

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Richard Sanson, Jean Sanson, and Cecilia Sanson v. Allstate Wrecker Recovery & Used Sales, LLC and Daniel Kessler

Sanson · No. No. 14-0966 · Decided April 12, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the circuit court's summary judgment enforcing a contract for the sale of a wrecker and recovery business. The court held that the contract was clear and unambiguous and that petitioners failed to present evidence establishing fraud or duress. The case was remanded because the circuit court had not addressed petitioners' counterclaim for damages.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Menis E. Ketchum; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II; Justice Robin Jean Davis
JURISDICTION	West Virginia
DECIDED	April 12, 2016
DOCKET	No. 14-0966
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioners appealed the circuit court's order granting respondents' motion for summary judgment and enforcing a sales contract. The Supreme Court of Appeals affirmed the summary judgment and enforcement ruling in part, but remanded for findings addressing petitioners' counterclaim for damages.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. At the summary judgment stage, the circuit court determines whether a genuine issue for trial exists and does not weigh the evidence or determine the truth of the matter.
PRECEDENTIAL VALUE	Memorandum decision under West Virginia Rule of Appellate Procedure 21(d); the source identifies the decision as published, but no reporter citation appears in the opinion text.

PARTIES

Richard Sanson, Jean Sanson, Cecilia Sanson v. Allstate Wrecker
Recovery & Used Sales, LLC, Daniel Kessler

TOPICS

contracts

summary judgment

contract interpretation

contract formation

appellate procedure

PRACTICE AREAS

contracts

civil procedure

commercial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly granted summary judgment and enforced the sales contract where petitioners argued that the motion was inadequately supported and genuine issues of material fact existed.
2. Whether extrinsic writings and parol evidence created a factual issue concerning the meaning of the parties' written agreement.
3. Whether petitioners presented sufficient evidence of fraud or duress to create a jury question regarding contract formation.
4. Whether the circuit court erred by entering an order that failed to address petitioners' counterclaim for damages.

HOLDINGS

1. Summary judgment was proper because the written agreement clearly and unambiguously required respondents to purchase petitioners' wrecker and recovery business and related salvage-lot property, and the record did not establish a genuine issue of material fact.
2. Petitioners did not create a jury question concerning fraud or duress because they presented no evidence that they entered into the contract under duress, and the record supported the circuit court's finding that the parties mutually assented to the agreement.
3. The circuit court's order was insufficient as to petitioners' counterclaim because it did not include factual findings permitting meaningful appellate review; the matter therefore had to be remanded for an order addressing the counterclaim.

KEY QUOTATIONS

"A circuit court's entry of summary judgment is reviewed de novo." (at 2)

"The essence of contract formation is, in the traditional formulation, a 'meeting of the minds' of the contracting parties, or in the more accurate contemporary formulation, their manifestations of mutual assent to a bargained-for exchange of promises or performances." (at 3)

"it is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different

contract.” (at 3)

“on summary judgment, a circuit court must make factual findings sufficient to permit meaningful appellate review.” (at 3)

FACTUAL BACKGROUND

In September 2009, the parties entered into an agreement for respondents to purchase petitioners' wrecker and recovery business for \$107,000, including a salvage lot, trucks, telephone numbers, accessories, motors, and transmissions. The agreement provided for rent-free use of the salvage lot for six months, rent thereafter, and a purchase option at a specified price within forty-two months. In October 2010, petitioners refused to accept payments for the property, and respondents brought an action to enforce the contract. The circuit court found the agreement clear and unambiguous, and the record showed that respondents tendered payments that petitioners accepted during the litigation.

PROCEDURAL HISTORY

The parties entered into a 2009 agreement for respondents' purchase of petitioners' wrecker and recovery business, including a salvage lot and related business assets. After petitioners refused to accept payments within the contract's forty-two-month period, respondents sued to enforce the agreement and moved for summary judgment. The Circuit Court of Kanawha County granted summary judgment and enforced the sales contract but did not adequately address petitioners' counterclaim for damages. The Supreme Court affirmed the contract ruling and remanded for an order addressing the counterclaim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Circuit Court of Kanawha County must enter an order addressing petitioners' counterclaim for damages, with factual findings sufficient to permit meaningful appellate review. The order granting respondents' summary judgment and enforcing the sales contract is affirmed.

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Watson v. Buckhannon River Coal Co., 95 W. Va. 164, 120 S.E. 390 (1923)
- Buckhannon Sales Co. v. Appalantic Corp., 175 W. Va. 742, 338 S.E.2d 222 (1985)
- Conley v. Johnson, 213 W. Va. 251, 580 S.E.2d 865 (2003)
- Faith United Methodist Church v. Morgan, 231 W. Va. 423, 745 S.E.2d 461 (2013)
- Gentry v. Mangum, 195 W. Va. 512, 466 S.E.2d 171 (1995)

OPINION

Richard Sanson v. Allstate Wrecker Recovery & Used Car Sales, LLC.

PER CURIAM.

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

Richard Sanson, Jean Sanson, FILED and Cecilia Sanson April 12, 2016 Defendants Below,
Petitioners RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

vs.) No. 14-0966 (Kanawha County 10-C-1785) OF WEST VIRGINIA Allstate Wrecker Recovery
& Used Sales, LLC and Daniel Kessler Plaintiffs Below, Respondents

MEMORANDUM DECISION

Petitioners Richard Sanson, Jean Sanson, and Cecilia Sanson, by counsel David L. White, appeal the Circuit Court of Kanawha County's August 29, 2014, order granting respondents' motion for summary judgment and enforcing the sales contract between the parties. Respondents Allstate Wrecker Recovery & Used Sales, LLC, and Daniel Kessler, by counsel D. Adrian Hoosier, II, filed a response in support of the circuit court's order. On appeal, petitioners argue that the circuit court erred in granting respondents' motion for summary judgment when the motion was not properly supported and genuine issues of material fact required jury resolution, and in disposing of the case without resolving all issues in the case, including petitioners' counter-claim. The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the Rules of Appellate Procedure and is appropriate for a memorandum decision rather than an opinion. For the reasons expressed below, the decision of the circuit court is affirmed, in part, and remanded back to the circuit court with directions to enter an order that addresses petitioners' counter-claim for damages. In September of 2009, petitioners and respondents entered into an agreement for respondents to purchase petitioners' wrecker and recovery business. The purchase included a salvage lot, several trucks, business telephone numbers, and accessories, for a total of \$107,000. The contract defines purchasers' and sellers' duties in each paragraph. The contract stated that purchasers are buying "all the telephone numbers," "all accessories to go with trucks," and "motors and transmissions" to go with the aforementioned trucks. The contract also established that the salvage lot was to be "rented by the purchaser for six months' rent free, then an extended three years for rent at the amount of \$400 per month and at the end of forty-two months, the rent will be increases (sic) annually by the Consumer Price Index." An additional provision provided that the purchase of the salvage lot would be for \$75,000 if purchased within the first forty-two 1 months. The same provision provided that if the property was not purchased within the forty-two months then the purchase price would increase annually by the Consumer Price Index. The contract also included a provision for the purchaser to "always [have] the right of first refusal on the above mentioned lot." The contract also contained a September 1, 2009, closing date for the

sale of the above mentioned business. In October of 2010, Petitioners refused to accept payments for the subject property made within the first forty-two months of the September agreement. Respondents initiated an action to enforce the contract within that forty-two month period and later filed a motion requesting summary judgment. In July of 2014, the circuit court held a hearing on respondents' motion for summary judgment. After the close of the hearing, the circuit court found that the parties entered into an agreement that required petitioners to sell their "property bargained for" to respondents and the agreement failed to provide petitioners with an "option to cancel the alleged lease." The circuit court also found that the agreement between the parties was "clear and unambiguous" and that petitioners "understood the [a]greement and knew exactly which lots were for sale." The circuit court determined that petitioners admitted knowledge of the subject lots and respondents tendered payments to petitioners, which they have "accepted since this litigation commenced." On August 29, 2014, the circuit court entered an order granting respondents' motion for summary judgment and enforcing the sales contract between the parties. It is from this order petitioners now appeal. We have previously held that "[a] circuit court's entry of summary judgment is reviewed de novo." Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). We have further held that "[t]he circuit court's function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial." *Id.* at 190, 451 at 756, Syl. Pt. 3. On appeal, petitioners argue that the circuit court erred in granting respondents' motion for summary judgment because the motion was not properly supported and genuine issues of material fact required jury resolution. Petitioners further argue that they pled sufficient proof of fraud and duress to present a jury question relative to the formation of the alleged contract at issue. Specifically, petitioners contend that they never intended to sell the "lots" to respondents but only to "afford them the right of first refusal if they ever decided to sell the salvage yard lot." In support of their argument, petitioners cite to other "agreements" the parties allegedly drafted before the final contract was signed by all the parties. Petitioners also maintain that the contract was uncertain and ambiguous and that the circuit court should have looked at the other writings based on our holding that: [w]hile the general rule is that the construction of a writing is for the court; yet where the meaning is uncertain and ambiguous, parol evidence is admissible to show the situation of the parties, the surrounding circumstances when the writing was made, and the practical construction given to the contract by the parties themselves either contemporaneously or subsequently. If the parol evidence be not in conflict, the court must construe the writing; but if it be conflicting on a material point necessary to interpretation of the writing, the question of its meaning should be left to the jury under proper hypothetical instructions." Syl. Point 4, *Watson v. Buckhannon River Coal Co.*, 95 W.Va. 164, 120 S.E. 390 (1923). 2 Syl. Pt. 1, *Buckhannon Sales Co. v. Appalantic Corp.*, 175 W.Va. 742, 338 S.E.2d 222 (1985). Upon careful review of the record before us, we find no error in the circuit court's granting respondents' motion for summary judgment and enforcing the sales contract between the parties. The clear language of the contract indicated that petitioners and respondents

entered into an agreement for respondents to purchase petitioners' wrecker and recovery business. According to the record on appeal, the meaning of contract was certain and unambiguous, thus, the circuit court was not required to look at outside writings to ascertain the clear meaning of the contract between the parties. The contract identified the parties as "purchasers" and "sellers" and included provisions to "sell" to respondents "all the telephone numbers," "all accessories to go along with the trucks," "motors and transmissions" to accompany the aforementioned trucks, and the salvage lot. We have previously addressed contract formation issues and we have indicated that "[t]he essence of contract formation is, in the traditional formulation, a 'meeting of the minds' of the contracting parties, or in the more accurate contemporary formulation, their manifestations of mutual assent to a bargained-for exchange of promises or performances." *Conley v. Johnson*, 213 W.Va. 251, 255, 580 S.E.2d 865, 869 (2003) (citing Restatement (Second) of Contracts §§ 19-23 (Tent. Draft Nos. 1-7, 1973)). The circuit court determined that, at all times, the parties knew that respondents would take title to the subject salvage lot property under the terms of the contract for purchase. The record is devoid of any evidence suggesting that modifications to the substantive terms of the agreement were made by either party. Additionally, the circuit court found that petitioners provided respondents with the tax ticket lot numbers to the exact lots contained in the parties' contract for sale. It is also clear from the record that, throughout the litigation, respondents tendered payments to petitioners and petitioners accepted those payments. Additionally, the circuit court found that the "substantive terms of the [a]greement" were clear. We have previously stated that in construing a written contract, "it is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract." *Faith United Methodist Church v. Morgan*, 231 W.Va. 423, 444, 745 S.E.2d 461, 482

(2013). As previously stated, there is no language within the sales contract from which the circuit court could have reasonably concluded that the agreement was anything other than a sales contract between petitioners and respondents for the sale and purchase of petitioners' wrecker and recovery business. Therefore, we find no error in the circuit court granting summary judgment and in enforcing the contract between the parties. Petitioners also argue that respondents misrepresented the terms of the contract and "bullied" them into signing a contract that did not allude to the previous agreements. However, petitioners presented no evidence to show that they entered into the contract under duress. Petitioners also assert on appeal that the circuit court's order granting summary judgment did not resolve all issues in the case, including the petitioners' counter-claim for damages. Petitioners contend that the circuit court ignored their counter-claim and entered its final order "as if those claims had not even been asserted." We have previously held that "on summary judgment, a circuit court must make factual findings sufficient to permit meaningful appellate review." *Gentry v. Mangum*, 195 W.Va. 512, 521, 466 S.E.2d 171, 180 (1995). Because the circuit court failed to set out factual findings sufficient to permit meaningful appellate review regarding petitioners' counter-claim for damages, we remand the matter to the circuit court with

directions to address the counter-claim. For the foregoing reasons, we (1) affirm the Circuit Court of Kanawha County's August 29, 2014, order granting respondents' motion for summary judgment and enforcing the sales contract between the parties; and (2) remand the case with directions to enter an order that addresses petitioners' counter-claim for damages. Affirmed, in Part, and Remanded with Directions. ISSUED: April 12, 2016 CONCURRED IN BY: Chief Justice Menis E. Ketchum Justice Brent D. Benjamin Justice Margaret L. Workman Justice Allen H. Loughry II DISSENTING: Justice Robin Jean Davis 4