

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001564-MR

SIMON RATLIFF AND GWENN RATLIFF

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 05-CI-00436

PIONEER CLEANING SERVICES, LLC

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HOWARD AND MOORE, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

HOWARD, JUDGE: Simon and Gwenn Ratliff (hereinafter the Ratliffs) appeal from a judgment of the Pike Circuit Court, in which the Ratliffs were ordered to pay \$7,551.25, plus interest, to Pioneer Cleaning Services, LLC (hereinafter Pioneer) for cleaning services related to fire damage to the Ratliff's home. Finding no error, we affirm.

The facts of this matter are as follows. On May 4, 2003, the Ratliffs suffered a fire to their mobile home. Both the home and its contents suffered smoke and

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

water damage. The Ratliffs had insurance on the mobile home with Allstate Insurance Company. Allstate's claims adjuster gave the Ratliffs the names of several companies who offered cleaning services for smoke and soot damage, one of which was Pioneer. Gwenn Ratliff contacted Pioneer for an estimate. On May 5, 2003, Terry Savage of Pioneer and Allstate's adjuster met at the Ratliff's home and inspected the damage. Gwenn Ratliff was also present. Pioneer provided an estimate of the cost of the clean-up to the adjuster, who agreed to pay that amount. Gwenn Ratliff authorized Pioneer to begin the clean-up work.

Pioneer completed its work on May 17, 2003. On that same day, Gwenn Ratliff delivered a check for \$500 to Pioneer, representing the deductible under the Ratliffs' insurance policy. Pioneer then submitted its final statement for services to Allstate, in the sum of \$8,051.25, less the \$500 deductible, leaving a balance due of \$7,551.25. Allstate sent its check, for the total bill of \$8,051.25, to the Ratliffs.² However, the Ratliffs refused to pay the remaining balance to Pioneer, apparently unhappy with Pioneer's work.

Pioneer then filed a complaint in Pike Circuit Court against the Ratliffs, seeking payment for their services. The Ratliffs filed a *pro se* document, styled a "Motion of Defense," which was accepted by the circuit court as an answer.

² It is unclear why Allstate paid the full amount of the bill, instead of deducting the \$500.00 deductible, which the Ratliffs conceded they owed under their policy, or why Pioneer's name was apparently not placed on the check. Allstate also paid other sums to the Ratliffs, unrelated to Pioneer's claim.

At a hearing before the court on August 12, 2005, the trial judge indicated his intent to set the case for trial. The Ratliffs at that time orally requested a trial by jury. The judge inquired whether they knew how to select a jury and “the rules of evidence and that stuff?” Mr. Ratliff responded, “Oh, yes sir, we should be able to get by, your honor.” The judge then asked if anyone had requested a jury trial in their pleadings. Pioneer's counsel apparently checked his file and correctly advised the court that neither side had made such a request. The court then refused to order a jury trial, and scheduled the matter for a bench trial instead. The trial was conducted on December 8, 2005, and the circuit court, after hearing evidence for both sides, made findings of fact and entered a judgment in favor of Pioneer on July 5, 2006. This appeal followed.

The Ratliffs request a reversal of the judgment on the sole ground they were improperly denied their right to a jury trial. That right is well established in Kentucky law. Section 7 of the Kentucky Constitution provides,

The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this constitution.

Kentucky courts have stated, “[t]he right to trial by jury has occupied a central place in our jurisprudence.” *B.F.M. Bldg., Inc. v. Trice*, 464 S.W.2d 617, 619 (Ky. 1971); and, “[t]he fundamental right to a trial by jury, when a proper demand is made, is recognized by the Kentucky Constitution in Section 7, and incorporated into the Kentucky Rules of Civil Procedure . . .” *Whitfield v. Cornelius*, 554 S.W.2d 870, 871 (Ky. App. 1977).

Relative to civil cases, Kentucky law has recognized exceptions to this right when the cause of action, at common law, would have been regarded as arising in equity, rather than law, *Reese's Administrator v. Youtsey*, 113 Ky. 839, 69 S.W. 708 (1902); and where the amount in controversy does not exceed \$250.00, KRS 29A.270(2). Neither of these exceptions apply in this case. Therefore, the Ratliffs were entitled to a jury trial, even though they were appearing before the circuit court, *pro se*.

However, there are also rules regarding the process for demanding a jury trial. Specifically, that process is set out in the Kentucky Rules of Civil Procedure, CR 38.02, which states:

Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party, and if indorsed on the complaint, the filing of the complaint shall constitute service of the demand.

See also Ohio River Pipeline Corp. v. Landrum, 580 S.W.2d 713 (Ky. App.1979).

CR 38.04 states,

The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5.05 constitutes a waiver by him of trial by jury. . . .

In this case, the Ratliffs never made a written demand for a jury trial, either in their Motion of Defense, within ten days thereafter, or at any time. The failure of a party to make a proper demand for a jury trial constitutes a waiver by that party.

Williams v. Whitaker, 293 S.W.2d 627 (Ky. 1956). The Ratliffs argue that great

deference should be given to *pro se* litigants but cite no authority that *pro se* litigants do not have to meet the requirements of CR 38.02 in demanding a jury trial. The trial court noted on the record that the Ratliffs had not made a proper request for a jury trial. We cannot say that the court abused its discretion in denying the oral request, or in trying the case without a jury.

Pioneer has also argued that the Ratliffs failed to put on any evidence that would have supported a verdict in their favor, and that therefore Pioneer was entitled to a directed verdict at the close of all the evidence, making any error in failing to grant a jury trial harmless, pursuant to *Spellman v. Fiscal Court*, 574 S.W.2d 342 (Ky. App. 1978). Because we find no error on the part of the trial court in denying a jury trial under these circumstances, as set out above, we need not consider this argument.

The judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Thomas W. Goodman, Jr.
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Donald H. Combs
Pikeville, Kentucky