IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Brief April 22, 2003

STEVE HOWELL AND LISA HOWELL
V.
GLEN TUCKER D/B/A GLEN TUCKER CONSTRUCTION

Appeal from the Chancery Court for Decatur County
No. 3000 Ron E. Harmon, Chancellor

No. W2002-02220-COA-R3-CV - Filed September 24, 2003

This is a construction case on appeal for the second time. The homeowners contracted for the construction of a house. The contractor began but did not complete construction of the house. The homeowners sued the contractor and were awarded a judgment. The contractor filed a notice of appeal. His appeal was dismissed by this Court. Meanwhile, the contractor had filed a motion with the trial court to set aside the trial court's order awarding a judgment to the homeowners. The trial court denied this motion and affirmed its original judgment. The contractor filed a second notice of appeal. We confine this appeal to a review of the trial court's disposition of the contractor's motion to set aside the original judgment and affirm, finding that the trial court did not abuse its discretion in overruling the motion to set aside.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Carthel L. Smith, Jr., Lexington, Tennessee, for appellant, Glen Tucker d/b/a/ Glen Tucker Construction.

Edwin Townsend, Jr., Parsons, Tennessee, for appellees, Steve Howell and Lisa Howell.

MEMORANDUM OPINION[1]

Steve Howell and Lisa Howell (collectively, "the Howells") contracted with Glen Tucker d/b/a Glen Tucker Construction ("Tucker") to build a home for the Howells. Tucker did not complete construction of the home. The Howells filed a lawsuit against Tucker. On March 26, 2001, they were awarded a $17,057 judgment against Tucker.

On April 24, 2001, Tucker filed a notice of appeal. Meanwhile, on October 26, 2001, while his appeal before this Court was pending, Tucker filed a motion with the trial court under Rule 60.01 of the Tennessee Rules of Civil Procedure,[2] requesting that the trial court set aside the judgment rendered in favor of the Howells.

On March 14, 2002, this Court dismissed Tucker's appeal.[3] ***Tucker v. Howell***, No. W2001-09999-COA-R3-CV, 2002 Tenn. App. LEXIS 194, at *6 (Tenn. Ct. App. Mar. 14, 2002). Tucker filed a petition to rehear this Court's decision, which was denied.

On July 9, 2002, after dismissal of the first appeal, the trial court held a hearing on Tucker's Rule 60.1 motion to set aside. The trial judge had reviewed his notes from the original trial. He recalculated the credits and adjustments, and found the original judgment in error by only two dollars. Consequently, the trial court issued a written order denying the Rule 60.01 motion to set

---

[1]Rule 10 of the Rules of the Court of Appeals of Tennessee states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

[2]Tennessee Rule of Civil Procedure 60.01 allows a court, on its own initiative, or on motion of any party, to correct "[c]lerical mistakes in judgments, orders or other parts of the record, and errors therein arising from oversight or omissions." Tenn. R. Civ. P. 60.01.

[3]Tucker's April 24, 2001 Notice of Appeal specified that it was an appeal " 'from the 'Finding of Facts and Conclusion of Law' entered in this case on . . . March 25, 2001, with respect only to the Counter-Claim against [the Howells], to the extent that said 'Finding of Facts and Conclusion of Law' is . . . deemed a final judgment.' " ***Tucker***, 2002 Tenn. App. LEXIS 194, at *3. In the Notice of Appeal, Tucker asked that, if the "Finding of Facts and Conclusion of Law" were not considered a final judgment, the Notice of Appeal be treated as premature until the trial court entered a final judgment. ***Id.*** In the record on that appeal, however, there was no "Finding of Fact and Conclusion of Law." ***Id.*** at *4. In addition, the record contained no "Counter-Claim." ***Id.*** at *3. In fact, at the time the Notice of Appeal was filed, a final, appealable judgment had been entered against Tucker by the trial court. ***Id.*** at **3-4. On appeal, this Court noted that, according to the express language in the Notice of Appeal, no appeal was taken from the final judgment. ***Id.*** at *6. Consequently, the judgment became final with Tucker taking no appeal. ***Id.*** As a result, Tucker's appeal was dismissed. ***Id.***

aside and affirming the original judgment.[4] From this order, Howell filed his second notice of appeal.

On appeal, Tucker argues that, in the original trial, the trial court erred in computing the adjustments and credits regarding the construction of the home. He asserts that the trial court's judgment of $17,057 was erroneous and should be reduced by $19,548. Tucker contends that this Court should review the trial court's judgment *de novo* with no presumption of correctness of the findings of fact, because the trial court made no findings of fact.[5]

The Howells assert that the preponderance of the evidence supports the trial court's judgment of $17,057 in their favor. They also submit that, based upon this Court's previous ruling that Tucker did not properly take the first appeal, the trial court's March 26, 2001 order has completed the appeal process and is now *res judicata*. They contend that the only issue currently on appeal is the trial court's determination with regard to Tucker's motion to set aside order. We agree.

We first note that Tucker's first appeal was dismissed and the trial court's March 26, 2001 judgment, awarding the Howells $17,057, became a final judgment, with no appeal properly taken. Consequently, in this second appeal, we address only the trial court's denial of Tucker's Rule 60.01 motion to set aside the judgment in favor of the Howells.

Rule 60.01 of the Tennessee Rules of Civil Procedure permits the trial court to correct "[c]lerical mistakes in judgments, orders or other parts of the record, and errors therein arising from oversight or omissions." Tenn. R. Civ. P. 60.01. It is not intended to be a vehicle for redress when a party is merely dissatisfied with the results of a particular case. ***See Toney v. Mueller Co.***, 810 S.W.2d 145, 147 (Tenn. 1991). A trial court's decision regarding a motion to set aside order will not be overturned absent an abuse of discretion. ***Boyd v. Bruce***, 84 S.W.3d 184, 185 (Tenn. Ct. App. 2001) (citations omitted).

Upon a review of the record, we find no abuse of discretion in the trial court's denial of Tucker's motion to set aside the judgment in favor of the Howells.

The decision of the trial court is affirmed. Costs are taxed to the appellant, Glen Tucker d/b/a Glen Tucker Construction, and its surety, for which execution may issue, if necessary.

_____

HOLLY M. KIRBY, JUDGE

[4]The trial court made the notes from the principal trial part of the record by attaching them as an exhibit to the order overruling the motion to set aside order.

[5]Astonishingly, Tucker's appellate brief makes *no mention* of this Court's dismissal of his prior appeal, presumably in the fond hope that it would not be noticed.