

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Neset Hikmet et al., | : | |
| Plaintiffs-Appellants, | : | |
| v. | : | No. 09AP-1104 (C.P.C. No. 05CVH-7146) |
| Mehmet Turkoglu et al., | : | (REGULAR CALENDAR) |
| Defendants-Appellees. | : | |

D E C I S I O N

Rendered on September 23, 2010

The Copley Firm, LLC, Michael F. Copley and Kenley S. Maddux, for appellants.

Carpenter Lane, LLC, James C. Carpenter and Vincent I. Holzhall, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Plaintiffs-appellants, Neset and Hatice Hikmet ("appellants"), appeal from the judgment of the Franklin County Court of Common Pleas granting the request for injunctive relief of defendants-appellees, Mehmet Turkoglu, Dr. Aziz Alasyali, and Aziz Alasyali as Trustee of the Dr. Aziz Alasyali and Ulker Alasyali Foundation (collectively "appellees").

{¶2} In July of 2005, appellants filed this underlying action asserting several causes of action including breach of contract based on a settlement agreement entered

into between the parties on January 25, 2005, that resolved actions pending in both Florida and Franklin County, Ohio. The basis of this underlying action is the allegation that Dr. Alasyali failed to perform his duties under the agreement. The trial court granted summary judgment in favor of appellees on all claims. The trial court's judgment was journalized on October 21, 2008. This court affirmed the trial court's decision on December 10, 2009. *Hikmet v. Turkoglu*, 10th Dist. No. 08AP-1021, 2009-Ohio-6477, discretionary appeal not allowed by 125 Ohio St.3d 1413, 2010-Ohio-1893.

{¶3} During the pendency of the appeal, on July 24, 2009, appellees filed a motion to enforce settlement agreement via injunctive relief seeking to enjoin appellants from maintaining a will contest action initiated in Stark County, Ohio, after the death of Dr. Alasyali. According to appellees' motion, the filing of the will contest action was in direct contravention of the settlement agreement, irreparable harm would occur in the absence of an injunction, no third parties would be harmed by the injunction, and the public interest would be served by the issuance of an injunction. In response, appellants filed a motion to dismiss the request for injunctive relief arguing the trial court did not have jurisdiction over either the new cause of action or the new request for relief as final judgment had already been rendered. The trial court, finding that it possessed jurisdiction, denied the motion to dismiss on July 31, 2009. On November 9, 2009, the trial court issued a decision and entry granting appellees' motion to enforce settlement agreement via injunctive relief, thereby enjoining appellants from maintaining the Stark County action. Appellants appealed to this court and bring the following six assignments of error for our review:

I. The injunction is not supported by clear and convincing evidence.

II. The court below imposed an improper burden of proof on Appellants.

III. The court below purported to remedy a breach of contract that was never pled.

IV. The court below decided a cause of action in violation of the Civil Rules and without constitutional due process.

V. The court below granted additional relief after its final decision, during appeal.

VI. The court below interfered with the jurisdiction of a separate and equal court.

{¶4} Because it is dispositive, we will address appellants' fifth assignment of error first. In this assigned error, appellants contend the trial court lacked jurisdiction to grant the injunction after final judgment and journalization. We agree.

{¶5} The trial court found that it possessed jurisdiction by relying on *Davis v. Jackson*, 159 Ohio App.3d 346, 2004-Ohio-6735, that indeed stated that "[a] settlement agreement may be enforced either through filing an independent action for breach of contract, or by filing a motion to enforce the settlement in the same action pursuant to Civ.R. 15(E)." *Id.* at ¶14. Initially, we note it is disputable whether this phrase renders any support to appellees because it contemplates the filing of a motion to enforce settlement "in the same action," and the litigation before us is not the case out of which the settlement agreement arose but, rather, is a separate action regarding the enforceability of the settlement agreement. However, it matters not because the remaining paragraph in *Davis* states, "[h]owever, a motion to enforce may be filed only prior to the entry of final judgment, and is inappropriate after the trial court issues a

journalized entry adjudicating all of the claims in dispute." *Id.*, citing *Frank J. Catanzaro Sons & Daughters, Inc. v. Trio Food Distrib., Inc.* (Apr. 27, 2001), 1st Dist. No. C-000584.

{¶6} Specifically, the court in *Catanzaro* stated:

In *Bolen v. Young*, the Tenth Appellate District addressed the appropriate avenue for seeking enforcement of a settlement agreement, stating that "relief may be sought through the filing of an independent action sounding in breach of contract, or it may be sought in the same action through a supplemental pleading filed pursuant to Civ.R. 15(E), setting out the alleged agreement and breach." A motion to enforce a settlement made pursuant to Civ. R. 15(E) may only be filed prior to the entry of a final judgment. Thus, a motion to enforce a settlement is inappropriate after an entry adjudicating all the claims in dispute has been journalized.

(Footnotes omitted.)

{¶7} Moreover, pursuant to R.C. 2727.03:

At the beginning of an action, *or any time before judgment*, an injunction may be granted by the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, *in causes pending therein*, when it appears to the court or judge by affidavit of the plaintiff, or his agent, that the plaintiff is entitled to an injunction. On like grounds and proof, the probate judge may grant injunctions in actions pending in either the court of common pleas or court of appeals of his county, in the absence therefrom of the judges of such courts.

(Emphasis added.)

{¶8} As this court noted in *Smith v. Advantis Computer Consulting, Inc.* (Mar. 20, 2001), 10th Dist. No. 00AP-361, "a trial court 'does not have jurisdiction to issue a permanent injunction after the underlying * * * action has been terminated through journalization of the final judgment.'" *Id.*, quoting *Gullia v. Gullia* (1994), 93 Ohio App.3d 653, 667. In *Smith*, the jury returned a verdict in favor of the defendant, and thereafter,

on November 18, 1999, the defendant filed a request for post-verdict relief seeking an injunction. The trial court's entry was journalized on November 30, 1999, and the trial court granted the request for injunctive relief on February 18, 2000. On appeal, relying on *Gullia*, this court stated there was no claim for injunctive relief properly before the trial court at the time of the verdict, the request for the injunction was made after the judgment, "so the trial court had no jurisdiction to issue the injunction."

{¶9} Thus, in the case at bar, the trial court was divested of jurisdiction to issue the injunction after final judgment and journalization was entered. Accordingly, appellants' fifth assignment of error is sustained, which renders moot all remaining assignments of error.

{¶10} For the foregoing reasons, appellants' fifth assignment of error is sustained, and the remaining assignments of error are rendered moot. The judgment of the Franklin County Court of Common Pleas is hereby reversed, and this cause is remanded to that court for further proceedings in accordance with law and consistent with this decision.

Judgment reversed; cause remanded.

KLATT and FRENCH, JJ., concur.
