

RENDERED: MAY 3, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000581-MR

JUANITA BEAMS

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 08-CI-00258

NEW HART COUNTY HEALTH CARE, LLC
D/B/A HART COUNTY HEALTH CARE CENTER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: Juanita Beams appeals from an Order and Judgment of the Hart Circuit Court finding that Beams entered into an oral settlement agreement with New Hart County Health Care, LLC d/b/a Hart County Health Care Center and sustaining the Center's motion to enforce the agreement. Beams argues that the trial court erred when it concluded that the parties reached a valid and

enforceable settlement agreement. For the reasons stated below, we affirm the Order and Judgment on appeal.

On October 24, 2007, Beams entered Hart County Health Care Center for the purpose of visiting her uncle who was a long term care resident. After entering her uncle's room, Beams - who was wearing high heels - allegedly tripped over a safety mat or liquid on the ground next to her uncle's bed. Beams then went to a nearby emergency room where she complained of left knee pain.

About 5 days later, Beams' knee was evaluated by Louisville orthopedic surgeon Dr. Malkani, who later recommended a partial left knee replacement. It appears from the record that Beams declined the surgery.

On October 21, 2008, Beams filed the instant action against Hart County Health Care Center in Hart Circuit Court alleging that her knee injury resulted from the Center's negligence. The matter was litigated for the next three years with a jury trial being scheduled for April 25, 2011. Five days prior to trial, the parties engaged in a settlement conference. Final settlement was reached by way of an oral agreement, which was memorialized on the record in open court by the parties' verbal assent. According to the video record, the terms of the settlement were confidential, though Beams would later allege in her pleadings that Hart County Health Care Center agreed to pay to Beams the sum of \$50,000. Hart County Health Care Center disputes that figure, and contends that Beams has violated the confidentiality agreement which was included in the settlement agreement.

After entering into the oral settlement agreement, Beams declined to sign the written settlement documents. Over the next few months, Hart County Health Care Center sought to acquire Beams' signature on the settlement agreement on several occasions to no avail. On November 18, 2011, the Center filed a Motion to Enforce Settlement Agreement, to which Beams filed no responsive pleading. Rather, Beams moved to set a jury trial date.

The Hart Circuit Court conducted a hearing on the matter on January 17, 2012, where Beams argued that she never agreed to settle the matter. On January 27, 2012, the court rendered an Order and Judgment sustaining Hart County Health Care Center's motion to enforce the settlement. Beams then filed a CR 59.05 Motion to Alter, Amend or Vacate the Order and Judgment. A hearing on Beams' motion was conducted, during which Beams again argued that she did not agree to settle the matter on April 20, 2011. On March 6, 2012, the Hart Circuit Court rendered an Order denying Beams' motion to vacate the Order and Judgment. This appeal followed.

Beams now argues that the Hart Circuit Court erred in rendering the Order and Judgment sustaining Hart County Health Care Center's motion to enforce the settlement, and in denying her motion to vacate the Order and Judgment. Specifically, she contends that the circuit court erred when it concluded that the parties reached a valid and enforceable settlement agreement. Subsumed in Beams' argument is her claim that the court improperly determined that the parties entered into an enforceable contract. Beams' argument is grounded on the

elements of CR 59.05, which allow for relief upon the showing of any of the following: 1) manifest errors of law or fact upon which the judgment is based, 2) newly discovered and previously unavailable evidence, 3) manifest injustice, or 4) an intervening change in controlling law. Beams argues that she qualifies for relief under each of these grounds. As a basis for this claim Beams contends, for example, that at the time of her oral settlement agreement she was not aware of the potential adverse Medicare effects upon the settlement. Beams states that after entering in the agreement, she contacted Medicare and learned that if it paid for a subsequent total knee replacement, Medicare would seek reimbursement from the settlement and “she could very well not end up ever seeing one penny of that money.” Beams’ recognition, after settling, that Medicare might seek reimbursement from the settlement appears to be the primary motivator for her unwillingness to sign the written settlement agreement and to now claim that no enforceable agreement was ever reached.

In concluding that an enforceable oral settlement had been reached, the Hart Circuit Court noted that both Beams, who was represented by counsel, and Hart County Health Care Center entered into protracted settlement talks in Judge Seay’s presence, and then each stated unequivocally their verbal assent to the agreement in open court. This determination is supported by the record. At approximately 10:20 a.m. on April 20, 2011, the following exchange between Judge Seay, Beams and the Center’s counsel is found in the video record:

Judge Seay: We are on the record . . . and after negotiation the parties have, uh, agreed to a settlement, the terms of which are confidential. With the parties, the plaintiff is present in person, and let me ask you on the record Ms. Beams is that your agreement that we discussed before we went on the record there, is that your agreement?

Ms. Beams: Do what sir?

Judge Seay: Have we reached an agreement in the case as the attorneys recited a few moments ago?

Ms. Beams: Yes.

Judge Seay: All right. And Mr. Chlarson [counsel for Hart County Health Care] is that your agreement also on behalf of the Defendant?

Mr. Chlarson: Yes, Judge.

Judge Seay: Then the Court will approve that settlement then and will remove the case from the jury trial docket of April the 25th. All right, is there anything else we need to take up at this time?

Unidentified person: No, Sir.

Judge Seay: Thank you everybody for your hard work, and let's go off the record.

The record then supports the Hart Circuit Court's conclusion that Beams and Hart County Health Care Center orally acknowledged the settlement of the action in open court. The first question for our consideration then is whether an oral settlement acknowledged in open court and on the record in the midst of a civil proceeding is enforceable. Oral settlement agreements are binding and enforceable. *Motorists Mut. Ins. Co. v. Glass*, 996 S.W.2d 437, 445 (Ky. 1997). "It has long been the law of this Commonwealth that the fact that a compromise

agreement is verbal and not yet reduced to writing does not make it any less binding.” *Id.* *Motorists Mutual* is dispositive.

We have previously held that,

In the administration of justice and the prompt dispatch of business, courts must and do act upon the statements of counsel and upon the stipulations of parties to pending causes. Where the parties have voluntarily entered into a stipulation, which appears fair and reasonable for the compromise and settlement of the issues of a pending cause, as here, the parties are bound thereby and the court may, thereafter, properly proceed to dispose of the case upon the basis of the pleadings, the stipulation and admitted facts.

Calloway v. Calloway, 707 S.W.2d 789, 791 (Ky. App. 1986). Additionally, and more to the point,

Where all the substantial terms of a contract have been agreed on and there is nothing left for future settlement, the fact alone that the parties contemplated execution of a formal instrument as a convenient memorial or definitive record of the agreement does not leave the transaction incomplete and without binding force in the absence of a positive agreement that it should not be binding until so executed.

Dohrman v. Sullivan, 310 Ky. 463, 220 S.W.2d 973, 975 (1949).

This and related case law stand for the proposition that an oral settlement agreement, like an oral contract falling outside the statute of frauds, is binding and enforceable by both parties. As Hart County Health Care Center properly notes, a settlement agreement is merely a contract. “An agreement to settle legal claims is essentially a contract subject to the rules of contract interpretation. It is valid if it satisfies the requirements associated with contracts generally; *i.e.*, offer and

acceptance, full and complete terms, and consideration.” *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 384 (Ky. App. 2002). Though the Hart Circuit Court never expressly characterized the settlement at issue as a contract, the record would support this determination as each party unequivocally gave as consideration its waiver of the right to move forward with the litigation and to take the matter to trial, thus resolving all issues.

Being a question of law, we review the Judgment *de novo*. *Ragland v. DiGiuro*, 352 S.W.3d 908 (Ky. App. 2010). Additionally, the denial of Beams’ CR 59.05 is reviewed under an abuse of discretion standard. *Cabinet for Health & Family Services v. J.T.G.*, 301 S.W.3d 35 (Ky. App. 2009). Having reviewed the circuit court’s determination that Beams orally assented to settle this action and that the settlement is enforceable, we find no error. Furthermore, the circuit court did not abuse its discretion in denying Beams’ Motion to Alter, Amend or Vacate the Judgment. Beams very clearly and expressly acknowledged the settlement in open court, and the settlement and acknowledgement thereof are enforceable. We find no error.

For the foregoing reasons, we affirm the Order and Judgment, and the Order Denying Motion to Alter, Amend or Vacate of the Hart Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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