

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 16, 2015 Session

**NATIONAL PUBLIC AUCTION COMPANY, LLC v. CAMP OUT, INC., ET
AL.**

**Appeal from the Chancery Court for Rutherford County
No. 100288CV Robert E. Corlew, III, Chancellor**

No. M2015-00291-COA-R3-CV – Filed February 18, 2016

An auctioneer filed suit against a recreational vehicle dealer for injunctive relief and damages; the dealer counterclaimed for fraud and other causes of action. A jury returned a verdict in favor of the dealer. Distribution of funds held by the court clerk was held in abeyance. This appeal is a post-judgment dispute as to whether the trial court erred in allowing the purchaser of a recreational vehicle at the auction to intervene after the trial court entered its judgment on the jury verdict to seek the return of money deposited with the court clerk, and whether the trial court erred in dismissing the dealer's counterclaim against the purchaser and awarding the purchaser the return of his purchase price. We conclude that the trial court did not abuse its discretion in allowing the purchaser to intervene, but that the trial court erred in failing to allow the dealer to conduct discovery to determine whether the purchaser contributed to the loss in value of the vehicle.

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Kristin Fecteau and Aubrey Givens, Nashville, Tennessee, for the appellant, Camp Out, Inc.

William Anthony Hollin, Knoxville, Tennessee, Pro Se.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

This appeal concerns a post-judgment dispute. We will, therefore, present only a brief summary of the case prior to that point as necessary to elucidate the current issues. On November 4, 2009, National Public Auction Company, LLC (“NPA”) entered into a contract with Camp Out, Inc. (“Camp Out”), a dealer of recreational vehicles and equipment, to sell some of Camp Out’s inventory. (The terms of the contract are disputed.) At the auction on November 7, 2009, William Anthony Hollin purchased a Sun Voyager recreational vehicle for \$44,500.00.

According to Mr. Hollin, NPA contacted him in January 2010 to inform him that it was unable to provide him with a certificate of title to the Sun Voyager. NPA refunded the \$44,500.00 and suggested that he maintain possession of the vehicle.

NPA filed suit against Camp Out on February 25, 2010 seeking an injunction and damages for breach of contract, negligent misrepresentation, and violations of the Tennessee Consumer Protection Act (“TCPA”). The complaint alleged that Camp Out authorized NPA to sell certain vehicles, trailers, and recreational equipment, but subsequently refused to “furnish the necessary paperwork to transfer ownership” as required under the contract. Camp Out filed an answer and counter-complaint asserting fraud in the sale of its recreational vehicles; Camp Out alleged that NPA should be held liable for breach of contract, misrepresentation, conversion, fraud in the inducement, violations of the TCPA, and violations of the duty of the auctioneer.

In June 2010, the trial court ordered NPA to pay the entire amount of the funds received from the auction of Camp Out’s recreational vehicles to the court clerk. Mr. Hollin paid the \$44,500 purchase price of the Sun Voyager directly to the court.

At a hearing in January 2011, the trial court granted the motion of GE Commercial Distribution Finance Corporation (“GE”) to intervene. GE held a security interest in Camp Out’s inventory.

A jury trial was held over six days in February 2011. On February 14, the jury announced its verdict: it found Camp Out was entitled to a judgment in the amount of \$226,236.00 for NPA’s violation of the TCPA. The trial court entered judgment on the verdict on March 28, 2011. Following the trial, GE filed its complaint in intervention and recovery of personal property alleging that Camp Out was in default for failing to pay amounts due under certain security documents and that GE had a perfected security interest

in the recreational vehicles that Camp Out had sold.

On May 18, 2011, the trial court ruled on several motions. The trial court trebled the TCPA damages awarded to Camp Out to \$678,708.00 and awarded Camp Out \$50,000.00 in attorney fees. The trial court denied Camp Out's motion to release funds to pay attorney fees, stating that "before we release any funds, we must consider whether the attorney's fee lien is subordinate to [GE's] perfected security interest in the proceeds."

We turn now to the facts that are directly relevant to this appeal. On June 2, 2011, Mr. Hollin filed a motion to intervene in this case. He requested that he be allowed to intervene to "protect his \$44,500 or receive good title to the RV." Camp Out filed a response in opposition to Mr. Hollin's motion to intervene. After a hearing on June 27, 2011, the trial court entered an order on July 14, 2011 allowing Mr. Hollin to intervene "for the sole claim that the \$44,500 in the clerk's office belongs to him." The court specifically stated: "If he [Mr. Hollin] wants to argue that he owns the camper, he must file a separate lawsuit." Mr. Hollin filed his complaint in intervention on July 5, 2011.¹

On November 10, 2011, the trial court heard Camp Out's motion for replevin of personal property from Mr. Hollin. Based upon the testimony at the hearing, "the ruling made by this Court regarding the rescission of the sale of Camp Out's Sun Voyager by National Public Auction, the security interest of GE Commercial Distribution Finance Corporation, and statements of counsel," the trial court granted Camp Out's motion. The trial court therefore ordered Mr. Hollin to "surrender possession of the Sun Voyager to any designated agent of [GE]."

Camp Out filed an answer to Mr. Hollin's second amended intervening complaint and a counter-complaint on January 24, 2012. In its counter-complaint, Camp Out asserted that Mr. Hollin was liable for conversion of the Sun Voyager because he maintained possession of the vehicle and refused to turn it over without a court order, thereby depriving Camp Out of its property and causing a loss of value.

NPA filed for Chapter 7 bankruptcy in January 2012. In October 2012, GE and Camp Out entered into a Stipulation for Release of Funds from Court's Registry in which they requested that all auction funds paid into the court be released to GE. On December 3, 2012, the trial court entered an order providing that all auction funds (\$18,976.75) paid into court be released to GE. The order provided that it "shall not affect the dispute between Camp Out and Hollins regarding the Hollins Funds." The funds paid into court by Mr. Hollins remained in the court registry. On February 13, 2013, GE filed a notice of satisfaction of claims and

¹He later filed two amended complaints.

request for dismissal; it was dismissed from the case on March 4, 2013.

On December 19, 2013, the trial court entered an order proposing to dismiss the remainder of the case unless objections were timely filed. Camp Out lodged a notice of objection to the dismissal explaining its view of the pertinent background of the case. On January 30, 2014, the trial court entered an order allowing the case to remain on the active docket.

On January 31, 2014, Mr. Hollin filed a response to Camp Out's objection to dismissal of the case for failure to prosecute. Mr. Hollin argued that the court should dismiss the case and disburse the escrowed funds to him as contemplated in its December 19, 2013 order. In the alternative, even in the absence of dismissal, Mr. Hollin asserted that the funds should still be disbursed to him; in his view, Camp Out could still proceed with its counterclaim.

On April 18, 2014, Camp Out sent a notice of deposition to Mr. Hollin for a deposition to take place on May 2, 2014. Mr. Hollin responded by filing a motion for a protective order alleging that Camp Out's request for a deposition was a "thinly-veiled attempt to cause annoyance, oppression and undue burden and expense" and was "an abuse of the discovery rules." Mr. Hollin did not appear for the deposition, and Camp Out filed a motion to show cause why Mr. Hollin should not be sanctioned for failure to appear for the deposition. Mr. Hollin filed a notice of hearing on his request to dismiss the case and disburse the funds to him or, in the alternative, just disburse the funds to him.

The trial court heard all of the parties' motions on June 6, 2014 and, on September 2, 2014, entered an order dismissing all of Camp Out's remaining claims and directing that the \$44,500 (minus any additional costs) be paid to Mr. Hollin. In a memorandum opinion, the trial court reasoned: "it appears elementary that Mr. Hollin, who is now pro se, should not be required to lose both the recreational vehicle which he bought at auction, and also lose the money which he paid in an effort to purchase that vehicle." The court further stated that "[a]ll claims by Camp Out against Mr. Hollin in this cause were subject to being asserted by GE Commercial, and were waived when the suit involving GE was concluded more than a year ago."

Camp Out filed a motion to alter or amend, which was denied on January 5, 2015. Camp Out then appealed to this Court.

ISSUES ON APPEAL

The two issues in this appeal are: (1) whether the trial court erred in granting Mr. Hollin the right to intervene in this case after a final judgment had been rendered; and (2)

whether the trial court erred in dismissing Camp Out's counterclaim and awarding the funds to Mr. Hollin.

ANALYSIS

(1)

Camp Out first maintains that the trial court erred in allowing Mr. Hollin to intervene after the trial court had already entered its final judgment.

Mr. Hollin moved to intervene as of right or, in the alternative, to intervene by permission. Tennessee Rule of Civil Procedure 24.01 governs intervention as of right and provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties; or (3) by stipulation of all the parties.

(Emphasis added).

Camp Out's main argument is that Mr. Hollin's attempt to intervene was not timely because he knew that litigation was pending and should have intervened to protect his interest during the trial. Based upon the same reasoning, Camp Out asserts the doctrine of laches as a defense to Mr. Hollin's motion to intervene. Camp Out further argues that, because Mr. Hollin maintained possession of the Sun Voyager and it depreciated in value for more than two years before the trial court ordered Mr. Hollin to turn the vehicle over to GE, Mr. Hollin came to court with unclean hands.

The standard of review for the grant or denial of intervention as of right is de novo, except that the timeliness of the application is reviewed under an abuse of discretion standard. *Holland v. Holland*, No. E2011-00782-COA-R3-CV, 2012 WL 1691498, at *2 (Tenn. Ct. App. May 15, 2012); *Am. Materials Techs., LLC v. City of Chattanooga*, 42 S.W.3d 914, 916 (Tenn. Ct. App. 2000). All of Camp Out's arguments relate to the timeliness of Mr. Hollin's application to intervene. We will, therefore, apply the abuse of discretion standard of review. Under the deferential abuse of discretion standard, we must review a trial court's discretionary decision to determine:

(1) whether the factual basis for the decision is properly supported by evidence in the record, (2) whether the [trial] court properly identified and applied the most appropriate legal principles applicable to the decision, and (3) whether the [trial] court's decision was within the range of acceptable alternative dispositions.

Lee Med., Inc. v. Beecher, 312 S.W.3d 515, 524 (Tenn. 2010) (citing *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 872-73 (Tenn. Ct. App. 2008) (quoting *BIF, a Div. of Gen. Signal Controls, Inc. v. Serv. Constr. Co., Inc.*, No. 87-136-II, 1988 WL 72409, at *3 (Tenn. Ct. App. July 13, 1988))).

In *American Materials Technologies, LLC. v. City of Chattanooga*, 42 S.W.3d at 916, this Court stated that, "The timeliness of an intervention is governed by equitable principles, and is determined by the facts and circumstances of each particular case." The court went on to identify the following factors to be considered:

"(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure after he knew or reasonably should have known of his interest in the case to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention."

Am. Materials, 42 S.W.3d at 916 (quoting *Velsicol Chem. Corp. v. Enenco, Inc.*, 9 F.3d 524, 531 (6th Cir. 1993)). The court in *American Materials* also noted that, absent special circumstances, the general rule precludes intervention after entry of a final judgment. *Id.* Depending upon the facts, however, intervention may be timely after a final judgment. *Id.* (citing *Hamilton Nat'l Bank v. Woods*, 238 S.W.2d 109, 112 (Tenn. Ct. App. 1948)).

In ruling that Mr. Hollin would be allowed to intervene in the case, the trial court found that it had not directed Mr. Hollin to deposit the money into the court, but Mr. Hollin had done so. The trial court further found:

[T]he clerk is holding money, but it is not clear whose money it is. The money may be [NPA's] or it may be Camp Out's or it may be GE's money. Tony Hollin deposited a check from his own account. The Court believes that Mr. Hollin should be allowed to enter this lawsuit to argue that the money in the clerk's office is his money.

IT IS THEREFORE ORDERED that Tony Hollin may intervene in this lawsuit for the sole claim that the \$44,500 in the clerk's office belongs to him. If he wants to argue that he owns the camper, he must file a separate lawsuit.

As stated above, "The timeliness of an intervention is governed by equitable principles, and is determined by the facts and circumstances of each particular case." *Am. Materials*, 42 S.W.3d at 916. It is within the trial court's discretion to give more weight to one factor over another. While Camp Out focuses on the fact that Mr. Hollin could have intervened earlier, the trial court emphasized that the clerk was holding money, that it remained unclear to whom the money belonged, and that Mr. Hollin had a legitimate interest in making a claim to that money. After the entry of judgment on the jury verdict in favor of Camp Out, the trial court still had to decide how to distribute the funds on deposit with the court clerk. Thus, at the point when Mr. Hollin sought to intervene, the court had not yet decided how to distribute the money the court clerk was holding. We cannot say that the trial court abused its discretion in permitting Mr. Hollin to intervene in order to pursue his claim to part of those funds.

(2)

The remaining issue is whether the trial court erred in dismissing Camp Out's counterclaim and awarding the \$44,500.00 in funds to Mr. Hollin. We conclude that this was error.

The trial court stated that it could not "continue to allow this four-year old matter to continue to drag on when the action between the principal parties is concluded" The delay in the case, however, was not caused by Camp Out, but in large measure by the bankruptcy of NPA and the withdrawal of Mr. Hollin's attorney. Camp Out attempted to depose Mr. Hollin, but Mr. Hollin sought a protective order. Camp Out has legitimate questions regarding Mr. Hollin's acquisition of the Sun Voyager, his care of the vehicle, and the diminution in the vehicle's value during the two years that Mr. Hollin maintained possession of it.² Tennessee Rule of Civil Procedure 26.02 provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" The trial court erred in failing to give Camp Out the opportunity to engage in discovery to support its assertion that it is "entitled to the money [deposited with the court by Mr. Hollin]" or at least to "an offset for the damage and depreciation that Hollin caused to the Sun Voyager."

² Although GE was awarded possession of the Sun Voyager, Camp Out must continue to pay GE for the balance of the secured indebtedness not covered by the funds GE received from the judgment.

Therefore, we reverse the decision of the trial court on this issue and remand for further proceedings.

CONCLUSION

The judgment of the trial court is affirmed in part, reversed in part, and remanded for further proceedings consistent with the opinion. Costs of appeal are assessed against the appellee, and execution may issue if necessary.

ANDY D. BENNETT, JUDGE