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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1347-MR

CRYSTAL RAINS — APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL K. WINCHESTER, JUDGE
ACTION NO. 23-CI-00348

DONNIE RAINS AND ELFREDA RAINS — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, ECKERLE, AND TAYLOR, JUDGES.

ECKERLE, JUDGE: Appellant, Crystal Rains ("Daughter-in-law"), seeks review of the Whitley Circuit Court's order granting partial summary judgment to Appellees, Donnie Rains ("Father") and Elfreda Rains ("Mother") (collectively, the "Rainses"). After careful review and consideration, we affirm.

Factual and Procedural Background

Daughter-in-law married the Rainses' son, who was also named Donnie ("Son"). The couple lived in a mobile home located on the Rainses' property for several years. They relocated elsewhere for about a decade. Then they returned and eventually moved into a home that they built on the Rainses' property in 2006. The Rainses acquiesced to that home's construction but did not transfer ownership of the land upon which it was built to Son and Daughter-in-law, who nonetheless continued to reside there until Father's death in 2023.

Daughter-in-law filed this action against the Rainses, seeking to be declared the owner of the land near her home. Originally, she only brought an adverse possession claim. The Trial Court dismissed that sole claim but allowed Daughter-in-law leave to file an amended complaint. Therein Daughter-in-law asserts that she should be "adjudicated the legal owner" of the land at issue "on theories of estoppel and unjust enrichment." Trial Court Record ("TR") at 75. *See, e.g.*, *Stepp v. Leslie*, 263 S.W.2d 122, 123 (Ky. 1953) ("As we understand the law relating to the right to recover for improvements made upon another's land, the right may be based upon the theory of estoppel or upon the theory of unjust enrichment."). The amended complaint also alleged that the Rainses had "converted personal property belonging properly to the Plaintiff, being a 1981

Case 8500 Dozier" by having "refused to turn over said property to the Plaintiff after rightful demand by her." TR at 76.

The Rainses filed a motion for summary judgment which, though not denominated as seeking only partial summary judgment, focuses solely on Daughter-in-law's unjust enrichment claim. Indeed, none of the three pleadings (the Rainses' motion for summary judgment and memorandum in support thereof, Daughter-in-law's response, and the Rainses' reply) meaningfully addresses Daughter-in-law's estoppel or conversion claims. The Trial Court granted, at least partially, the Rainses' motion for summary judgment in early July 2025. The Court held that Daughter-in-law could not prevail on her unjust enrichment claim because she knew she was not the owner of the property at issue. The order does not address Daughter-in-law's estoppel or conversion claims. The order stated that it was final and appealable but did not state that there was no just reason for delay. Kentucky Rule of Civil Procedure ("CR") 54.02 requires a Trial Court to recite that there is no just reason for delay if the Trial Court wishes to allow a party to appeal from what would otherwise be an interlocutory decision.

Daughter-in-law filed a CR 59.05 motion to alter, amend, or vacate,[1] which the Trial Court denied in late July 2025. Neither the motion nor the order

[1] "[A] circuit court's authority for reconsidering an *interlocutory* order as opposed to a final judgment is not found in CR 59.05" but "is actually found under common law and in CR 54.02 which make such orders subject to revision at any time before the entry of judgment adjudicating

discussed Daughter-in-law's estoppel or conversion claims. Again, that CR 59.05 order stated that it was final and appealable, but did not include language stating that there was no just reason for delay.

In early September of 2025, Daughter-in-law filed a motion to set aside the Trial Court's Orders "pursuant to CR 54.02(1)[.]" TR at 159. That motion asserted that the Trial Court's prior decisions were not final and appealable because they had not resolved two claims (estoppel and conversion), and the orders did not include the requisite language stating "no just reason for delay."

The Rainses conceded that the previous orders lacked the mandatory, finality language. The response also seemed to admit that the Rainses had only sought summary judgment on Daughter-in-law's unjust enrichment claim. *See* TR at 166-67 ("On March 6, 2025, the Rainses . . . filed a motion for summary judgment . . . arguing that [Daughter-in-law] could not prevail under a theory of unjust enrichment."). Finally, the Rainses did not mention Daughter-in-law's conversion claim, but (for the first time) explicitly asserted that they were entitled to summary judgment on Daughter-in-law's estoppel claim.

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all the claims and the rights and liabilities of all the parties." *Tax Ease Lien Investments 1, L.L.C. v. Brown*, 340 S.W.3d 99, 103 (Ky. App. 2011) (internal quotation marks and citations omitted). Thus, because the summary judgment order was interlocutory, CR 59.05 was not the proper procedural mechanism for Daughter-in-law's post-order motion.

In mid-September of 2025, the Trial Court denied Daughter-in-law's CR 54.02 motion. However, the Trial Court included language stating that it was adding "no just reason for delay" solely to the July 30, 2025, order denying Daughter-in-law's procedurally-flawed CR 59.05 motion. That CR 54.02 order does not address Daughter-in-law's estoppel or conversion claims. Daughter-in-law then filed this appeal.

Standard of Review

Summary judgment is governed by CR 56.03, which provides that pretrial adjudication is warranted "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." To determine whether summary judgment is appropriate, a Trial Court must view the record in the light most favorable to the nonmoving party. *Steelvest, Inc. v. Scansteel Service Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is appropriate only if it is impossible, from a practical viewpoint, for the nonmoving party to produce evidence at trial warranting a judgment in her favor. *Id*. at 482. "[A] party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.* We review the order granting summary judgment *de*

novo since it presents only questions of law. *Bruner v. Cooper*, 677 S.W.3d 252, 269 (Ky. 2023).

Analysis

A. Timeliness and Limited Scope of This Appeal

Before we may address the merits, we must first ensure that we have jurisdiction. Kentucky Rule of Appellate Procedure ("RAP") 3(A)(1) provides that a party must file a notice of appeal "no later than 30 days from the date of notation of service of the judgment or order appealed from." Under RAP 2(A)(2), "[t]he timely filing of a notice of appeal is jurisdictional." No party has argued that we lack jurisdiction, but we "are obligated to address jurisdictional issues *sua sponte* if necessary." *Walsh-Stender v. Walsh*, 307 S.W.3d 127, 128 n.3 (Ky. App. 2009). As a result, we must determine if the order granting partial summary judgment or the order denying Daughter-in-law's CR 59.05 motion was final and appealable, as Daughter-in-law undisputedly did not appeal within 30 days of either decision.

There are two manners by which a Trial Court's decision becomes final and appealable. First, a decision is inherently final and appealable if it "is a final order adjudicating all the rights of all the parties in an action or proceeding." CR 54.01. Here, neither the initial partial summary judgment order nor the order denying Daughter-in-law's motion to alter, amend, or vacate is inherently final because neither resolved all of Daughter-in-law's claims. Additionally, a decision

denying a CR 59.05 motion cannot be made final and appealable simply via adding the language contained in CR 54.02, where it is not otherwise final and appealable. *Tax Ease Lien Investments 1, L.L.C. v. Brown*, 340 S.W.3d 99, 103 (Ky. App. 2011).

Second, CR 54.01 provides that an interlocutory decision may be "made final under Rule 54.02." But the Trial Court did not make its initial partial summary judgment order final under CR 54.02 because that order did not state there was "no just reason for delay." We require strict compliance with CR 54.02 for an interlocutory decision to be deemed final and appealable, *Vorherr v. Coldiron*, 525 S.W.3d 532, 540 (Ky. App. 2017), and the partial summary judgment did not strictly comply with CR 54.02. Moreover, the CR 59.05 order is inherently non-appealable as interlocutory (and, in any event, did not contain all the finality language required by CR 54.02). We generally lack jurisdiction over appeals taken from interlocutory orders, including orders denying CR 59.05 relief. *Ford v. Ford*, 578 S.W.3d 356, 365 (Ky. App. 2019). Thus, Daughter-in-law was not required to appeal from—indeed, could not have properly appealed from—either the partial summary judgment or the order denying her procedurally-improper CR 59.05 motion.

Instead, Daughter-in-law was only able to appeal after the Trial Court agreed in its September CR 54.02 order to add the entire finality language required

by CR 54.02 to the July CR 59.05 order. In the CR 54.02 decision, the Trial Court stated that it would retroactively add the "no just reason for delay" language to its order denying CR 59.05 relief, but made no mention of adding that language to the original partial summary judgment order.

Although achieving finality in this case has been suboptimal, even somewhat of a procedural quagmire, we shall exalt practical function over procedural form to conclude that there is a final and appealable decision here. The Trial Court plainly wanted Daughter-in-law to be able to appeal the partial summary judgment decision and made some effort to do so by adding some language attempting to do so. Though the Trial Court should have stated that it was adding the CR 54.02 finality language to the partial summary judgment order, not the inherently interlocutory CR 59.05 order, the inescapable conclusion is that the Trial Court has now effectively included all the finality language required by CR 54.02. We thus shall "consider the appeal properly taken from the final judgment that was the subject of the CR 59.05 motion." *Ford*, 578 S.W.3d at 366 (internal quotation marks, italics, and citations omitted). We hold this appeal timely because Daughter-in-law filed her notice of appeal 30 days after the issuance of the first decision that included all the requisite CR 54.02 finality language. We again note that the parties do not argue timeliness or finality but we

are required to untie this Gordian knot of procedure to establish our own jurisdiction before we proceed.

However, the Trial Court has not addressed Daughter-in-law's estoppel or conversion claims, and Daughter-in-law raises no arguments regarding the dismissal of her adverse possession claim. We are a Court of review, not an initial decisionmaker. *Yelton v. Yelton*, 740 S.W.3d 643, 656 (Ky. App. 2026). Consequently, we decline to be the initial Court to address the merits of the estoppel or conversion claims.[2]

B. The Trial Court Properly Granted Summary Judgment to the Rainses on the Unjust Enrichment Claim

To succeed on a claim for unjust enrichment based on the plaintiff's having made improvements to land owned by another person, "[t]he party making the improvements must also have been acting in good faith." *Mullins v. Mullins*, 797 S.W.2d 491, 493 (Ky. App. 1990). In that specific context, a plaintiff lacks good faith if she knew that another person owned the land upon which she made the improvements. *Id*.

[2] On pages 24 and 25 of her deposition, Daughter-in-law testified that she had gained possession of the bulldozer mentioned in her complaint. Perhaps Daughter-in-law's conversion claim is thus moot. However, Daughter-in-law has not formally withdrawn that claim, and the Trial Court has not otherwise adjudicated it. We express no opinion on the viability of the conversion claim (or the estoppel claim), or any potential defenses.

Here, Daughter-in-law has forthrightly admitted that she knew all along that the Rainses owned the land at issue:

> Q When you guys started building this house, I guess in '06 is what—right abouts [sic]—
>
> A Uh-huh (affirmative response).
>
> Q --you knew at that time that you didn't have legal title to the property, correct?
>
> A Yes, that's correct. It was more of a trust thing.
>
> Q And at no time were you under the impression that you had legal title to the property?
>
> A That's correct.

Crystal Rains Deposition, p. 22-23. Thus, Daughter-in-law cannot prevail on her unjust enrichment claim. *Mullins*, 797 S.W.2d at 493.

Our conclusion is not changed by Daughter-in-law's insistence that the Rainses had orally promised to transfer ownership of the land at issue. The statute of frauds, Kentucky Revised Statute ("KRS") 371.010(6), provides in relevant part that "[n]o action shall be brought to charge any person . . . [u]pon any contract for the sale of real estate . . . unless the promise, contract, [or] agreement . . . be in writing and signed by the party to be charged therewith . . . ." Daughter-in-law admitted on page 17 of her deposition that there was never a written contract whereby the Rainses would transfer the land in question to herself and her husband:

> Q Why do you feel like you're entitled to the full 13-acre tract?
>
> A Because it was promised from them [the Rainses] to [her husband] Donnie and I . . . .
> Q So when you say it was promised to you, do you have any kind of writing at all to support [that belief]?
>
> A It was verbal.

As per our Supreme Court, "[t]he statute of frauds does not lend itself to the issue of whether there is or is not a contract in existence" but instead is designed "to prevent the enforcement of a contract unless, by reason of some exception, the statute of frauds would be found not applicable." *Bennett v. Horton*, 592 S.W.2d 460, 463 (Ky. 1979). An agreement to transfer ownership of real property which is not written and signed by the parties is unenforceable. *Adamson v. Adamson*, 635 S.W.3d 72, 82 (Ky. 2021). Daughter-in-law does not cite an applicable exception. Thus, any alleged oral promise by the Rainses to transfer ownership of the land at issue to Daughter-in-law is barred by the statute of frauds.

As our Supreme Court has forcefully held, albeit in a factually distinguishable case, "where the statute of frauds is clear and unambiguous, as is the case here, equitable relief should only be granted under the most limited of circumstances, lest the Court run afoul of judicially amending the statute in violation of separation of powers." *Farmers Bank and Tr. Co. of Georgetown, Kentucky v. Willmott Hardwoods, Inc.*, 171 S.W.3d 4, 10 (Ky. 2005). We thus

affirm the Trial Court's decision to grant summary judgment to the Rainses on Daughter-in-law's unjust enrichment claim.

C. The Improper Citations in Daughter-in-law's Brief

Finally, we agree with the Rainses that Daughter-in-law's brief contains at least four improper citations to case law. Those cites are:

1. On pages five and six of her brief, Daughter-in-law asserts: "Kentucky law is clear that long-term possession, improvements, and reliance may give rise to equitable interests sufficient to defeat summary judgment. *See* Sebastian-Voor Properties, LLC v. Lexington-Fayette Urban County Gov't, 265 S.W.3d 190, 194 (Ky. 2008) (summary judgment improper where factual issues exist regarding property interests and equitable considerations)."[3] *Sebastian-Voor* involves zoning laws and whether equitable estoppel should be permitted to apply against a governmental entity. That opinion does not hold that possession, improvements, and reliance create equitable interests sufficient to prevent summary judgment.
2. Daughter-in-law's citations on pages six and seven of her brief to *Meade v. Richardson Fuel, Inc.*, 166 S.W.3d 55 (Ky. App. 2005) are wholly improper.

[3] Daughter-in-law's underlining case names contravenes the requirement in RAP 31(E)(1) that "[c]ase names should be italicized."

According to Daughter-in-law, "[i]n Meade v Richardson Fuel, Inc., the Court of Appeals recognized that promissory estoppel may be invoked to avoid the harsh application of the Statute of Frauds where a party has relied to their detriment." Our opinion in *Meade* does not contain the term "promissory estoppel," and the statute of frauds at issue in *Meade* is not KRS 371.010 but instead is found in the Uniform Commercial Code, KRS 355.2-201. Even more troubling, page seven of Daughter-in-law's brief states: "Moreover, the Kentucky Supreme Court has emphasized that the Statute of Frauds 'was not designed to perpetrate fraud, but to prevent it.' *Meade*, 166 S.W.3d at 58." This purported quotation is neither present in *Meade* nor is the principle evident in similar language.

3. Pages six and seven of Daughter-in-law's brief state: "Similarly, Kentucky courts have long recognized that part performance and reliance may remove an agreement from the statute of frauds. *See* McCarthy v. Louisville Cartage Co., 796 S.W.2d 10, 12 (Ky. App. 1990)." *McCarthy* does not even contain the word "performance," and it does not discuss the statute of frauds.
4. Finally, page eight of Daughter-in-law's brief states: "At a minimum, whether Appellees were unjustly enriched is a question of fact that should have been presented to a jury. *See* Jones [v. Sparks, 297 S.W. 3d 73] at 78 [Ky. App. 2009)]." *Jones* does not contain that holding. In fact, the law in

Kentucky regarding unjust enrichment claims is directly contrary to the assertion in Daughter-in-law's brief: "Equitable claims, such as unjust enrichment, are heard and decided by the trial court, not the jury." *Superior Steel, Inc. v. Ascent at Roebling's Bridge, L.L.C.*, 540 S.W.3d 770, 782 (Ky. 2017).

The citation errors in Daughter-in-law's brief are simply too persistent and egregious to ignore. It is beyond question that her brief does not satisfy the requirements in RAP 31(E)(1) and 32(A)(4) requiring proper citations to authority. *See also* RAP 11(A)(1). We strongly cautioned the bar in *Crowder v. Yussman*, 724 S.W.3d 772 (Ky. App. 2025), to ensure briefs submitted to this Court are scrupulously accurate and contain caselaw that actually exists:

> Moreover, we take this opportunity to caution practitioners of this Commonwealth on the submission of briefs or citations without confirming their accuracy and the correctness of the resulting analysis. The abject failure to conduct due diligence when making arguments to the Court greatly impacts the profession and undermines confidence in the skills and knowledge necessary to practice as an attorney. Failure to verify substantive legal citations prior to submission to this Court is not only in derogation of the RAP, but also violates the attorney's ethical responsibilities. *See* Supreme Court Rule 3.130(1.1).

Id. at 779. Unfortunately, Daughter-in-law's counsel did not follow the rules and failed to heed our warning. Moreover, counsel inexplicably declined to file a reply brief once the Rainses pointed out the citation deficiencies in their appellee brief.

"This Court has the discretion to determine the appropriate penalty for failure to follow its rules." *Id.* Counsel "submitting a brief to a Court of law without confirming that the cited case law" is accurate "is an affront to the dignity of the Court system, the legal profession as a whole, the judiciary, the client, and the public at large." *Id*. We could strike Daughter-in-law's brief, but do not wish to punish her for her attorney's mistakes. *Id*. This point is especially true in the case *sub judice* because the improper citations are replete throughout the argument section, and striking the entire argument section would require us to dismiss the appeal. *Commonwealth v. Roth*, 567 S.W.3d 591, 593 (Ky. 2019) (striking a brief "necessarily requires" dismissing the appeal).

Therefore, we shall instead direct the Clerk of this Court to send a copy of this opinion to the Office of Bar Counsel at the Kentucky Bar Association. While we considered a financial sanction, we have rejected that approach given the severity of the problem in this case. Upon receipt of this Opinion, Bar Counsel may take whatever professional disciplinary action, if any, it believes to be warranted. *See, e.g.*, *Cabinet for Health and Family Services v. R.C.*, 661 S.W.3d 305, 318 (Ky. App. 2023) (affirming a Family Court's decision to refer possible misconduct by an attorney to the Kentucky Bar Association because "[a] Court has a right and obligation to refer an attorney to the KBA for suspected misconduct of which it has direct knowledge"); KRS 26A.080 ("When it comes to the attention of

any judicial officer that any . . . attorney may have been guilty of unprofessional conduct, he [or she] shall at once report the matter to the proper investigating and disciplinary authorities.").

Conclusion

For the foregoing reasons, the Whitley Circuit Court is affirmed. The Clerk of the Court of Appeals is directed to send a copy of this Opinion to the Kentucky Bar Association, Office of Bar Counsel, 514 W. Main Street, Frankfort, Kentucky 40601.

COMBS, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

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