Affirmed and Opinion filed September 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00416-CV

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JOSE LUIS HERNANDEZ & LUZ ELENA HERNANDEZ, Appellant

V.

USA BAIL BONDS, Appellee

On Appeal from the 133rd District Court
Harris County, Texas
Trial Court Cause No. 97-02780

O P I N I O N

Jose Luiz Hernandez and Luz Elena Hernandez (the "Hernandezes"), appellants, appeal a final judgment in favor of USA Bail Bonds ("USA"), appellee, in USA's breach of contract action. The Hernandezes raise four issues on appeal challenging the judgment's validity. They contend the trial court erred in (1) rendering judgment without their consent; (2) rendering a judgment that was not dispositive as to all defendants; (3) finding the Hernandezes had waived their right to a jury trial; and (4) rendering judgment in favor of USA, whom the Hernandezes allege is a non-party to the suit. We affirm the court's judgment.

BACKGROUND

On February 13, 1996, USA posted bail in the amount of $100,000 on behalf of William Valdi Caicedo. The Hernandezes executed contracts to indemnify in which they agreed to act as sureties for $100,250, plus all reasonable and necessary expenses incurred in apprehending Caicedo in the event Caicedo forfeited his bond. On April 8, 1996, Caicedo failed to appear in court and, thus, forfeited the bond. Subsequently, the Hernandezes failed to pay USA pursuant to the contracts.

In January 1997, USA sued the Hernandezes for breach of contract. On the day of trial, the parties announced that a settlement agreement had been reached. USA's attorney read the terms of the settlement into the record, and both parties asked the court to enter an order on the terms of the agreement. The court rendered judgment in open court and instructed the parties to submit a signed final judgment by November 17, 1997, for the court's signature. But when USA tendered its proposed Final Judgment, the Hernandezes refused to sign it. On November 24, USA filed a Motion to Enter Final Judgment. The Hernandezes responded, asserting the form of the proposed Final Judgment was "absolutely and irreconcilably at variance" with the settlement agreement. On December 29, the court, having drafted its own order, entered judgment on the settlement agreement. This appeal follows.

LACK OF CONSENT

In their first point of error, the Hernandezes complain the trial court erred in signing the Final Judgment because the parties no longer agreed on the terms of the settlement. The Hernandezes state there are "absolute and irreconcilable variances" between the settlement agreement and the Final Judgment. Therefore, because of these variances and because the trial court was on notice of the disagreement between the parties, they claim the Final Judgment should be set aside and the parties should be allowed to proceed to a trial on the merits. For the following reasons, we disagree and affirm the trial court's judgment.

The first issue to be decided is when was judgment rendered by the trial court. The law

is well settled that a judgment is rendered when the trial court announces its decision in open court. *See S & A Restaurant v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995). "Rendition is the judicial act by which the court settles and declares the decision of the law upon the matters at issue." *Catlett v. Catlett*, 630 S.W.2d 478, 482 (Tex.App.–Ft. Worth 1982, writ ref. n.r.e). The rendition must be clear and unambiguous; "the trial court must clearly indicate its intent to render judgment at that time rather than in the future." *Patel v. Eagle Pass Pediatric Health Clinic, Inc.*, 985 S.W.2d 249, 252 (Tex.App.–Corpus Christi 1999, n.p.h.) (citing *S& A Restaurant*, 892 S.W.2d at 857-8; *Reese v. Piperi*, 534 S.W.2d 329, 330 (Tex. 1976)). The law is also well settled that at the time of rendition, all the parties must consent to the agreement underlying the judgment. *See First Heights Bank, FSB v. Marom*, 934 S.W.2d 843 (Tex.App.–Houston [14th Dist.] 1996, no writ). In this case, the Hernandezes argue that at the time the court signed the Final Judgment, they no longer consented to the terms of the settlement; however, it is the rendition and not the signing of the judgment which controls the disposition of this case.

The case was called to trial on November 10, 1997, at which time the parties announced they had reached a settlement agreement. USA's attorney then read the terms of the "proposed agreement" into the record as follows: the Hernandezes agreed to pay $8,500 at 6% interest by making monthly payments of $150 until the note was paid.[1] The trial judge asked the Hernandezes, "are the terms as they have been dictated by counsel your understanding of the terms?" Both answered "yes" to this question and asked the court to enter judgment on those terms. The trial judge then said, "if that be the case, then judgment is rendered accordingly." Further, the docket sheet notation reads "terms dictated into the record and judgment rendered accordingly." This court has stated that the language "judgment rendered accordingly"

[1] At this time there was also an announcement that the Hernandezes had agreed to "make a lump sum [down] payment to initiate payments," but no amount had been decided on. However, they do not complain of the absence of this term from the Final Judgment signed on December 29, 1997, nor do they use this to demonstrate lack of consent at the time judgment was rendered. In any event, neither the existence nor the amount of a down payment are material under the terms of the Final Judgment.

constitutes rendition of judgment and binds the parties to a stipulated agreement. *See Wharton v. Gonzales*, 761 S.W.2d 72, 74(Tex.App.–Houston [14th Dist.] 1988, no writ). In this case, then, we find judgment was rendered on November 10, 1997. The reduction of this agreement to writing on December 29, 1997, was "a purely ministerial act by which the evidence of [the] judicial act [of rendition was] recorded." *Harper v. Welchem*, 799 S.W.2d 492, 493 (Tex.App.–Houston [14th Dist] 1990, no writ). Moreover, we find the Hernandezes consented to the terms of the settlement at the time judgment was rendered.

At the close of the hearing, the trial judge asked the parties to prepare a written order and present it to the court by November 17,1997. However, the Hernandezes did not cooperate. The record reflects that USA's attorney made repeated phone calls which went unreturned, and, after faxing the Hernandezes a copy of the proposed Final Judgment, was informed by Jose Luis Hernandez that his attorney would have to review it.[2] On November 24, USA submitted a Motion to Enter Final Judgment with the proposed Final Judgment attached. The Hernandezes voiced an objection to the terms of the settlement agreement as they were reflected in the proposed Final Judgment.[3] However, the court did *not* adopt USA's proposed Final Judgment. The court drafted its own Final Judgment which accurately reflects the terms upon which judgment had already been rendered.[4] But the Hernandezes complain that the "absolute and irreconcilable variances" remain in the Final Judgment signed on December 29, 1997. For the reasons explained below, the terms the Hernandezes complain of do not constitute "absolute and irreconcilable variances."

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[2] The Hernandezes were and are pro se.

[3] The terms of the proposed Final Judgment were as follows: the Hernandezes would pay a total of $8,500. This would be achieved by making a $1,500 down payment (due on December 20, 1997) and monthly payments of $150 (to be paid beginning January 5, 1998). The Hernandezes would also be charged a 6% prejudgment interest rate and a10% post-judgment interest rate.

[4] The terms of the Final Judgment drafted and signed by the court are: the Hernandezes would pay a total of $8,500 which would be achieved by making monthly down payments of $150 (to be paid beginning January 5, 1998). The Hernandezes would be charged a 6% post-judgment interest rate.

First, the Final Judgment orders payments to be made "on the 5th day of each month beginning on January 5, 1998." We find this requirement is not an additional term; rather, we find such a requirement is only incidental because the Hernandezes had already agreed to make monthly payments. Second, the Final Judgment imposes a post-judgment interest rate of 6% per year. The record clearly reflects this term had also been agreed to by the Hernandezes. Thus, the court was *not* "supply[ing] terms, provisions or conditions not previously agreed upon by the parties." *Tinney v. Willingham*, 897 S.W.2d 543, 544 (Tex.App.–Ft. Worth 1995, no writ). Moreover, these terms do *not* conflict with the terms of the settlement agreement. *See Id.* Accordingly, the first point of error is overruled.

WAIVER OF JURY TRIAL

In their third point of error, the Hernandezes first assert the trial court erred in finding they had waived their right to a jury trial by entering into the settlement agreement on the day the case was called to trial. There is no question the Hernandezes had timely perfected their demand for a jury trial. The record indicates the trial judge had already called for a jury when he was notified of the parties' agreement that no jury was needed. Moreover, the trial judge announced he was ready to proceed with a bench trial, but again the parties stated no trial was necessary. The case was not tried before either a jury or the judge because a settlement had been reached. Nevertheless, the Hernandezes argue this was not an effective waiver.

The main issue in the case below was a simple one: Had the Hernandezes breached their agreement with USA by refusing to pay? However, the settlement agreement disposed of this issue because the Hernandezes agreed to pay a portion of what they owed under their contracts with USA. Accordingly, all issues that would have been submitted to a jury were disposed of by the terms of the settlement agreement and Final Judgment.

The Hernandezes also assert the trial court erred because it denied their Motion to Set Aside Judgment and Motion to Proceed to a Jury Trial. The Hernandezes argue that because the settlement talks "broke down" and no agreement could be reached, they are entitled to a

jury trial on the merits of the underlying case. We disagree. The question before this court of whether the underlying claims had been settled is "not a factual query, but the interpretation of a settlement agreement." *Hurst v. American Racing Equip., Inc.*, 981 S.W.2d 458, 461 (Tex.App.–Texarkana 1998, no pet.). We already have found that judgment was rendered on November 10, at which time the Hernandezes consented to the terms of the settlement. Further, we have found the variances complained of between the settlement agreement and the Final Judgment drafted and signed by the trial court to be immaterial. Therefore, the trial court correctly denied the Hernandezes motions, and their third point of error is overruled.

MISCELLANEOUS

In their second point of error, the Hernandezes complain the trial court erred by signing a Final Judgment that was not dispositive as to all defendants because there is no mention of Freddie Butler. However, the record reflects that USA non-suited Freddie Butler on October 23, 1997. Thus, he was not a party at the time judgment was rendered. Therefore, appellant's second point of error is without merit and is overruled.

By their fourth point of error, the Hernandezes complain the trial court erred in signing the Final Judgment because USA had no contractual relationship with the Hernandezes. The Hernandezes argue the wrong plaintiff has sued them because they contracted with AAA USA Bonding Company not USA Bail Bonds. However, the record indicates USA used the name AAA USA Bonding Company when the business first began. The record further shows USA is a sole proprietorship, is the same company, and has the same owner as AAA USA Bonding Company. Appellants' fourth point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed September 23, 1999.

Panel consists of Justices Yates, Fowler and Frost.

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