2015 IL App (2d) 150158-U
No. 2-15-0158
Order filed December 11, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WILLIAM LEO BEESON and THOMAS EDWARD BEESON,	)	Appeal from the Circuit Court of McHenry County.
Plaintiffs-Appellants,	)	
v.	)	No. 09-CH-1132
CHARLES JOSEPH BEESON and SUSAN BEESON MENTGEN, Individually and as Co-Trustees of the May H. Beeson Trust, and THE LAND CONSERVANCY OF MCHENRY COUNTY,	)	
Defendants-Appellees	)	Honorable Thomas A. Meyer,
(Francis Charles Beeson, Plaintiff).	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding that the parties had reached a settlement agreement or in granting the defendants' petition for attorney fees.

¶ 2 On June 6, 2012, the plaintiffs, Francis Charles Beeson, William Leo Beeson, and Thomas Edward Beeson, filed a third-amended complaint against the defendants, Charles Joseph Beeson, Susan Beeson Mentgen, and The Land Conservancy of McHenry County (Land Conservancy), alleging claims related to actions taken by Charles and Susan as co-trustees of

their deceased mother's trust. The parties ultimately reached a settlement agreement and the trial court entered an order approving the settlement agreement. The trial court also granted the defendants' petition for attorney fees. The plaintiffs appeal from these orders. We affirm.

¶ 3 BACKGROUND

¶ 4 On May 19, 2002, May Beeson established a trust. On June 12, 2008, May died. The co-trustees of the trust were two of the deceased's children, the defendants, Charles and Susan. The trust provided that, upon May's death, the property in the trust would be split evenly between her eight children. At the time of death, the inventoried value of the trust was $3,061,479; this included a 120-acre parcel of real property in Harvard that was valued at $1,010,000. Seventy-five acres of the 120-acre parcel were used as a tree nursery that was owned and operated by Charles.

¶ 5 On March 3, 2009, the co-trustees entered into a grant of conservation right and easement with the Land Conservancy. The purpose of the easement was to ensure that the nursery and other natural areas of the property would be retained forever and that the property would not be developed.

¶ 6 On June 6, 2012, the plaintiffs, three of May's eight children, filed a third-amended five-count complaint against the defendants, alleging claims based on violation of the trust's no-contest clause (count I); breach of fiduciary duty (count II); breach of the prudent investor rule (count III); quiet title (count IV); and for removal of Charles and Susan as co-trustees of the trust. The plaintiffs argued that the grant of conservation right and easement reduced the value of the 120-acre parcel by half. The plaintiffs also alleged improprieties of the co-trustees with respect to a lease agreement between the trust and Charles' nursery business, loans to Charles from the trust property, and payments made to Charles from the trust.

¶ 7 A trial commenced on March 3, 2014. On March 5, 2014, at the close of the plaintiffs' case, the defendants moved for a directed finding. The trial court granted the directed finding as to Susan on all counts and entered a partial directed finding in favor of Charles. The trial court stated that the evidence indicated that the defendants had the discretion under the trust to create a conservation easement. The trial court denied the motion for directed verdict in part as to Charles because there was some evidence suggesting that Charles set up the conservation easement in such a way that it benefitted him more than any of the other beneficiaries. As to Susan, the trial court granted the motion for directed verdict in full because there was no evidence that she in any way benefitted from the grant of the conservation easement; rather, she was in the same situation as all the other beneficiaries of the trust.

¶ 8 The parties reconvened on March 6, 2014, entered settlement negotiations, and reached a settlement agreement. The terms of the agreement were read into the record on that date. Specifically, the 120-acre parcel would still be subject to the conservation right and easement but would be placed for sale on September 1, 2014, with a closing date no earlier than December 31, 2014, the date on which the nursery's lease on the property terminated. Three brokers would be chosen to establish a listing price for the 120-acre parcel, subject to the court's approval unless otherwise agreed to between the parties. The brokers would report to the parties, every three months, on the status of the sale. An independent appraisal of the remaining nursery stock would be conducted and the nursery would be paid up to $80,000 for its inventory. The appraisal would be paid for by the plaintiffs unless the parties agreed to a value of the inventory. The trust would make a $10,000 charitable donation to the Land Conservancy. Charles would resign as trustee upon the entry of the settlement agreement and would be paid up to $5,000 for trustee fees upon petition to the court. Susan would continue as sole trustee and continue to prepare and deliver accountings. The trial court entered a written order on that date indicating that the parties

had reached a settlement, the terms were placed on the record, and that the bench trial was suspended pending further order of the court.

¶ 9 On May 12, 2014, Charles and Susan filed a motion to enforce the settlement agreement. They alleged that two of the plaintiffs, Thomas and William, had refused to acknowledge the settlement agreement. The defendants drafted and sent a copy of the proposed settlement agreement to the plaintiffs but Thomas and William refused to sign it. The defendants requested that the trial court compel the two plaintiffs to sign the agreement or enter the settlement agreement on their behalf.

¶ 10 On January 15, 2015, following a hearing, the trial court found that a settlement agreement had been reached on March 6, 2014, with all parties present, and that the terms of the agreement were read into the record on that date. The trial court noted that, after the terms were read into the record on March 6, it asked the parties if those were the terms and no objections were raised. As such, the trial court granted the motion to enforce the settlement agreement. Thereafter, the parties discussed the entry of a subsequent written order that would memorialize the terms of the agreement. The terms of the settlement agreement as read into the record on March 6 indicated that certain things were to be done by certain dates. Those dates had passed due to the delay in the execution of the settlement agreement. The defendants wanted those dates adjusted and set out in a written judgment order. The trial court indicated that the parties should file a motion requesting a written judgment that explicitly included the terms of the agreement, with any necessary dates adjusted. An order was entered on January 15, 2015, indicating that a settlement agreement had been reached by all parties on March 6, 2014, and its terms were as read into the record on that date. The order further stated that "[t]his order is found to be final and appealable on all issues pursuant to [Supreme Court] Rule 304 [Ill. S. Ct. R. 304 (eff. Feb. 26, 2010),] there being no just reason to delay appeal or enforcement."

¶ 11 On February 2, 2015, the defendants, Charles and Susan, filed a motion for entry of judgment on the settlement agreement. The defendants noted that the agreement, as reached on March 6, 2014, contained certain deadlines and dates, such as when the 120-acre parcel would be listed for sale, when the lease between the nursery and the trust would terminate, and a cap on the trustee fees that could be paid to Charles. However, since Thomas and William had subsequently refused to sign the settlement agreement, the defendants requested that these dates be extended and that the cap be removed because Charles incurred additional time and expenses in his capacity as trustee.

¶ 12 On February 9, 2015, the trial court entered a written order setting forth the terms of the settlement agreement: the conservation easement would remain in effect; the 120-acre parcel would be listed for sale by August 1, 2015, but closed not prior to November 30, 2015; Susan would remain as sole acting trustee; upon signing of the agreement, Charles would resign as co-trustee and trustee fees for Charles would be capped at $5,000; any award of attorney fees was subject to the filing of a petition for fees; the nursery lease on the subject property would terminate on November 30, 2015; the trust would make a $10,000 charitable donation to the Land Conservancy; the parties would each submit the names of two licensed real estate brokers and the court would then select a broker to handle the sale of the 120-acre parcel at issue; the listing price and sale price would be set and approved by the trial court; the case would be set for status every three months to monitor the status of the sale of the property; and Charles' nursery would be paid between $40,000 and $80,000, based on fair market value, for any remaining nursery stock on the property when the lease terminated on November 30, 2015. The trial court also included that it retained jurisdiction over the matter until the property was sold and the terms of the judgment were fulfilled. The order further indicated that it was final and appealable pursuant to Rule 304 (eff. Feb. 26, 2010), and that there was no just reason to delay enforcement

or appeal. On February 19, 2015, two of the plaintiffs, William and Thomas, filed a notice of appeal.

¶ 13 ANALYSIS

¶ 14 On appeal, the plaintiffs argue that the trial court erred in: (1) finding that a settlement agreement had been reached between the parties because there was no meeting of the minds; (2) granting the motion for directed finding in favor of Susan; and (3) allowing attorney fees to be paid out of the trust.

¶ 15 At the outset, we note that the defendants argue that we lack jurisdiction to address this appeal. They contend that the final order in this case was on January 15, 2015; that the defendant's February 2, 2015, motion was for entry of an order consistent with the January 15 ruling; and that, therefore, that motion did not toll the time for filing a notice of appeal. Thus, they argue that the notice of appeal filed on February 19, 2015, was not filed within 30 days of the final order as required by Supreme Court Rule 303 (Ill. S. Ct. R. 303 (eff. June 4, 2008)).

¶ 16 An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof. *Inland Commercial Property Management v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 18. "An order approving a settlement [agreement] constitutes a final disposition as to a definite and separate part of the litigation and is appealable when the trial court makes a Rule 304(a) finding." *Schramm v. County of Monroe*, 325 Ill. App. 3d 760, 770 (2001). However, it is well settled that a Rule 304(a) finding does not make an otherwise nonfinal order final and appealable. *Inland*, 2015 IL App (1st) 141051, ¶ 23.

¶ 17 We hold that the January 15, 2015, order, despite the Rule 304(a) language, was not a final order. *Id.* On January 15, the trial court merely addressed the preliminary matter of whether the parties had entered a settlement agreement. The trial court found that the parties had

reached a settlement agreement on March 6, 2014, and had agreed to the terms that were stated in court on that date. However, an issue remained as to whether the trial court would approve that settlement agreement. The trial court did approve that settlement agreement when, on February 9, 2015, it entered judgment incorporating the terms of the settlement agreement. Accordingly, the final judgment was entered on February 9, 2015, when the trial court approved the settlement agreement and entered a Rule 304(a) finding. *Schramm*, 325 Ill. App. 3d at 770. The plaintiffs' notice of appeal was therefore timely and we have jurisdiction to address the merits of this appeal.

¶ 18 The plaintiffs' first contention on appeal is that the trial court erred in finding that the parties had reached a settlement agreement. A settlement agreement is a contract and its enforcement and construction are governed by contract law. *Lampe v. O'Toole*, 292 Ill. App. 3d 144, 146 (1997). As such, an oral settlement agreement is enforceable absent mistake or fraud. *Id.* Further, oral agreements are binding as long as there is an offer, an acceptance, and a meeting of the minds. *Id.* "When presented with a challenge to a trial court's determination that parties reached an oral settlement agreement, a reviewing court will not overturn that finding unless it is against the manifest weight of the evidence." *K4 Enterprises v. Grater, Inc.*, 394 Ill. App. 3d 307, 312 (2009). "A finding regarding the validity of a settlement agreement is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or where a decision is palpably erroneous and wholly unwarranted." *Id.* at 312-13.

¶ 19 In the present case, the trial court's finding that an oral settlement agreement had been reached was not against the manifest weight of the evidence. The record indicates that on March 6, 2014, the parties, represented by counsel, participated in off-the-record settlement discussions that lasted about six hours. The trial court was present for some of the negotiations. When the parties reached an agreement, the terms of that agreement were stated on the record by the

plaintiffs' attorney, with the plaintiffs present in court, and there were no objections. Thereafter, a written order was entered stating that an agreement was reached and suspending the bench trial. Accordingly, the trial court's finding that a settlement agreement was reached was not palpably erroneous.

¶ 20 The plaintiffs argue that there was no meeting of the minds because they could not hear what their attorney was saying as he was stating the agreement on the record in court on March 6, 2014. Additionally, they argue that their attorney did not have express authority to enter a settlement agreement on their behalf. The law is clear that an attorney may bind his client to a settlement agreement, particularly when the settlement is made in open court or in the presence of the client. *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 29. "While an attorney's authority to settle must be expressly conferred, the existence of the attorney of record's authority to settle in open court is presumed unless rebutted by affirmative evidence that authority is lacking." *Szymkowski v. Szymkowski*, 104 Ill. App. 3d 630, 633 (1982). "Moreover, where a party silently stands by and permits her attorney to act in her behalf in dealing with another in a situation where the attorney may be presumed to have authority, the party is estopped from denying the agent's apparent authority as to third persons." *Id.*

¶ 21 Here, the record indicates that the plaintiffs were present at the settlement negotiations and were present when the agreement was read into the record. The plaintiffs did not object to their attorney acting on their behalf during the negotiations or when the settlement agreed was stated on the record in court. Accordingly, the argument that their attorney had no express authority to enter the settlement agreement on their behalf is without merit. *Id.* Further, because their attorney had the authority to bind them to the settlement agreement, the argument that there was no meeting of the minds because they could not hear what was being said is not relevant.

Even if they could not hear, they are still bound by the agreement. Moreover, in response to the argument that the plaintiffs never agreed to the settlement agreement, the trial court stated:

> "THE COURT: "I'll tell you the problems I have regarding that. Your client, Mr. Tom Beeson, is about the farthest thing from a shrinking violent [sic] I've run into in this courtroom. He made his points very well—very clear. I discussed with him the settlement at length and I never perceived a reluctance to express his point of view.
>
> So what you're asking me to now believe is that this gentleman who is thoroughly not calmed by these proceedings was intimidated and afraid to speak his mind. I saw it precisely the opposite.
>
> *** I don't doubt that Mr. Beeson is dissatisfied with the resolution. I share his dissatisfaction, not so much that one side got something that he wanted, but the fact that, from my perspective, the assets of this trust have been destroyed by the litigation ***.
>
> So in an effort to maybe see if this matter could be resolved ***, I suggested we have settlement discussion [*sic*] and we had them and we had them at great length. And, again, Mr. Beeson made his points, at least when I was in the room, he made them very clear and I recall some significant give and take with him as I was discussing the issues that had been resolved."

Accordingly, any claim that there was "no meeting of the minds," or that the plaintiffs did not realize what was happening or were afraid to speak up, is not supported by the record. The plaintiffs ask "why would [we] enter into a settlement agreement, when the issue regarding the conservation easement was not resolved?" The reason is that the trial court had granted a motion for directed verdict in favor of Susan and the record indicates that the plaintiffs did not have a strong case.

¶ 22 The plaintiffs also argue that what was written in the judgment setting forth the settlement agreement is more expansive than what was stated in court. However, a comparison of the March 6, 2014, report of proceedings and the February 9, 2015, judgment order indicates that the trial court only enforced the terms that were stated on the record and that any differences were not material. The only provision in the written judgment that was not read into the record on March 6, 2014, was the provision that if the defendants were to seek an award of attorney fees, they would need to file a petition. However, this was implicit and not a reason to repudiate the settlement agreement. The plaintiffs also argue that the written agreement added an additional defendant, the "Trust." However, as that term is used in the agreement, it refers to the defendants in their capacities as co-trustees of the trust. An additional defendant was not added.

¶ 23 The plaintiffs' second contention on appeal is that the trial court erred in granting the defendants' motion for a directed verdict in full as to Susan and partially as to Charles. However, based on our determination that the parties reached a valid settlement agreement, we need not address this contention as it is moot because any alleged trial errors were superseded by the settlement agreement. *Kim v. Alvey, Inc.*, 322 Ill. App. 3d 657, 672 (2001).

¶ 24 The plaintiffs' final contention on appeal is that the trial court erred in allowing attorney fees to be paid out of the trust. On August 8, 2014, the co-trustees filed an amended petition for payment of attorney fees, stating that they had incurred $84,563.50 in attorney fees and $1,472.96 in costs between October 11, 2013 and April 30, 2014. The amended petition contained affidavits of the attorneys and a detailed list of time and costs. On November 10, 2014, following a hearing, the trial court granted the petition for fees and costs.

¶ 25 "It is well-established that a party seeking to recover attorney fees from another party bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness." *Harris Trust & Savings Bank v. American National Bank &*

Trust Co. of Chicago, 230 Ill. App. 3d 591, 595 (1992). A petition for fees must present the court with detailed records specifying the services performed, by whom they were performed, the time expended and the hourly rate charged. *Id.* A trial court's award granting attorney fees will not be disturbed absent an abuse of discretion. *Id.* at 595-96.

¶ 26 We cannot say that the trial court abused its discretion in granting the petition for fees. On appeal, the plaintiffs do not dispute that attorney fees can be paid out of the trust. Their sole argument is that the reasonableness of the fees must be established by an expert and then by a trier of fact. However, "while expert testimony is proper on the issue of reasonableness of fees, such testimony is not required as a matter of law." *Fitzwilliam v. 1220 Iroquois Venture*, 233 Ill. App. 3d 221, 235 (1992). Further, a trial court may rely on its own experience in determining whether fees are reasonable. *Van Fleet v. Van Fleet*, 50 Ill. App. 3d 172, 175 (1977). Here, the petition for fees was supported by affidavits of the attorneys and a detailed time and cost report. In light of the record before us, we cannot say that the trial court abused its discretion in granting the fee petition.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 29 Affirmed.