RENDERED: APRIL 24, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000423-MR

PHYLLIS HUNDLEY,
As the Personal Administratrix of
the Estate of Richard L. Poff, Jr.;
PHYLLIS HUNDLEY, Individually;
PHYLLIS HUNDLEY, As Parent and
Next of Friend of Nicholas Lee Poff and
Kaylea Marie Poff — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 10-CI-01199

DAVID L. WILSON — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, KRAMER, AND MAZE, JUDGES.

COMBS, JUDGE: Phyllis Hundley, individually, as next friend of Nicholas Lee Poff and Kaylea Marie Poff, and as the personal administratrix of the Estate of

Richard L. Poff, Jr., appeals from an order of the Oldham Circuit Court that denied her motion to compel enforcement of a settlement agreement. This case involves the estate of Hundley's late husband, who was killed in a vehicular accident. Hundley contends that she intended to settle the claims against David Wilson for $300,000.00 and not for "the policy limits" as asserted by the insurer. After our review, we affirm.

On May 30, 2010, Richard Poff, Hundley's husband and the father of her children, Nicholas and Kaylea, died as a result of a motor vehicle collision. Hundley qualified as personal administratrix of his estate, and on November 30, 2010, she filed a wrongful death action against David Wilson, the driver of the second vehicle involved in the collision. At the time of the collision, Wilson was insured by State Auto. In February 2011, in response to written discovery requests, Wilson provided Hundley with a copy of his policy declarations. The declarations page indicated that the policy limits were $250,000.00. Hundley and Wilson/State Auto entered into settlement negotiations, and on May 9, 2011, they agreed to settle all claims for the policy limits.

On May 20, 2011, Hundley filed a motion requesting the trial court to approve the settlement. In the motion, Hundley's counsel indicated that Wilson had "tendered his policy limits of $300,000.00 to settle the matter." Counsel explained that the settlement proceeds would be distributed *pro rata* among three claimants: her two minor children and herself. On May 27, 2011, the Oldham

Circuit Court signed an order tendered by Hundley's counsel approving the settlement. The order did not recite a monetary figure.

On June 16, 2011, State Auto issued a check in the amount of $116,884.72 to MetLife Tower Resources Group, Inc., an assignment company specializing in structured settlement annuities. This figure was calculated by Hundley's counsel, who represented that each of the minor children's share would total $58,442.36. The children's structured settlements were fully funded on June 20, 2011.

On June 29, 2011, Hundley's counsel filed a motion for approval of the proposed management of the minors' portion of the settlement proceeds. On July 11, 2011, the Oldham Circuit Court signed another order tendered by Hundley's counsel. The order directed State Auto to issue a check in the amount of $116,920.40 to MetLife to fund the purchase of annuity policies for Hundley's minor children and to execute "the Settlement Agreement and Release and Qualified Assignment documents as required by the life company to issue policy." Order at 2.[1]

While there is no suggestion that the written settlement agreement and release were presented to the court, the agreement provides for an immediate cash payment of $183,115.28; a payment to Kaylea of $15,000.00 annually, beginning on November 15, 2022, guaranteed for four years, plus a lump sum payment of $49,421.09 to follow; and a payment to Nicholas of $17,500.00 annually,

[1] The appellant concedes that the $35.68 difference between the check issued by State Auto and the order entered is immaterial to the proceedings.

beginning on July 20, 2027, guaranteed for four years, plus a lump sum payment of $72,585.89 to follow. Hundley executed the agreement on July 14, 2011. State Auto did not execute the agreement. Instead, State Auto tendered to Hundley $133,115.28 -- the remainder of the policy limits.

On December 12, 2012, Hundley filed a motion to compel Wilson and State Auto to comply with the terms of the settlement agreement by tendering an additional $50,000.00. In an affidavit filed with the court, Hundley's counsel explained that Wilson had offered to settle the matter for the insured's policy limits. Counsel could not "specifically remember if [Wilson's] counsel represented the policy limits as $300,000.00," but he could recollect that "some indication was made or some discussion was had at some time indicating the policy limits were $300,000.00." Counsel indicated that he had supplied this figure to Forge Consulting. Forge Consulting had prepared the children's annuity policies based upon specific information with respect to Hundley's share, fees, and costs -- all provided by Hundley's counsel.

In response, State Auto explained that it had authorized counsel to settle the claims against Wilson for the insured's policy limits. Counsel vehemently denied that he or anyone had ever represented that the policy limits were $300,000.00. Wilson and State Auto contended that Hundley's counsel had mistakenly conveyed an inaccurate settlement amount to various individuals involved in the settlement and that he had produced documents that perpetuated the discrepancy. When the error was discovered by State Auto, Wilson's counsel

immediately contacted Hundley's counsel. Counsel for State Auto explained that State Auto had tendered the policy limits of $250,000.00 and had acted in good faith to comply with the settlement agreement.

After oral arguments, the trial court denied Hundley's motion to compel State Auto to pay an additional $50,000.00 to settle the claims. The circuit court's order was entered on June 6, 2013. This appeal followed.

On appeal, Hundley contends that the trial court erred by concluding that the parties were bound to an agreement that provided for the payment of the insured's "policy limits" of $250,000.00 rather than the $300,000.00 to which she believes she is entitled. We disagree.

In its order, the court observed that "it is undisputed that the parties believed they were settling for the "policy limits.'" Opinion and Order at 3. It concluded that the "error in interpreting the phrase 'policy limits' to mean $300,000.00 by either party" did not render the terms of the agreement ambiguous since each of the parties was aware at the time the agreement was reached that the insured's declarations page designated the "policy limits" as $250,000.00. *Id.* The court did not believe that either rescission or reformation was warranted under the circumstances.

Where the parties to an agreement have made a mutual mistake, equitable relief may be available through reformation of the contract terms. *Nichols v. Zurich Am. Ins. Co.,* 423 S.W.3d 698 (Ky. 2014). Equitable relief through rescission of the contract may be afforded only where a party claims that a

unilateral mistake has been made. *Fields v. Cornett*, 254 Ky 35, 70 S.W.2d 954 (1934). In this case, neither party asserts that the settlement for the limits of Wilson's liability policy was reached as a result of a *mutual* mistake.

In *Kane v. Hopkins*, 309 Ky. 488, 492-93, 218 S.W.2d 37, 39-40 (1949), the court observed that several essential elements must be established before equitable relief can be granted on the basis of a *unilateral* mistake. First, the party must show that the mistake was of so grave a consequence that to enforce the contract as it stands would be unconscionable. *Id.* Additionally, the matter as to which the mistake was made must relate to a material feature of the contract. Generally, the mistake must have occurred despite the exercise of due diligence by the party making the mistake. *Id.* Finally, the rescission must not result in serious prejudice to the other party except the loss of his bargain. *Id.*

The trial court did not err by concluding that the parties' agreement to settle the claims for the insured's policy limits could not be reformed or rescinded on the basis of Hundley's unilateral mistake concerning Wilson's policy limits. Viewing the issue in a light more favorable to Hundley, we can find nothing in the record to justify her mistaken belief that the claims were to be settled for $300,000.00.

Before settlement negotiations were undertaken, Hundley and her counsel were provided with a copy of Wilson's declaration's page, which clearly and accurately reflected policy limits of $250,000.00. It was simply not foreseeable that either State Auto or Wilson could anticipate that such a mistake

would be made under the circumstances. Hundley's counsel claims that "some indication was made or some discussion was had at some time indicating the policy limits were $300,000.00. . . ." However, Wilson's counsel indicated unequivocally that he had not supplied misinformation "at any time in any settlement negotiation or conversation with [Hundley's] counsel" and that he had not been aware of Hundley's mistaken belief as to the amount of the proceeds until well after State Auto had begun performance under the terms of the agreement. Finally, Hundley's mistake was not of such a grave consequence that enforcement of the agreement for the insured's policy limits would be unconscionable.

Under these circumstances, the trial court did not err by concluding that Wilson and State Auto fully performed the agreement and that Hundley was not entitled to compel payment of an additional $50,000.00.

We affirm the order of the Oldham Circuit Court denying Hundley's motion.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANT:

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BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

John R. Martin, Jr.
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