

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000648-MR

JOYCE LANE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARY M. SHAW, JUDGE
ACTION NO. 05-CI-009582

THOMAS J. GRADY, INDIVIDUALLY;
AND SEGAL STEWART CULTER
LINDSAY JANES AND BERRY, PLLC

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND STUMBO, JUDGES; LAMBERT,¹ CHIEF SENIOR
JUDGE.

STUMBO, JUDGE: Joyce Lane, *pro se*, is appealing numerous orders of the
circuit court regarding a legal malpractice case. Lane states in her notice of appeal
that she is appealing an order entered March 3, 2010, and “any and all prior

¹ Chief Senior Judge Joseph E. Lambert, sitting as Special Judge by assignment of the Chief
Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised
Statutes (KRS) 21.580.

decisions made by the court during the pendency of the litigation. . . .” However, only the March 3, 2010 order is properly before us. Any other orders or rulings made by the trial court are time barred. We find there are no appealable issues in the March 3, 2010 order and affirm.

This case has a lengthy history and has been before this Court in one form or another before. As such, we will use a previous recitation to set forth some of the facts of the case.

Lane retained [Hugh Montgomery] Richards in April of 1998 to represent her in an action in federal district court against the Bell County School Board for various violations of federal law. The district court dismissed her claim on February 11, 2002. Lane then retained H. Wayne Roberts to represent her in her appeal to the Court of Appeals for the Sixth Circuit. The court dismissed that appeal on August 12, 2003.

On September 12, 2003, Roberts wrote a letter to Lane informing her of the dismissal. Roberts further stated in his letter that he would not continue to represent her in the prosecution of any further proceedings because he believed an appeal to the United States Supreme Court would be futile. Furthermore, he correctly informed her that she had ninety days from August 12, 2003, to file the writ of certiorari with that court. Also, Roberts expressed his view that Lane had a malpractice claim against Richards. Finally, he expressed what proved to be a conservative and cautious view that Lane had one year from August 12, 2003, to file such a claim.

Without Roberts to represent her in her pursuit of relief before the United States Supreme Court, Lane retained Thomas Grady in October 2003 to do so. Shortly after she paid him a \$7,000 retainer, Grady told Lane verbally that he had timely filed the writ and that she should expect a ruling from the Supreme Court between April and December 2004. On March 23, 2004, Grady wrote

to Lane stating, “[a]s soon as I hear from the Supreme Court I will let you know.”

The record shows that on July 28, 2004, Lane wrote either to Grady or his firm. Five months later, on December 28, 2004, one of the firm's partners responded.

[“]Mr. Grady's service with this firm has been terminated.... Mr. Grady prepared a Writ of Certiorari in the Supreme Court but never filed it.[”]

Lane v. Richards, 256 S.W.3d 581, 583 (Ky. App. 2008). This Court concluded that Lane’s malpractice suit against Richards was timely filed and could proceed.

Lane then hired attorney Bobby Wombles to represent her in a malpractice suit against Grady. On November 4, 2005, Lane brought suit against Grady and his law firm. Initially, this case did not progress beyond the complaint and answer phase because some aspects would revolve around the outcome of the *Lane v. Richards* case cited above, which was not then final. *Lane v. Richards* was rendered by this Court on June 13, 2008. Review was not sought by the Supreme Court.

Eventually, on or about November 5, 2009, Grady filed a motion to have Lane’s claims dismissed with prejudice for lack of prosecution. A hearing was scheduled for November 9, 2009. At the hearing, no one appeared on Lane’s behalf. The trial court took the motion under consideration and gave Lane 20 days to respond. The 20 days expired without response from Lane or her counsel. On December 7, 2009, the trial court entered an order dismissing Lane’s claims with

prejudice. No appeal was filed from the December 7, 2009 order dismissing the suit with prejudice.

On December 29, 2009, Lane filed a motion pursuant to CR 60.02 to set aside the dismissal based upon a letter that her attorney, Mr. Wombles, had written to defense counsel stating that he was under a disability, fighting a diagnosis of early Alzheimer's, and intended to withdraw from the case. A hearing was held on January 25, 2010, at which Mr. Wombles described his disability and the trial court agreed to relieve him as counsel. The court also denied the CR 60.02 motion without prejudice so that Lane could obtain new counsel and submit a new motion.

On February 12, 2010, Mr. Wombles, who was no longer Lane's counsel of record, filed a number of motions with the court related to Lane's case, none of which specifically challenged the trial court's denial of the CR 60.02 motion. On March 3, 2010, the trial court denied all of the motions because Mr. Wombles lacked standing to proceed as he was no longer counsel for Lane. Lane did not retain new counsel and did not file a new CR 60.02 motion. Instead she brought the current appeal by notice filed on March 31, 2010.

As stated above, Lane is appealing the March 3, 2010 order and "any and all prior decisions made by the court during the pendency of the litigation. . . ." The March 3, 2010 order is the only order appealed timely as prescribed by CR 73.02 and is therefore the only order we can discuss and rule upon. Lane's brief asks this Court to reinstate her case. On procedural grounds, we cannot do so. The

March 3, 2010 order has no issues which can be appealed to achieve that end. That order only dealt with the motions brought by Mr. Wombles after he had withdrawn from the case.

We are aware of the terrible circumstances Ms. Lane has had to endure. She has had three different attorneys let her down for one reason or another. There is nothing this Court can do to remedy this situation on these facts. However, we note that her original CR 60.02 motion to set aside the dismissal of her case was dismissed *without* prejudice.

Based on the above, we affirm the trial court's order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Joyce Lane, *pro se*
Pineville, Kentucky

BRIEF FOR APPELLEE:

J. Allan Cobb
Gary M. Weiss
Louisville, Kentucky