

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| ELLIOTT BAILEY | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| CITY OF PHILADELPHIA | : | No. 00-5002 |
| | : | |

O'NEILL, J. FEBRUARY , 2003

MEMORANDUM

Plaintiff and defendant reached an oral agreement to settle this case during a settlement conference before Magistrate Judge Carol Sandra Moore Wells. Plaintiff later refused to sign a written version of the settlement agreement and moved for Magistrate Judge Wells to vacate her Order dismissing the case with prejudice. I have before me plaintiff's appeal of two Orders entered by Magistrate Judge Wells: a February 19, 2002 Order denying plaintiff's motion to vacate the dismissal of his case and granting his counsel's motion to withdraw from representation of plaintiff and a March 6, 2002 Order denying plaintiff's motion for reconsideration of her February Order. Defendant has filed a memorandum of law in opposition to plaintiff's appeal.

BACKGROUND

In his complaint, plaintiff asserts claims for violations of the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the Family Medical Leave Act. He alleges that defendants terminated his employment without proper legal process after he suffered a work-related knee injury.

Magistrate Judge Wells conducted a settlement conference on November 9, 2002, at which plaintiff was present and represented by counsel. During that conference, the parties agreed to a settlement in which defendant would pay plaintiff ten thousand dollars (\$10,000.00), inclusive of attorney's fees. Bailey v. City of Philadelphia, 2002 U.S. Dist. LEXIS 11529, at *6 (E.D. Pa. Feb. 19, 2002). The settlement did not affect plaintiff's "vacation or sick time" compensation, "Continuation Salary," rights to disability retirement or ability to seek other positions with the City. Id. After the settlement conference Magistrate Judge Wells issued an Order dismissing the action with prejudice according to local Rule 41.1(b). Id. at *6-7.

Sometime between November 9 and December 5 plaintiff signed a release authorizing his counsel to accept a settlement check on plaintiff's behalf. On December 5, however, plaintiff told his counsel that he would not sign the settlement papers. Subsequently, plaintiff's counsel withdrew from the action with the permission of Magistrate Judge Wells.

Plaintiff asked Magistrate Judge Wells to vacate the Order that dismissed the case so that he could proceed to trial. In a hearing regarding his request, plaintiff argued (1) that he believed the oral agreement included an admission of wrongdoing by defendant that was not included in the written agreement; and (2) that he had not been given sufficient time to consider the settlement before he was bound by it. On February 19, 2002, Magistrate Judge Wells denied

plaintiff's request to have the Order vacated, thus leaving plaintiff's claims dismissed with prejudice. Following the hearing and Magistrate Judge Wells' denial of plaintiff's request to vacate her earlier Order, plaintiff filed a letter brief that Magistrate Judge Wells treated as a motion for reconsideration. Magistrate Judge Wells denied plaintiff's motion for reconsideration on March 6, 2002.

I have jurisdiction over plaintiff's appeal pursuant to 28 U.S.C § 636(b)(1)(A). Plaintiff began this appeal within the time frame contemplated by the Rule 4(a) of the Federal Rules of Appellate Procedure. Magistrate Judge Wells' denial of plaintiff's motion for reconsideration was entered on March 6, 2002. Rule 4(a) treats motions for reconsideration the same way it treats motions under Rule 59(e). Fed. Kemper Ins. Co. v. Rauscher, 807 F.2d 345, 348 (3d Cir. 1986). Because a Rule 59(e) motion tolls the time for filing a notice of appeal, so does a motion for reconsideration. Id. Furthermore, an appeal from a denial of a Rule 59(e) motion allows the reviewing court to examine the underlying judgment. Id.

Plaintiff filed a notice of appeal to the Court of Appeals from Magistrate Judge Wells' denial of his motion for reconsideration on April 4, 2002. Although the Court of Appeals did not direct that plaintiff's appeal be decided by this Court until November 2002, it is the date on which plaintiff filed his notice of appeal that determines if he complied with Rule 4(a). Plaintiff's notice of appeal was filed within thirty days of the entry of the Order denying reconsideration. His appeal, therefore, was timely, and allows me to review the underlying judgment, which is the Order denying plaintiff's motion to vacate the settlement and granting plaintiff's counsel's motion to withdraw.

STANDARD OF REVIEW

A district court may reverse a Magistrate Judge's order only if it finds the ruling clearly erroneous or contrary to law. 28 U.S.C. 636(b)(1)(A); Fed. R. Civ. P. 72(a). According to the Supreme Court, "a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

DISCUSSION

Magistrate Judge Wells' rulings that there are no grounds to vacate her Order dismissing the case and that plaintiff's counsel should be permitted to withdraw are not clearly erroneous. The settlement agreement made on November 9, 2001, as memorialized in the written agreement, binds the parties.

I. The Settlement Agreement Entered Into On November 9, 2001 is Binding

Magistrate Judge Wells was present at the settlement conference and conducted an evidentiary hearing concerning plaintiff's later objections to the settlement. After the hearing, she made a finding of fact that "the parties orally consented to settle Plaintiff's claims." Bailey, 2002 U.S. Dist. LEXIS 11529, at *6. In fact, plaintiff admitted during the hearing that he initially authorized the settlement. Id. at * 10. Magistrate Judge Wells' impression from her involvement with this case is that plaintiff developed second thoughts about settling the case after he had orally agreed to do so. Id. at *11.

The oral agreement to settle is binding because in this Circuit an "agreement to settle a

lawsuit, voluntarily entered into is binding upon the parties, whether or not made in the presence of the Court and even in the absence of a writing.” Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970). The rule applies to parties who agree to settle and change their mind before signing a written settlement agreement. See Reed v. Am. Foods Equip. Co., 1994 U.S. Dist. LEXIS 3114, at *2 (E.D. Pa. March 18, 1994). Therefore, Magistrate Judge Wells properly denied plaintiff’s request to vacate her Order dismissing the case.

II. The Written Settlement Agreement Accurately Represents the Oral Agreement Reached on November 9, 2001, and May Be Enforced

Plaintiff contends that the oral settlement agreement included the term that defendant admitted wrongdoing, a term that is not included in the written version of the agreement. When there are conflicting “material facts concerning the existence or terms of an agreement to settle” the parties are entitled to an evidentiary hearing. Tiernan v. Devoe, 923 F.2d 1024, 1031 (3d Cir. 1991) (quoting Callie v. Near, 829 F.2d 888, 890 (9th Cir. 1987)).

I need not reach the issue of whether there are conflicting material facts concerning the term of the settlement agreement because plaintiff has been provided the evidentiary hearing to which he is entitled. After the evidentiary hearing held on January 24, 2002, Magistrate Judge Wells stated that “this court has reviewed the written Settlement Agreement and finds that its terms are not inconsistent with the terms orally agreed upon at the settlement conference.” Bailey, 2002 U.S. Dist. LEXIS 11529, at *11. Nothing in the record before me shows that her ruling on this point is clearly erroneous.

III. I Do Not Reach the Question of Whether Plaintiff's Counsel Should Have Been Permitted to Withdraw

Because the settlement agreement as memorialized in the writing is binding on plaintiff, there is no reason to examine the Order that granted plaintiff's counsel's motion to withdraw from representation of plaintiff after plaintiff refused to sign the settlement papers.

An appropriate Order follows.

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ORDER

AND NOW, this day of February, 2003, after consideration of plaintiff's appeal of the February 19, 2002 and March 6, 2002 Orders of Magistrate Judge Carol Sandra Moore Wells and defendant's memorandum of law in opposition thereto, and for the reasons set forth in the accompanying memorandum, the Orders are affirmed.

THOMAS N. O'NEILL, JR., J.