2019 IL App (4th) 180487-U

NO. 4-18-0487

FILED
February 20, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

KEITH ALLEN and BARBARA ALLEN, Petitioners-Appellants, v. MARSHAL SOLIS, Respondent-Appellee.	)	Appeal from the Circuit Court of Vermilion County No. 17CH61
MARSHAL SOLIS, Counter Plaintiff-Appellee, v. KEITH ALLEN and BARBARA ALLEN, Counter Defendant-Appellant.	)	Honorable Mark S. Goodwin, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding that the parties entered into a binding settlement agreement. Appellant is estopped from challenging the court's directed verdict. Appellee's request for sanctions is denied.

¶ 2 Petitioners-Appellants, Keith and Barbara Allen, filed a complaint against their neighbor, respondent-appellee, Marshal Solis. The Allens alleged that they adversely possessed a tract of land situated near the boundary line of their respective properties. Solis filed a counterclaim alleging that he owned the disputed property. During a bench trial, the court entered a directed verdict in favor of Solis on the Allens's complaint, finding, *inter alia*, that the Allens failed to establish a *prima facie* case of adverse possession. After the court entered the

directed verdict, but prior to the resumption of the trial on Solis's counterclaim, the parties reached a settlement agreement outside the courtroom. The court, on the record, recited the terms of the final settlement agreement, which were again confirmed by counsel for both parties. Subsequently, the Allens filed a partial motion to reconsider, claiming their counsel mistakenly agreed to additional settlement terms not previously agreed to. The court denied the motion and entered an "Agreed Confession of Judgment" over the Allens's objection.

¶ 3 On appeal, the Allens argue that (1) new terms were fraudulently added to the final settlement agreement and counsel mistakenly agreed to those terms and (2) the trial court erred in entering a directed verdict on their claim of adverse possession. Solis counters that this appeal is frivolous and asks this court to impose sanctions. We affirm and deny the request for sanctions.

¶ 4 I. BACKGROUND

¶ 5 In April 2017, the Allens filed a complaint against their neighbor, Solis, for a preliminary injunction (count I), trespass (count II), and adverse possession (count III) relating to a tract of land measuring 15' x 495' near the boundary between their respective properties.

¶ 6 According to the complaint, the Allens purchased their property from Kathleen Swanson in 1992. However, the conveyance allegedly did not convey all of Swanson's interest in the land and omitted the disputed property. Two "corrective deeds" were later executed in an attempt to convey interest in the disputed property. The Allens alleged that they possessed the disputed property, having farmed it since 1992.

¶ 7 The Allens further alleged that Solis purchased his property from Kenneth Dazey in 2009. The deed conveying the property to Solis described the disputed property. In 2016, Solis

placed boundary markers on the eastern edge of the disputed property, allegedly damaging the Allens's crops.

¶ 8 Solis thereafter filed a counterclaim against the Allens for declaratory judgment (count I), quiet title (count II), slander of title (III), trespass (count IV), and an action pursuant to the Wrongful Tree Cutting Act (count V). According to the counterclaim, Solis alleged he was the legal and record owner of the disputed property, that he held "superior title to all other claimants," including the Allens, and he requested that the two corrective deeds be expunged.

¶ 9 In April 2018, the trial court conducted a two-day bench trial. After the Allens concluded their case-in-chief, the court entered a directed verdict in favor of Solis on the Allens's claims for trespass (count II) and adverse possession (count III). The Allens had previously withdrawn count I of the complaint. Counsel then requested a recess during which a settlement agreement was purportedly reached on Solis's counterclaim. The terms of the settlement agreement were subsequently recited to the trial court as follows:

> "MR. SPIROS [(Counsel for Appellee)]: The case is resolved as to the remaining, uh, counts.
>
> THE COURT: I'm sorry if my mouth dropped open. I apologize. *** What's that?
>
> MR. SPIROS: *** Petitioner[s] [the Allens] in the original case, uh, will confess judgment, um, as to Mr. Solis.
>
> Um, as a condition of confessing judgment on Counts *** II and III of our Counterclaim, uh, they will pay a total of five thousand dollars ($5,000) to include attorney's fees, uh, court costs, uh survey costs incurred by Mr. Solis, and, uh,

monument relocation cost which will be needed as a result of this resolution.

They will, um, stipulate and agree, uh, to a Court Order wherein Mr. Solis has superior title, uh, to the Allens.

Um, they will also cooperate and undertake the necessary tasks to obtain a Court Order expunging the two (2) Deeds which were *** [r]ecord[] [n]umber 16-07735 and 17-01069 in the *** Vermilion County Recorder's Office. They will undertake the tasks necessary to get a Court Order expunging those.

* * *

THE COURT: [The] remaining counts are dismissed with prejudice?

MR. SPIROS: That's correct, Your Honor.

THE COURT: Okay. *** I note that *** Mr. and Mrs. Allen are no longer here.

MR. BROUGHER [(Counsel for Appellant):] Well they're in the hallway, Your Honor. Uh, we would confirm on their behalf that this is an accurate order. They were present and we discussed this with them.

* * *

THE COURT: All right, sir. *** Well the Court *** will approve the settlement of the parties[.] *** [J]udgment *** will be confessed by *** the original Petitioners [the Allens] *** on Counts II and III [of the counterclaim]. Five thousand dollars ($5,000) sum will be payable by Mr. and Mrs. Allen to Mr. Solis, *** that is inclusive of any *** payment of attorney's fees, court costs, expenses *** of all kinds including monument relocation.

***[T]here is a *** confession to the fact that *** Mr. Solis has superior title to the tract in question, that being a 15 by 495 tract. *** [T]he parties are in agreement that the *** two *** [d]eeds in question 16-07735 and 17-01069 *** will be *** expunge[d] *** [and] charges [will] be *** paid by Mr. and Mrs. Allen.

All other remaining counts pending in the [c]ounterclaim will be *** dismissed with prejudice. All right folks. Anything else?

MR. BROUGHER: No. That's it. Thanks, Judge."

¶ 10 In May 2018, the Allens filed a motion for partial reconsideration, arguing their attorney had mistakenly agreed to additional settlement terms not previously agreed to during the trial recess. The motion further stated that the only agreement reached during the recess was to pay "$5,000 in order to dismiss Count III Slander of Title" of the counterclaim. Attached to the motion were two affidavits. In the first affidavit, attorney James L. Brougher stated that he is "one of the attorneys for [the Allens] and [he] was present at the Court proceedings [in] *** April [2018]." He further stated that "the matters set forth in the *** [m]otion are true and correct." In the second affidavit, attorney Charles D. Mockbee IV stated that he does "not recall the term and statement, that the [Allens] would confess Judgment to Counts II and III nor that [Solis] would have superior title, being mentioned or discussed *** prior to the Judge reconvening after the break." On June 1, 2018, the trial court denied the motion.

¶ 11 On June 19, 2018, the trial court entered an "Agreed Confession of Judgment" over objection by the Allens. The judgment stated as follows:

"1. Judgment is entered in favor of [Solis] and against [the Allens] as to

Count II of the [v]erified [c]ounterclaim;

2. Judgment is entered in favor of [Solis] and against [the Allens] as to [c]ount III of the [v]erified [c]ounterclaim;

3. This Court finds that [Solis] has superior title over [the Allens] to the property at issue in this lawsuit, which is the South 495 feet of the East 15 feet of the Southeast Quarter of the Northwest Quarter of Section 33 Township 23 North, Range 11 West of the 2nd P.M., situated in Vermilion County, Illinois, by way of the Warranty Deed recorded with the Vermilion County Recorder's Office on September 21, 2009 as document number 09-08585;

4. This Court directs the Vermilion County Recorder to expunge the Corrective Quitclaim Deed recorded with his office on October 20, 2016 as document number 16-07735, a copy of which is attached hereto as Exhibit A;

5. This Court directs the Vermilion County Recorder to expunge the Corrective Warranty Deed recorded with his office on February 6, 2017 as document number 17-01069, a copy of which is attached hereto as Exhibit B;

6. [The Allens] are ordered to pay [Solis] a total sum of $5,000, as an agreed award of actual damages, attorney's fees, and costs as to Count III of the Verified Counterclaim, in addition to any expenses associated with recordings to complete the expungements of Exhibits A and B; and

7. Counts I, IV, and V are dismissed with prejudice."

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 The Allens argue on appeal that (1) new terms were fraudulently added to the final settlement agreement and counsel mistakenly agreed to those terms and (2) the trial court erred in entering a directed verdict on their claim of adverse possession. Solis counters that this appeal is frivolous and asks this court to impose sanctions.

¶ 15 A. The Settlement Agreement

¶ 16 The Allens contend that Solis's counsel "fraudulently" added new terms to the settlement agreement when he recited the terms of the agreement to the trial court and counsel for the Allens agreed to the new terms "by mistake" when counsel was "momentarily distracted" and "did not hear" them.

¶ 17 "A settlement agreement is binding where there is a clear offer and acceptance to compromise and there is a meeting of the minds as to the terms of the agreement." *Kulchawik v. Durabla Manufacturing Co.*, 371 Ill. App. 3d 964, 972, 864 N.E.2d 744, 751 (2007). "The law is clear that an attorney may bind his client to a settlement agreement." *Knisley v. City of Jacksonville*, 147 Ill. App. 3d 116, 120, 497 N.E.2d 883, 886 (1986). "[S]ettlements are generally encouraged and favored by the courts, and, in the absence of mistake or fraud, are conclusive on the parties as to all matters included therein and will not be lightly altered or set aside." *McCracken Contracting Co. v. R.L. DePrizio & Associates., Inc.*, 122 Ill. App. 3d 680, 683, 462 N.E.2d 682, 685 (1984). On review, we will not reverse a trial court's decision about whether a settlement occurred unless it is contrary to the manifest weight of the evidence. *Kulchawik*, 371 Ill. App. 3d at 972.

¶ 18 Here, according to the Allens, a settlement agreement was allegedly reached off the record during a recess in which the Allens only agreed to settle count III of the counterclaim

for slander of title and, in exchange, the Allens would pay $5000. As stated, the Allens contend that Solis's counsel fraudulently added new terms to the settlement agreement when he later recited the terms of the agreement to the trial court, and counsel for the Allens agreed to those additional terms by mistake.

¶ 19 The terms of the settlement agreement that the Allens now challenge were clearly stated, not once but twice, on the record:

> "MR. SPIROS: The case is resolved as to the remaining, uh, counts.
>
> THE COURT: I'm sorry if my mouth dropped open. I apologize. *** What's that?
>
> MR. SPIROS: *** Petitioner[s] [the Allens] in the original case, uh, will confess judgment, um, as to Mr. Solis.
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THE COURT: [The] remaining counts are dismissed with prejudice?

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THE COURT: Okay. *** I note that *** Mr. and Mrs. Allen are no longer here.

MR. BROUGHER [(Counsel for Appellant):] Well they're in the hallway, Your Honor. Uh, *we would confirm on their behalf that this is an accurate order. They were present and we discussed this with them.*

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THE COURT: All right, sir. *** Well the Court *** will approve the settlement of the parties[.] *** [J]udgment *** will be confessed by *** the original Petitioners [the Allens] *** on Counts II and III [of the counterclaim]. Five thousand dollars ($5,000) sum will be payable by Mr. and Mrs. Allen to Mr. Solis, *** that is inclusive of any *** payment of attorney's fees, court costs, expenses *** of all kinds including monument relocation.

***[T]here is a *** confession to the fact that *** Mr. Solis has superior title to the tract in question, that being a 15 by 495 tract. *** [T]he parties are in agreement that the *** two *** [d]eeds in question 16-07735 and 17-01069 *** will be *** expunge[d] *** [and] charges [will] be *** paid by Mr. and Mrs. Allen.

All other remaining counts pending in the [c]ounterclaim will be *** dismissed with prejudice. All right folks. Anything else?

MR. BROUGHER: *No. That's it. Thanks, Judge*." (Emphases added.)

¶ 20 The record in this case belies any contention that the settlement agreement was entered into "by mistake" because counsel "did not hear *** or understand or recognize" the terms of the agreement that the Allens now wish to avoid. After counsel for Solis recited the terms of the settlement agreement on the record, counsel for the Allens stated he "would confirm *** that is an accurate order." He went on to state that the Allens "were present and we discussed this with them." Counsel for the Allens acknowledged the terms of the settlement agreement a second time when the court repeated the agreement on the record and counsel responded, "That's it. Thanks, Judge." We find the record clearly reflects the Allens, through their counsel, accepted the terms of the final settlement agreement as recited on the record in court. The Allens's counsel acknowledged these now-disputed settlement terms not once, but *twice*. Apart from counsel's own bare assertions, the record is devoid of any evidence that counsel for Solis fraudulently altered the agreement or that an alternative agreement ever existed. We note that Attorney Mockbee's affidavit does not indicate that the disputed terms of the settlement agreement were not discussed during the recess, only that "he does not recall" them being discussed. Therefore, we find the trial court's determination that the parties entered into a valid and binding settlement agreement—the terms of which were recited on the record and set forth in the court's written judgment—was not against the manifest weight of the evidence.

¶ 21 As noted, the Allens also contend the trial court erred in entering a directed verdict in favor of Solis with respect to their claim of adverse possession. Specifically, the Allens claimed superior title to the disputed property. Their claim on appeal that they, not Solis, hold superior title to the disputed property is inconsistent with their agreement reached with Solis in the trial court. "A party is estopped from taking a position on appeal that is inconsistent with a

position the party took in the trial court." *In re Stephen K.*, 373 Ill. App. 3d 7, 25, 867 N.E.2d 81, 98 (2007). Therefore, we reject the Allens's claim regarding the trial court's directed verdict.

¶ 22 B. Sanctions and Attorney Fees

¶ 23 Finally, Solis contends sanctions should be entered against the Allens because this appeal is a frivolous attempt to delay enforcement of the settlement agreement and "harass" Solis.

¶ 24 A reviewing court may impose sanctions against a party for an appeal that is either frivolous or taken for an improper purpose. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). An appeal is frivolous when (1) it is not reasonably well-grounded in fact; (2) not warranted by existing law; (3) is not a good-faith argument for the extension, modification, or reversal of existing law; or (4) a reasonable attorney would not have brought the appeal. *Goldberg v. Michael*, 328 Ill. App. 3d 593, 600, 766 N.E.2d 246, 252 (2002). An appeal is for an improper purpose when the primary purpose of the appeal is to delay, harass, or cause needless expense. *Id.* at 600–01.

¶ 25 Here, we do not find any clear indication that this appeal was taken for purposes of delay or harassment. It is a closer call as to whether the appeal may be considered frivolous. Ultimately, although the Allens did not prevail on appeal, we decline to impose sanctions.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment and deny Solis's request for sanctions.

¶ 28 Affirmed.