

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
On Brief May 29, 2007

CRAIG GREEN v. MORGAN HINES, M.D.

**A Direct Appeal from the Chancery Court for Maury County
No. 01-772 The Honorable Robert L. Jones, Chancellor**

No. M2004-01883-COA-R3-CV - Filed on August 14, 2007

Appellant and cross-plaintiff appeals the trial court's order which, among other things, granted an easement across the appellant's property. The record contains no statement of the evidence or transcript of the proceedings; therefore, the trial court's findings of fact are presumed to be correct. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DAVID R. FARMER, J., joined.

Morgan B. Hines, M.D., Pro Se

Craig Green, Pro Se

OPINION

I. Facts and Procedure

This case is about an easement across property which is owned by Dr. Morgan Hines ("Dr. Hines," "Appellant," "Defendant"). In 1977, Dr. Hines purchased a property located at 418 West 6th Street in Columbia, Tennessee ("Hines Tract 1"). The deed to the property states that the property is subject to a drive or right of way easement for the benefit of the property to the east and north. The house on this property serves as Dr. Hines' residence, and he also operates his dental practice from that location. In 1999, Dr. Hines acquired a second lot adjoining and immediately north of the 418 West 6th Street parcel ("Hines Tract 2").

In 2001, Mr. Craig Green ("Mr. Green," "Appellee," "Plaintiff") purchased the property to the east of Dr. Hines' two parcels (Green Tract). Mr. Green's property contains several separate apartments in a large house. Because Mr. Green's lot extends the length of both of Dr. Hines' lots combined, there is a common boundary line extending north to south between Mr. Green's property to the east and Dr. Hines' two lots to the west. The 15-foot-wide easement

which is included in the deed to Hines Tract 1 serves as the only driveway to Mr. Green's property and leads to the parking area on the rear portion of Mr. Green's lot. This easement is the subject of the current litigation.

In August 2001, there were communications between Dr. Hines and Mr. Green in which Dr. Hines asked Mr. Green to surrender his rights to the original easement along the northern portion of Hines Tract 1 and to accept as a substitute a new 15-foot-wide easement across the middle portion of Hines Tract 2. Dr. Hines apparently believed that an agreement was reached and in furtherance of that understanding constructed a gravel driveway and parking area along the middle and northern portion of Hines Tract 2. Dr. Hines also placed soil and grass over the original easement in an attempt to establish a lawn in that area.

The parties had several agreements which resulted in Mr. Green contacting an attorney, John Colley.¹ Mr. Colley met with the parties to discuss a possible settlement. In a letter dated November 27, 2001, Mr. Colley sent a letter to Dr. Hines outlining his understanding of an agreement reached for the original easement to continue in use, with Dr. Hines having the right to use some material of up to one foot in width on each side of the 15-foot-wide easement for purposes of containing gravel within the easement. On November 29, 2001, Dr. Hines responded by letter to Mr. Colley and continued to attempt to persuade Mr. Green to accept a new easement across Hines Tract 2 and surrender all rights to the original easement.

On December 13, 2001, Mr. Green filed a complaint and a request for a restraining order preventing Dr. Hines from interfering with his right to use the easement. On January 15, 2002, Dr. Hines filed an answer to the complaint and a counterclaim claiming trespass and harassment and breach of contract. On July 9, 2002, Dr. Hines filed a motion for default judgment on the basis that Mr. Green had failed to timely file an answer to Dr. Hines' counterclaim. On August 30, 2002, Dr. Hines' motion was denied, and Mr. Green answered Dr. Hines' counterclaim on August 26, 2002. Dr. Hines filed two additional motions for default judgment which were denied.

On July 9, 2004, the trial court entered its final judgment granting summary judgment in favor of Mr. Green and dismissing all other claims and counterclaims. In its order, the trial court stated in pertinent part:

¹ By Order entered December 15, 2004, the trial court admitted as part of the record six exhibits:

1. Copy of plat of subject property
2. Warranty Deed to Morgan B. Hines
3. Letter to Morgan Hines from John Colley
4. Letter to John Colley from Morgan Hines and copies of pictures of property
5. Picture of Lots 416 and 418
6. Warranty Deed to Mrs. Elizabeth Fariss referencing easement

These exhibits are referenced in the Opinion and are considered by the court as part of the record.

* * * *

18. The court concludes that no August agreement existed or is legally enforceable, so there can be no cause of action for compensatory or punitive damages for its alleged breach. Therefore, partial summary judgment is granted in favor of the plaintiff Green by dismissing that cause of action from the counterclaim of the defendant Hines.
19. While, as the court stated above, the November 27, 2001, letter from Mr. Colley as attorney for the plaintiff Green could have satisfied the Statute of Frauds and been evidence of an agreement enforceable in court, the November 29, 2001, response of the defendant Hines unequivocally shows that there was not a binding meeting of minds between the parties as of November 27 for the purpose of establishing an enforceable agreement.
20. While a contract must be supported by consideration and the plaintiff Green contends there was no consideration for a November agreement, the court finds there were some nominal benefits flowing to each of the parties, if such agreement had ever been reached. If nothing else, a clear agreement honored by the parties would have removed the ambiguity and disputing that had been in existence for a number of months. Even though the court finds such an agreement would have been supported by adequate consideration, the actions of the defendant Hines shows either that there never was an agreement or that he repudiated the same by his November 29 letter.
21. Therefore, the court finds there was never an enforceable November agreement, so there can be no cause of action for compensatory or punitive damages for any alleged breach thereof, and the plaintiff Green is hereby granted partial summary judgment as to any such claim made in the counterclaim of the defendant Hines.
22. The plaintiff Green argued that the defendant Hines' counterclaim was insufficient to state a cause of action for outrageous conduct. The court finds that the defendant Hines' claim of "harassment" sufficiently states a legal cause of action.

23. The plaintiff Green argued that harassment is a personal tort, and, therefore, was a compulsory counterclaim that had to be raised in the Circuit Court action The plaintiff Green argued that the present action solely involves a property dispute and torts sounding in property claims. The court finds that the defendant Hines' counterclaim of harassment was a compulsory counterclaim in the Circuit Court action, and partial summary judgment is hereby granted by dismissing the harassment cause of action in the defendant Hines' counterclaim.

* * * *

25. ... The Court agrees that the defendant Hines' counterclaim of trespass is merely different damage from the alleged removal of dirt and destruction of wooden frame borders already tried in the tort action, and is therefore barred by the doctrine of collateral estoppel. Partial summary judgment is hereby granted by dismissing the trespass cause of action in the defendant Hines' counterclaim.

* * * *

28. This court is hereby granting partial summary judgment establishing unequivocally the rights for the plaintiff Green's property to perpetually benefit from a 15-foot-wide easement across the defendant Hines' Tract 1 to Armstrong Street in the same location where such easement has existed since 1951.

* * * *

IT IS, THEREFORE, ORDERED that the plaintiff Green is granted final judgment as to easement rights appurtenant to his property as recognized herein and that all other claims of both parties are hereby dismissed

Dr. Hines filed a Notice of Appeal on July 30, 2004.

II. Issues

Dr. Hines raises the following eleven issues for appeal as stated in his brief:

1. Whether the Court abused its judicial discretion when it denied Dr. Hines' motion for default judgment and

enlarged the time for filing for failure of Mr. Green to answer Dr. Hines original counterclaim.

2. Whether the Court abused its judicial discretion when it set aside the default judgment and enlarged the time for filing because of Mr. Green's failure to answer Dr. Hines' amended counterclaim.
3. Whether the Court abused its judicial discretion when it heard the motion for temporary restraining order ex parte and granted a temporary injunction order.
4. Whether the Court abused its judicial discretion when it severely limited Dr. Hines' rights of discovery.
5. Whether the Court erred when it granted Summary Judgment on all issues.
6. Whether the Court abused its judicial discretion when it granted partial summary judgment finding that no August, 2001 agreement exists.
7. Whether the Court abused its judicial discretion when it granted partial summary judgment finding that no November 27, 2001 agreement exists.
8. Whether the Court erred when it granted partial summary judgment dismissing the trespass cause of action.
9. Whether the Court erred when it granted partial summary judgment dismissing the harassment cause of action.
10. Whether the Court abused its judicial discretion when it limited the right of Dr. Hines to amend its counterclaim.
11. Whether the Court abused its judicial discretion when the Court ordered the Clerk of the Court to order Mr. Green to pretrial conference.

Mr. Green has not filed an appellee brief arguing any issues in this case.

III. Analysis

The majority of the issues presented for review assert an abuse of discretion by the trial court. There is neither a statement of the evidence nor a transcript of the proceedings included in the record on appeal. We, therefore, must conclusively presume from the trial court's findings that every fact admissible under the pleadings was found or should have been found favorably for the appellee. *See Leek v. Powell*, 884 S.W.2d 118 (Tenn. Ct. App. 1994); *Lyon v. Lyon*, 765 S.W.2d 759 (Tenn. Ct. App. 1988).

The abuse of discretion standard requires us to consider, among other things, whether the decision has a sufficient evidentiary foundation. In the absence of a transcript or statement of the evidence, we must indulge in the presumption stated above. Accordingly, all of the issues presented for review asserting abuse of discretion are without merit.

Concerning the issues dealing with the grant of summary judgment, we again indulge in the presumption resulting from the lack of a transcript or statement of evidence as to the factual issues involved. We have, however, briefly discussed the major issues in light of the record and the pleadings filed which indicate that an affirmance of the trial court's ruling is required.

Dr. Hines raises several issues regarding procedural decisions by the trial court. For example, Dr. Hines challenges the denial of his motions for default judgment due to failure to answer his counterclaim and amended counterclaims, the enlargement of time for Mr. Green to answer Dr. Hines' counterclaim, the grant of a temporary injunction, the limiting of subjects broached in discovery, and the denial of Dr. Hines' motion to amend his counterclaim. These procedural decisions all lie within the sound discretion of the trial court and can only be overturned upon a showing of abuse of discretion. The Tennessee Supreme Court addressed the abuse of discretion standard in *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22 (Tenn. 2005). In that opinion, the Court stated that "[a] trial court abuses its discretion when it applies an incorrect legal standard or reaches a decision which is against logic or reasoning and which causes an injustice to the complaining party." *Id.* at 42.

Default Judgment

The trial court has broad discretion in determining whether a grant of default judgment is proper. *See, e.g., Henson v. Diehl Machines, Inc.*, 674 S.W.2d 307 (Tenn. Ct. App. 1984). In this case, the trial court chose to allow additional time for Mr. Green to file his answers to Dr. Hines original counterclaim and his amended counterclaim. The court has broad discretion in making such decisions, and we find that the court did not abuse its discretion in allowing Mr. Green additional time to answer Dr. Hines' claims.

Dr. Hines also argues that the trial court was incorrect in setting aside its oral order granting a default judgment. In *Keck v. Nationwide Sys. Inc.*, 499 S.W.2d 266, 267 (Tenn. Ct. App. 1973), this Court stated:

The setting aside of a judgment addresses itself and lies within the sound discretion of the court. One can find numerous decisions

where the courts make it clear they are anxious to see cases determined on the merits whenever such is possible. It seems to be a universal rule that when there is a reasonable doubt as to whether a default judgment should be set aside upon proper application, the court should exercise its discretion in favor of granting the application so as to permit a determination of the cause upon the merits.

Id. Further, Tenn. R. Civ. P. 60.02 permits the court to set aside default judgments for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud, misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged; or (5) any other reason justifying relief.

We find that the trial court did not abuse its discretion when holding that Mr. Green should have an opportunity to answer Dr. Hines' amended counterclaim in order to give an opportunity for this case to be determined on its merits.

Ex Parte Temporary Restraining Order

Dr. Hines argues that the trial court was incorrect in granting a temporary restraining order ex parte, without his presence. Tenn. R. Civ. P. 65.03(1) clearly states that a temporary restraining order may be granted at the commencement of the action or during its pendency *without notice* "if it is clearly shown by verified complaint or affidavit that the applicant's rights are being or will be violated by the adverse party and the applicant will suffer immediate and irreparable injury, loss or damage before notice can be served and a hearing had thereon." Because Dr. Hines had taken action to block Mr. Green's access to his property, Mr. Green certainly met the requirements of Tenn. R. Civ. P. 65.03, and a temporary restraining order was proper in this case.

Scope of Discovery

Dr. Hines argues that the trial court was incorrect when it limited the scope of the discovery in this case to the subject matter of the complaint and did not allow the depositions of Mr. and Mrs. Green to be taken. In this case, Dr. Hines had previously deposed both Mr. Green and Mrs. Green in another case, *Green v. Hines et al.*, a tort action which had been filed in Maury County Circuit Court. Tenn. R. Civ. P. 30.04 states that upon a showing that the deposition is being conducted in such a manner as to "unreasonably annoy, embarrass, or oppress the deponent or party," the court may order the deposition to not take place or limit the scope and manner of taking the deposition. In this case, because Dr. Hines had previously deposed the Greens, the court was proper in limiting the scope of the discovery to subject matter that was contained in the complaint of this matter.

Motion to Amend Counterclaim

Dr. Hines also challenges the trial court's decision denying his motion to amend his counterclaim. In its order of May 4, 2004, the trial court granted Dr. Hines leave to file a restated Amended Counterclaim that merges the original Counterclaim and the November 5, 2003 Request to Amend Counterclaim, but the court held that Dr. Hines may not raise any new claims or allegations of fact in his Amended Counterclaim. The court later struck Dr. Hines' allegations of fraud based on this previous order.

Tenn. R. Civ. P. 15.01 states that a party may amend the party's pleadings once as a matter of course and again "only by written consent of the adverse party or by leave of court, and leave shall be freely given when justice so requires." Dr. Hines had been granted several opportunities to amend his countercomplaint, and the court did not abuse its discretion in not allowing Dr. Hines to continually raise new allegations throughout the course of the litigation.

We also note that Dr. Hines also argues that the trial court abused its discretion when it ordered the clerk of the court to order Mr. Green to court for pretrial conference. We find this argument to be without merit.

Summary Judgment

The remaining issues that Dr. Hines raises deal whether the trial court was correct in granting summary judgment in favor of Mr. Green. A motion for summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04. The moving party for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. *See Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). On a motion for summary judgment, the court must take the strongest legitimate view of evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. *See id.* In *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993), our Supreme Court stated:

Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery material, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth *specific facts* showing that there is a genuine issue of material fact for trial.

Id. at 210-11 (citations omitted) (emphasis in original).

Summary judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion. *See Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995). Because only questions of law are involved, there is no presumption of correctness regarding a trial court's grant or denial of summary judgment. *See Bain*, 926 S.W.2d at 622. Therefore, our review of the trial court's grant of summary judgment is *de novo*

on the record before this Court. *See Warren v. Estate of Kirk*, 954 S.W.2d 722, 723 (Tenn. 1997).

In this case, there is no doubt that a deeded easement existed on Dr. Hines' property. Dr. Hines attempted to move that easement through negotiations with Mr. Green. Dr. Hines argues that the two agreed to move the easement to another location, but there is no evidence to support this assertion in the record.

First, Dr. Hines argues that the trial court erred when it granted partial summary judgment finding that no August 2001 agreement existed. This agreement was an alleged oral agreement between the two parties. However, this alleged agreement must be a written document in order to be enforceable under the Tennessee Statute of Frauds, T.C.A. § 29-2-101. See *Mattix v. Swepston*, 155 S.W. 928 (Tenn. 1913). Therefore, the trial court was correct in holding that this agreement did not exist.

Next, Dr. Hines argues that the trial court erred when it granted partial summary judgment finding that no November 2001 agreement existed. In order for a contract to be enforceable, the contract must, "among other elements, result from a meeting of the minds in mutual assent to terms, must be based upon sufficient consideration, and must be sufficiently definite." *Wheeler v. Haley*, No. 91-267-I, 1993 WL 398489, *5 (Tenn. Ct. App. Oct. 1, 1993) (citations omitted). While the written letter from Mr. Colley attempted to serve as a written document outlining their agreement, Dr. Hines' letter in response makes it clear that there was no meeting of the minds such that any agreement existed. Mr. Colley was attempting to negotiate use of the original easement while Dr. Hines continued to persuade use of a new easement. Because there was no meeting of the minds, there was no contract, and thus, the trial court was correct in granting partial summary judgment holding that no November 2001 agreement existed.

Dr. Hines argues that the trial court erred in granting partial summary judgment dismissing the trespass and harrassment causes of action. The trial court granted partial summary judgment on both claims based on collateral estoppel, holding that Dr. Hines had previously argued similar claims in the other case filed in Maury County Circuit Court.

In *Beaty v. McGraw*, 15 S.W.3d 819 (Tenn.Ct.App.1998), this Court, through Judge Koch, extensively discussed the doctrine and the use of collateral estoppel:

Collateral estoppel is an issue preclusion doctrine devised by the courts. *See Dickerson v. Godfrey*, 825 S.W.2d 692, 694

(Tenn.1992); *Goeke v. Woods*, 777 S.W.2d 347, 349 (Tenn.1989); *Morris v. Esmark Apparel, Inc.*, 832 S.W.2d 563, 565 (Tenn.Ct.App.1991). Like other preclusion doctrines, its purposes are to conserve judicial resources, to relieve litigants from the cost and vexation of multiple lawsuits, and to encourage reliance on judicial decisions by preventing inconsistent decisions. *See Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414-15, 66 L.Ed.2d 308 (1980); *Disimone v. Browner*, 121 F.3d 1262, 1267 (9th Cir.1997).

Id. Judge Friendly succinctly explained issue preclusion when he observed over thirty years ago that “[w]here the litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again.” *Zdanok v. Glidden Co.*, 327 F.2d 944, 953 (2d Cir.1964). Thus, as our courts have construed the collateral estoppel doctrine, it bars the same parties or their privies from relitigating in a second suit issues that were actually raised and determined in an earlier suit. *See Massengill v. Scott*, 738 S.W.2d 629, 631 (Tenn.1987); *Collins v. Greene County Bank*, 916 S.W.2d 941, 945 (Tenn.Ct.App.1995). Stated another way, when an issue has been actually and necessarily determined in a former action between the parties, that determination is conclusive against them in subsequent litigation. *See King v. Brooks*, 562 S.W.2d 422, 424 (Tenn.1978); *Allied Sound, Inc. v. Neely*, 909 S.W.2d 815, 820 (Tenn.Ct.App.1995).

The circuit court case involving these parties involved a personal tort claim about conduct related to the easement and the alleged agreements involving the easement. This case is about a property dispute and torts surrounding property disputes. The trial court was correct in holding that a claim for harassment was a compulsory counterclaim in the circuit court suit and was thus barred by collateral estoppel in this case. Further, the circuit court case also involved a claim that Mr. Green removed dirt from Dr. Hines' property and destroyed wooden frame borders, basically the same claim of trespass that Dr. Hines raises in this case. Therefore, the trial court was also correct in holding that Dr. Hines' claim of trespass was also barred by the doctrine of collateral estoppel in this case.

IV. Conclusion

For the foregoing reasons, we affirm the order of the trial court. Costs of this appeal are assessed against the Appellant, Dr. Morgan Hines.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.