

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000234-MR

BETH RUTHERFORD AND DDI

APPELLANTS

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 05-CI-00164

CHRISTY PHILLIPS

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: NICKELL AND TAYLOR, JUDGES; PAISLEY,¹ SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: Beth Rutherford and DDI appeal from an order of the Logan County Circuit Court which granted summary judgment to a former business associate, Christy Phillips. At issue is whether a letter sent by Christy to Beth served to release Beth from having to pay the remainder of debt she owed Christy.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In 1991, Christy and an associate, Kelly Allen, started a business, Definitely Drafting, Inc.,² which performed contract drafting. Christy and Kelly each owned one half of the shares of stock in the corporation. In 1993, Beth Rutherford purchased all of Kelly's shares. She and Christy operated the business together until 1996. At that time, tensions between the two women arose with the result that in March 1996, they signed an agreement, backdated to January 1996, specifying that Beth would purchase all of Christy's shares in the company for \$60,000.00. The agreement provided for the immediate payment of the entire amount, but Christy told Beth she could pay "what she could when she could." The agreement made no provision of the payment of interest.

Beth made sporadic payments on the debt totaling \$27,500.00. Meanwhile, the relationship between the two women continued to deteriorate, in part because Beth thought that she might be entitled to some setoff in the purchase price for a large debt that the business had incurred. Christy, on the other hand, was angry that Beth was not paying off the debt more quickly and with greater regularity. Finally, in December 2000, Christy mailed Beth a lengthy handwritten letter discussing their troubled personal relationship, which Christy described as characterized by hurt, frustration, anger and bitterness, largely connected in her mind with Beth's failure to pay off the debt. The significant portion of the letter states as follows:

I know I told you at the beginning to pay it back "what you can, when you can," but I guess we have different interpretations of what that meant. My idea was that you

² Beth later changed the name of the company to DDI Engineering, Inc.

would begin immediately paying something each month or two if at all possible and the amount might vary, but it would be something.

Over the last five years I feel that the only time there was anything paid is when I have asked for it, which as I'm sure you must know has been difficult for me.

...

But as I said in the beginning my purpose in this is to put it behind me and let it go. In doing so, I believe God will heal my hurts.

This time I will do what I believe God wants me to do, which is to release you from the remainder of the debt you owe us. I believe this is another step in His healing my hurts.

I hope that someday you will forgive me for the feelings of anger and bitterness I have held these last few years.

(Emphasis supplied.)

Christy's mother was working as a bookkeeper at DDI at this time, and Christy told her about the letter, informing her that she "wanted to be done" with it and "wanted it to go away and be over with." In her deposition, Beth testified that she and Christy's mother never spoke about the letter or its implications. Beth did not pay off any more of the debt thereafter.

More than four years later, on April 18, 2005, Christy filed suit against Beth to recover the balance of \$32,500.00 still owing on the debt. Beth responded by arguing that the letter from Christy was an effective release that barred judgment on the debt. Both parties filed motions for summary judgment. The trial court granted summary

judgment to Christy, finding that the letter was unenforceable as either a valid release or as a waiver of the debt.

In reviewing a grant of summary judgment, our inquiry focuses on whether the trial court correctly found that there was no genuine issue as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. “[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Steelvest v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

Beth’s first argument on appeal is that Christy’s letter and her corroborating comments to her mother constituted a binding release supported by adequate consideration.

A release is a private agreement amongst parties which gives up or abandons a claim or right to the person against whom the claim exists or the right is to be enforced or exercised. That is to say, a release is a surrender of a claimant’s right to prosecute a cause of action. In Kentucky, a release is viewed as a contract between the party executing the release and the party being released. . . . As with any valid contract . . . a release must be supported by valuable consideration.

Waddle v. Galen of Kentucky, Inc., 131 S.W.3d 361, 364-65 (Ky.App. 2004) (citations omitted).

Christy relies on *Illinois Central Railroad Co. v. Heath*, 80 S.W. 502 (Ky. 1904), which she contends stands for the proposition that feelings of emotional satisfaction and spiritual contentment (as experienced by Christy when she wrote the

letter) can constitute adequate consideration to support a release. In that case, Mrs. Heath, a railway passenger, was put off the train along with her four children at the wrong station (Caneyville, Illinois rather than Caneyville, Kentucky). The conductor was so apologetic and fearful of losing his job when he discovered his mistake that Mrs. Heath, motivated by feelings of kindness and forgiveness, accepted only two dollars in exchange for releasing her claims against the railway. Our state's highest court held that the release was valid. The trial court in the case before us, in analyzing *Heath*, correctly observed that Mrs. Heath's **feelings** did not constitute the consideration for the release; rather, they were what caused her to accept inadequate consideration. Consideration that is inadequate is not necessarily legally insufficient or invalid. As the *Heath* court explained:

It is true she [Mrs. Heath] settled for a very inadequate consideration, but the amount of the consideration is not material Persons who make settlements cannot be relieved from them because they do so upon an inadequate consideration [i.e. two dollars] from feelings of kindness in return for kindness shown.

Id. at 504-505. In the case before us, however, there was not even a “peppercorn” of consideration to support the purported release. Christy’s feelings of relief and healing, without anything more, are simply not legally sufficient consideration to support a release.

Beth also argues in the alternative that Christy’s letter and her comments to her mother were an effective waiver because they constituted “a voluntary and intentional surrender or relinquishment of a known right.” *Greathouse v. Shreve*, 891 S.W.2d 387,

390 (Ky. 1995). The trial court ruled that even if the letter and Christy's subsequent conduct in not acting to collect the debt for several years constituted a waiver, Beth would nonetheless be unjustly enriched as a result. The court, confronted with competing equitable theories, ruled that justice would be served by enforcement of the debt.

Beth contends that the court's ruling essentially eviscerates the doctrine of waiver, since in the circumstances under which waiver is invoked, the opposing party has generally been enriched in some manner.

When applying equitable doctrines, a trial court is endowed with broad discretion:

While equity operates on fixed rules, as well defined as are the rules of law, it exercises a judicial discretion which may be likened to the civil conscience, and which may vary in the relief accorded, according to the particular facts and circumstances of the particular case.

McCord v. McCord 558 S.W.2d 624, 626 (Ky.App. 1977) *citing Cox v. Burgess*, 139 Ky. 699, 96 S.W. 577 (1906), *overruled on other grounds by Hutton v. Hutton*, 118 S.W.3d 176 (Ky. 2003).

The ruling of the trial court should not be interpreted, nor was it intended to be interpreted, as a general statement that waiver can never be invoked as a defense because it invariably results in some enrichment of the opposing party. Under the particular facts and circumstances of this case, the trial court decided that treating the letter as a waiver of Christy's right to collect the debt would result in **unjust** enrichment

for Beth. We find no abuse of discretion in the trial court's application of these equitable doctrines to the factual circumstances of this case.

For the foregoing reasons, the summary judgment granted to Christy Phillips by the Logan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Meda Burnette
Russellville, Kentucky

BRIEF FOR APPELLEE:

John Laramore
Bowling Green, Kentucky