

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

IN THE MATTER OF THE COMPLAINT : CIVIL ACTION
OF AMERICAN DREDGING COMPANY :
AND GATES CONSTRUCTION COMPANY :
AS OWNER AND BAREBOAT CHARTERED :
OWNER OF DREDGE ARKANSAS, FOR :
EXONERATION FROM OR LIMITATION :
OF LIABILITY : NO. 89-1549

MEMORANDUM

Bartle, J.

October 18, 2011

Settlement Funding, LLC ("Settlement Funding") and Joanne C. Musial ("Musial") have filed a joint petition for consent and court approval to proceed with a partial transfer of a structured settlement pursuant to Pennsylvania's Structured Settlement Protection Act (the "Act"), 40 Pa. Cons. Stat. Ann. §§ 4001-4009. The joint petitioners request this court's express approval of the transfer under 40 Pa. Cons. Stat. Ann. § 4003(a)(5)(i)(B) in order to allow them to proceed with what they hope will be final approval in the Court of Common Pleas of Monroe County, Pennsylvania where a similar petition is pending.

On September 5, 1988, Theodore P. Musial, Jr., the late husband of Joanne Musial, was operating a 19-foot motorboat on the Delaware River when it struck a dredging pipeline which was extending eastward from an American Dredging Company barge. He died in the accident. Joanne Musial and her minor children thereafter filed a wrongful death suit in the Court of Common Pleas of Philadelphia County against defendants American Dredging

Company and Gates Construction Company. The defendants then brought an action for exoneration from or limitation of liability in this court pursuant to our admiralty jurisdiction. On July 10, 1989, the late Judge Clarence Newcomer of this court approved the structured settlement agreement involved here which gave Musial and her minor children monthly and periodic lump sum payments from an annuity issued by Genworth Life Insurance Company and owned by Reliance Insurance Company (in Liquidation). The required payments to the minor children have all been satisfied. Under the terms of the structured settlement agreement, Musial receives monthly payments of \$1250, guaranteed from July 1, 1989 through July 1, 2009 and continuing thereafter for life. It also provided for deferred lump sum payments to Musial, including a \$15,000 lump sum payment on July 1, 2009 and a \$37,500 lump sum payment on July 1, 2014. After the approval of the settlement, the action remained on the court's docket until it was dismissed by another judge on December 27, 2000 due to the fact that it had been resolved.

On June 19, 2011, Musial entered into a purchase agreement with Settlement Funding. Under this purchase agreement, Musial consents to the transfer of \$22,500, which she would otherwise receive in a lump sum on July 1, 2014, to Settlement Funding in exchange for \$13,100.¹ The discounted

1. This is the second time Musial has entered into a purchase agreement with Settlement Funding. In 2008, this court approved her petition to transfer the other portion of the 2014 lump sum
(continued...)

present value of the \$22,500 is \$20,647.65, and the effective interest rate, or discount rate, for this transaction is 10.47%.

Settlement Funding and Musial first filed a Petition for Partial Transfer of Structured Settlement in the Court of Common Pleas of Monroe County, Pennsylvania, as required under the Act. After a hearing, the state court requested that the joint petitioners obtain the consent from the United States District Court in the Eastern District of Pennsylvania, the court where the structured settlement agreement was originally approved. The petition pending in this court followed.

Under the Act, "No transfer of structured settlement payment rights shall be effective ... unless the payee has filed a petition requesting such transfer and the petition has been granted by final order or decree of a court of competent jurisdiction based on such court's express written findings that [t]he payee has established that the transfer is in the best interests of the payee or his dependents." 40 Pa. Cons. Stat. Ann. § 4003(a)(3). The Act provides, "[t]he court of common pleas of the judicial district in which the payee is domiciled shall have jurisdiction over any petition as required ... for a transfer of structured settlement rights." 40 Pa. Cons. Stat. Ann. § 4004. In addition, the Act requires that when "the transfer would contravene the terms of the structured settlement," the transfer must be "expressly approved in writing

(...continued)
payment.

by ... any court or responsible administrative authority that previously approved the structured settlement." 40 Pa. Cons. Stat. Ann. § 4003(a)(5)(i)(B).

The structured settlement agreement, as noted above, was originally approved by the late Judge Newcomer. In addition, the proposed transfer would contravene the terms of that structured settlement agreement. Thus, pursuant to the language of the statute, this court must "expressly approve[] in writing" the transfer of structured settlement rights before the state court may grant its approval. The General Assembly clearly found it to be in the public interest for the court that originally approved the structured settlement to review any such modification as is sought here.

The Act's requirement that this court approve any transfer of rights under the structured settlement initially raises a question of this court's subject matter jurisdiction since this action was dismissed in 2000. The issue before the court involves an assignment of contractual rights and a Pennsylvania statute. Even if the petition constituted a new or independent action, there is no federal question jurisdiction under 28 U.S.C. § 1331 and no admiralty jurisdiction under 28 U.S.C. § 1333. Nor would there be jurisdiction under 28 U.S.C. § 1332 because the amount in controversy does not exceed \$75,000, exclusive of interest and costs, even if the parties were of diverse citizenship.

A federal court, however, may vacate a final order such as a dismissal order and reopen a previously terminated action under limited circumstances as provided in Rule 60(b) of the Federal Rules of Civil Procedure. Rule 60(b) states:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

The petition before the court does not fit into one of the specific provisions of Rule 60(b)(1)-(5). However, under Rule 60(b)(6) a court may grant relief from a final judgment, order, or proceeding for "any other reason that justifies relief." This authority is quite narrow and may be exercised only under "extraordinary circumstances." See Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 864 (1988). The Supreme Court has stated that the "extraordinary circumstances" requirement is "essential if the finality of judgments is to be preserved." See Gonzalez v. Crosby, 545 U.S. 524, 535 (U.S.

2005) (citing Liljeberg, 486 U.S. at 864 (Rehnquist, C.J., dissenting)).

Our Court of Appeals has addressed whether a district court may vacate an order of dismissal pursuant to Rule 60(b)(6) when a party moves to enforce a settlement agreement that led to the dismissal. The leading case in this circuit is Sawka v. Healtheast, Inc., 989 F.3d 138 (1993). There, the plaintiff appealed the decision of the district court denying her petition to reinstate her action under Rule 60(b)(6) and to enforce the settlement agreement between the parties. Id. at 139. The Court of Appeals held that the district court acted properly in not reopening that action under Rule 60(b)(6). It explained that the required "extraordinary circumstances" were not present since the parties could file a separate contract action to enforce the settlement agreement. Id. at 140-41. According to Sawka, the district court may exercise jurisdiction to enforce the settlement agreement under Rule 60(b)(6) after an action is dismissed only if the settlement "is part of the record, incorporated into an order of the district court, or the district court has manifested an intent to retain jurisdiction." Id. at 141. None of those circumstances existed in Sawka.

The Court of Appeals distinguished the situation in Sawka from that in an earlier decision it had rendered in Kelly v. Greer, 334 F.2d 434, 436 (3d Cir. 1964). There, the Court of Appeals determined that "[o]f course the district court has jurisdiction to vacate its own orders of dismissal which were

based upon the stipulation of the parties in reliance upon their settlement agreement" where "such action is appropriate to accomplish justice." Id. (citing Klapprott v. United States, 335 U.S. 601, 615 (1949)). The Kelly court held that a district court retained jurisdiction to vacate a dismissal over an action that has been settled when the settlement agreement had been read into the record. Kelly, 334 F.3d at 436.

This case is more closely aligned to Kelly than to Sawka. Unlike in Sawka, the structured settlement agreement is part of the record, and this court specifically approved it in an order signed by Judge Newcomer. Moreover, extraordinary circumstances exist here. If the court does not vacate the dismissal order under Rule 60(b)(6), Musial will never be able to have her petition to transfer decided on the merits by the Court of Common Pleas of Monroe County or any other state court since no state court may approve any transfer without the authorization of this court which previously approved the structured settlement. 40 Pa. Cons. Stat. Ann. § 4003(a)(5)(i)(B). Accordingly, we will vacate under Rule 60(b)(6) the Order of dismissal of this action dated December 27, 2000 and reopen the action for consideration of the pending petition.

During an evidentiary hearing before this court, Musial explained why she wants to transfer the rights to part of her settlement funds and obtain \$13,100 in return. Musial is fifty-nine years old, with a high school education. She is single and currently lives alone in rural Monroe County. Her only source of

support is the \$1250 per month which she receives from the structured settlement agreement. Previously, she has worked in a restaurant and at a sporting goods store, but she has been unemployed for the past two years. She is currently looking for work. She told the court that the bulk of what little money she has goes toward her rent, and she spends the remainder on food, necessities, and her grandchildren.

Musial's daughter, a single mother, was incarcerated until recently and is recovering from addiction. Musial was given custody over her grandchildren, although the grandchildren moved to Bucks County with their mother last month. Musial wants to return to that area to be closer to them and give support to her daughter. She cannot afford to do so without a partial transfer of her structured settlement rights.

Musial maintains that her current monetary needs are so pressing that she and her family would decidedly benefit from having \$13,100 now, rather than \$22,500 in three years. Specifically, Musial explained that she would spend the money on fixing her car (estimated cost \$2500), dental work for herself (estimated cost \$3500), braces for her granddaughter (estimated cost \$2500), and renting a place to live in Bucks County to be closer to her daughter and grandchildren. Musial understands the deep discount she is taking under her agreement with Settlement Funding. We are convinced that Musial has carefully thought about this matter and made a voluntary and informed decision to give up \$22,500 in 2014 for \$13,100 now.

Considering all of these facts, Musial has established that the transfer is in the best interests of her and her dependants. We accordingly consent to the partial transfer of structured settlement rights as petitioned by Settlement Funding and Musial while recognizing that the Court of Common Pleas of Monroe County has the last word.

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ORDER

AND NOW, this 18th day of October, 2011, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the Order dated December 27, 2000 dismissing this action under Local Civil Rule 41.1(b) is VACATED pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure; and

(2) the petition of Settlement Funding, LLC and Joanne C. Musial for consent and court approval to proceed with a partial transfer of a structured settlement pursuant to Pennsylvania's Structured Settlement Protection Act, 40 Pa. Cons. Stat. Ann. §§ 4001-4009, is GRANTED pursuant to 40 Pa. Cons. Stat. Ann. § 4003(a)(5)(i)(B).

BY THE COURT:

/s/ Harvey Bartle III
J.