Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-276

MARCH TERM, 2008

Carl Wetherby and Marina Wetherby	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Superior Court
	}	
	}	
Leland Vincent	}	DOCKET NO. S331-03 Fc
		Trial Judge: Ben W. Joseph

In the above-entitled cause, the Clerk will enter:

Defendant Leland Vincent, who is contesting plaintiffs Carl and Marina Wetherby's action seeking specific performance of an agreement to sell defendant's house to them, appeals the superior court's denial of his renewed motion for relief from judgment following remand from this Court. We affirm.

The procedural history of this case is complex; indeed, this is the third time that the case has come before this Court. In May 2003, the then-eighty-two-year-old defendant and his sister signed a contract under which they agreed to sell their home to plaintiffs. Shortly before the scheduled closing in June 2003, after defendant's sister died, defendant refused to sell plaintiffs the house. In July 2003, plaintiffs filed suit against defendant and sought a writ of attachment. On August 25, 2003, without having filed an answer to the complaint, defendant's attorney filed a motion for summary judgment, contending that the contract lacked specific terms and was unsupported by consideration. On September 10, 2003, one day before the scheduled hearing on plaintiffs' request for a writ of attachment, the parties filed with the court a stipulation stating that the court could "resolve the attachment hearing issue as well as the lawsuit on the merits by consideration and ruling upon the parties' summary judgment pleadings." Plaintiffs then responded to defendant's summary-judgment motion and filed a cross-motion for summary judgment, asserting that they were entitled to relief under the doctrine of promissory estoppel. Although ordered by the court to respond to this argument, defendant's attorney failed to do so, and the court granted summary judgment to plaintiffs.

On October 8, 2003, defendant's attorney filed a motion for relief from judgment, stating that he had assumed that under Vermont Rule of Civil Procedure 56(c)(1) he was entitled to additional time in which to file a supplemental motion for summary judgment. The superior court denied the motion, and defendant appealed to this Court, arguing that the trial court erred

by construing the parties' stipulation as restricting the legal issues that the parties could raise and by concluding that his opposition to plaintiffs' motion for summary judgment was untimely. We rejected these arguments and affirmed the superior court's decision, concluding that: (1) the parties had agreed in their stipulation that the case could be decided on their motions for summary judgment; and (2) the trial court acted within its discretion in refusing to grant relief from judgment based on defendant's untimely renewed motion for summary judgment alleging a completely new legal theory. See Wetherby v. Vincent, No. 2004-014, slip op. at 2 (Vt. Sept. 1, 2004) (unreported mem.).

After we issued this decision, defendant obtained new counsel and filed a second motion for relief from judgment under Rule 60(b). This time, defendant asserted that he was never informed of, nor did he consent to, the terms of the stipulation. He argued that he was entitled to relief because his attorney did not have the authority to submit the stipulation on his behalf without his permission. In lieu of a hearing, the parties agreed that: (1) defendant did not read the stipulation because of his failing eyesight; (2) his attorney did not read or fully explain the stipulation to him; (3) defendant did not understand that, by signing the stipulation, he waived his right to present additional defenses and participate in an evidentiary hearing; and (4) had he known these facts, he would not have signed the stipulation. The superior court denied defendant's second Rule 60(b) motion, finding that it was based on contentions considered and rejected by this Court. Defendant appealed, and we reversed the superior court's decision and remanded the matter for reconsideration based on our conclusion that: (1) the doctrine of issue preclusion does not apply to subsequent filings in the same action; and (2) even if it did, it would not apply here because the issue before the trial court was not the same as the one previously decided by this Court. See Wetherby v. Vincent, No. 2005-417, slip op. at 2-3 (Vt. Oct. 3, 2006) (unreported mem.). We noted that the issue raised by defendant's second Rule 60(b) motion was whether his attorney was without authority to bind him to the stipulation.

On remand, the superior court again denied defendant's second Rule 60(b) motion, concluding that (1) defendant's first attorney had apparent authority to submit the stipulation to the trial court because defendant executed the stipulation; and (2) neither his attorney's negligence nor his own mistaken belief as to the import of the stipulation are grounds for relief under Rule 60(b). On appeal, defendant argues that the superior court abused its discretion by not granting him relief from judgment because: (1) the court failed to consider that he did not voluntarily consent to the stipulation; and (2) the court erred in concluding that apparent authority is sufficient to allow an attorney to perform an act that results in the loss of a client's substantive rights. "We will uphold the trial court's denial of a V.R.C.P. 60(b) motion unless the moving party shows that the court abused its discretion." John A. Russell Corp. v. Bohlig, 170 Vt. 12, 24 (1999).

Defendant first argues that the superior court erred in denying his Rule 60(b) motion because the court overlooked the critical and undisputed fact that his execution of the stipulation was involuntary. According to defendant, the court erred by characterizing his signing of the stipulation as a mistake rather than an involuntary action. We find no error. The undisputed facts demonstrated that both defendant and defendant's attorney freely and voluntarily signed the stipulation, but that they were both mistaken as to its import. The superior court accurately characterized the situation as such. This case is distinguishable from two of the cases upon which defendant relies in that he voluntarily executed the stipulation based upon his attorney's

advice, which he later claimed was negligent. Cf. Slansky v. Slansky, 150 Vt. 627, 629 (1988) (upholding the trial court's denial of the defendant's Rule 60(b) motion based upon the court's findings rejecting the defendant's claim that he was so heavily medicated that his signing of a stipulation was involuntary); In re John L. Norris Trust, 143 Vt. 325, 327 (1983) (upholding the trial court's denial of the defendant's Rule 60(b) motion based upon the court's findings that the defendant executed the stipulation voluntarily). The other case upon which defendant relies is distinguishable "because of the unique character of URESA [Uniform Reciprocal Enforcement Support Act] proceedings" and the fact that, in that case, the state's attorney dismissed the appellant's case without contacting appellant. Scully v. Schubert, 155 Vt. 327, 330, 332 (1990).

Defendant argues, however, that even if the court did not err in characterizing the nature of his execution of the stipulation, the apparent authority resulting from his execution of the stipulation was an insufficient basis upon which to bind him to the stipulation. According to defendant, Vermont law requires special or express authority to perform an act that affects a client's substantive rights. Again, we find no error in the superior court's analysis. An attorney has no authority to do anything that will irrevocably bar a client's right of action, including settling a case, unless "the evidence supports the conclusion that [the attorney] had implied or apparent authority to settle the case." New England Educ. Training Serv., Inc. v. Silver St. P'ship, 148 Vt. 99, 102-03 (1987). Here, the court correctly ruled that defendant's attorney had apparent authority to submit the stipulation to the trial court because defendant had executed it, and that the apparent authority was sufficient to bind defendant to the stipulation. Moreover, the court did not abuse its discretion in ruling that counsel's mistaken belief as to the effect of the stipulation was not grounds for relief under V.R.C.P. 60(b). See Haskins v. Haskins' Estate, 113 Vt. 466, 471 (1944) (stating "general rule that the negligence of an attorney is imputable to his client, and that the latter cannot be relieved from a judgment taken against him in consequence of the neglect"); see also Margison v. Spriggs, 146 Vt. 116, 120 (1985) (stating that an attorney's ignorance of procedural rules is not excusable neglect, and that it is not an abuse of discretion to deny relief from judgment under such circumstances).

Finally, plaintiffs' motion to strike defendant's reply brief is denied.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice