AFFIRM; and Opinion Filed May 24, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01406-CV

ANN BRAY, F/K/A ANN FLEMING, Appellant
V.
JON H. FLEMING, Appellee

On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-51085-95

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Boatright

Ann Bray appeals the trial court's judgment dismissing her case for want of prosecution. We affirm.

Bray and her former husband, John Fleming, divorced in 1995. A few years later, Bray filed a motion to enforce the decree. They reached a mediated settlement that was entered as an agreed judgment in 2001. On September 16, 2015, Fleming filed a motion to vacate the 2001 agreed judgment. Bray filed a response to his motion a few weeks later. The court held a hearing on the motion to vacate; both parties appeared. The trial court denied the motion on October 2, 2015, then Fleming filed a motion for reconsideration. Without notice or hearing, the court granted Fleming's motion to vacate the 2001 agreed judgment on December 17, 2015 but, apparently, did not inform the parties that it had done so. On August 4, 2016, the trial court issued the parties a notice of intent to dismiss the cause for want of prosecution and, on September 2, 2016, entered

an order dismissing the case. Bray filed a motion for new trial on September 28, 2016. The trial court heard Bray's motion for new trial on November 18, 2016, and denied that motion on November 28, 2016.

In her sole issue on appeal, Bray contends that she was denied due process of law when the trial court granted Fleming's motion for reconsideration without providing notice and a hearing. Issues regarding deprivation of due process raise questions of law. *See Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 932 (Tex. 1998) (holding that the question of whether a municipal regulation violates due process is a question of law). We review questions of law de novo. *State v. Heal*, 917 S.W.2d 6, 9 (Tex. 1996). Accordingly, we will review the trial court's judgment de novo.

To support her contention that granting Fleming's motion for reconsideration without notice and hearing was a denial of due process, Bray cites *In re Keck*, 329 S.W.3d 658 (Tex. App.—Houston [14th Dist.] 2010, no pet.). In that case, the trial court held a hearing on a motion for reconsideration, but one of the parties did not receive notice of the hearing and did not attend it. *Id*. at 661–62. The movant presented new evidence at the hearing in support of the motion. *Id*. at 662. The court ruled that holding this hearing without notice to one of the parties violated Texas Rule of Civil Procedure 21. *Id*. In our case, however, there was no hearing on the motion for reconsideration. Nor is a violation of rule 21 quite the same as a denial of constitutional due process. Bray does not cite legal authority that might support the proposition that the U.S. Constitution entitled her to a hearing on Fleming's motion for reconsideration; instead, she relies on *In re Keck*, which supports only the notion that a Texas procedural rule would have entitled her to notice of a hearing on the motion for reconsideration. *In re Keck* does not support Bray's contention.

Bray also cites *Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, which held that entry of a post-answer default judgment against a defendant who did not receive notice of the trial setting or dispositive hearing constitutes a denial of due process under the U.S. Constitution. 369 S.W.3d 809, 813 (Tex. 2012). However, Bray received notice and a hearing on Fleming's motion to vacate, which was the dispositive motion concerning the parties' agreed judgment in the trial court. She responded in writing to that motion and appeared at the October 1 hearing on it. Bray does not argue that a motion for reconsideration is a dispositive motion, and cites no legal authority that would support that conclusion.

Bray also points out that the trial court did not provide the parties with notice of the December 17, 2015 order granting the motion to vacate the 2001 agreed judgment until she received the trial court's August 4, 2016 notice of intent to dismiss the case for want of prosecution. To support her contention, she cites *Hubert v. Illinois State Assistance Comm'n*, 867 S.W.2d 160 (Tex. App.—Houston [14th Dist.] 1993, no writ). In that case, the court of appeals noted that Texas Rule of Civil Procedure 165a imposes an affirmative duty on the clerk to give notice of the court's intention to dismiss a case for want of prosecution. *Id*. at 163. The court also explained that Rule 306a requires the court to give notice of its order of dismissal. *Id*. The court then held that the failure to give such notice is a denial of due process. *Id*. In our case, the parties agree that the court issued a notice of intent to dismiss the cause for want of prosecution on August 4; that Bray filed a motion on August 28 to vacate the trial court's December 17, 2015 order granting Fleming's motion to vacate the 2001 agreed judgment; and that the trial court entered an order dismissing the cause for want of prosecution on September 2. Bray does not attempt to explain why this might be inadequate. On the contrary, it appears to satisfy *Hubert* and Rules 165a and 306a.

It also appears to satisfy the general proposition for which Bray cites *Hubert*: that if a party is not given notice of a judgment, the party is deprived of its right to be heard by a court. Bray had

notice of the October 1, 2015 hearing on Fleming's motion to vacate the 2001 agreed judgment. She also had notice of the trial court's intention to dismiss the case for want of prosecution; she even filed a motion in response to the notice. Nor was this the last notice that Bray received. On September 28, 2016, Bray filed a motion for new trial in which she made much the same arguments that she made in her 2015 response to Fleming's motion to vacate the 2001 agreed judgment. The trial court held a hearing on Bray's motion for new trial on November 18, 2016; no one disputes that Bray received notice of this hearing and appeared at it. A hearing after dismissal, while the trial court has control over its judgment, obviates any due process concerns regarding the dismissal. *Franklin v. Sherman Indep. Sch. Dist.*, 53 S.W.3d 398, 403 (Tex. App.—Dallas 2001, pet. denied).

Thus, Bray received notice and a hearing on dispositive motions involving the 2001 agreed judgment twice in this case. She presents no legal authority indicating that this did not satisfy her right to due process of law. We overrule Bray's sole issue.

CONCLUSION

We affirm the trial court's judgment.

/Jason Boatright/
JASON BOATRIGHT
JUSTICE

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JUDGMENT

ANN BRAY F/K/A ANN FLEMING, Appellant	On Appeal from the 219th Judicial District Court, Collin County, Texas Trial Court Cause No. 219-51085-95.
No. 05-16-01406-CV V.	Opinion delivered by Justice Boatright. Justices Lang-Miers and Myers
JON H. FLEMING, Appellee	participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Jon H. Fleming recover his costs of this appeal from appellant Ann Bray f/k/A Ann Fleming.

Judgment entered this 24th day of May, 2018.