

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000901-MR

JAMES G. HINES

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 03-CI-00319

STEVEN E. FURLONG

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE: Appellant James G. Hines appeals the directed verdict of his action for collection of a debt on the basis of the statute of limitations. We affirm.

The undisputed facts are that on August 10, 1977, appellee, Steven E. Furlong, and his then fiancée, Donna Hines, borrowed from the James R. Hines Corporation the sum of twelve thousand dollars and signed a promissory note for that sum. According to the note it was due and payable on January 2, 1978. Appellee and Donna Hines were married two months after the

execution of the promissory note. Appellant, James G. Hines, is the father of Donna Hines and thus was the father-in law of appellee. Appellant purchased the subject promissory note from the James G. Hines Corporation in November 1977, and is the current holder of the note. The note was never paid. It was not an issue until the divorce of appellee and his wife in 2003. During the divorce proceedings, appellant testified regarding the note. The Warren County Family Court held that the promissory note was non-marital and that appellant could pursue collection in accordance with the terms of the note and governing state law.

Appellant filed a complaint in the Warren Circuit Court on March 3, 2003, alleging that the note was due and payable. Appellee's motion for summary judgment was denied and a jury trial was conducted. The court below directed a verdict based on the statute of limitations, KRS 355.3-118, which provides that an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date stated in the note. The court further held that any extensions were in violation of the Statute of Frauds since no written extension was ever made.

Appellant challenges these conclusions on appeal, asserting that he had the right to extend the note and that the Statute of Frauds is inapplicable to a contract which may be

performed within a year. When reviewing a ruling on a motion for directed verdict, the appellate court must ascribe to the evidence all reasonable inferences and deductions which support the claim of the prevailing party, and cannot substitute its judgment for that of the trial court unless its determination was clearly erroneous. Bierman v. Klapheke, 967 S.W.2d 16, 18 (Ky. 1998).

We find no error. The statute of limitations is clear that an action on a note due at a particular time must be commenced within 6 years, and appellant waited 25 years before filing suit. Appellant concedes in his brief on appeal that the note was payable at a definite time when it was issued because it states a fixed due date of January 2, 1978. Appellant argued at trial that the date of the note was extended. He cites KRS 355.3-118 as support for the proposition that he was empowered as the holder of the note to extend the time for payment.

There is indeed authority for the proposition that, even without an express right on the face of the note to extend, any holder has a right to extend the obligor's obligation to pay. David J. Leibson & Richard H. Nowka, *The Uniform Commercial Code of Kentucky* § 4.1(A)(4) (2d ed. 1992). Nevertheless, appellant provided no evidence of a valid extension of the time to pay. The burden of proving an agreement for an extension of time is on the party alleging it.

Bradford v. Union Trust Co., 242 Ky. 709, 47 S.W.2d 536, 538 (1932). In order for an agreement for the extension of time of a note to be enforceable it must be supported by a new consideration and *must be for a definite period of time.* Bradford, 47 S.W.2d at 537; Bates' Adm'r v. Lockery, 241 Ky. 498, 44 S.W.2d 589 (1931); Robinson v. Miller, 2 Bush 179, 65 Ky. 179 (1867); 11 Am Jur 2d, Bills and Notes § 198.

Appellant expressly testified that he never gave a specific date to appellee as to when the note would come due. Therefore, appellant did not create a valid and enforceable extension, and he was subject to the statute of limitations on the original date of the note. The trial court properly granted the motion for directed verdict in favor of appellee. As a result of this determination, we find it unnecessary to address the Statute of Frauds issue.

For the foregoing reasons, we affirm the directed verdict in favor of appellee in the Warren Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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