

RENDERED: AUGUST 3, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001401-MR

CSX TRANSPORTATION, INC.

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 99-CI-01361

JAMES S. HAMILTON

APPELLEE

AND

NO. 2011-CA-001422-MR

JAMES S. HAMILTON

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 99-CI-01361

CSX TRANSPORTATION, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, MAZE AND TAYLOR, JUDGES.

MAZE, JUDGE: CSX Transportation, Inc. (CSX) appeals from a postjudgment order of the Pike Circuit Court ordering distribution of settlement proceeds to James Hamilton. Hamilton separately appeals from that order. CSX argues that Hamilton was not entitled to the proceeds until he executed a release of all claims arising out of this litigation. Although we agree with CSX that it was entitled to an executed release from Hamilton, we conclude that the prior appeals of this action preclude a release of claims for potential future injuries arising out of the injuries asserted by Hamilton in this litigation. Since Hamilton has already executed a release of those claims, we affirm the trial court on the direct appeal. In his associated appeal, Hamilton argues that he was entitled to an award of pre-judgment interest and attorney fees due to CSX's delay in allowing release of the settlement proceeds. Finding no abuse of discretion in the trial court's denial of interest or attorney fees, we also affirm on Hamilton's appeal.

The facts of this action were fully set forth in the two prior appeals to this Court. For purposes of this appeal, the following facts are relevant: In 1999, Hamilton filed this action under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51 et seq., for injuries which he sustained in the course of his employment with CSX. The matter went to trial in January of 2005 and resulted in

a jury verdict in favor of CSX. On appeal, however, this Court reversed the jury verdict due to faulty instructions. *Hamilton v. CSX Transp., Inc.*, 208 S.W.3d 272 (Ky. App. 2006).

Upon remand to the trial court, Hamilton and CSX engaged in mediation and reached a settlement (the Mediation Agreement). Thereafter, CSX prepared and transmitted to Hamilton a document styled “Settlement and Final Release of All Claims” (Release). Hamilton refused to execute the Release, claiming that the Release did not reflect the agreement the parties reached at mediation. Both Hamilton and CSX filed motions to enforce the agreement reached through mediation. Subsequently, Hamilton prepared and signed a different release reflecting his understanding of the parties’ agreement. CSX refused to execute Hamilton’s release.

Eventually, by order entered June 12, 2007, the trial court ordered the parties to execute CSX’s Release with slight modifications. While the appeal from this matter was pending, CSX paid the settlement proceeds into court, and those funds were then placed in an interest-bearing account. On appeal, Hamilton argued that CSX’s Release improperly included claims for potential future injuries and claims for injuries not arising from this litigation. This Court agreed, concluding that the parties’ Mediation Agreement only required Hamilton to release claims for injuries asserted in this litigation. *Hamilton v. CSX Transp., Inc.*, 2009 WL 50177 (Ky. App. 2009)(2007-CA-001291-MR). This Court also

directed the trial court to reconsider its prior denial of Hamilton's request for prejudgment interest and attorney fees.

Following this Court's opinion, CSX drafted another Release.

However, Hamilton again took the position that CSX's Release did not comply with the terms of the Mediation Agreement. He also maintained that the Release which he prepared and executed was sufficient under the terms of the Agreement.

When the parties were unable to come to an agreement, Hamilton filed a motion on June 15, 2011, asking the trial court to release the settlement proceeds. CSX countered by insisting that Hamilton's execution of the Release was a prerequisite to the release of any proceeds. CSX also opposed Hamilton's request for prejudgment interest and attorney fees.

On July 29, 2011, the trial court entered an order enforcing the parties' agreement and distributing the settlement proceeds to Hamilton. The trial court concluded that there was no need for the parties to execute a release because the Mediation Agreement and this Court's opinion specifically set forth the claims covered by the settlement. The trial court also denied Hamilton's motion for prejudgment interest and attorney fees, finding that he was not entitled to any additional interest or costs beyond the interest already earned on the settlement proceeds. CSX and Hamilton each filed notices of appeal from this order, and their associated appeals are both before this Court.

In its appeal, CSX argues that the Mediation Agreement required the parties to execute a release and thus the trial court erred by not enforcing that term.

As this Court recognized in its prior opinion, a settlement agreement is a contract and is governed by contract law. *Ford v. Ratliff*, 183 S.W.3d 199, 202 (Ky. App. 2006). The trial court, however, noted that it had previously ordered the Mediation Agreement to be enforced as part of its final judgment. In addition, FELA and the doctrine of *res judicata* would prevent Hamilton from bringing any claim covered by the settlement. Consequently, the trial concluded that this term was enforceable under the judgment even without execution of a separate release.

The trial court's conclusion is reasonable and seems practical under the circumstances. Nevertheless, in the absence of an ambiguity, a settlement agreement must be enforced strictly according to its terms. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 106 (Ky. 2003). The Mediation Agreement specifically provides:

**IT IS HEREBY AGREED** by and between the parties hereto that all claims therein between the parties to this Agreement are fully and finally settled with [Hamilton] receiving a settlement of \$[redacted] from [CSX] *in exchange for which [Hamilton] agrees to execute a full and final Release of all claims against [CSX] arising out of this litigation*, and the entry of dismissal with prejudice, with each party to this litigation paying that party's respective court costs and attorney fees. (BOLD in original; *emphasis added*).

Thus, Hamilton clearly agreed to execute a release in exchange for CSX's settlement of the claims arising out of this litigation. Although Hamilton's execution of a formal release may not be absolutely necessary to enforce this term, CSX is entitled to the benefit of its bargain. Part of that bargain includes

Hamilton's execution of a release setting out the claims which are covered by this settlement.

In the alternative, Hamilton argues that CSX had waived its right to require a formal written release due to its failure to tender Releases which complied with the Mediation Agreement and this Court's prior opinion. Along similar lines, Hamilton argues that he complied with the requirement of the Mediation Agreement by executing and tendering a release. On this latter point, we agree.

The sufficiency of either CSX's or Hamilton's release turns on the extent of the claims which Hamilton agreed to release under the Mediation Agreement. Hamilton argues that he only agreed to release the specific claims for injuries asserted in his complaint and set out in this Court's prior opinion. Consequently, his Release is limited to these particular claims. CSX's Release, on the other hand, requires Hamilton to also release any claims for future injuries which arise out of injuries asserted in his complaint.

There is a split of authority among Federal Circuit Courts whether the parties to a FELA claim may release claims for unspecified future injuries. The Sixth Circuit has held that "a release must reflect a bargained-for settlement of a known claim for a specific injury, as contrasted with an attempt to extinguish potential future claims the employee might have arising from injuries known or unknown by him." *Babbitt v. Norfolk & Western Ry.*, 104 F.3d 89, 93 (6<sup>th</sup> Cir. 1997). On the other hand, the Third Circuit has held that FELA also permits the

release of known risks of future injuries or conditions arising out of the specific injuries asserted. *Wicker v. Consolidated Rail Corp.*, 142 F.3d 690, 702 (3d Cir. 1998).<sup>1</sup>

We need not reach this question, however, because the law of the case set out in this Court’s prior opinion clearly establishes the scope of the issues presented on remand. This Court held that the parties agreed to require a release of claims for injuries asserted by Hamilton in this litigation. The Court noted that Hamilton had set out only four separate claims for injuries: (1) injuries to elbow and knee, (2) noise-induced hearing loss, (3) bilateral carpal tunnel syndrome, and (4) injury to shoulder. However, the Court recognized that

the final determination of what claims Hamilton asserted is dependent upon the record and particular facts of this case. Consequently, we remand to the circuit court for a determination of the precise claims for injuries asserted by Hamilton in this litigation. *As hereinbefore stated it is only these claims that may properly be included in the Release.*

*Hamilton*, 2009 WL 50177 at 2 (*emphasis added*).

By its plain terms, the Mediation Agreement requires Hamilton to release only those claims “arising out of this litigation”. This Court previously held that this language requires a release of claims for the specific injuries asserted

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<sup>1</sup> While Kentucky Courts have not definitively ruled on this issue in a published opinion, this Court has previously adopted the *Babbitt* approach in an unpublished opinion, *Knoth v. Illinois Central R.R. Co.*, 2006 WL 1510782 (Ky. App. 2006)(2005-CA-001882-MR), 2006 WL 1510782 (Ky. App. 2006). *But see Ratliff v. Norfolk Southern R.R. Co.*, 680 S.E.2d 28 (W. Va. 2009), holding that *Babbitt* and *Wicker* actually set out different standards to be applied in different circumstances.

in this litigation. Although this Court remanded for additional findings regarding any additional claims which Hamilton asserted in this litigation, the parties do not dispute that issue. Furthermore, this Court rejected CSX's argument that the Release must include "claims for potential future injuries and claims for injuries not arising from this litigation."

Consequently, we conclude any claims for risk of future injuries were beyond the scope of the order of remand and outside of the scope of the Mediation Agreement. Therefore, we find that Hamilton's execution of a Release of the specific claims arising from this litigation was sufficient to meet his obligation under the Mediation Agreement. As a result, the trial court did not err by failing to require Hamilton to execute the Release tendered by CSX.

In his separate appeal, Hamilton argues that he was entitled to an award of prejudgment interest and attorney fees based upon CSX's unreasonable delay in allowing distribution of the settlement proceeds. We disagree. Where damages are liquidated, prejudgment interest generally follows as a matter of course. *Nucor Corp. v. Gen. Elec. Co.*, 812 S.W.2d 136, 141 (Ky. 1991). Nevertheless, an award of prejudgment interest is a matter entrusted to the sound discretion of the trial court. *Id.*

CSX actually paid the settlement proceeds into court while the matters involving the scope of the Release were in dispute. The trial court awarded Hamilton the interest which those proceeds have earned, but not at the statutory prejudgment rate. The trial court concluded that CSX reasonably litigated the



scope of the Release in the prior appeal and it did not unreasonably delay distribution of the proceeds following remand. Given this finding, the trial court did not abuse its discretion by denying Hamilton's motion for additional interest beyond those amounts already earned on the settlement proceeds.

Likewise, attorney fees are within the discretion of the trial court to award. *Ford v. Beasley*, 148 S.W.3d 808, 813 (Ky. App. 2004). The Mediation Agreement specifically required each party to pay its own attorney fees and costs. In the absence of any showing of bad faith or unreasonable delay by CSX, the trial court did not abuse its discretion by denying Hamilton's motion for attorney fees.

Accordingly, the judgment of the Pike Circuit Court is affirmed in both appeals.

ALL CONCUR.

BRIEF FOR CSX  
TRANSPORTATION, INC.:

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