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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001533-MR

RONNY L. STAMPER — APPELLANT

v.

APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE JAMES T. JAMESON, JUDGE
ACTION NO. 16-CI-00023

COMMUNITY FINANCIAL SERVICES,
F/D/B/A BANK OF BENTON — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: COMBS, JONES, AND TAYLOR, JUDGES.

JONES, JUDGE: Appellant, Ronny L. Stamper, appeals from the Marshall Circuit Court's grant of summary judgment in favor of Appellee, Community Financial Services (the "Bank"). On appeal, Stamper asserts that the circuit court should have denied the Bank's summary judgment because the Bank's action against him is time-barred. Following review of the record and applicable law, we reverse the

circuit court and remand with instructions for the circuit court to dismiss the Bank's civil action against Stamper.

I. Background

In April of 1997, Stamper executed a note (the "Note") and security agreement evidencing a loan by the Bank in the principal amount of $18,408.18. Stamper pledged his 1995 Chevrolet Blazer as collateral. The Note had a stated maturity date of April 25, 2002. The following provision was included under a heading entitled "Lender's Rights": "Upon default, then, at the option of Lender and without notice or demand, this Agreement may be declared and thereupon immediately will become due and payable."

In April 2000, Stamper defaulted on his loan and the Blazer was repossessed. Following sale of the Blazer, the Bank sent Stamper a letter on August 25, 2000, which stated in pertinent part as follows:

> Please be advised that the vehicle pledged for security on your note has been sold to the highest bidder at $2,190.00. Therefore, this balance has been applied to your note.
>
> Your balance is now $9,703.16. This balance must either be paid in full or have a satisfactory repayment schedule established by September 15, 2000. Failure to meet this obligation will result in immediate legal action against you.

When Stamper did not respond, the Bank sent Stamper a second letter dated June 5, 2001. This letter again referenced Stamper's remaining balance on

the loan and requested that Stamper contact the Bank to work out a suitable repayment plan. The June 5th letter indicated that, if the Bank did not hear from Stamper, it would turn over his account to an attorney or a collection agency. There is nothing indicating that Stamper responded to the June 5, 2001, letter.

On April 2, 2008, counsel for the Bank also wrote to Stamper. In this letter, counsel notified Stamper that he must satisfy the balance on his loan, in full, within thirty days. A letter dated April 27, 2010, from the Bank to Stamper and his wife, Kimberly Stamper, indicates that Stamper had expressed some interest in working out a payment plan on the loan; however, there is no indication that any payments were ever made.

The next communication of record between the parties occurred in January of 2016, when the Bank brought this suit against Stamper to collect on Stamper's debt. On March 7, 2016, the Bank filed a motion for default judgment against Stamper, as Stamper had failed to respond to the Bank's complaint in a timely manner. On March 10, 2016, Stamper filed a motion to file a late answer. In that motion, Stamper stated that the Bank's claim against him was time-barred.[1] R. 13. The circuit court granted Stamper leave to file a later answer on March 22, 2016. In his answer, which was deemed filed as of March 10, 2016, Stamper admitted that he had defaulted on his loan and refused to pay the balance due;

[1] As will be discussed in more detail below, in support of his defense of statute of limitations, Stamper cited KRS (Kentucky Revised Statutes) 413.090(2), which governs actions on written contracts.

however, Stamper affirmatively pleaded that the Bank's action was barred by the "applicable statute of limitations."

Following discovery, the Bank moved for summary judgment. Its motion noted the fact that Stamper's answer had not disputed any facts material to the action, but rather claimed that the "applicable statute of limitations" on the claim had run. Presuming that Stamper was referring to KRS 413.090(2), the statute to which Stamper cited in his motion to file a late answer, the Bank contested Stamper's defense. The Bank contended that a claim on a note such as the one at issue does not accrue until the date of maturity, which, in this case, was April 25, 2002. Because the Bank had filed its claim against Stamper on January 25, 2016, it asserted that the action was commenced was well within the applicable statute of limitations. In support of its motion, the Bank attached an affidavit from Penny Hatcher, the custodian of records at the Bank. Hatcher averred that Stamper's loan had been moved to "charge off" status, which meant that the loan was not actively being pursued because of the absence of collection avenues, and that "at no time was the loan balance accelerated to an earlier date." R. 48.

Stamper responded to the Bank's motion for summary judgment on June 8, 2016. In his response, Stamper argued that, contrary to the Bank's assertions, the cause of action on the Note accrued, at the latest, on September 15, 2000. To support his theory, Stamper noted that the Note indicated that the Bank had the option, upon his default, to declare the entire balance of his loan due and

payable. Stamper contended that the Bank's letter of August 25, 2000, worked to declare his entire balance on the Note due if he did not schedule a payment plan by September 15, 2000. Therefore, Stamper argued, September 15, 2000, should be the date that the cause of action accrued, not the stated date of the Note's maturity.

The circuit court entered an order granting summary judgment in favor of the Bank on July 8, 2016. The circuit court noted that because Stamper was not contesting either the validity of the note or his failure to repay it, the only matter for it to resolve was the statute of limitations issue. The circuit court's order states: "In the case at hand, the note at issue had a maturity date of April 25, 2002 so the cause of action accrued on this date. Having established that the fifteen (15) year statute of limitations applies, this means the action should have been commenced on or before April 25, 2017. Since, the action was commenced on January 25, 2016, before the statute of limitations had run, Plaintiff's cause of action is not barred." Thereafter, the circuit court entered a judgment against Stamper "in the amount of $9,743.16 plus an additional $1,461.47 in attorney fees for a total of $11,204.63, plus interest at the rate of 9.75% per annum from January 13, 2016 until paid."

Stamper moved to alter, amend, or vacate the judgment on July 12, 2016. In his motion, Stamper again argued that the Bank had declared the Note immediately due and payable as of September 15, 2000, which meant that its claim had accrued as of that date. Stamper did not cite any law in support of his position.

In response, the Bank argued that Stamper had presented no evidence indicating that the Bank had accelerated his debt, had simply restated his argument against summary judgment, and had raised no grounds upon which the judgment could be altered, amended, or vacated. The circuit court denied Stamper's motion to alter, amend, or vacate by order dated September 19, 2016.

This appeal followed.

II. Standard of Review

On appeal, "[t]he standard of review . . . of a summary judgment is whether the circuit judge correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law." *Caniff v. CSX Transp., Inc.*, 438 S.W.3d 368, 372 (Ky. 2014). "Because summary judgments involve no fact finding, this Court reviews them *de novo*, in the sense that we owe no deference to the conclusions of the trial court." *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000). We must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is appropriate only if "it appears impossible in a practical sense for the respondent to prevail at trial." *Haugh v. City of Louisville*, 242 S.W.3d 683, 686 (Ky. App. 2007).

III. Analysis

On appeal, Stamper maintains his contention that KRS 413.090(2) bars the Bank's action against him. Stamper continues to argue that, based on the optional acceleration clause in the Note and the letter from the Bank dated August 25, 2000, the Bank's cause of action on the Note accrued on September 15, 2000. Stamper's argument rests on his theory that "[a]n acceleration clause is, effectively, an alternative maturity date." We disagree. It is well-settled that "[a] note in which the date of maturity is fixed at a specified future time is not due until the date of maturity and the statute of limitations does not begin to run until after that date." *Gould v. Bank of Independence*, 264 Ky. 511, 94 S.W.2d 991, 993 (1936). Stamper does not outright deny that this is the case, but instead argues that we should treat the acceleration clause in the note as an "alternative maturity date" for purposes of the statute of limitations. Stamper cites no authority for this position, and we have found none. Accordingly, we agree with the circuit court that the Bank's claim against Stamper did not accrue until April 25, 2002, and that if KRS 413.090(2) applied, the Bank's action would not be barred. Our analysis, however, does not end with resolution of this issue.

As noted above, Stamper's answer raised the defense that the "applicable statute of limitations" barred the Bank's action against him. In support of his defense, Stamper cited KRS 413.090(2), which governs actions on written contracts. Perhaps because there was no contention to the contrary, the circuit court concluded as a matter of law that KRS 413.090(2) was the applicable statute

of limitations and applied that statute to conclude that the Bank's claim was not barred. The application of KRS 413.090(2) was an error of law.

The record is clear that the Note at issue is a negotiable instrument. *See* KRS 355.3-104(1).[2] Therefore, the "applicable" statute of limitations is not the fifteen-year statute of limitations in KRS 413.090, but the statute of limitations found in KRS 355.3-118. KRS 355.3-118(1) states that "an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date."

Stamper correctly pleaded that the Bank's action was time-barred in his answer. However, he failed to identify the correct statute of limitations. Throughout the proceedings below, the parties continued to cite to the incorrect

[2] KRS 355.3-104 (1) provides:

> (1) Except as provided in subsections (3) and (4) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
> (a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
> (b) Is payable on demand or at a definite time; and
> (c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:
> 1. An undertaking or power to give, maintain, or protect collateral to secure payment;
> 2. An authorization or power to the holder to confess judgment or realize on or dispose of collateral; or
> 3. A waiver of the benefit of any law intended for the advantage or protection of an obligor.

statute of limitations; an error they replicated before this Court. We are cognizant of our limited role as an appellate court. And, we are well aware that we should limit ourselves to the issues raised by the parties before the lower court. However, this is not a situation where the appellant failed to present the issue to the circuit court. Stamper did raise the issue of statute of limitations. In fact, that was the only issue he raised before the circuit court.

This case is one that turns on whether the circuit court applied the law correctly to the issue raised. Applying and interpreting the law is the job of the courts. Courts should be able to rely on the validity and correctness of the law presented to them by the litigants, but they are not bound to apply an incorrect law simply because the parties have failed to identify the correct one. Justice demands more. "Applicable legal authority is not evidence and can be resorted to at any stage of the proceedings whether cited by the litigants or simply applied, *sua sponte*, by the adjudicator(s). Nor is legal research a matter of judicial notice, for the issue is one of law, not evidence." *Burton v. Foster Wheeler Corp*., 72 S.W.3d 925, 930 (Ky. 2002). "When the facts reveal a fundamental basis for decision not presented by the parties, it is our duty to address the issue to avoid a misleading application of the law. This is such a case." *Mitchell v. Hadl*, 816 S.W.2d 183, 185 (Ky. 1991); *see also Slone v. Calhoun*, 386 S.W.3d 745, 748 (Ky. App. 2012).

The circuit court erred as a matter of law in this case. Because the Note at issue is a negotiable instrument, the six-year limitations period found in KRS 355.3-118 governs and renders the Bank's action against Stamper untimely.

IV. CONCLUSION

In light of the foregoing, we REVERSE the order granting summary judgment in favor of the Bank and REMAND to the Marshall Circuit Court with directions to dismiss this action as time-barred.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Robert L. Prince
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BRIEF FOR APPELLEE:

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