

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

EMILY B. RUTHERFORD

Plaintiff

-vs-

NORMAN R. INGLE, ET AL.

Defendants-Appellees

-vs-

ROBERT RUTHERFORD

Third Party Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 08-CA-141

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Case No. 06 CV 1684

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 18, 2009

APPEARANCES:

For Third Party Defendant-Appellant,
Robert Rutherford

For Defendants-Appellees,
Norman and Teri Ingle

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Hoffman, P.J.

{¶1} Appellant Robert Rutherford appeals the October 10, 2008 Judgment Entry of the Licking County Court of Common Pleas granting Appellees Norman R. Ingle and Teri L. Ingle's motion to enforce a settlement agreement between the parties, and denying Appellant's motion for reconsideration.

STATEMENT OF THE FACTS AND CASE

{¶2} Emily B. Rutherford owns property on which a driveway exists providing access to property owned by Appellees Norman R. Ingle and Teri L. Ingle. The easement for use of the driveway provides a right-of-way for the premises owned by Appellees. Appellants aver the easement permits use for the occupancy of one family only and for no other purpose.

{¶3} A dispute arose when Appellees commenced building a second one-family residence on their property, utilizing the driveway for access to the second residence.

{¶4} On November 13, 2006, Emily Rutherford¹ filed a complaint in the Licking County Court of Common Pleas seeking a temporary restraining order, a preliminary injunction and a permanent injunction enjoining Appellees from using said driveway and easement for right-of-way for ingress and egress to the second residence. The Rutherfords further sought an order terminating the easement and right-of-way, and also for damages and attorney fees.

¹ Appellant Robert Rutherford was not a party to the initial complaint. Appellant is the spouse of Emily B. Rutherford; therefore, he has a dower interest in the real estate subject to these proceedings. Appellees filed a third-party complaint against Appellant Robert Rutherford.

{¶5} The trial court scheduled the matter for a jury trial on April 7, 2008. Prior to trial, the parties purportedly settled the case indicating to the trial court the case was settled and dismissed.

{¶6} On May 28, 2008, Appellees filed a motion to enforce settlement.

{¶7} On July 15, 2008, the trial court scheduled a conference to discuss the arguments with regard to Appellees' motion to enforce the settlement agreement. The trial court offered the parties an evidentiary hearing on the motion, and all parties waived said evidentiary hearing.

{¶8} On July 29, 2008, the trial court granted the motion to enforce the settlement agreement via a Memorandum of Decision, ordering counsel for Appellees to submit a Judgment Entry containing a legal description of the property and stating a certified copy of the entry shall serve as the conveyance of the easement from Appellants to Appellees.

{¶9} On August 18, 2008, Appellant filed a motion for reconsideration, which the trial court denied on September 3, 2008.

{¶10} Via Judgment Entry of October 10, 2008, the trial court granted the motion to enforce settlement agreement as submitted by counsel for Appellees, and denied Appellant's motion for reconsideration.

{¶11} Appellant now appeals, assigning as sole error:

{¶12} "I. THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION TO ENFORCE SETTLEMENT AND DENYING APPELLANT'S MOTION FOR RECONSIDERATION BY FINDING THAT THE PURPORTED SETTLEMENT AGREEMENT CONSTITUTED A BINDING CONTRACT."

{¶13} Settlement agreements are considered contracts; therefore, their interpretation is governed by the law of contracts. *In re All Kelley and Ferraro Asbestos Cases*, 104 Ohio St.3d 605. Accordingly, reviewing courts must determine whether the trial court's order is based on an erroneous standard or misconstruction of law. *Continental W. Condominium Unit Owners Assn. v. Howard F. Ferguson, Inc.* (1996), 74 Ohio St.3d 501.

{¶14} Appellant argues there was no meeting of the minds with regard to the settlement agreement as the terms of the agreement failed to address the allegations contained in the complaint and issues on which Appellant was prepared to introduce evidence.

{¶15} Upon review of the settlement agreement and the record, Appellant did not object to the terms of the settlement agreement at the time the same was read into the record before the trial court. Rather, the following exchange occurred before the court:

{¶16} "The Court: This is the case of Emily Rutherford versus Norman Ingle, et al., Case Number 06 CV 1684. The parties are present in court with counsel. This matter was set for trial by jury. The Court has been informed that there has been resolution of this that needs to be put on the record. Counsel wish to put the settlement terms on the record at this time?"

{¶17} "Mr. Cahill: One moment, Your Honor.

{¶18} "Your Honor, this is John Cahill, attorney for the defendant. The settlement terms are as follows: The defendants agree to pay \$30,000 to the plaintiffs. In exchange, the plaintiffs will give the defendants a complete release of all claims and

the parties will file a dismissal with prejudice of all claims that are currently pending. The - - there will be a new easement that will be prepared. The easement would be to allow two family houses, one on each parcel, giving those two families the free flow of ingress and egress through the easement. The easement would contain language that if the terms of the easement are violated by the owner of 170 Joy Lane, for example, it would not impact the rights of the other owner at 176 Joy Lane to use the easement. The language of the easement would be added acknowledging that the parcel on which the guest house is located contains the guest house, and the easement can be used by persons staying in the guest house to access the guest house so long as the persons occupying the guest house are not doing so pursuant to a rental or lease agreement. And it is agreed that the language in the easement as it currently stands concerning the gate would not be changed. (Emphasis added.)

{¶19} “Mr. Norm Ingle, is this your understanding of the agreement?”

{¶20} “Mr. Norman Ingle: That we would have a free flow back and forth on the easement.

{¶21} “Mr. Cahill: Correct. And that the gate language would not be changed.

{¶22} “Mr. Norman Ingle: Correct.

{¶23} “Mr. Cahill: And Terry Ingle, is that your understanding as well?”

{¶24} “Ms. Terry Ingle: Yes.

{¶25} “Mr. Cahill: For the record, both clients yes.

{¶26} “I also have with me Attorney Andy Crawford, who’s acting as personal counsel on the issue of the easement.

{¶27} “Mr. Crawford: The only thing I might add, Your Honor, and it’s the - - on the - - I think we would have to have reciprocal language on the Item 2 where it says the terms of the easement if violated by the owner of 170 Joy Lane would not impact the right of the owner of 176 Joy Lane to use the easement. I think in order to make the current property saleable, we’d have to have a reciprocal right on that, that if 176 would violate the easement, it won’t terminate the easement for 170.

{¶28} “Mr. Greene: We have no objection to that.

{¶29} “Mr. Crawford: Okay.

{¶30} “The Court: So noted.

{¶31} “Mr. Greene, is this your understanding as well?

{¶32} “Mr. Greene: Yes, Your Honor. I do want to add for the record that the easement we’re referring to is the easement recorded in Volume 445 at page 382 of the deed records of Licking County, Ohio, and that the easement will remain the same in all respects except as modified by this agreement.

{¶33} “The Court: And the parties are in agreement?

{¶34} “Mr. Greene: We are in agreement with that.

{¶35} “Mr. Cahill: One moment, Your Honor.

{¶36} “It is important that my client have the language concerning the free flow of traffic concerning ingress and egress. My clients are in agreement with this - - with the settlement terms.

{¶37} “Mr. Greene: Don’t know about that. I guess that is coming up for the very first time as we’re sitting in the courtroom.

{¶38} “The Courtroom: Well, an easement is an easement. If it grants - - easement does grant the free flow, so that is noted by the Court.

{¶39} “Mr. Cahill: Mr. Norm Ingle would like to make a statement just to make sure - -

{¶40} “The Court: Well, I want to go through counsel.

{¶41} “Mr. Cahill: Okay.

{¶42} (Off-The-Record Discussion Held.)

{¶43} “Mr. Cahill: Yes, we have had - - simply stated, I have had an opportunity to consult with my client, and we have adequately stated the settlement terms.”

{¶44} Tr. at 3-7.

{¶45} We find Appellant consented and agreed through his attorney, Mr. Green, to the terms of the settlement agreement sought to be enforced resolving all claims of the parties. Accordingly, we find the trial court did not err in granting Appellees’ motion to enforce the settlement agreement.

{¶46} The October 10, 2008 Judgment Entry of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

