Tmetuchl v. Kohn, 5 ROP Intrm. 81 (1995)

RMERIANG TMETUCHL,
Appellant,

v.

MISA KOHN,
Appellee.

CIVIL APPEAL NO. 17-94
Small Claim No. 42-94

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: March 24, 1995

Counsel for Appellant: William L. Ridpath

Counsel for Appellee: Misa Kohn, *pro se*

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BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; and PETER T. HOFFMAN, Associate Justice.

PER CURIAM:

This matter is before the Court on appeal from the Decision and Judgment entered in a small claims case by the Court of Common Pleas in favor of Appellee Misa Kohn ("Kohn") and against Appellant Rmeriang Tmetuchl ("Tmetuchl"). Having considered the briefs submitted by the parties and the record, and having heard oral argument, we affirm.

I. Facts

This small claims dispute centers on a contract between Kohn and Tmetuchl for the provision of piano lessons for students enrolled in Belau School of Music, Tmetuchl's business. Kohn initiated the action as a small claims matter in the Court of Common Pleas, seeking to recover $625.22 for services rendered and wages earned.

Tmetuchl filed a motion for a more definite statement, asking the Court to order Kohn to file a more detailed complaint. The trial court denied Tmetuchl's motion and ordered Tmetuchl "to appear at the scheduled hearing in this matter without filing any further pleadings." Tmetuchl then served interrogatories on Kohn to which Kohn objected. Agreeing with Kohn, the trial court denied Tmetuchl her requested discovery and ordered Tmetuchl "to appear at the scheduled hearing in this matter without filing any further documents of any nature with the court."

At trial, Kohn presented evidence of the terms and performance of the contract while Tmetuchl presented her defenses, including testimony that Kohn had caused Tmetuchl over $1,000 in business losses by taking her piano students. At the conclusion of the trial, the trial court found that there was a contract between Tmetuchl and Kohn whereby Kohn would provide piano lessons to students at Tmetuchl's school, the Belau School of Music. Pursuant to this agreement, Tmetuchl would pay Kohn a percentage of the proceeds gained from the lessons. The trial court found that Tmetuchl had failed to pay Kohn for lessons conducted during certain months and concluded that Tmetuchl owed Kohn for these lessons. The trial court made no explicit reference in its Decision and Judgment to Tmetuchl's charge that Kohn was liable to her for the loss of students.

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II. Discussion

Tmetuchl appeals from the pretrial orders issued by the trial court. Specifically, she contends the trial court committed reversible error by prohibiting discovery, and prohibiting her from pleading an answer and counterclaim. [1] In her response brief, Kohn requests sanctions, costs and interest.

A. Discovery

The trial court's order preventing Tmetuchl from pursuing her interrogatories was essentially a protective order. It was clearly within the trial court's authority to issue such an order. ROP R. Civ. Proc. 26(c) ("[u]pon motion by a party . . . from whom discovery is sought, and for good cause shown, the court . . . may make any order which justice requires to protect a party . . . from annoyance, embarrassment, oppression or undue burden or expense, including . . . that the discovery not be had.").

The trial court has wide discretion in managing discovery and issuing protective orders, and we will uphold the trial court's discovery decisions unless, in the totality of circumstances, its rulings are seen to be a gross abuse of discretion resulting in fundamental unfairness in the trial of the case. See *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit* , 28 F.3d 1388, 1394 (5th Cir. 1994); *O'Neal v. Riceland Foods*, 684 F.2d 577, 581 (6th Cir. 1982); *In re Coordinated Pretrial Proceedings in Petro. Prod. Antitrust Litig.* , 669 F.2d 620, 623 (l0th Cir. 1982). Proper considerations in determining if requested discovery imposes an undue burden or expense include the complexity of and amount involved in the dispute. See ROP R. Civ. Proc. 1 (the Rules 'shall be construed to secure the just, speedy, and inexpensive determination of every action.").

It is clear that even if the trial court's order hindered Tmetuchl's discovery efforts, the trial court did not abuse its discretion given the simplicity of the dispute and the small amount in controversy. Tmetuchl's purported reason for seeking answers to interrogatories was to learn

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[1] Effective April 1, 1995, the ROP Rules of Civil Procedure for Small Claims actions will become effective. Because these rules were not in place at the time this case was filed and tried, they do not apply here.

more about Kohn's claim. Given the simple factual setting of the dispute and the small amount in controversy, the trial court did not abuse its discretion in issuing the protective order.

⊥84 **B. Pleadings**

Tmetuchl also complains that the trial court's order forbidding the filing of pleadings was reversible error. Specifically, Tmetuchl complains that she was prejudiced because she was unable to file her answer or her counterclaim with the court. We address each argument below.

1. Answer

Tmetuchl's contention that she was unfairly prejudiced by the order forbidding her from filing an answer is without merit. It is important to note that nothing in the trial court's order hindered Tmetuchl from presenting her full defense at trial. It only forbade her from filing with the court and serving on her opponent a paper setting forth her answers to the allegations and any affirmative defenses thereto. Tmetuchl fails to explain how her inability to notify the trial court and Kohn of her defenses prior to trial could possibly have injured her defense. On the contrary, if any party was prejudiced here by the order, it was Kohn who could not learn of Tmetuchl's defenses until after she presented her own case at trial. Any error was harmless to Tmetuchl and thus not a ground for reversal. ROP R. Civ. Proc. 61.

2. Counterclaim

Tmetuchl also contends that she was prevented from filing a counterclaim against Kohn for the loss of her piano students. Tmetuchl here admits that she was able to, and did, present the evidence supporting her theory at trial both as a counterclaim as an affirmative defense without objection from Kohn or limitation by the trial court. But, she argues, even though the trial court heard evidence relating to her counterclaim, it had no subject matter jurisdiction to rule on it because the value of the counterclaim exceeded $1,000. Instead, she contends, the assertion of the counterclaim should have caused the entire action to be removed to the Trial Division.[2]

⊥85 The assertion of a counterclaim in excess of the jurisdictional amount of a court of limited jurisdiction does not oust the court of jurisdiction over the plaintiff's claim. *Decision 525, Order of Ry. Conductors of Am. v. Gorman*, 133 F. 2d 273, 277 (8th Cir. 1943); *Nelson v. Meyer*, 180 P. 86, 87 (Colo. 1919); 20 Am. Jur.2d Courts § 169 (1965). A party wishing to assert such a counterclaim may proceed in one of two ways: First, the party may assert the counterclaim in the court of limited jurisdiction, but any relief granted will be confined to the

[2] Newly enacted Small Claims Rule 5 clarifies the procedure by which a small claims defendant may bring a counterclaim in excess of $1,000. Under Rule 5, any such counterclaim must be brought as a separate action in the Trial Division of the Supreme Court. The small claims action and the Trial Division action may then be consolidated at the Trial Division level. Accordingly, there is no possibility that a small claims defendant will be without a forum to assert his or her compulsory counterclaim in excess of the jurisdictional limit of the small claims court.

jurisdictional limits of the court. [3] See 20 Am. Jur.2d Courts § 119 (1965). Second, the counterclaim may be brought as a separate action in a court with proper jurisdiction. Tmetuchl chose to pursue the first of these options.

C. Sanctions, Costs and Prejudgment Interest

Kohn asks this Court to impose sanctions on Tmetuchl for bringing a frivolous appeal. Because this appeal raises issues that are novel to this jurisdiction and are not inherently meritless, we decline to do so.

Kohn also asks for costs and prejudgment interest. Kohn failed, however, to bring a cross-appeal as required by ROP Rule of Appellate Procedure 4(b). It is well established that without filing a cross-appeal, Kohn "may not attack the decree with a view either to enlarge [her] own rights thereunder or of lessening the rights of [her] adversary, where what [she] seeks is to correct an error or to supplement the decree with respect to a matter not dealt with." *United States v. American Railway Express Co.*, 44 S.Ct. 560, 563 (1924); see *Thurston v. United States*, 810 F.2d 438, 447 (4th Cir. 1987) (same; interpreting identical Federal Rule of Appellate Procedure 4(a)(2)). Kohn must file a cross-appeal if she is to properly bring the issue before this Court for review. *Speaks v. Trikora Lloyd P.T.*, 838 F.2d 1436, 1439 (5th Cir. 1988) (trial court's denial of prejudgment interest and attorney's fees to prevailing party not properly before appellate court where party failed to bring cross-appeal); *Stella v. DePaul Community Health Center, Inc.*, 642 F.2d 258, 261 (8th Cir. 1981) (prejudgment interest, costs and attorney's fees not properly before appellate court because of party's failure to file cross-appeal).

⊥86 Accordingly, we affirm the Decision and Judgment of the Court of Common Pleas.

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[3] A counterclaim in excess of the jurisdictional limits of a court cannot be a compulsory counterclaim under ROP Rule of Civil Procedure 13(a) because the trial court could not have made a *full* adjudication thereon. "No claim should be regarded as compulsory and barred for failure to plead it if the court cannot make an adjudication thereon. 3 JAMES MOORE ET AL., MOORE' S FEDERAL PRACTICE ¶ 13.149[3] (1991).