

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000042-MR

JAMES D. CROSS;
ROBERTA J. CROSS, HIS WIFE;
GAIL W. THOMPSON, EXECUTRIX
OF THE WILL OF FRANCIS ALLAN THOMPSON;
AND GAIL W. THOMPSON, INDIVIDUALLY APPELLANTS

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE CHARLES C. SIMMS III, JUDGE
ACTION NO. 10-CI-00581

B.J. MANAGEMENT, INC.;
JERRY BRADY; AND GAYLE BRADY APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

DIXON, JUDGE: Appellants appeal from an order of the Nelson Circuit Court that resolved a dispute in favor of Appellees regarding the court's prior award of post-judgment interest. We affirm.

In August 2013, following a bench trial, Appellants obtained a judgment against Appellees for \$16,160.47 with 12% interest. Approximately eight days after the judgment was entered, counsel for Appellees delivered checks to Appellants' counsel for the entire amount of the judgment, including appropriate interest. Appellants subsequently appealed the circuit court judgment, which was affirmed by this Court in *Cross v. B.J. Management, Inc.*, 2016 WL 749011 (Ky. App. 2016).

After the judgment was affirmed, a dispute arose regarding payment of post-judgment interest, as the checks tendered to Appellants' counsel were never negotiated. Appellees' moved the court for a declaration the judgment was satisfied and submitted copies of the cover letter and checks that had been delivered to Appellants' counsel in August 2013. Appellants did not dispute the evidence indicating the checks had been previously tendered to their attorney. According to Appellants, the personal checks were a conditional tender of funds since the bank would not have been obligated to honor a non-certified check after six months; consequently, Appellants asserted they were entitled to post-judgment interest from the date of the judgment through June 2016.

Following a hearing, the trial court rendered a written order concluding Appellees tendered an unconditional payment satisfying the judgment

to Appellants as of August 20, 2013. The court relied on *Grange Mutual Casualty Co. v. Hollon*, 816 S.W.2d 663, 666 (Ky. App. 1991), which held:

[A]n unsuccessful appeal from a favorable judgment deemed by the appealing party to be inadequate does not toll the running of interest on the initial award in the absence of an unconditional tender of the award to the appealing party. In the alternative, the judgment debtor may deposit the award into court subject to unrestricted withdrawal by the party prosecuting the appeal, that is, the judgment creditor.

The court determined Appellees' unconditional tender of the judgment amount tolled the running of interest; accordingly, the court ordered Appellees to re-issue checks to Appellants in the amounts previously tendered in August 2013. This appeal followed.

Appellants contend the court erred by finding the Appellees' use of personal checks to satisfy the judgment constituted an unconditional tender.

Appellants rely on KRS 355.4-404, which provides:

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six (6) months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Appellants theorize the personal checks were a conditional tender of funds since the bank would not have been obligated to honor a personal check after six months.

This argument is without merit. Appellants do not dispute the personal checks were delivered to their attorney on August 20, 2013. Appellants

appealed the underlying judgment, and for reasons that are not clear in the record, the checks were never negotiated. In *Faulkner v. Smith*, 747 S.W.2d 592, 593 (Ky. 1988), the Court explained a valid tender must be unconditional and “requires the actual production of the funds which are admitted to be due by draft, check, cash or otherwise.” Here, Appellees produced the funds in the form of personal checks to Appellants, and Appellants were thereafter free to immediately negotiate the checks. Under the facts presented, we simply find no error in the trial court’s determination the personal checks were an unconditional tender to satisfy the Appellees’ obligation.

For the reasons stated herein, the order of the Nelson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

John Douglas Hubbard
Bardstown, Kentucky

BRIEF FOR APPELLEES:

Michael E. Coen
Bardstown, Kentucky