10/27/89 SOUTHSIDE LEASING COMPANY v. RALPH MATLOCK

1989 | Cited 0 times | Court of Appeals of Tennessee | October 27, 1989

OPINION

E. Riley Anderson, J.

Landlord appeals judgment requiring him to pay tenant for new roof on leased premises and dismissing his counterclaim for damages. We affirm.

This case is a dispute between Ralph Matlock, lessor ("Matlock"), and Southside Leasing Company, lessee ("Southside" regarding the obligations under the lease for repair and maintenance of the leased premises. The lease between Matlock's now deceased parents and Southside was executed May 4, 1970, and was for a five-year period with five options for five-year renewals, which, if exercised, will run the lease through May 2000. Since 1971, Southside has subleased the property to a tenant who utilizes the premises as a service station.

Under the Matlock lease, Southside is responsible for general repair and maintenance of the property, and Matlock is required to maintain and repair the roof. Southside began complaining to Matlock about the leaking roof and attendant damage in 1983 and filed suit for declaratory relief in 1984. Matlock counterclaimed that the lease was terminated for Southside's failure to pay taxes. In 1986, the court decided that Southside had not breached the lease. Matlock filed an unsuccessful interlocutory appeal. The case was finally tried in August 1988 on the issue of damages only. In 1986, Matlock replaced the roof, but the water problem continued. At trial, the Chancellor refused to allow Matlock to testify on his counterclaim because of his failure to adequately answer Southside's interrogatories. At the Conclusion of trial, the Chancellor rendered judgment against Matlock for $5,507.56 to be used by Southside to install a new roof and replace damaged ceiling tiles, and dismissed Matlock's counterclaim for damages. Matlock appeals. The issues on appeal are whether the Chancellor erred in excluding Matlock's testimony regarding damages and dismissing his counterclaim; and whether the Chancellor erred in finding that Matlock was obligated to install a new roof and entering judgment for that amount.

Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be... de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Foster v. Bue, 749 S.W.2d 736 (Tenn. 1988); Tenn. R. App. P. 13(d).

Matlock argues the trial court erred in excluding his testimony regarding damages to the premises

based on his failure to adequately answer interrogatories. The interrogatories were filed on July 25, 1988, and answered on August 25, 1988, three days before trial. They sought information on Southside's failure to maintain the premises, requesting specific dollar amounts of damages, the date damages were sustained, and identity of any individuals who made reports or appraisals. Matlock listed the areas that he alleged were not maintained, indicated that the building was beyond repair, and estimated damages at $20,000. He answered that he would identify individuals who examined the premises to determine damages "when and if obtained." On the second day of trial, in response to his attorney's question, "Have you taken the effort to determine what it would cost to put the building back in the condition it was when it was originally leased in 1970?", Matlock began testifying on his estimate of repair costs based on his expertise as a contractor and his examination of the premises. Southside's attorney objected. The court asked Matlock when he had arrived at specific breakdowns, and Matlock responded, "This morning." The court then noted that the owner of property may testify as to value, but the testimony proposed here was really expert testimony on cost of repairs and sustained the objection.

Rule 26.02(4) of the Tennessee Rules of Civil procedure provides for the discovery of facts known and opinions held by experts through the use of interrogatories. The discovery of the identity of experts and the substance of their opinions has two goals: first, promoting fairness through full disclosure of all relevant information and second, encouraging counsel to be fully prepared. Vythoulkas v. Vanderbilt Univ. Hosp., 693 S.W.2d 350, 355 (Tenn. Ct. App. 1985) (citations omitted). Parties also have a continuing duty to supplement their responses to include the name of an expert to be called at trial when that information is developed. Tenn. R. Civ. P. 26.05; Lyle v. Exxon, 746 S.W.2d 694, 698 (Tenn. 1988). In this case, it is clear that Southside was unable to respond to Matlock's testimony of specific repair costs, because they were not told that there would be expert testimony on that issue. If Matlock had informed Southside in advance that he was going to testify on specific breakdowns of cost, Southside could have prepared a rebuttal or requested a continuance to adequately prepare.

Although the rules do not provide a sanction for abuse of the discovery process absent noncompliance with a court order under Tenn. R. Civ. P. 37, the inherent power of trial Judges permits the trial Judge to take appropriate corrective action against a party for discovery abuse. Lyle v. Exxon, 746 S.W.2d at 699; Strickland v. Strickland, 618 S.W.2d 496, 501 (Tenn. Ct. App. 1981). Considerations of the appropriate sanction should be based upon: the explanation given for failure to name the witness; the importance of the testimony of the witness; the need for time to prepare to meet the testimony; and the possibility of a continuance. Id. On appeal, the trial court's determination of the appropriate sanction to impose will not be disturbed in the absence of an affirmative showing of an abuse of discretion. See Brooks v. United Uniform Co., 682 S.W.2d 913, 915 (Tenn. 1984); Lyle v. Exxon, 746 S.W.2d at 699. It is clear Matlock's testimony was important and the explanation for failure to name him unacceptable. It is also clear that Southside would have been prejudiced if Matlock's testimony about specific repair costs had been allowed. The proof was offered for the first time on the second day of trial and a continuance was not requested by either party. Exclusion of the testimony by the Chancellor under the facts here was an appropriate sanction

and was not an abuse of discretion. Since there was no evidence in the record to support Matlock's computation of damages on the counterclaim, its dismissal was also proper.

Matlock argues the Chancellor erred in requiring Matlock to re-roof the premises and entering judgment for that amount. We have reviewed the evidence and conclude that the Chancellor's finding does not preponderate against the evidence.

As a result of the foregoing, we affirm the Chancellor's judgment. The costs of this appeal are taxed to the Appellant Matlock for which execution may issue if necessary.