

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 8, 2007 Session

**QUINTIN G. MACDONALD, ET AL. v. BILL GUNTHER, d/b/a
BJK PROPERTY INSPECTIONS**

**Appeal from the Chancery Court for Davidson County
No. 02-2100-I Claudia Bonnyman, Chancellor**

No. M2006-00927-COA-R3-CV - Filed September 21, 2007

The plaintiff homeowners contended that the defendant licensed property inspector had performed a negligent or fraudulent home inspection on the house they subsequently purchased, and that as a result, they incurred many unanticipated expenses for repairs. The parties agreed to resolve their dispute through binding arbitration, which resulted in an arbitration award of nearly \$100,000 for the homeowners. The trial court granted the plaintiffs' motion to confirm the award. The defendant argues on appeal that the court should have dismissed the plaintiffs' motion to confirm because of their failure to comply with the court's scheduling order. We affirm the trial court.

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

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., and E. RILEY ANDERSON, SP. J., joined.

Christopher D. Cravens, Nashville, Tennessee, for the appellant Bill Gunther, d/b/a BJK Property Inspections.

Quintin G. MacDonald and Courtney L. MacDonald, Nashville, Tennessee, appellees, Pro Se.

MEMORANDUM OPINION¹

I.

In July of 2001, Quinton and Courtney MacDonald (“homeowners”) entered into a contract to purchase a house on Castleman Drive in Nashville. The contract contained a warranty on the part of the sellers that all systems in the house were in proper functioning order and in a good state of repair, and that “the roof will be free of leaks as of the date of closing.”

On the recommendation of their realtor, the MacDonalds hired Bill Gunther d/b/a BJK Property Inspections (“inspector”) to perform an inspection of the house. He furnished them with a twenty-one page inspection report. After the homeowners closed on the property and moved in, they discovered numerous defects that the inspector’s report had either not revealed or had suggested would not be a problem in the short term. These included infestations of carpenter ants, windows that did not open, non-functioning commodes, and a negligently patched and leaky roof. The homeowners incurred significant expenses repairing those defects.

On July 15, 2002, the homeowners brought suit in the Chancery Court of Davidson County against the sellers and the inspector. Their claims included intentional and negligent misrepresentation, breach of contract, and violation of the Tennessee Consumer Protection Act. The homeowners subsequently learned that when the sellers had purchased the home nine months earlier, Mr. Gunther had inspected the house for them. In the report Mr. Gunther prepared for the homeowners, he simply duplicated the wording of his previous inspection report on the property, but used selective editing and alterations to minimize deficiencies.

The homeowners eventually settled with the sellers and agreed to resolve their differences with the inspector through binding arbitration. The parties entered into an agreed order staying litigation on July 25, 2005. The order required each party to proceed pro se in the arbitration, with the arbitration to be conducted within ninety days.

To keep the process moving, the trial court added a hand-written provision to the agreed order, stating that if the case was not resolved or set for trial by November 1, 2005, it would be dismissed, with costs taxed to the plaintiffs. For a number of reasons the arbitration process did not move along as quickly as expected, and the trial court extended its deadline several times.² The trial court’s last scheduling order set a final disposition date of March 1, 2006.

On that date, the MacDonalds filed a motion to extend the deadline once again. Their motion stated that the arbitration hearing had finally been completed and that the arbitrator had

¹ Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

² The parties acknowledge that the trial court lacks the authority to compel the arbitrator to conform to its schedule.

agreed to furnish the parties with a written ruling on or before March 10, 2006. The trial court did not sign the motion because the homeowners, who were still proceeding pro se, had failed to attach a certificate of service to the motion or to the proposed order. It is undisputed, however, that the defendant was in fact served on March 1. On that same date, the defendant filed a motion to dismiss the homeowners' claim on the ground that they had failed to comply with the trial court's scheduling order.

The arbitrator completed his written ruling on March 10. He found that the MacDonalds had succeeded in proving their causes of action for breach of contract, negligent misrepresentation and violation of the Tennessee Consumer Protection Act and had proven damages in the amount of \$98,347.30.

On March 16, 2006, the homeowners filed a motion in the trial court to confirm the arbitrator's ruling. The court heard that motion and the inspector's motion to dismiss on March 31. The court's final order addressed the motion to dismiss as follows:

The order [setting a March 1, 2006 disposition date] is a case management order, designed to force the plaintiff to move the lawsuit forward so that unnecessary delay is avoided. The Court enforces these orders by dismissing the case with prejudice when the case is a year old and the parties are ignoring the Court's deadlines. . . . The Court denies the defendant's motion to dismiss because the plaintiffs were not ignoring the Court's efforts to manage the lawsuit, and because a dismissal under these circumstances would be contrary to Rule 1 of the Tennessee Rules of Civil Procedure.³

The court accordingly denied the defendant's motion to dismiss and confirmed the arbitrator's award. This appeal followed.

³ Rule 1 of the Rules of Civil Procedure sets out the scope of the rules and declares that they "shall be construed to secure the just, speedy, and inexpensive determination of every action."

II.

The defendant argues on appeal that the trial court erred by confirming the arbitration award. He contends that the pro se plaintiffs failed to file a timely motion to extend the deadline for completion of the arbitration process and that the terms of the trial court's scheduling order accordingly obligated it to dismiss the plaintiff's case.

The defendant cites the trial court's order of December 22, 2005, which extended the arbitration award filing date to February 16, 2006, and the disposition date to March 1, 2006. That order included a hand-written provision similar to the one included in the first scheduling order in this case, stating that if the case was not resolved or set for trial by the scheduled date, it would be dismissed.

The defendant notes the homeowners' failure to attach a certificate of service to their motion of March 1, 2006, and the trial court's decision not to sign the motion on that date because of the lack of such a certificate. He concludes that by the time they filed the motion of March 16, 2006 to confirm the arbitration award, "the trial court, pursuant to Rule 6.02 did not have the discretion or authority to approve the arbitration award." We do not agree.

Rule 6.02 of the Tennessee Rules of Civil Procedure reads in pertinent part:

When by statute or by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (1) with or without motion or notice order the period enlarged if request is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done, where the failure to act was a result of excusable neglect. . . .

Under Rule 6.02, the decision to extend or not extend the time within which a party is allowed to act always remains within the sound discretion of the trial court. The authority to set and enforce deadlines is an important tool for case management. "Because trial courts enjoy substantial discretion to control the disposition of cases on their dockets, we customarily defer to their decisions regarding continuances, enlargements of time, or other relief from deadlines." *Kenyon v. Handal*, 122 S.W.2d 743, 751 (Tenn. Ct. App. 2003); *Douglas v. Estate of Robertson*, 876 S.W.3d 95, 97 (Tenn. 1994).

In the present case, the plaintiffs' motion of March 1, 2006 was filed before the expiration of the period extended by a previous order and the defendant was served with a copy of the motion. The fact that the pro se plaintiffs failed to attach the required certificate of service to the motion does not deprive the trial court of the discretion to grant such a motion in appropriate cases.

The defendant also notes that the homeowners did not file a motion to extend the filing date for the arbitration award past February 16, 2005 and that the date passed without any filing by the arbitrator. The defendant cites section (2) of Rule 6.02 and asserts that it limits the trial

court's authority to extend the allowable time to circumstances where the failure to file before the deadline had passed was a result of excusable neglect.

He argues that no such excusable delay was shown in the present case, and argues that the plaintiffs simply "sat on their hands," rather than timely moving the court for an extension of time. However, the record tells a very different story. It indicates a sustained effort by the plaintiffs to vindicate their rights despite financial obstacles.

Further, a fair reading of the trial court's order of December 22, 2005, indicates that the court was not announcing an intention to dismiss the case if the arbitration award was not filed by February 16, 2006, but only if the case was not set for trial or resolved by March 1, 2006. In any event, the trial court is in the best position to interpret its own orders. In this matter of case management, the trial court acted within the broad scope of its discretion.

III.

The order of the trial court is affirmed. We remand this case to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant, Bill Gunther d/b/a BJK Property Inspections.

PATRICIA J. COTTRELL, JUDGE