

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

CACV OF COLORADO, LLC,
Plaintiff below, Appellant

v. No. 35559 (Kanawha County Civil Action Nos.
00-C-3022; 01-C-2085; 02-C-2435)

INA HAYNES,
Defendant below, Appellee

FILED
February 11
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA, 2011

MEMORANDUM DECISION

Appellant CACV of Colorado, LLC, (hereinafter “CACV”) plaintiff below, obtained two judgments against appellee Ina Haynes, defendant below, in the Circuit Court of Kanawha County in 2001. On March 11, 2009, the Circuit Court entered orders releasing Haynes from the judgments. Subsequently, in two final orders entered on November 6, 2009, the Circuit Court denied CACV’s motion, filed pursuant to Rule 60(b) of the West Virginia Rules of Civil Procedure, for relief from the March 11, 2009 orders.

CACV appeals to this Court from the denial of its Rule 60(b) motion, contending that the judgments against Haynes were never satisfied and should be restored by this Court. For the reasons stated below, however, this Court is of the opinion that both the release of Haynes from the two judgments and the denial of CACV’s Rule 60(b) motion were matters within the discretion of the Circuit Court. Accordingly, the final orders of November 6, 2009, are affirmed.

I.

In 2001, CACV obtained a \$7,344.80 judgment against Haynes in Civil Action No. 00-C-3022 and a \$7,882.19 judgment against Haynes in Civil Action No. 01-C-2085, both in Kanawha County. In 2003, a third judgment was obtained against Haynes in the amount of \$3,788.39 by Portfolio Recovery Associates. The Portfolio judgment, also in Kanawha County, was in Civil Action No. 02-C-2435. The plaintiffs in all three actions were represented by the law firm Martin & Seibert. In the Portfolio action, the agreed judgment order stated that, as long as Haynes continued to make monthly payments, Portfolio would not execute on the judgment. In the two CACV actions, Martin & Seibert sent a letter to Haynes memorializing a settlement agreement wherein Haynes would satisfy both CACV judgments for a total of \$9,600.00, payable in monthly installments. The record indicates that Haynes made payments with checks which combined monthly amounts due on the three judgments and which were made payable to Martin & Seibert.

The record is undisputed that Haynes made significant, if not substantial, payments on all three judgments through Martin & Seibert. In April 2006, the account of judgment creditor Portfolio was transferred to another law firm, Booth & McCarthy, for collection. The record indicates that Daniel T. Booth, who then handled the Portfolio account, had previously worked for Martin & Seibert.

II.

Sharp conflict arose in December 2008 when a suggestee execution was filed against Haynes' wages. Haynes, *pro se*, filed a motion in the Circuit Court of Kanawha County for a stay of the execution and for a review of the application of her monthly payments as to all three judgments. Thereafter, summary proceedings were conducted by the Circuit Court beginning with a hearing on February 5, 2009. Although Martin & Seibert did not attend the hearing, Haynes and Daniel T. Booth were present. Directing Haynes, Booth and Martin & Seibert to confer on a proper accounting, the Circuit Court stayed the further collection of monies from Haynes with regard to all three judgments.

The ruling of the Circuit Court was followed by an order entered on February 12, 2009, which stated:

From the Court's initial inquiry into this matter, it appears to the Court that the defendant has made substantial payments towards satisfaction of the judgments. Further, it is clear that the defendant believed that she had made a settlement agreement for all three of the subject accounts. However, the Court cannot determine the amount for which she has been credited, and the amount credited towards each of the judgments, without records of the payments and the balance on each judgment. These amounts should be reflected on the collection records of Martin & Seibert, L.C. for each of the accounts, including the judgment for Portfolio Recovery Associates, LLC, prior to referral to Booth & McCarthy in April 2006. The Court concludes that an accounting of the payments is absolutely necessary to do substantial justice to the defendant in these matters.

A second hearing was conducted on March 3, 2009, attended by Haynes and Daniel T. Booth but not Martin & Seibert. In that regard, Martin & Seibert asserts that its presence was not required at the February and March 2009 hearings because the Circuit Court had before it only the Portfolio account, which had been transferred to Booth & McCarthy. As discussed below, however, that assertion is without merit.

During the hearing, Booth, indicating that there was confusion concerning the application of Haynes' payments as to Portfolio, stated: "I can't force another law firm as well to try to straighten something out that has simply been caused by changes in lawyers during the course of the case." The Circuit Court accepted Portfolio's voluntary release of its judgment in Civil Action No. 02-C-2435 and subsequently entered separate orders on March 11, 2009, also releasing Haynes from

the CACV judgments in Civil Action Nos. 00-C-3022 and 01-C-2085. The orders noted Haynes' comment that she was "close to satisfying the judgments in issue" and her stated frustration "in dealing with the many different lawyers retained by the plaintiffs in these cases."

Alleging that \$5,350.00 remained unpaid under the settlement agreement, CACV filed a Rule 60(b) motion for relief from the March 11, 2009, orders. Attached to the motion was an accounting of payments made by Haynes on the two CACV judgments but not the Portfolio judgment. However, following a hearing conducted on October 21, 2009, attended by Martin & Seibert and Haynes, the Circuit Court entered two orders on November 6, 2009, denying the motion as to Civil Action Nos. 00-C-3022 and 01-C-2085.

In May 2010, this Court granted CACV's appeal, and this matter was designated for disposition under Rules 19 and 21 of the Revised Rules of Appellate Procedure.

III.

Syllabus point 5 of *Toler v. Shelton*, 157 W.Va. 778, 204 S.E.2d 85 (1974), holds: "A motion to vacate a judgment made pursuant to *Rule 60(b)*, W.Va. R.C.P., is addressed to the sound discretion of the court and the court's ruling on such motion will not be disturbed on appeal unless there is a showing of an abuse of such discretion." Syl. pt. 1, *Builders' Service and Supply Company v. Dempsey*, 224 W.Va. 80, 680 S.E.2d 95 (2009); syl. pt. 1, *Fernandez v. Fernandez*, 218 W.Va. 340, 624 S.E.2d 777 (2005).

Here, the record is undisputed that Haynes made significant, if not substantial, payments on all three judgments through Martin & Seibert, until the Portfolio account was transferred to Booth & McCarthy in April 2006. Appearing *pro se* throughout this matter, Haynes' confusion is understandable, not only because of the substitution of attorneys, but also because of the arrangement for her payments to Martin & Seibert on the three judgments, rather than directly to the judgment creditors. The two CACV judgments became the subject of a settlement agreement with monthly payments, and the Portfolio judgment was obtained through an agreed order which stated that, as long as Haynes continued to make monthly payments (at the rate of \$25.00 per month), Portfolio would not execute on the judgment. All three judgments were obtained for the plaintiffs through Martin & Seibert, and Haynes often combined payments on the judgments in a single check to Martin & Seibert.

The assertion of CACV that the Circuit Court should not have considered its two judgments along with the Portfolio judgment, transferred from Martin & Seibert to Booth & McCarthy, is unconvincing. The Circuit Court directed both firms to confer with Haynes and submit a complete accounting as to all three judgments as the only way to sort out Haynes' remaining financial responsibility. The record of Haynes' payments, later submitted by Martin & Seibert, were precise as to the CACV judgments. However, the absence of that firm's records of payments attributed to the Portfolio judgment, prior to the transfer to Booth & McCarthy, prevented the Circuit Court from reaching an accurate accounting. Daniel T. Booth stated at the February 5, 2009, hearing that, when the Portfolio account was transferred to his firm, he did not receive any corresponding payment

records.

Consequently, the Circuit Court could not determine the amount of the monthly payments made by Haynes allocated by Martin & Seibert to the Portfolio account. Moreover, the Circuit Court could not determine whether the allocations made by Martin & Seibert were reasonable, because an accounting as to all three judgments was not submitted as ordered by the Circuit Court.

Only last year, this Court filed the opinion in *Isaacs v. Bonner*, 225 W.Va. 460, 694 S.E.2d 302 (2010), a wage payment and collection case, wherein the employer failed to provide accurate information to his employees concerning fringe benefits. The opinion in *Isaacs* states that the employees were “entitled to an accurate pay stub.” 225 W.Va. at 466, 694 S.E.2d at 308. Though distinguishable from the circumstances herein, *Isaacs*, by analogy, is supportive of the principle that Haynes was entitled to an accurate accounting of her payments as to all three judgments.

IV.

A complete accounting not having been submitted, the Circuit Court was warranted in releasing Haynes from the two CACV judgments. Nor, in these circumstances, was the Circuit Court under a mandate to conduct an evidentiary hearing upon CACV’s Rule 60(b) motion. The denial of CACV’s requested relief was within the discretion of the Circuit Court and will not be disturbed. Accordingly, the final orders of November 6, 2009, are affirmed.

Affirmed.

ISSUED: February 11 , 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh