

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000523-MR

DAVID R. PORTERFIELD

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
ACTION NO. 03-CI-03402

PAUL RENAKER

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** * ** * **

BEFORE: THOMPSON AND WINE, JUDGES; KNOPF, SENIOR JUDGE.¹

KNOPF, SENIOR JUDGE: David R. Porterfield appeals the denial of his motion for summary judgment in a motor vehicle accident case based upon Paul Renaker's alleged violation of the applicable statute of limitations. This Court does not have jurisdiction to hear this appeal because it is interlocutory in nature. Therefore, we must dismiss the appeal.

Porterfield and Renaker were involved in a motor vehicle accident on August 4, 2000. Renaker was transporting two jail inmates in connection with his employment for

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

the Housing Authority of Convington, Kentucky, when his vehicle was allegedly struck by Porterfield. Renaker filed suit against Porterfield in Kenton Circuit Court on December 22, 2003. Porterfield filed a motion for summary judgment based on Renaker's alleged violation of the applicable statute of limitations. The trial court denied the motion which was made final and appealable through a subsequent order entered on March 7, 2006.

Although neither party raises the issue, the rule is well established that the denial of a motion for summary judgment is interlocutory and not appealable. *Roman Catholic Bishop of Louisville v. Burden*, 168 S.W.3d 414, 419 (Ky.App. 2004). There is an exception to this general rule that applies where: "(1) the facts are not in dispute, (2) the only basis of the ruling is a matter of law, (3) there is a denial of the motion, and (4) there is an entry of a final judgment with an appeal therefrom." *Id.* (quoting *Transportation Cabinet, Bureau of Highways, Com. of Ky. v. Leneave*, 751 S.W.2d 36, 37 (Ky.App. 1988)). This exception does not apply to the present case because there was no final judgment entered in this action. Further, the inclusion of CR 54.02 finality language will not make an order appealable when it is interlocutory by its very nature. *Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978).

Accordingly, it is ORDERED that the above-styled appeal is DISMISSED.

ALL CONCUR.

ENTERED: March 9, 2007

/s/ William L. Knopf
SENIOR JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

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