

RENDERED: APRIL 22, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000484-MR

MELISSA BENNETT

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE JERRY D. WINCHESTER, JUDGE
ACTION NO. 03-CI-00044

NATIONWIDE MUTUAL FIRE AND INSURANCE
COMPANY, R. CRAIG REINHARDT, AND
CUMBERLAND VALLEY NATIONAL BANK

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF AND TACKETT, JUDGES; EMBERTON, SENIOR JUDGE.¹

TACKETT, JUDGE: Melissa Bennett appeals from the judgment of the Whitley Circuit Court, which enforced a settlement agreement between her and defendants Nationwide Mutual Fire and Insurance Company (Nationwide), R. Craig Reinhardt of Fowler, Measle & Bell, LLP, and Cumberland Valley National Bank. Bennett argues

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

that the offer of settlement was revoked when she hired new counsel to pursue this action. The circuit court held that the settlement offer was still valid, in spite of the change of counsel, and enforced the agreement. We affirm.

Melissa Bennett had her driver's license revoked and bank account with Cumberland Valley National Bank garnished in 2001, as a result of a subrogation action brought by Reinhardt on behalf of Nationwide. Bennett happened to have the same name as another person, who had a default judgment entered against her for an automobile accident, and through a mistake, Reinhardt sought enforcement of the judgment against the wrong person. Bennett's bank account was closed and her credit history damaged from the garnishment. Bennett hired attorney Johnnie Turner to bring an action against the defendants for their wrongful actions.

Turner filed a complaint on Bennett's behalf in January, 2003, and demanded \$6,000 and a letter of apology to settle the claim, which the parties rejected due to a dispute among them about relative shares of responsibility. Reinhardt states in his brief that the law firm was willing to settle for \$4,500, on the belief that the bank would pay the remaining \$1,500, but the bank was, seemingly, unwilling to do so. In May, Turner again demanded \$6,000 to settle the claim, and the parties made a \$5,000 counter-offer, which Bennett rejected. In

June, the defendants' attorney, David Knights, sought clarification that the \$6,000 demand applied to settlement of all claims against all parties. On September 8, 2003, Turner again demanded \$6,000 to settle the claim, reiterating the terms of the prior demand, stating that Bennett was still willing to settle if the matter could be "settled in the immediate future". The defendants claim that they tried to accept the settlement by telephone, but were unable to contact Turner; ultimately, they accepted by a letter sent both by fax and regular mail dated October 14, 2003. Meanwhile, after Turner sent the September 8 letter but before the attempt to accept by the defendants, Bennett had discharged Turner and hired Thomas Carroll to pursue this action, and Carroll filed a motion to substitute counsel and sent notice that he was now representing Bennett. The letter did not specifically state that all previous offers of settlement were revoked, but it did not state that any outstanding offer was still valid either. The defendants filed a motion to enforce the settlement agreement, which the court treated as a motion for summary judgment. The court held that in light of all the relevant facts, the acceptance of the offer was valid and therefore a contract to settle the matter was formed. This appeal followed.

This unusual case requires this Court to review de novo the question of law on which the court based its ruling.

If the September 8 offer by Bennett, made through counsel, was still a valid offer at the time of the defendants' acceptance, then the parties had a valid agreement to settle the case. If Bennett's decision to substitute counsel acted as a revocation of the offer, or if the offer was not accepted within a reasonable time, then no contract to settle existed and Bennett's action must go forward. The underlying facts are not in dispute. The only question to be resolved is whether the offer was still open for the defendants to accept on October 14. We hold that it was.

To us, the most relevant fact is that this offer was the same offer that Bennett had been making all along. She had been seeking \$6,000 and a letter of apology since the action was filed. Other than the change of counsel, nothing had changed since Bennett filed suit; no new facts had come to light, and it seems that there was never a serious debate regarding the defendants' liability. If the offer was no longer valid, Bennett's new counsel should have stated so in his letter to the defendants' counsel, given the relevant facts available. Similarly, counsel could have contacted Turner about the status of settlement negotiations, but nothing indicates that he did. The substitution of counsel, by itself, did not necessarily indicate a change on the part of Bennett in her willingness to

settle the matter, absent specific statements or actions to the contrary.

The limiting language "in the immediate future" does not specify a time frame. Therefore, the defendants had to accept within a reasonable time. Given that the offer was unchanged from as far back as January, it was reasonable for the defendants to accept it within five weeks.

Bennett argues that the purported acceptance was not an acceptance at all, but a counteroffer, arguing that it contained materially different terms. We do not agree. The additional terms inserted by Knights operated only to effectuate a settlement of all claims between all parties, including, of necessity, Bennett's husband. There was no material variance in the essential terms of the offer, and therefore it was not a counteroffer.

This remains a close case, but given the facts and circumstances surrounding the case, we believe that the circuit court did not err in enforcing the settlement agreement.

For the foregoing reasons, the judgment of the Whitley Circuit Court is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE, NATIONWIDE
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NO BRIEF FOR CUMBERLAND VALLEY
BANK