

FILED

03/15/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
February 7, 2023 Session

ADRIANE ALLEN v. AMERICAN YEAST INC. ET AL.

**Appeal from the Circuit Court for Shelby County
No. CT-003101-12 Gina C. Higgins, Judge**

No. W2021-00956-COA-R3-CV

In a prior appeal involving this case, this Court vacated the trial court's decision to require the Appellants herein to interplead funds, but we otherwise affirmed the trial court's actions, including the dismissal of the underlying case. Following our remand for further proceedings consistent with the appellate opinion, such as the collection of costs, the trial court ruled, notwithstanding our prior affirmance of the case's dismissal, that the case "shall be Dismissed With Prejudice" but upon the payment of \$300,000.00 into the registry of the court. The trial court further dismissed, without prejudice, a petition to enforce an attorney's lien that plaintiff's former attorneys had attempted to get the trial court to adjudicate in the present litigation. Because this Court's prior opinion affirmed the trial court's previous dismissal, thus ending the underlying case, we conclude that the trial court's efforts to condition dismissal of the case on remand was in error. Regarding the petition for enforcement of an attorney's lien, the issue raised for our review on appeal is whether the trial court should have transferred the matter to another court division as opposed to dismissing the petition without prejudice. For the reasons stated herein, we discern no error with the trial court's disposition on that issue.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed in Part, Reversed in Part, and Remanded**

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and CARMA DENNIS MCGEE, J., joined.

Jeffrey E. Nicoson, Memphis, Tennessee, for the appellants, American Yeast, Inc., and Crystal June Stark.

Darrell James O'Neal and Laura E. Smittick, Memphis, Tennessee, for the appellees, Estate of John Walker and Darrell James O'Neal.

Adriane Allen, Little Rock, Arkansas, Pro se.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

As we discussed when resolving a prior appeal of this matter, *Allen v. American Yeast, Inc.*, No. W2017-00874-COA-R3-CV, 2018 WL 4846364 (Tenn. Ct. App. Oct. 4, 2018) (“*American Yeast I*”), this case was commenced by Adriane Allen in an attempt to recover from Crystal Stark and American Yeast, Inc. (“American Yeast”), for injuries Ms. Allen sustained in a motor vehicle accident involving her and Ms. Stark, an employee of American Yeast. *Id.* at *1. Following a mediation of the dispute, the parties reached a post-mediation agreement to settle Ms. Allen’s claims, and the agreement was signed by American Yeast’s counsel,¹ Ms. Allen’s counsel, and Ms. Allen’s mother, who was acting pursuant to a power of attorney given by her daughter. *Id.* at *1-2. Ms. Allen, however, later refused to sign a release that was contemplated by the settlement, prompting American Yeast to file a motion to enforce the settlement. *Id.* at *2. Although Ms. Allen testified during a subsequent hearing on American Yeast’s motion that her mother did not have her permission to make decisions for her, and further testified that she had rejected American Yeast’s settlement offer at the mediation, the trial court ultimately determined that the parties’ agreement was enforceable and noted its expectation that the parties would adhere to its terms. *Id.* Ms. Allen, however, continued to refuse to comply, and American Yeast filed a petition for civil contempt. *Id.* Ms. Allen’s counsel then filed a motion requesting that the trial court require the interpleader of \$300,000.00 in settlement funds, which American Yeast opposed. *Id.* Ms. Allen also noted her opposition to the request, filing a pro se response contending that her attorney did not have the authority to request relief on her behalf because she had fired him the previous calendar year. *Id.* The trial court would later enter an order on April 4, 2017, denying the contempt petition, granting the motion for interpleader, and dismissing Ms. Allen’s case with prejudice. *Id.* at *3.

When the interpleader issue, the court’s dismissal order, and the topic of the parties’ post-mediation agreement became the focus of our review in *American Yeast I*, we held that Ms. Allen had “lost the ability to challenge the validity of the post-mediation agreement” and that “because the trial court concluded that Ms. Allen and American Yeast had an enforceable agreement fully resolving Ms. Allen’s claims . . . **the court’s decision to dismiss the case with prejudice was proper.**” *Id.* at *4 (emphasis added). As for the interpleader of funds issue, we agreed with Ms. Allen that the trial court had improperly considered a motion filed by her former attorney, and we therefore vacated the court’s decision requiring American Yeast to interplead funds. *Id.* at *4-5. In connection with our disposition on the interpleader issue, we specifically stressed that the trial court’s April 4, 2017, order was affirmed “in all other respects,” including the “dismissal of the case with prejudice.” *Id.* at *5. We then remanded “for further proceedings consistent with this

¹ Within the context of the opinion in *American Yeast I*, according to the tagging we employed therein, “American Yeast” referred collectively to both Ms. Stark and American Yeast, Inc.

opinion.” *Id.* Although Ms. Allen subsequently filed a Rule 11 application for permission to appeal, the Tennessee Supreme Court denied her application. *Allen v. American Yeast Inc.*, No. W2017-00874-SC-R11-CV (Tenn. Feb. 22, 2019) (order denying application for permission to appeal). The mandate issued on February 27, 2019.

Prior to the issuance of the mandate, in January 2019, attorney Darrell O’Neal, who was Ms. Allen’s former counsel, filed a “Petition to Enforce Attorney’s Lien” within the context of the same case and trial court docket number that was the subject of review in *American Yeast I*. American Yeast responded by filing a motion to dismiss and argued, among other things, that the court lacked jurisdiction due to an ongoing appellate process and that Mr. O’Neal was not entitled to enforce his claim within the same lawsuit. Further, American Yeast contended that Mr. O’Neal’s charging lien did not permit him to recover from it, an opposing party. Rather, American Yeast submitted that Mr. O’Neal’s lien was against Ms. Allen. American Yeast also offered an argument observing that the contract relied upon by Mr. O’Neal was between Ms. Allen and another attorney, John Walker, a licensed Arkansas attorney.

Following the issuance of the mandate, Mr. O’Neal filed an amended petition to enforce attorney’s lien, and he was joined in the petition by Mr. Walker. The filing averred that, although Ms. Allen had retained Mr. Walker to represent her in her personal injury action, her contract with Mr. Walker provided that Mr. Walker could associate with other counsel. The petition further noted that Mr. Walker had, in fact, associated with Mr. O’Neal to provide local representation in Memphis and that Ms. Allen had agreed to this representation.

Of note, the amended petition to enforce attorney’s lien acknowledged that pursuant to this Court’s ruling in *American Yeast I*, “Ms. Allen’s claims were dismissed with prejudice.” In attempting to enforce the attorney’s lien that was the subject of the petition, Mr. O’Neal and Mr. Walker requested in part that the court “require **American Yeast** to pay the required attorney’s fees.” (emphasis added) As for American Yeast’s previously-noted objection to the enforcement of a lien within the same lawsuit, Mr. O’Neal and Mr. Walker alerted the trial court to the existence of an “exception” to the general rule that American Yeast had highlighted. Namely, Mr. O’Neal and Mr. Walker argued that lien enforcement could occur in the same action where the property that is the subject of the lien came into the control of the court in the case in which services were rendered. *See Schmitt v. Smith*, 118 S.W.3d 348, 354 (Tenn. 2003) (discussing an exception to the general rule that an attorney must commence a separate proceeding to enforce his or her contractual right to a fee).

American Yeast did not stray from its position that dismissal of the lien issue was warranted. In a filing submitted after the joint petition from Mr. O’Neal and Mr. Walker was filed, American Yeast argued that the exception discussed in *Schmitt* did not apply as, according to it, there were never any funds within the control of the court. In support of

its position, American Yeast relied upon this Court's decision in *Castle v. David Dorris Logging, Inc.*, No. W2012-00917-COA-R3-CV, 2013 WL 500780 (Tenn. Ct. App. Feb. 11, 2013).²

Later, before the lien issue was addressed, Mr. O'Neal and Mr. Walker requested that the trial court "require American Yeast to pay Three Hundred Thousand Dollars . . . into the registry of [the trial court]," noting, among other things, that their request "is designed to protect any funds due Ms. Allen." American Yeast objected to this request and continued to object to the court's jurisdiction over the attorney's lien matter. Among other things, American Yeast argued that "[t]here was no issue raised over any potential settlement funds, or the payment of those, when the [trial court] made its ruling. Moreover, [the trial court] also subsequently dismissed the underlying case under Rule 41.02 as a sanction for Allen's continued defiance of [the trial court's] prior orders to comply with the Post Mediation Agreement." American Yeast stated that the trial court had previously "simply held that the Post Mediation Agreement was a contract that Respondent Adriane Allen had to comply with." No funds were within the control of the court according to American Yeast, and further, it argued that "[a] dismissed case means there is no award or judgment and no attorney's lien to adjudicate." Although Mr. O'Neal and Mr. Walker had suggested that "[o]nce funds are paid, there is a dismissal with prejudice," American Yeast argued that this position "defies the Court of Appeals' decision vacating the interpleader . . . while the rest of the [trial court's order] was affirmed."

² In that case, a jury returned a verdict for plaintiffs in the amount of \$350,000.00, but after the verdict, the plaintiffs fired their law firm. *Castle*, 2013 WL 500780, at *1. The verdict was reduced to judgment, and thereafter, the law firm filed a notice of attorney lien. *Id.* The defendants in the case later paid the jury verdict into the court clerk and ceased further participation in the litigation. *Id.* at *2 n.3. The law firm then sought to recover its fees in the same proceeding, which the trial court allowed. *Id.* at *2-3. Although the law firm argued that its efforts in the underlying proceeding fell within the exception under the case law given that the parties had agreed to pay damages into court, *id.* at *6, this Court disagreed when the matter was considered on appeal and observed that "the funds at issue were not within the trial court's control during the underlying litigation." *Id.* at *8. We explained:

[D]uring the underlying litigation there were no funds at issue because the Defendants had not yet been ordered to pay damages to the Appellants until the order on the jury verdict was entered. In contrast in *Schmitt*, the property at issue was within the trial court's jurisdiction from the inception of the underlying litigation because it constituted marital property subject to equitable division pursuant to Tennessee Code Annotated Section 36-4-121. Thus, in this case, the funds at issue were not within the control of the trial court "during the underlying litigation," and the trial court therefore, had no jurisdiction to award [the law firm] its alleged fee in this case.

Id. We further stated in *Castle* that "despite the parties' apparent consent to allow the trial court to hold the funds pending resolution of the dispute, the consent order did not operate to confer jurisdiction on the trial court to consider the fee dispute between the Appellants and [the law firm]." *Id.*

During a March 19, 2021, hearing in which Mr. O’Neal and Mr. Walker’s lien matter was argued, Mr. O’Neal expressed a desire to have the lien issue transferred to a different court if the trial court was of the opinion that it should not be considered in the present lawsuit. Ultimately, the trial court expressed its agreement with American Yeast’s position that the lien matter was not properly asserted in this lawsuit, and as discussed *infra*, the lien enforcement petition was later dismissed without prejudice by written order. When explaining its position why the lien matter was not properly before it, the trial court stated as follows during the March 19, 2021, hearing:

This Court is not in the proper posture to enforce the attorney lien.

In accordance with the arguments that were posed and raised by the Defendant that this Court lacks jurisdiction, well, this Court does agree that it lacks jurisdiction to enforce the attorney lien in this matter. These were not funds that were under -- that came into the custody of this Court as a part of this litigation while the litigation was ongoing. Those funds have not come in. They were not -- this Court was up-front and certainly a part of the Castle v. Loggins case. I’m well aware of the appellate court’s rulings and determinations as to when we can take jurisdiction over liens.

Mr. O’Neal is going to have to file a separate lawsuit. That lawsuit could wind up around and end up in Division IV. It might. It can end up in any one of the nine divisions of Circuit Court. We have no control over that.

Although this Court’s opinion in *American Yeast I* had affirmed the trial court’s prior dismissal of the underlying case, the trial court subsequently addressed during the March 19, 2021, hearing what conditions, if complied with prospectively, would allow for dismissal:

So the question becomes not based upon Mr. O’Neal’s request to have the funds paid in to the Clerk’s Office, but in order to resolve this case, clean it up finally, what happens? And I am going to, in essence, repeat myself.

....

So the Court orders for final resolution of this matter, based upon the agreement of the parties, one more time: Defendant is to pay the \$300,000 in to the Clerk’s Office. Upon the payment and receipt of that \$300,000 by the Clerk, this matter will be dismissed. The Court will enter an Order of Dismissal of this case.^[3]

³ This conditioning of the dismissal of the case was also broached by the trial court on remand from *American Yeast I* well before the March 19, 2021, hearing. For instance, in a prior order, the trial court had

Following the hearing, on July 23, 2021, the trial court entered its “Final Order” that memorialized the rulings discussed above. In this order, the trial court held in pertinent part that “[t]he Defendant shall have 30 days from the entry of this order to deposit [\$300,000.00] into the Registry of the Court. Upon that payment, this matter shall be Dismissed With Prejudice.” The court ruled that it would stay the disbursement of any funds from the registry until such time that all appeals have been exhausted.⁴ As for Mr. O’Neal and Mr. Walker’s lien enforcement petition, the trial court held that the matter was “Dismissed Without Prejudice.” This appeal followed.

DISCUSSION

The parties have raised a number of issues for our review. American Yeast and Ms. Stark (hereinafter “the American Yeast Appellants”) generally complain about the trial court’s decision to condition dismissal of the underlying case on the payment of funds into the court’s registry, “even though this Court had previously vacated such a requirement and affirmed dismissal of the matter with prejudice . . . without conditions.” They submit that the trial court’s actions violated the law of the case and ask that the funds they deposited into court be disgorged from the registry of the court and returned. For their part, Mr. O’Neal and the Estate of John Walker⁵ argue that the trial court did not err in its actions on remand, save for their specific contention that, instead of dismissing the petition to enforce the attorney’s lien, the trial court should have transferred that lien enforcement matter to another court division. Proceeding pro se, Ms. Allen also raises a number of issues for our review. In addition to posing procedural questions relating to this appeal, she appears to challenge the propriety of the settlement agreement that was entered into following mediation.

Ms. Allen’s Issues

We begin our discussion by briefly considering the concerns raised by Ms. Allen in this appeal. As best as we are able to discern, the heart of Ms. Allen’s challenge on appeal appears to relate to the validity of the settlement agreement concerning her claims. Indeed, we observe that she specifically describes her appeal as “involv[ing] the legal right of Appellee/Plaintiff Adriane Allen . . . to legally reject Defendants’ settlement offer.” Respectfully, all of the various concerns Ms. Allen appears to raise in relation to that end were addressed in our prior decision in *American Yeast I* in which her challenge to the settlement agreement was specifically foreclosed. See *American Yeast I*, 2018 WL 4846364, at *4. We thus turn to the issues raised by the other parties in this appeal.⁶

signaled that the case “will be dismissed” upon the payment of settlement funds into the registry.

⁴ According to a notice filed with the trial court, \$300,000.00 was paid into the registry on August 23, 2021.

⁵ Mr. Walker is now deceased.

⁶ We also note, of course, that we find no merit with respect to certain procedural concerns Ms. Allen has attempted to interject in this appeal. For instance, whereas Ms. Allen claims that the brief of the

Trial Court's Conditioning of Dismissal on Remand

The primary issues before us in this appeal are fairly narrow ones, and we limit our discussion accordingly. The essential question implicated through the brief submitted by the American Yeast Appellants is whether, on remand from *American Yeast I*, the trial court erred in conditioning dismissal of the case upon the payment of funds into court. The American Yeast Appellants contend that such action on the part of the trial court violated the law of the case doctrine and note, correctly, that this Court previously removed a requirement that funds be interpleaded into court and, at the same time, affirmed the trial court's previous dismissal of the case with prejudice. *Id.* at *5.

As this Court has previously discussed concerning a trial court's responsibility on remand:

After a case has been appealed, a trial court does not reacquire jurisdiction over the case until it receives a mandate from the appellate court. Once the mandate reinvests the trial court's jurisdiction over a case, the case stands in the same posture it did before the appeal except insofar as the trial court's judgment has been changed or modified by the appellate court. *Raht v. Southern Ry.*, 215 Tenn. 485, 497, 387 S.W.2d 781, 786 (1965). The appellate court's opinion becomes the law of the case, *Gill v. Godwin*, 59 Tenn.App. 582, 786, 442 S.W.2d 661, 662-63(1967), foreclosing and excluding any complaint, constitutional or otherwise, as to the issues addressed and decided in the appellate court's opinion. *Cook v. McCullough*, 735 S.W.2d 464, 469 (Tenn.Ct.App.1987). Thus, the trial court does not have the authority to modify or revise the appellate court's opinion, *McDade v. McDade*, 487 S.W.2d 659, 663 (Tenn.Ct.App.1972), or to expand the proceedings beyond the remand order. *Cook v. McCullough*, 735 S.W.2d at 470. The trial court's sole responsibility is to carefully comply with directions in the appellate court's opinion. *Raht v. Southern Ry.*, 215 Tenn. at 497-98, 387 S.W.2d at 786-87.

Earls v. Earls, No. M1999-00035-COA-R3-CV, 2001 WL 504905, at *3 (Tenn. Ct. App.

American Yeast Appellants should be stricken because it was, allegedly, not properly served on her in accordance with technical procedural requirements, we fail to understand what prejudice exists even assuming arguendo that the brief was not served on her properly as she claims. Indeed, it is clear that Ms. Allen received the brief, as she has acknowledged the brief and its contents before this Court, and it is further clear that she was aware of the brief's contents months before her own amended brief was submitted. For instance, in a document Ms. Allen filed regarding a motion to supplement the record, she referenced how "Appellants/Defendants cited from the volumes of the Record of Appeal in their filing of their brief." We thus find no merit to her request that we strike the American Yeast Appellants' brief. We also find no merit in Ms. Allen's conclusory assertion, which is not supported by any evidence, that the attorneys representing the estate of Mr. Walker are doing so fraudulently.

May 14, 2001) (internal footnote omitted). The law of the case doctrine “promotes the finality and efficiency of the judicial process, avoids indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts.” *Memphis Publ’g Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998).

Here, it is clear to us that the trial court’s action on remand in effect modified this Court’s prior opinion from *American Yeast I*. As reflected in *American Yeast I*, this Court vacated the trial court’s prior decision requiring the interpleading of funds into the court but otherwise affirmed the trial court, including its dismissal of the case with prejudice. *American Yeast I*, 2018 WL 4846364, at *5. The underlying tort case was thus dismissed; the case was over. That is the posture in which this litigation was remanded. Yet, even though this Court had already affirmed dismissal of the case and removed the requirement that funds be interpleaded pursuant to the motion of Mr. O’Neal, who no longer represented Ms. Allen, the trial court took further action on remand to condition dismissal of the *already-dismissed* case, all occurring amidst the efforts of Mr. O’Neal and Mr. Walker to litigate their attorney’s lien enforcement petition. Indeed, as we have discussed, the trial court ultimately required, following a motion by Mr. O’Neal and Mr. Walker for funds to be deposited into court,⁷ that the case would be dismissed upon the payment of \$300,000.00 into the court’s registry.

The trial court’s action on remand in conditioning dismissal of the case departed from what had already been decided in the case, as it had already been dismissed. In this respect, we agree with the sentiment and understanding expressed by the American Yeast Appellants: “[t]he case was supposed to be over.” The underlying tort case was in fact already over, as we had affirmed its dismissal and had removed the requirement that funds be interpleaded in connection thereto. Because the trial court did not adhere to the law of the case, we hereby reverse its order conditioning dismissal of the case upon the payment of funds into the court’s registry. Moreover, based on this disposition, we are in agreement with the American Yeast Appellants that funds they paid into the court’s registry in accordance with the complained-of order should be released and returned to them. The ultimate effect is, as in *American Yeast I*, that Ms. Allen’s tort case is over.

Petition to Enforce Attorney’s Lien

The last issue for our review concerns the petition to enforce attorney’s lien, which was interjected into the context of this litigation following the remand from *American Yeast I*.⁸ As mentioned earlier, when attempting to enforce the attorney’s lien that was the subject

⁷ Although we recognize that the motion to deposit funds was not nominally filed in the name of Ms. Allen, we still observe that, just as Mr. O’Neal was Ms. Allen’s *former* attorney when the motion for interpleader discussed in *American Yeast I* had been considered, we observe he also was not her counsel at this stage.

⁸ Technically, as outlined earlier, the initial petition submitted by Mr. O’Neal alone was filed before

of the petition, Mr. O’Neal and Mr. Walker requested, among other things, that the trial court “require **American Yeast** to pay the required attorney’s fees.” (emphasis added) Moreover, as we discussed, American Yeast opposed the attempted lien enforcement by, in part, directing the trial court to case law such as *Castle v. David Dorris Logging, Inc.*, No. W2012-00917-COA-R3-CV, 2013 WL 500780 (Tenn. Ct. App. Feb. 11, 2013), which indicates that fee disputes must ordinarily be litigated in a separate lawsuit unless the property upon which the lien is to be enforced comes within the control of the court in the case in which services were rendered. *See id.* at *6-8. The record reflects that the trial court found favor in American Yeast’s argument, with the court dismissing the petition to enforce without prejudice. Notably, Mr. O’Neal and Mr. Walker’s estate do not appear to raise any actual challenge to the trial court’s conclusion that the attorney’s lien matter needed to be asserted in a separate lawsuit. Rather, the issue they raise concerning the matter is simply that, instead of dismissing the attorney’s lien enforcement petition from the present litigation without prejudice, the trial court should have transferred the petition to another court division pursuant to Tennessee Code Annotated section 16-1-116. This referenced statute allows a court that determines it lacks jurisdiction to, “if it is in the interest of justice, transfer the action . . . to any other such court in which the action . . . could have been brought at the time it was originally filed.” Tenn. Code Ann. § 16-1-116. It is within a court’s discretion to determine whether a transfer is warranted. *See Turner v. State*, 184 S.W.3d 701, 705 (Tenn. Ct. App. 2005) (noting that transfer under the statute is not automatic but subject to the court’s discretion).

To the extent Mr. O’Neal and Mr. Walker’s estate are asserting that the trial court abused its discretion, we fail to discern any abuse of discretion on the part of the trial court concerning this issue. The dismissed petition was dismissed *without prejudice*, and moreover, it is not clear to us why it would have been “in the interest of justice” to transfer the petition as filed, considering that the petition named American Yeast (which was not a client of Mr. O’Neal or Mr. Walker). Indeed, even comments made by Mr. O’Neal when discussing the transfer issue during a hearing before the trial court point to the real nature of the dispute at issue concerning the attorney’s lien: “That’s the transfer statute. So if this petition -- you know, because **this is a dispute between a lawyer and her [sic] client**; and the question is if this Court believes that it shouldn’t be in this courtroom, this Court would have the jurisdiction to transfer it to the appropriate courtroom or to another Court.” (emphasis added) This issue is, respectfully, without merit.

CONCLUSION

In light of the foregoing discussion, we reject the issues raised by Ms. Allen in this appeal, reverse the trial court’s order conditioning dismissal of the case upon the payment of funds into the court’s registry, hold that the funds paid into the court’s registry pursuant

the mandate issued in *American Yeast I*, but the amended petition filed on behalf of Mr. O’Neal and Mr. Walker was filed after the mandate issued.

to that order should be returned to the American Yeast Appellants, and affirm the trial court's nonprejudicial dismissal of the attorney's lien enforcement petition that was pursued by Mr. O'Neal and the Estate of John Walker.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE