

Archive – Summaries of Tennessee Cases on Settlements (2010-12)

Below are cases related to settlements in general. For cases on mediated settlements, go to Archive – Summaries of Tennessee Cases on Mediation.

A. Tennessee Supreme Court Cases

Settlement of Employment Discrimination Suit Does Not Preclude Subsequent Suit for Federal Retaliatory Discharge Claim. In Porsha Perkins v. Metropolitan Government of Nashville and Davidson County, 380 S.W. 3d 73 (Tenn. 2012), an employee of a Metro Nashville agency was discharged after she filed complaints with the EEOC and sued Metro alleging employment discrimination. After appealing her termination to the Metro Civil Service Commission, she settled, receiving backpay and other consideration in exchange for her agreement not to apply for or accept future employment with the agency that discharged her. The employee subsequently sued Metro alleging, among other things, retaliatory discharge in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (“ADEA”). Reversing and vacating the judgment of the Court of Appeals, the Tennessee Supreme Court relied on Burlington N. & Santa Fe Ry. V. White, 548 U.S. 53 (2006) to hold that the employee’s acceptance of the settlement did not preclude her from establishing that her termination constituted an adverse employment action for purposes of her federal retaliatory discharge claims. The settlement expressly excluded the employee’s EEOC complaints.

Settlement Agreement Enforced; Statute of Frauds Satisfied by Emails. In a case of first impression, Earline Waddle v. Lorene B. Elrod, 367 S.W. 3d 217 (Tenn. 2012), the Court held that: 1) the Statute of Frauds, Tenn. Code Ann. § 29-2-101(a)(4) (Supp. 2011), applies to a settlement agreement requiring the transfer of an interest in real property; and 2) the emails exchanged by the parties’ attorneys, together with a detailed legal description of the only real estate at issue in a cross claim filed by one of the parties in the lawsuit, satisfy the Statute of Frauds under

the Uniform Electronic Transactions Act (UETA), Tenn. Code Ann. §§ 47-10-101 to -123 (2001 & Supp. 2011). The Court noted that when deciding whether the Statute of Frauds applies, courts “must consider the terms of the settlement agreement, not the subject matter of the litigation.” Further, the Statute of Frauds does not require a written contract. Only a written memo evidencing the parties’ agreement is required. Also, the party to be charged (or the party’s authorized agent) must sign one of the writings, a requirement satisfied in this case under the UETA by the party’s attorney sending an email with his typed name at the end of the email.

B. Tennessee Court of Appeals Cases

Confidentiality of Settlement with Hospital under Peer Review Law. In Thomas M. Gautreaux v. Chattanooga-Hamilton County Hospital Authority, 2010 WL 2593613, No. E2009-00367-COA-R3-CV (Tenn. Ct. App. 2010), Gautreaux filed a Tennessee Public Records Act petition for access to a settlement agreement involving Chattanooga-Hamilton County Hospital Authority in a previous lawsuit. The hospital claimed privilege under the Tennessee Peer Review Law. At a subsequent show cause hearing, the trial court determined the settlement agreement was exempt from disclosure under the Peer Review Law. The Court of Appeals affirmed.

Settlements: Lesson Learned - look at the insurance policy. In Catherine M. Love, et Al. v. Doris Lakins Woods, 2010 WL 4366072, No. E2009-02385-COA-R3-CV (Tenn. App. Nov. 4, 2010) the surviving children of decedent had filed a wrongful death claim against the Defendant. The Defendant's attorney proposed a settlement in the amount of the insurance policy limit, which the attorney misstated to be \$100,000. The policy limit was actually \$50,000. The Plaintiffs’ attorney accepted the \$100,000 offer. The trial court denied the Plaintiff’s motion to enforce the \$100,000 settlement, finding that the settlement was not enforceable because it lacked material terms of the agreement. On appeal, the Court concluded that the trial court failed to determine whether an agency relationship existed between the Defendant’s attorney and the insurance

company and also whether the insurance company is required to be a party to the litigation.

Portion of Breach of Contract Case Re: Settlement of Employment Case Not Time-Barred. In Michael McGhee v. Shelby County Government, 2012 WL 2087188, No. W2012-00185-COA-R3-CV (Tenn. Ct. App. June 11, 2012), a former employee of Shelby County sued the county for breach of a settlement agreement executed in 2000. He alleged that the county failed to change his employment record to reflect that he resigned, pursuant to a settlement agreement, and/or by informing a potential employer that he was fired. The trial court granted the county's motion to dismiss statute of limitations grounds. On appeal, affirming in part and reversing in part, the Court concluded that: 1) the contract is severable, therefore, the former employee has two separate causes of action for each breach of the contract; 2) the cause of action for breach of an obligation to change the employment records was correctly dismissed on statute of limitations grounds; 3) the county's contractual obligation to answer employment inquiries per the settlement agreement was not implicated until a condition precedent occurred (when a third party inquired as to employment record); and 4) the breach of this obligation accrued when the county disseminated information counter to that contemplated in the settlement agreement. Accordingly, the former employee's claim that Shelby County violated the express terms of the settlement agreement in 2010, by informing his potential employer that he was fired, is not time-barred.

Settlement Unambiguous; Fraud Claim Not Considered. In Timothy Scott Marcum, et al. v. Haskel "Hack" Ayers et al., 398 S.W. 3d 624 (Tenn. Ct. App. 2012), the Court held that the parties' settlement agreement, resolving a dispute between the buyer and seller of real estate, was an unambiguous release of all claims past, present, and future. Any alleged fraud was committed in connection with the real estate sale, not to induce the buyer into entering into the settlement.

Forgetting County Policy When Agreeing to Settlement at Judicial Settlement Conference.

In James Lewis Jackson v. John N. Jewell et al., 2012 WL 2051103, No. M2011-01838-COA-R3-CV (Tenn. Ct. App. June 6, 2012), the Court affirmed the trial court's denial of defendant Wilson County's Tenn. R. Civ. P. 60.02 motion to set aside an agreed order of compromise and settlement reached at a Judicial Settlement Conference. Wilson County asserted that the agreement would violate a policy of the Wilson County Road Commission and that it "forgot" the policy when entering into the agreed order. County representatives with authority to settle were present at the Judicial Settlement Conference. The trial court's order was not an abuse of discretion.

Settlement Enforced Against Party Unrepresented at Judicial Settlement Conference.

In PNC Multifamily Capital Institutional Fund XXI Limited Partnership et al. v. Carl Mabry, 402 S.W. 3d 654 (Tenn. Ct. App. 2012), the parties had participated in a judicial settlement conference where one of the parties was not represented by counsel. The parties signed a written agreement which contemplated the execution of more formal settlement documents. When the formal documents were presented, the party who was not represented at the time of the settlement conference refused to sign. On appeal, the Court affirmed the trial court's decision to enforce the settlement.

Parol Evidence Rule Does not Apply in Fraud in Inducement of Settlement Contract Case.

In Deshon Ewan And Patrick Ewan v. The Hardison Law Firm and Jonathan Martin, 2012 WL 1269148, No. W2011-00763-COA-R3-CV (Tenn. Ct. App. April 16, 2012), the plaintiffs sought rescission of a release and settlement agreement in a vehicle accident tort case. The plaintiffs had settled the case for the limits of the defendants' automobile liability insurance policy. They signed a release that included the defendants, the defendants' attorneys, and the insurance company. The release included an integration clause, stating that all agreements were embodied in the release and plaintiffs' had agreed to the release "without reliance on any statement or

representations made by Releasees except as herein set forth.” After later discovering a substantial general liability insurance policy they thought would also provide additional coverage on their claims, the plaintiffs sued the defendants’ attorneys, seeking rescission of the release based on fraud, a declaratory judgment that the general liability policy covered the plaintiffs’ injuries, compensatory damages from the attorneys for all damages resulting from the fraud, and punitive damages. The trial court granted the attorney defendants’ motion for summary judgment based on the release, refusing to consider extrinsic evidence. Reversing on appeal, the Court of Appeals held the trial court erred in refusing to consider extrinsic evidence of fraud. One of the exceptions to the parol evidence rule is a claim of fraudulent misrepresentation in inducement of a contract, even when a release states that no extra-contractual representations were made.

Settlement in Uninsured Motorist Case. In Shavon Hurt v. John Doe, et al., 2012 WL 120205, No. M2011-00604-COA-R3-CV (Tenn. Ct. App. January 13, 2012), the plaintiff filed a personal injury action naming defendant Brown as the owner of the car that allegedly struck the plaintiff. After discovery, the plaintiff amended the complaint to add "John Doe/Jane Doe" as a defendant, served process on her uninsured motorist carrier, settled with defendant Brown, and then dismissed the action against Brown. The trial court erred in dismissing the action against the uninsured motorist carrier. The carrier did not cite any authority for the proposition that the amended complaint failed to state a claim.

Workers Comp Settlement: Reconsideration Not Available Due to Voluntary Resignation. In Rochelle M. Evans v. Ford Motor Company, No. M2010-02254-WC-R3-WC (Tenn. February 10, 2012), the pro se employee sought reconsideration of her 2005 workers' compensation settlement. She returned to work, was put on medical leave in 2006, and then resigned effective Sept. 1, 2007 to take advantage of a buyout involving an educational opportunity program. A few months later, the employee was not able to continue in the program and received a lump sum payment from the employer. She then

filed a petition for reconsideration of the previous settlement. Affirming the trial court, the Court found that she had voluntarily resigned and was therefore not eligible to receive reconsideration.

Improper Venue in Workers’ Comp Settlement Case. In Michael Draine v. S & ME, Inc. et al., 2013 WL 221653, No. E2012-00384-WC-R3-WC (Tenn. January 22, 2013), an employee suffered a compensable injury that was settled in 2003 and approved by the Department of Labor and Workforce Development. Under the settlement, the employer was to provide medical care per the workers’ compensation law. In 2009, the employee (not represented at the time) and the employer’s insurer entered into an agreement closing future medical benefits in exchange for a lump sum payment in the amount of \$80,709.45, subject to approval by Medicare. The Knox County Circuit Court approved the settlement, but Medicare declined to approve the proposed agreement and suggested a lump sum payment in the amount of \$554,243.53. The employee then petitioned the Sullivan County Circuit Court to enforce the settlement agreement as amended by Medicare. After denying a motion of the employer and insurer to dismiss based on improper venue, the Sullivan County trial court ordered the employer’s insurer to make a lump sum payment in excess of \$500,000. On appeal, the Tennessee Supreme Court’s Special Workers’ Compensation Appeals Panel reversed, holding that the Sullivan County court erred in denying the motion to dismiss. The employee had waived venue when he and the insurer filed their joint petition in the Knox County court.

Settlement Announced in Court Enforced. In Kimberlie Lois Edmonson v. Terry Lynn Wilson, 2011 WL 6147014, No. E2010-02215-COA-R3-CV (Tenn. Ct. App. December 9, 2011), the plaintiff sued for breach of an alleged partnership agreement. Before trial, the parties settled. After counsel announced the agreement in court by counsel, the plaintiff refused to honor the agreement. Denying the defendant’s subsequent motion to enforce the agreement, the trial court conducted a bench trial and held for the plaintiff. Reversing on appeal, the Court held that the trial court should have enforced the settlement

agreement. The plaintiff waived a new issue raised on appeal that her attorney lacked authority to settle the case.

Probate Settlement Vacated on Appeal.

In Re Estate of Billy Joe Stricklan, 2010 WL 2593929, No. E 2009-01086-COA-R3-CV (Tenn. Ct. App. 2010) involved contested wills and a settlement agreement involving minors. After the death of the decedent, his daughter filed two wills for Probate. Finding the first will valid would result in awarding all of the decedent's estate to daughter, while finding the second will valid would result in dividing the estate, minus \$100 to the daughter, among the great-grandchildren. After the Probate Court certified the case to Circuit Court for a will contest, the daughter and the guardian ad litem for the great-grandchildren negotiated a settlement. These parties obtained Probate Court approval of the settlement over the objection of the proponent of second will, decedent's brother. The Probate Court also ordered a partial distribution of cash assets held in the estate to Daughter. On appeal, the Court vacated the settlement order.