least two years. On March 6, 2008, Plaintiff filed a Notice of intention to proceed. Again on January 31, 2011, the Court issued a notice of proposed termination

due to no activity for at least two years. On March 8, 2011, Plaintiff filed a Statement of Intention to Proceed.

On June 6, 2011, the Court issued an Order requiring the parties to submit Status Reports. On June 27, 2011, Plaintiff filed a Status Report. Within said Report, Plaintiff stated that all discovery is completed. Further, that there was a settlement conference held in March of 2005 with a purported settlement in the amount of $7,500 which had been confirmed in writing by both counsel, but never effectuated by the Plaintiff. Plaintiff suggested forty-five days for dispositive motions and thereafter be scheduled for arbitration.

That same day, Defendant filed a Status Report. Defendant claims that the matter was settled on March 14, 2005 for $7,500. Both Counsel confirmed the settlement via written letter. Defendant enclosed a Release and Praecipe to Discontinue and stated that the check will be delivered upon signature of said Release. Thereafter, Defendant received no further communication from Plaintiff's counsel. Defendant's position at this time was that they will take the necessary steps to effectuate the settlement that was confirmed by both parties.

On July 18, 2011, pursuant to the Status Reports filed by the parties, the Court ordered counsel to file an Administrative Application for a Status Conference. This Court held a Status Conference on September 31, 2011. It was decided at the Status Conference that Plaintiff's Counsel would speak with his client about the settlement. Counsel was provided thirty days, after which time he was to report on the status of the case.

On October 27, 2011, this Court received a letter from Plaintiff's Counsel requesting an additional two weeks to speak with his client. Defense Counsel did not object. This Court issued an order granting the two week extension and again ordered that Counsel report back on the status of the case.

On December 5, 2011, this Court received correspondence from Plaintiff's Counsel. He informed that the case has been unable to be settled due to significant proof problems relating to liability, however discovery is complete and witnesses are identified. Additionally, counsel again proposed the filing of dispositive motions by Defense Counsel and/or submitting the case to arbitration.

This Court decided to hold a hearing on the matter in order to put an end to the extensions of time and the stalling of the judicial process. During the Hearing on January 5, 2012, Plaintiff Counsel again requested an extension of time for dispositive motions and should said motions fail then to submit the claim to arbitration due to problems with proving liability. Defense counsel did not consent to the extension and informed the Court that they seek the enforcement of the settlement from March of 2005. Further, that submitting the claim to arbitration would be fruitless for the Plaintiff as they would face the same problems and issues with liability as they do currently.

Discussion

Since settlement agreements reduce burdens on courts and expedite the transfer of money into the hands of complainants, there is a strong judicial policy in favor of voluntarily settling lawsuits. Felix v. Giuseppe Kitchens & Baths. Inc., 848 A.2d 943, 946 (Pa. Super. 2004). Settlement agreements are governed by principles of contract law. Mastroni-Mucker v. Allstate Ins. Co., 976 A.2d 510, 518 (Pa. Super. 2009). There is an offer (the settlement figure), acceptance, and consideration (in exchange for the plaintiff terminating the lawsuit, the defendant will pay the plaintiff the agreed upon sum)." Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick, 587 A.2d 1346, 1349 (Pa. 1991). If the requirements for a valid contract are met, a court must enforce the terms of the settlement agreement. McDonnell v. Ford Motor Co., 643 A.2d 1102, 1105 (Pa. Super 1984). This is true even if the terms of-the agreement are not yet formalized in writing." Mastroni-Mucker, 976 A.2d at 518. Even the absence of a signed release does not prevent the enforcement of an otherwise valid settlement agreement. Pulcinello v. Consolidated Rail Corp., 784 A.2d 122, 124 (Pa. Super. 2001). Our Supreme Court stated that "where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. ...[U]nless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties..." Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425 (Pa. 2004).

This Court concludes that the parties entered into a settlement agreement that is enforceable and binding, despite the absence of signed releases, because all the necessary elements for a valid contract exist. In March of 2005, Defendant made an offer to settle

at a conference with Judge Hoover. Plaintiff accepted this offer. This agreement was memorialized in written correspondence dated March 14, 2005, by Counsel for both parties. Moreover, the plain language of the written correspondence indicating a settlement was reached is unambiguous. There was a valid offer of $7,500.00, which Plaintiff voluntarily accepted. In exchange for terminating the lawsuit, Defense Counsel agreed to, and in fact did, obtain a settlement check for the agreed upon sum. Further, Plaintiff did not argue any fraud, mistake, or duress in reference to the settlement. It is this Court's belief that the reason this litigation ensued beyond the parties receipts of the March 14, 2005 confirmation letters was due to Plaintiff's Counsel's unilateral decision to no longer respond to Defense Counsel despite the existence of the valid offer and acceptance. Since the requirements for a valid contract have been met, it is this Court's duty to enforce the settlement agreement. Certainly, the requested continuances should not act to dismiss the valid settlement agreement or continue to stall the judicial process on a case that is now twelve years old. If this Court does not enforce the agreement, it would be counter to the longstanding judicial principles favoring settlements.

This Court rules accordingly: