

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 21, 2014 Session

**TONITA REEVES v. PEDERSON-KRONSEDER, LLC, d/b/a PEDERSON'S
NATURAL FARMS, INC.**

**Appeal from the Chancery Court for Davidson County
No. 121593II Carol L. McCoy, Chancellor**

No. M2013-01651-COA-R3-CV - Filed March 28, 2014

Employee and Employer were preparing to arbitrate Employee's age discrimination claim when parties began discussing settlement. Employer was responsible for arbitration expenses and made an offer to settle Employee's claim before incurring bulk of expenses. Employee was aware of Employer's motivation to avoid paying these fees. Employee attempted to accept offer of settlement three days before arbitration was scheduled, which was after Employer was required to pay \$9,000 deposit for arbitration and incurred other necessary expenses preparing for hearing. Employer informed Employee its offer had lapsed and was no longer open. Employee sued for breach of contract. Trial court found Employee did not accept Employer's offer within reasonable period of time and that there was no settlement contract to enforce. Employee appeals trial court's judgment. We affirm.

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

BEN H. CANTRELL, SR. J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Phillip Leon Davidson, Nashville, Tennessee, for the appellant, Tonita Reeves.

Darrick Lee O'Dell, Nashville, Tennessee, for the appellee, Pederson-Kronseder, LLC, d/b/a Pederson's Natural Farms, Inc.

OPINION

This contract case involves an offer of settlement that did not include a specific time for acceptance. The recipient of the offer contends the offer was open until it was either accepted, rejected, or withdrawn. The maker of the offer asserts that the offer was open only for a reasonable time and, based on the circumstances of this case, the offer was no longer

available by the time the recipient purported to accept it. We agree that the concept of “reasonableness” is determinative and find that the recipient did not accept the offer within a reasonable time. We therefore affirm the trial court’s judgment ruling that there was no enforceable settlement agreement.

I. BACKGROUND

Tonita Reeves was employed by Pederson-Kronseder, LLC d/b/a Pederson’s Natural Farms, Inc. (“Pederson’s”). Ms. Reeves was terminated by Pederson’s and filed an age discrimination claim with the Equal Employment Opportunity Commission (“EEOC”). The parties were unable to resolve Ms. Reeves’ claim through mediation with the EEOC. Ms. Reeves’ employment agreement required that she arbitrate any claims she had against Pederson’s. Ms. Reeves, therefore, made a demand for arbitration of her claim.

On May 31, 2012, counsel for Ms. Reeves sent an e-mail to Pederson’s counsel asking whether Pederson’s would “be interested in trying to settle this case before we start depositions.” Pederson’s counsel responded by e-mail that same day: “I’m not sure if my client’s last offer is still on the table or not. I know they have spent a lot of money on the AAA¹ as well as my own work that might affect the way they look at this.”

Counsel for the parties continued corresponding by e-mail regarding discovery and the idea of settlement generally. By e-mail dated June 29, Pederson’s attorney stated, “I was able to get [Pederson’s] to agree to put the \$40,000 back on the table we offered at the EEOC mediation. Since your client made a move I was able to get an extra \$2,500 for a total of \$42,500.” Ms. Reeves’ attorney responded three days later, on July 2, “My client just returned to Nashville. I will meet with her after her deposition tomorrow and give you an answer regarding your counter-offer.”

Having heard nothing further from Ms. Reeves’ counsel, Pederson’s attorney inquired by e-mail on July 10 whether Ms. Reeves’ attorney had been able to discuss Pederson’s counter-offer with Ms. Reeves. Ms. Reeves’ attorney replied later that day that he was working on it, and that Ms. Reeves had not given him an answer yet.

Between July 10 and August 12, the parties engaged in additional written discovery and took depositions. On July 23, Ms. Reeves propounded a new set of discovery requests asking for Pederson’s tax returns. Pederson’s produced the requested documents on August 6. On Sunday, August 12, Ms. Reeves’ counsel e-mailed Pederson’s counsel to let him know Ms. Reeves accepted Pederson’s offer to settle her claim for \$42,500. Pederson’s counsel

¹American Arbitration Association.

did not receive this e-mail until the next day, August 13, which was just two days before the arbitration was scheduled to begin. By the time Ms. Reeves attempted to accept Pederson's offer, Pederson's took the position that its offer to settle was no longer viable. Pederson's believed its offer had lapsed with the passage of time and lack of response before it was required to pay the bulk of the arbitration expenses.

By the time Ms. Reeves attempted to accept Pederson's offer, Pederson's had expended significant amounts of money. Pursuant to the employment contract between Ms. Reeves and Pederson's, Pederson's was responsible for paying the arbitration fees charged by the AAA. This included an initial fee of approximately \$2,000 as well as a deposit that was due by July 16 in the amount of \$9,130 to cover the arbitrator's anticipated compensation and expenses. Pederson's paid both of these amounts when they were due. Pederson's also incurred attorney's fees associated with the upcoming arbitration and costs associated with transporting its witnesses from Texas to Nashville for the upcoming arbitration and putting them up at hotels during the arbitration itself.

Following the arbitration, which did not result in a favorable outcome for Ms. Reeves, Ms. Reeves filed a complaint against Pederson's in the chancery court alleging breach of contract. Ms. Reeves alleged Pederson's made an offer of settlement on June 29, 2012, but that she was not in a position to respond at that time because there was still discovery that needed to be taken concerning Pederson's financial condition. Ms. Reeves asserted that Pederson's offer of settlement was not withdrawn or modified before she accepted it on August 12 and that the time within which she accepted the offer was not unreasonable. Ms. Reeves alleged she suffered damages as a result of Pederson's breach in the amount of 42,500.

Both Pederson's and Ms. Reeves filed motions for summary judgment, which the trial court denied. A trial took place on May 28, 2013. After all the evidence was presented, the court ruled in favor of Pederson's. In its oral ruling from the bench, the trial court stated:

Focusing on the e-mails that were exchanged, each of these parties understood that the conditions between their respective clients would change significantly with the passage of time, and therefore it is important to look at the facts of the case . . . and look at the situations of the parties.

This offer was not open indefinitely. Through the exchange of the e-mails, there is an implicit connotation that time was being considered; with its passage, expenses would be incurred of some significance that would impact the evaluation that the employer was making on what was to be offered to resolve this case.

In its Final Order, the trial court wrote:

IT IS ORDERED, ADJUDGED AND DECREED the question to be determined here by the Court, when considering whether an enforceable settlement agreement existed, depends on the reasonableness of the time that passed between July 10, 2012 and August 13, 2012. In regard to offers of settlement, the law in Tennessee is that settlement offers are only open for a reasonable time period. Tullahoma Concrete P. Co. v. T.E. Gillespie Const. Co., 405 S.W.2d 657 (Tenn. Ct. App. 1966).

As offers to settle in Tennessee are only open a reasonable time, the court finds the offer Ms. Reeves attempted to accept was not open indefinitely. When considering reasonableness for the time period between offer and acceptance, it is not whether the amount of time that passed is short or great, but rather what transpired during the passage of time to affect the parties' negotiating status.

The court finds, based on the e-mails exchanged between counsel, both parties understood that the conditions between the respective parties would change significantly with the passage of time.

The financial information Ms. Reeves' counsel indicated was critical to the evaluation of the settlement offer was obtained via a second set of discovery (propounded on July 23, 2012). It was propounded well after the parties had entered into settlement discussions, informal and formal discovery exchanges.

After Pederson's made the counteroffer of \$42,500.00, expenses were incurred for litigation, formal and informal discovery, arbitration fees, depositions and travel expenses with little chance of recouping expenses.

Based on the facts and reasonableness of the passage of time, the Court finds that the settlement offer of \$42,500 lapsed after July 10, 2012, and was not re-activated by Ms. Reeves' counsel's e-mail accepting it on August 12, 2012. It was not reasonable for Ms. Reeves to assume, when the attempted acceptance was sent, that the offer remained open. Both parties had an opportunity to inquire as to the status of the settlement offer.

Pederson's last inquiry into a response to the settlement offer on July 10, 2012 came back with an indication that Ms. Reeves was still thinking about

it and her attorney was working on it. When the parties proceeded toward arbitration with no further mention of the offer, the Court finds Ms. Reeves was remiss in not inquiring whether the offer remained open before proceeding further.

Based on the foregoing, the Court finds there is no enforceable settlement agreement and Judgment in this action is entered on behalf of the Defendant.

Ms. Reeves appeals the trial court's judgment. She argues that the trial court erred when it held that Pederson's offer, which had been neither withdrawn nor expressly rejected by the time Ms. Reeves attempted to accept it, had lapsed as a result of the passage of time and the parties' situation.

II. ANALYSIS

Our review on appeal of the trial court's findings of fact is *de novo* with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Blair v. Brownson*, 197 S.W.3d 681, 684 (Tenn. 2006); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001); *Hass v. Knighton*, 676 S.W.2d 554, 555 (Tenn. 1984); *Edmunds v. Delta Partners, L.L.C.*, 403 S.W.3d 812, 821 (Tenn. Ct. App. 2012). We review a trial court's conclusions of law *de novo*, with no presumption of correctness. *Whaley v. Perkins*, 197 S.W.3d 665, 670 (Tenn. 2006); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

The parties do not dispute the facts of this case. The only issue is whether the trial court erred in holding that Pederson's offer was only open for a reasonable time, and, if so, whether a reasonable time had passed by the time Ms. Reeves sought to accept the offer.

The trial court relied on *Tullahoma Concrete P. Co. v. T.E. Gillespie Const. Co.*, 405 S.W.2d 657 (Tenn. Ct. App. 1966), in ruling that settlement offers are only open for a reasonable period of time. In *Tullahoma*, one party attempted to accept another party's offer of settlement four and a half months after it was made. *Id.* at 664. The trial court had ruled that more than a reasonable amount of time had passed between the date of the offer and the date of the purported acceptance and that the offering party was, therefore, not bound thereby. *Id.* On appeal, the Court of Appeals wrote:

If any such offer of settlement was made, there was no time limit on it and, therefore, in such a situation, the law considers that the alleged offer remained open for a **reasonable time**.

Id. (Emphasis added.)

Indeed, the rule of reasonableness is applied to all types of contracts in Tennessee when an offer does not include a specific time within which an acceptance or performance is required. *See Shearer v. McArthur*, 2012 WL 5399221, at *5 (Tenn. Ct. App. Nov. 5, 2012) (“courts generally read into a contract a reasonable time standard when the contract does not include a time for performance”). In *Minor v. Minor*, 863 S.W.2d 51 (Tenn. Ct. App. 1993), for example, the Court of Appeals wrote that “[a] qualifying word which must be read into every contract is the word ‘reasonable’ or its equivalent ‘reasonably.’” *Id.* at 54 (citing *Moore v. Moore*, 603 S.W.2d 736, 739 (Tenn. Ct. App. 1980)). The contract in *Minor* was a reconciliation agreement between a husband and wife that the husband wanted to enforce twelve years after it was executed, and the time of performance was at issue. *Id.* at 53-54. The *Minor* court explained:

Where no provision is made in the contract for performance, a reasonable time is implied. Completion of a contract within a reasonable time is sufficient if no time is stipulated. Where the parties have not clearly expressed the duration of the contract, or where the duration of the contract is indefinite, the courts will imply that they intended performance to continue for a reasonable time.

Minor, 863 S.W.2d at 54. Quoting American Jurisprudence 2d, the *Minor* court explained that a “reasonable time” depends on the subject matter of the contract, the situation of the parties, and their intention when contemplating the contract. *Id.* (citing 17A AM.JUR.2D *Contracts* §§ 479 and 480 (1991)); *see Gerulis v. Jacobus*, 2010 WL 1644991, at *5 (Tenn. Ct. App. Apr. 23, 2010) (where contract is silent on time of performance, offeree must perform within “reasonable time,” which depends on subject matter of contract, parties’ situation, parties’ intention when contract was made, and circumstances surrounding performance).

In *Allen v. Nat’l Adver. Co.*, 798 S.W.2d 766 (Tenn. Ct. App. 1990), the plaintiff attempted to exercise an option to purchase property belonging to the defendant about ten years after the option was offered to the plaintiff. *Id.* at 767. The Court of Appeals held the plaintiff failed to exercise his option within a reasonable time under the circumstances. Quoting 17 C.J.S. *Contracts* § 51, the *Allen* court explained:

Where no time is fixed in the offer it expires at the end of a reasonable time unless the parties treat the offer as continuing in force. What is a reasonable time depends largely on the nature of the particular offer and the circumstances of the case.

Id. at 771.

As these cases show, there are no set rules to determine what amount of time is “reasonable” when an offer does not specify how long it will remain open, or when an agreement does not specify when performance must be completed. Each case must be decided based on the unique circumstances of the parties and the situation under consideration. The cases do not support Ms. Reeves’ argument that an offer containing no time limitations remains open indefinitely until it is either expressly rejected, withdrawn, or accepted.

The parties in this case were both interested in settling Ms. Reeves’ claim against Pederson’s before too much money was spent on preparing the case for arbitration, which was scheduled for August 15, 2012. The evidence introduced at trial showed Ms. Reeves was aware that the costs Pederson’s was incurring in connection with the upcoming arbitration was an important factor when Pederson’s offered to settle Ms. Reeves’ claim for \$42,500. In fact, Ms. Reeves initiated the settlement discussion in May by asking Pederson’s attorney whether Pederson’s would be interested in settling the matter before the parties spent money on depositions.

Ms. Reeves knew Pederson’s was required to pay \$9,130 to AAA by July 16 for the arbitration scheduled the following month.² On July 10, shortly before this amount was due, Pederson’s attorney contacted Ms. Reeves’ attorney to find out whether Ms. Reeves was going to accept its offer. Only after Pederson’s paid this deposit did Ms. Reeves seek additional discovery that she contends was vital for her to consider before deciding whether or not to accept Pederson’s offer of settlement.

By the time Ms. Reeves attempted to accept Pederson’s offer, the arbitration hearing was less than a week away. In addition to paying the \$9,130 deposit, Pederson’s had also incurred costs consisting of non-refundable airplane tickets for its witnesses and hotel rooms as well as attorney’s fees for preparing the pre-arbitration brief and other work in anticipation of the arbitration. In these circumstances, the “reasonable time” for Pederson’s offer to remain open had passed by the time Ms. Reeves sought to accept the offer.

²Ms. Reeves takes the position that this deposit was required regardless of whether the parties settled the case before the arbitration was scheduled to take place. However, the letter from AAA described the \$9,130 fee as “a deposit to cover the arbitrator’s anticipated compensation and expenses for this matter.” This suggests that if the arbitration was canceled due to the parties’ settlement of the matter before the fee was due, Pederson’s would be relieved of paying this amount.

III. CONCLUSION

The trial court's judgment dismissing Ms. Reeves' action against Pederson's is affirmed. Costs of this appeal shall be assessed against the appellant, Tonita Reeves, for which execution shall issue if necessary.

BEN H. CANTRELL, SR. JUDGE