PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

Judges who would like to submit their opinions for publication can do so by emailing their opinions as a Microsoft Word document to *opinions@acba.org*. Paper copies of opinions and .pdf versions of opinions cannot be considered for publication.

PLJ

The Pittsburgh Legal Journal Opinions *are published fortnightly by the*
Allegheny County Bar Association
400 Koppers Building
Pittsburgh, Pennsylvania 15219
412-261-6255
www.acba.org

Circulation 5,329

PLJ Editorial Staff

Opinion Selection Policy

Opinions selected for publication are based upon precedential value or clarification of the law. Opinions are selected by the Opinion Editor and/or committees in a specific practice area. An opinion may also be published upon the specific request of a judge.

Opinions deemed appropriate for publication are not disqualified because of the identity, profession or community status of the litigant. All opinions submitted to the Pittsburgh Legal Journal (PLJ) are printed as they are received and will only be disqualified or altered by Order of Court, except it is the express policy of the Pittsburgh Legal Journal (PLJ) not to publish the names of juveniles in cases involving sexual or physical abuse and names of sexual assault victims or relatives whose names could be used to identify such victims.

Opinions

The Pittsburgh Legal Journal provides the ACBA members with timely, precedent-setting, full text opinions, from various divisions of the Court of Common Pleas. These opinions can be viewed in a searchable format on the ACBA website, www.acba.org.

James Eddie Waters v. Express Container Services of Pittsburgh, LLC; Express Container Services LLC; Miller Transporters, Inc.; Miller Transportation Services, Inc.; Miller Intermodal Logistics Services, Inc.; Heniff Transportation Systems, LLC; Heniff Transportation Holdings, LLC; Heniff Holdco, LLC; and Pre-HTS, Inc.

Arbitration Clause

No. GD-20-10701. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
McVay, J.—March 11, 2022.

OPINION

PROCEDURAL HISTORY

The Plaintiff, James Eddie Waters ("Waters") filed a Second Amended Complaint on August 14, 2021 against Miller Transporters Inc. ("Miller"), Miller Transportation Services, Inc., Miller Intermodal Logistics Services, Inc., Heniff Transporters Systems, LLC, Heniff Transportation Holdings, LLC, Heniff Holdco, LLC, Pre-HTS, Inc., and Express Container Services of Pittsburgh, LLC, Express Container Service Limited Liability Company ("Express") alleging a claim for personal injuries that resulted from a fall off a tank trailer located on property owned and/or leased by Defendants Miller and Express in Allegheny County.[1] Express filed its Answer and Miller filed Preliminary Objections to the Second Amended Complaint. Argument on Miller' Preliminary Objections was scheduled for December 13, 2021.

Miller's Preliminary Objections aver that I lack jurisdiction over this matter and Allegheny County is the improper venue pursuant to a lease agreement between Waters and Miller. The Lease agreement included a binding arbitration clause, a forum selection clause requiring all disputes to be litigated in Mississippi, and a covenant not to sue. On December 21, 2021, I overruled Miller's preliminary objections. Miller filed a motion for reconsideration on January 12, 2022, and then immediately filed an appeal on January 14, 2022 to my December 21, 2021 order overruling their preliminary objections. Because of the foregoing opinion, my order overruling Miller's Preliminary Objections should be affirmed and the appeal dismissed.

DISCUSSION

All the other related Miller defendants have been dismissed from this lawsuit and any issues raised on appeal related to them are now moot. The remaining Miller defendant, Miller Transporters, Inc., has admitted that it does business in Pennsylvania and Allegheny County and leased from the co-defendant Express a portion of its property located at 3505 Grand Ave., Pittsburgh, Pa 15225 to operate a truck terminal. The only remaining issue is whether the Allegheny County Court of Common Pleas has jurisdiction and venue over Waters' civil action for personal injuries that occurred at the truck terminal.

> Pennsylvania Rules of Civil Procedure Rule 1006 Venue states,
>
> a) Except as otherwise provided by subdivisions (a. I), (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which
>
> (I) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out or which the cause of action arose or in any other county authorized by law,

It is clear from the pleadings and affidavits that Miller operated its business and leased at least a portion of the property located at 3505 Grand Ave., Pittsburgh, Pennsylvania 15225. This was the precise location of Waters' alleged injury. Miller argues that pursuant to an Equipment Lease and Transportation Agreement entered by the parties in which they agreed "to the exclusive jurisdiction of the state and federal courts situated in Jackson, Mississippi for any litigation arising under or related to the agreement or any business dealings between Miller and Waters" Lease Agreement Miller Exhibit 7. The operative language relied on by Miller to change the venue of this case is "arising under or related to the agreement or business dealings between the parties".

Waters' injuries occurred on property either owned or leased by Miller and/or Express located in Allegheny County. The claim of negligence on the part of Miller and/or Express is not a business dealing, but rather an alleged negligent act or conduct on the part of two different defendants out of which the cause of action arose. lt simply cannot be stated that Water's personal injury claims "arise under" or are related to the lease agreement or business dealings of Waters and Miller.

Miller relies on Central Contracting Co. v C. F. Youngdall & Co. 209 A.2d 810,816 which held "the modern and correct rule is that, while private parties may not by contract prevent a court from asserting its jurisdiction or change the rules of venue, nevertheless, a court in which venue is proper and which has jurisdiction should decline to proceed with the cause when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation. Such an agreement is unreasonable only where its enforcement would, under all circumstances existing at the time of litigation, seriously impair plaintiffs ability to pursue his cause of action."

First and foremost, the Central Contracting case is clearly distinguishable as an assumpsit/breach of contract case which related to performance under the terms of the contract. More significantly, the original parties to the lawsuit were also the parties to the contract which agreed to jurisdiction and venue in New York. The case before me is a tort/personal injury claim in which the other defendant Express is not a party to the Lease Agreement that Miller relies on to change venue. If Waters had brought a suit for breach of contract under the lease agreement, I might agree with the exclusive jurisdiction clause but that's not the case here.

Miller also fails the second prong of Central Contracting, because it is unreasonable to enforce the binding arbitration clause, forum selection clause and covenant not to sue in this litigation. Miller and the other defendant Express were sued by Waters', alleging that they were both negligent arising from the same occurrence which caused his injuries. If Miller were permitted to change venue, the case against Express would remain in Allegheny County without an indispensable party. Waters would be forced to litigate the same cause of action in two separate jurisdictions and Express would not have benefit of the other co-defendant to deflect its liability. Miller chose to do business in Allegheny County and should be subject to the jurisdiction of its courts if its negligence causes injury to someone and if that injury does not arise out of or relate to an unrelated lease agreement. Miller clearly fails the second prong of Central Contracting as it would not be reasonable, now that we are in litigation, to enforce the lease agreement terms.

Waters admits that he was a party to the Equipment Lease agreement but argues that the only equipment covered and listed by the agreement was the truck tractor listed as a 2014 Kenworth VfN 1XK.AD48Xl EJ386127. His second amended complaint clearly indicates that his injuries occurred from falling off a tank trailer which was not listed as equipment covered by the lease. Thus, I find that the arbitration provision, forum selection, and covenant not to sue would not be applicable to his personal injury claim. In fact, I note that the lease agreement equipment schedule is devoid of mention or reference to any trailers. "A written instrument is ambiguous if it is reasonably or fairly susceptible of more than one construction. When a contract is ambiguous, it is undisputed that the rule of contra proferentem requires the language to be construed against the drafter and in favor of the other party if the latter's interpretation is reasonable. (Internal citations omitted) Com., State Pub. Sch. Bldg. Auth. v. Noble C. Quandel Co., 137 Pa. Cmwlth. 252, 267-68, 585 A.2d 1136, 1144 (1991). I find that Waters interpretation of the lease agreement to be reasonable given that the contract was drafted by Miller. If Miller wanted to include possible injuries arising from the use of a trailer they would have provided for that contingency in their contract.

CONCLUSION

In sum, Miller's reliance on the arbitration clause, forum selection clause, and covenant not to sue in the lease of the truck between Waters and Miller is misplaced. Clearly, Waters' personal injury lawsuit stemming from an injury on a trailer cannot, under any reasonable interpretation, "arise under" or be "related to" the truck tractor lease. Thus, the arbitration clause, forum selection clause, and covenant not to sue are not enforceable. I have jurisdiction over this dispute and Allegheny County is the proper venue for this dispute under PA R.C.P. 1006. My December 21, 2021 Order overruling Miller's Preliminary Objections should be affirmed and the Defendant Miller's appeal should be dismissed with prejudice.

BY THE COURT:
/s/McVay, J.

Date: March 11, 2022

[1] By agreement of the parties, an order was filed on February 22, 2022, dismissing Express Container Services Limited Liability Company, Miller Transportation Services, Inc., Miller lntermodal Logistics Services, Inc., Heniff Transportation Systems, LLC, Heniff Transportation Holdings, LLC, Heniff Holdco, LLC, and Pre-HTS, Inc. The only two remaining defendants in this case are Miller Transporters, Inc. and Express Container Services of Pittsburgh, LLC.

Miriam Osorio v. Halbleib Automotive

Late Appeal

No. AR-22-000227. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
McVay, J.—May 3, 2022.

OPINION

FACTS AND PROCEDURAL HISTORY

On 8/3/2021 the Plaintiff Miriam Osorio filed a complaint before District Justice James J. Hanley, Jr. against the Defendant Halblieb Automotive for money damages. On 12/17/2021 the District Justice entered a judgement in favor of Halblieb.

Pursuant to Pa.R.C.P.M.D.J.1002A. a party has 30 days from the entry of the judgement to file an appeal. In this case Osorio had until January 18, 2022, to file her appeal since the 30th day fell on a Sunday and the following Monday 1/17/2022 was Martin Luther King Jr. Day. Osorio avers that she attempted to file her appeal online with the Allegheny County Department of Court Records (DCR) on 1/18/2022 but could not find an appeal form online. She then proceeded to call DCR and was informed by DCR personnel that appeals from District Justice Judgements could not be appealed online but had to be filed in person. Since Osorio lived in Bedford County, she was unable to drive to Pittsburgh on 1/18/2022 in time to file an appeal in person.

Osorio filed her Motion to File a late Appeal Nunc Pro Tunc and her Petition to proceed In Forma Pauperis on 1/24/2022. I signed her IFP order the same day. Osorio filed a Notice to Attend which scheduled the presentation of her Motion to File a Late Appeal for February 18, 2022. At the argument Osorio averred that the reason she did not attempt to file her appeal in person on or before 1/18/2022 was that she had been advised by Kim at DCR that she could file her appeal online and but for this misinformation/miscommunication she would have filed a timely appeal. I denied her Motion to File a Late Appeal for her failure to provide any prima facie evidence that there had been a miscommunication or misinformation on the part of a DCR employee other than her personal recollection of a conversation. I included in my order that if she could obtain an affidavit from a DCR representative that she had been given misinformation or miscommunication I would reconsider her request.

DISCUSSION

Pursuant to Rule 1002 A. of the Pennsylvania Rules of Civil Procedure for Magisterial District Justices a party has thirty (30) days to file their appeal from the entry of the district justice's judgement with the court of common pleas See. Pa.R.C.P.M.D.J.1002A. Rule 1002 states as follows:

Rule 1002. Time and Method of Appeal

> A. A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal the judgment within 30 days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form that shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge. The prothonotary shall not accept an appeal from an aggrieved party that is presented for filing more than 30 days after the date of entry of the judgment without leave of court and upon good cause shown. Pa. R. Civ. P. MAG DIST J RULE 1002.

There is no question that Osorio did not comply with Rule 1002A. and failed to file her appeal within the 30-day time period. The issue to be determined by me was whether her failure to appeal was for good cause. Our Superior court has held that an "Allowance of an appeal nunc pro tunc lies at the sound discretion of the Trial Judge." McKeown v. Bailey, 731 A.2d 628, 630 (Pa.Super.1999) (citations omitted). In the usual case, where a party requests permission to file an appeal nunc pro tunc, it is because counsel for the appealing party has not timely filed an appeal. That party must therefore show more than mere hardship. Rather, a trial court may grant such an appeal only if the delay in filing is caused by "extraordinary circumstances involving 'fraud or some breakdown in the court's operation through a default of its officers.' " Nagy v. Best Home Servs., Inc., 829 A.2d 1166, 1167 (2003).

Osorio argued that a DCR employee (Kim) advised her that she could file an appeal electronically and that this represented a breakdown in the court's operation warranting her to be permitted to file an appeal nunc pro tunc. I gave her an opportunity to provide some prima facie evidence which she was unable to produce.

In addition, Osorio makes an admission in her Concise Statement of Errors paragraph 15 that her conversation with Kim from DCR took place on 12/7/2021, ten (10) days before the judgement was entered in this case and about another case that she was a party to. At the time of this conversation, Osorio was attempting to change her address on the docket electronically. When Osorio called DCR she spoke to Kim who advised her that she could not make a change of address electronically but rather had to be completed in person or by mail. I note that Osorio never avers that she asked Kim from DCR specifically about whether a party could file an appeal electronically or about the case sub judice, but rather their conversation was limited to the procedure of changing of a party's address with DCR on another case.

It appears that Osorio made the incorrect assumption from this prior conversation about a different DCR procedure and different case that she could file an appeal electronically. I do not find this a sufficient breakdown in the operation of the court to equate to an extraordinary circumstance for good cause. By Osorio's own admission she did not specifically seek advisement from DCR on filing an appeal electronically until January 18, 2022, the date the statute ran and was told correctly that she could not file her appeal electronically.

Osorio also claims that her Motion for Reconsideration was ignored by the court. A review of the docket indicates that she never filed her Motion for Reconsideration with DCR. Osorio's motion also lacked a certificate of service that the opposing counsel was served a copy. I cannot and will not review or schedule an argument date on a Motion for Reconsideration that has not been filed with DCR and served on the opposing party to provide them an opportunity to respond. Therefore, no action was taken on Osorio's Motion for Reconsideration which by her own admission did not have an affidavit or other evidence from DCR that she had been provided inaccurate information regarding filing an appeal.

CONCLUSION

In conclusion, Osorio's own assumption that a different DCR procedure applied to her appeal is not cause for me to find an extraordinary circumstance existed showing good cause to grant her Motion for a Late Appeal. Further, Osorio's Motion for Reconsideration was not ignored by the court because it was never filed and served on the opposing party.

BY THE COURT:
/s/McVay, J.

Date: May 3, 2022