REL: September 30, 2022

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210106

The Lem Harris Rainwater Family Trust, Charles Edward Rainwater, Jean Rainwater Loggins, and the Rainwater Marital Trust

v.

Lenn Rainwater

Appeal from St. Clair Circuit Court
(CV-18-900281)

PARKER, Chief Justice.

This case returns to this Court as an appeal in ongoing litigation among four siblings regarding family trusts. Charles Edward Rainwater,

Jean Rainwater Loggins, The Lem Harris Rainwater Family Trust, and the Rainwater Marital Trust appeal a final judgment of the St. Clair Circuit Court enforcing a settlement agreement in the litigation. They challenge three aspects of the judgment: its enforcement of the settlement agreement, its denial of a motion to dissolve a prior order enforcing the settlement agreement, and its denial of a motion to quash a garnishment. Because the court failed to hold an evidentiary hearing on enforcement of the settlement agreement, because the prior enforcement order was improper, and because any award on which the garnishment could have been based is being reversed, we reverse the judgment as to all three aspects.

I. Facts

Lem Harris Rainwater ("Mr. Rainwater") and Jean Rainwater ("Mrs. Rainwater") had four children: Lenn Rainwater ("Lenn," a daughter), Charles Edward Rainwater ("Charles"), Jean Rainwater Loggins ("Jean"), and Mary Rainwater Breazeale ("Mary"). In 1995, Mr. and Mrs. Rainwater created The Lem Harris Rainwater Family Trust ("the Family Trust"). After Mrs. Rainwater died in 2007, the Family

Trust was divided into two trusts -- the Rainwater Marital Trust ("the Marital Trust") and the Jean Rainwater Bypass Trust. Mr. Rainwater allegedly amended the Marital Trust to provide that, upon his death, Lenn would receive all rights to Victorian Village, a shopping center. All four children served as trustees of the Family Trust and the Marital Trust.

Mr. Rainwater died in 2015. In 2018, Lenn sued Charles, Jean, Mary, and the Family Trust, seeking a declaration of Lenn's rights. After court-ordered mediation, the parties signed a settlement agreement. In it, Charles, Jean, Mary, and the Family Trust agreed to pay Lenn a cash amount from Family Trust assets and to convey all interest in Victorian Village to her. In exchange, Lenn agreed to release all her claims and to resign as cotrustee. The settlement agreement contained a confidentiality clause.

In 2020, Charles, Jean, and Mary moved for clarification regarding the settlement agreement. They alleged that Lenn had breached the agreement by not executing a release of her claims and by not maintaining the confidentiality of the agreement. They argued that

Lenn's breaches excused their performance of their duties under the agreement. After a hearing, the circuit court entered an order enforcing the settlement agreement ("the first enforcement order").

Lenn then moved to enforce the first enforcement order or to freeze cash assets. Lenn attached to her motion a copy of the settlement agreement. The court granted Lenn's motion, and Charles, Jean, and the Family Trust appealed, challenging the first enforcement order.

While that appeal was pending, Lenn filed a process of garnishment issued to Regions Bank regarding an account belonging to the Marital Trust. Charles, Jean, Mary, the Family Trust, and the Marital Trust moved to quash the garnishment. After a hearing, the circuit court denied the motion to quash. Charles, Jean, the Family Trust, and the Marital Trust appealed.

This Court dismissed both appeals, which had been consolidated. Lem Harris Rainwater Fam. Tr. v. Rainwater, [Ms. 1190951, June 30, 2021] ___ So. 3d ___ (Ala. 2021) ("Rainwater"). We held that the first enforcement order was an interlocutory injunction, not a final judgment, and that the appeal of that order was untimely because the appeal was

filed more than 14 days after the order was entered. We also held that the order denying the motion to quash the garnishment was not a final judgment, such that the appeal of that order was premature.

Thereafter, Charles and Jean moved to dissolve the first enforcement order and to quash the garnishment. Lenn moved to enforce the settlement agreement (and to enforce the first enforcement order, which had itself enforced the settlement agreement). Charles and Jean filed a response to Lenn's motion, alleging that Lenn had materially breached the settlement agreement and requesting an evidentiary hearing on the motion. Without holding an evidentiary hearing, the circuit court entered a final judgment enforcing the settlement agreement. The judgment also denied Charles and Jean's motions to dissolve the first enforcement order and to quash the garnishment. Charles, Jean, the Family Trust, and the Marital Trust ("the defendants") appeal.

II. Analysis

The defendants challenge the aspects of the circuit court's judgment enforcing the settlement agreement, denying the motion to dissolve the

first enforcement order, and denying the motion to quash the garnishment.

A. Enforcement of the settlement agreement

The defendants contend that the circuit court erred in entering the final judgment enforcing the settlement agreement without conducting an evidentiary hearing. In opposition to Lenn's final motion to enforce, Charles and Jean alleged that Lenn had materially breached the settlement agreement. Thus, the defendants contend, the court was required to hold an evidentiary hearing to allow Charles and Jean to present evidence of Lenn's material breaches of the agreement, which they alleged excused their performance, before the court determined whether Lenn was entitled to enforcement of the settlement agreement.

This argument raises a question of law, which we review de novo. Richardson v. County of Mobile, 327 So. 3d 1130, 1134 (Ala. 2020). A settlement agreement is a contract. Billy Barnes Enters., Inc. v. Williams, 982 So. 2d 494, 498 (Ala. 2007); Jones v. Bullington, 401 So. 2d 740, 741 (Ala. 1981). Normally, a breach of a contract is a basis for a distinct legal claim in a lawsuit. However, when a settlement agreement

resolving underlying legal claims is entered into mid-litigation and the underlying action is not dismissed, the mechanism for seeking relief based on a breach of that agreement is a motion to enforce the agreement. See Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683, 690 n.3 (Ala. 2009) (explaining, in case involving enforcement of a settlement agreement within the underlying action, that "a proceeding to enforce a settlement is in the nature of an action on a contract"); 15B Am. Jur. 2d Compromise and Settlement § 41 (2021) ("[W]here the parties agree to settle a pending lawsuit but, before judgment is rendered on the agreement, one party withdraws consent, … the party seeking to uphold the agreement may file a motion for enforcement in the underlying action, rather than institute a new action on the contract of settlement."); Fidelity & Guar. Ins. Co. v. Star Equip. Corp., 541 F.3d 1, 5 (1st Cir. 2008) ("Where … the settlement collapses before the original suit is dismissed, the party seeking to enforce the agreement may file a motion with the trial court.").

Thus, the principles that apply to breach-of-contract claims also ordinarily apply to a motion to enforce a settlement agreement. Village

of Kaktovik v. Watt, 689 F.2d 222, 230 (D.C. Cir. 1982) ("The enforceability of settlement agreements is governed by familiar principles of contract law."). When a party raises a defense to a breach-of-contract claim and the defense involves an issue of fact, normally a trial must be held on the defense. See LNM1, LLC v. TP Props., LLC, 296 So. 3d 792, 797 (Ala. 2019). Accordingly, when the same situation arises on a motion to enforce a settlement agreement, an evidentiary hearing must be held. That is, when a party raises a fact-based defense to enforcement of a settlement agreement, that defense must be resolved in the same way other issues of fact are resolved -- by conducting a hearing at which evidence is received and any witnesses are subject to cross-examination. See Claybrook v. Claybrook, 56 So. 3d 652, 658 (Ala. Civ. App. 2010). In Claybrook, a husband and wife entered into a divorce settlement agreement. During the divorce action, the wife challenged the enforceability of the settlement agreement, based on contract-law defenses. The trial court, without conducting an evidentiary hearing, entered a final judgment incorporating the agreement. The Court of Civil Appeals held that the trial court erred by failing to hold an evidentiary

hearing on the wife's challenges to the enforceability of the settlement agreement. Cf. Dunn v. Dunn, 124 So. 3d 148, 150-51 (Ala. Civ. App. 2013) (holding that trial court erred by failing to conduct evidentiary hearing on party's postjudgment motion that raised contract-formation-defense grounds for vacating judgment that had incorporated settlement agreement). Similarly, here Charles and Jean alleged the contract-law defense of material breach in opposition to Lenn's motion to enforce the settlement agreement.

Lenn argues that Charles and Jean could not oppose her motion to enforce the settlement agreement because the enforceability of the agreement was the law of the case after this Court's decision in Rainwater. Lenn points out that (1) the first enforcement order ruled that the settlement agreement was enforceable and (2) Rainwater did not disturb that ruling. The only relevant issue this Court decided in Rainwater, however, was whether the first enforcement order was a final judgment or a preliminary injunction. This Court determined that it was a preliminary injunction, appealable only within 14 days, making the appeal after that deadline untimely. We never reached the merits of

Charles and Jean's argument that Lenn's alleged breaches of the settlement agreement excused their performance. And a dismissal of an appeal has the same effect as if no appeal had been taken. Federal Deposit Ins. Corp. v. Equitable Life Assurance Soc'y of the United States, 289 Ala. 192, 196, 266 So. 2d 752, 754 (1972); Florence Surgery Ctr., L.P. v. Eye Surgery Ctr. of Florence, LLC, 121 So. 3d 386 (Ala. Civ. App. 2013). Accordingly, our dismissal of the appeal placed Charles and Jean in the position of not having appealed the first enforcement order. Thus, our decision in Rainwater did not preclude any of the defendants from later challenging the enforceability of the settlement agreement.

Alternatively, Lenn's argument may be understood as asserting that, under the law-of-the-case doctrine, after the defendants failed to timely appeal the appealable first enforcement order, they were precluded from challenging the circuit court's rulings in that order. This argument raises what appears to be a question of first impression for this Court, but the answer to it is clear. Ordinarily, a party must wait until final judgment to appeal an adverse ruling. North Alabama Elec. Coop. v. New Hope Tel. Coop., 7 So. 3d 342, 344 (Ala. 2008). However, Rule

4(a)(1), Ala. R. App. P., recognizes several categories of orders from which an appeal is permitted before final judgment. One of those categories includes orders "granting … an injunction." Rule 4(a)(1)(A). But nothing in Rule 4(a)(1) requires a party to interlocutorily appeal an injunction order to avoid later preclusion of issues that could have been raised in such an appeal. In this way, Rule 4(a)(1)(A) is analogous to 28 U.S.C. § 1292(a), which permits appeals from interlocutory orders regarding injunctions. Federal courts have held that that statute does not require a party to interlocutorily appeal to avoid preclusion:

> "Although an order denying a preliminary injunction is immediately appealable as an interlocutory decision under 28 U.S.C. § 1292(a)(1), an immediate appeal nonetheless is not mandated by the statute. A party may forgo an interlocutory appeal and present the issue for appeal after final judgment. 'Interlocutory orders therefore may be stored up and raised at the end of the case....'"

Retired Chicago Police Ass'n v. City of Chicago, 7 F.3d 584, 608 (7th Cir. 1993) (citation omitted); see 16 Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3921 (3d ed. 2012) ("[A]lthough appeal is available under § 1292(a)(1) as a matter of right, failure to take an available appeal does not of itself waive the right

to secure review, on appeal from final judgment, of matters that could have been appealed but were not."). Similarly, the fact that Rule 4(a)(1)(A) provides an opportunity for interlocutory appeal of certain injunction-related orders does not prevent a party that does not file such an appeal from later challenging the trial court's rulings in those orders.

Lenn also argues that a party's breach of a settlement agreement is no defense to that party's enforcement of it. She contends that the only defenses to enforcement are fraud, accident, or mistake -- none of which was alleged here. Lenn relies on the following language in an opinion of the Court of Civil Appeals:

> "'"The law in Alabama is clear in that agreements made in settlement of litigation are as binding on parties thereto as any other contract. A settlement agreement once entered into cannot be repudiated by either party and will be summarily enforced.
>
> "'"When parties who are sui juris make a final settlement between themselves, such settlement is as binding on them in many respects as a decree of the court. However, such settlement may be opened for fraud, accident, or mistake."'"

Sherman Int'l Corp. v. Summit Gen. Contractors, Inc., 848 So. 2d 263, 264 (Ala. Civ. App. 2002) (citations omitted). It is true that fraud,

accident, and mistake are grounds for setting aside a settlement agreement as defective in its formation. Barnes, 982 So. 2d at 498-99. But that is not what Charles and Jean sought to do. Instead, they sought to defend against Lenn's attempt to enforce the settlement agreement, on the basis that she had allegedly materially breached the agreement.

Moreover, as explained above, a settlement agreement is simply a particular type of contract. Thus, a settlement agreement is "as binding … as any other contract." Sherman, 848 So. 2d at 264 (citations and quotation marks omitted); Beverly v. Chandler, 564 So. 2d 922, 923 (Ala. 1990). Ordinarily, a contract is binding so long as each party performs its obligations under it. If either party materially breaches the contract, the other party is excused from performing. Nationwide Mut. Ins. Co. v. Clay, 525 So. 2d 1339, 1343 (Ala. 1987). Thus, as applied to settlement agreements, the general rule is that "[a] party's material breach or failure to fulfill a substantial condition of a settlement agreement excuses the other party's obligation to perform its end of the bargain." 15B Am. Jur. 2d Compromise and Settlement § 40 (2021) (footnotes omitted). Therefore, Charles and Jean were not limited to alleging fraud, accident,

or mistake, but could defend against Lenn's motion to enforce the settlement agreement based on allegations that Lenn materially breached it.

For these reasons, we conclude that the circuit court erred in entering the final judgment without conducting an evidentiary hearing on the enforceability of the settlement agreement, including Charles and Jean's defense of material breach.

The defendants also argue that the circuit court erred in entering the judgment because the record contained undisputed evidence that Lenn materially breached the settlement agreement. We do not reach this argument because we have concluded that the settlement-enforcement aspect of the judgment must be reversed based on the circuit court's failure to conduct an evidentiary hearing.

B. Denial of the motion to dissolve the first enforcement order

The defendants also challenge the circuit court's denial of Charles and Jean's motion to dissolve the first enforcement order. This challenge is not moot, because we are reversing the settlement-enforcement aspect

of the final judgment, and on remand the first enforcement order will once again be in place.

In Rainwater, this Court held that the first enforcement order was a preliminary injunction, and that characterization is the law of the case as between these parties. See Blumberg v. Touche Ross & Co., 514 So. 2d 922, 924 (Ala. 1987) ("Under the doctrine of the 'law of the case,' whatever is once established between the same parties in the same case continues to be the law of that case …."). In this appeal, the defendants contend that the first enforcement order did not comply with the requirements for a preliminary injunction. First, they point out that Lenn did not provide security for any damage they might incur in complying with the order. Rule 65(c), Ala. R. Civ. P., provides:

> "No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and reasonable attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained ...."

Further, the defendants argue that the first enforcement order did not set forth the reasons for its issuance and did not describe in detail the acts to be performed by the parties. Rule 65(d)(2) provides: "Every order

granting an injunction shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained ...."

When considering a challenge to an order regarding a preliminary injunction, we review questions of law de novo. See Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008). In the first enforcement order, the circuit court stated that it was entering the order "[u]pon consideration of the motion [for clarification] and arguments of counsel, and based upon the terms and provisions of the [settlement agreement] as determined by this [c]ourt." The court articulated no reasons, other than referring to the parties' arguments, why the settlement agreement was due to be enforced despite allegations that Lenn had breached it. Thus, the order failed to comply with Rule 65(d)(2) by failing to set forth reasons for its issuance. See Teleprompter of Mobile, Inc. v. Bayou Cable TV, 428 So. 2d 17, 20 (Ala. 1983) (holding that preliminary injunction that merely referenced party's arguments did not comply with Rule 65(d)(2)'s reasons-for-issuance requirement).

The first enforcement order also commanded the parties to "perform each and every act and to execute any and all documents necessary or expedient to evidence and consummate the [settlement agreement]." This provision failed to satisfy Rule 65(d)(2) because it did not describe in detail the acts to be performed, without reference to another document. Instead, it merely incorporated the terms of the settlement agreement, which the rule prohibits.

Because of these deficiencies in the first enforcement order, the circuit court erred in denying Charles and Jean's motion to dissolve it. See Tapscott v. Fowler, 437 So. 2d 1280, 1282 (Ala. 1983) (reversing injunction for failure to comply with Rule 65(d)(2)).

C. Denial of the motion to quash the garnishment

Finally, the defendants contend that, if this Court reverses the settlement-enforcement aspect of the final judgment, the garnishment must necessarily be quashed because any judgment on which the garnishment was based no longer exists. Under § 6-6-390, Ala. Code 1975, "no garnishment shall issue prior to a final judgment … unless there is a showing that such garnishment is necessary because of

extraordinary circumstances." Here, based on our reversal of the settlement-enforcement aspect of the judgment, there is no remaining judgment award on which the garnishment could have been based. Moreover, Lenn made no showing of extraordinary circumstances. Thus, the garnishment must be quashed.

III. Conclusion

Based on the foregoing, we reverse the final judgment as to its enforcement of the settlement agreement and its denial of the motions to dissolve the first enforcement order and to quash the garnishment. We remand the case for further proceedings.

REVERSED AND REMANDED.

Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.