RENDERED: FEBRUARY 17, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002317-MR

ERIC DETERS AND
JAMES CHANDLER — APPELLANTS

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 06-CI-03311

KENTON COUNTY — APPELLEE

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: CLAYTON, MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Eric Deters and James Chandler appeal from four orders entered by the Kenton Circuit Court in 2009 and 2010. As explained below, we dismiss the appeal for lack of appellate jurisdiction.

On November 17, 2006, Chandler was arrested and lodged in the Kenton County Jail. While a prisoner, he developed appendicitis and on November 20, 2006,

was transported to the hospital where he underwent an emergency appendectomy. Claiming Chandler did not receive prompt and reasonable health care while held in the jail, Deters, an attorney, filed a civil complaint on Chandler's behalf on December 7, 2006, alleging negligence by the Kenton County Jailer, Terry Carl, in his official capacity.

At Carl's urging, the original complaint against him was dismissed on grounds of absolute immunity. However, the order of dismissal also gave Deters leave of court to file an amended complaint, which he did. He again alleged negligence, but this time against Carl; the Kenton County Judge Executive; and, three members of the Kenton County Fiscal Court—all in their individual capacities. The amended complaint is not included in the record on appeal, but based on references to it in the record, it apparently also listed "Unknown Deputy Kenton County Jailers" and "Unknown Medical Personnel of the Kenton County Jail" as defendants.

The defendants filed a joint answer urging dismissal of the amended complaint asserting the defenses of local government immunity, qualified official immunity, Chandler's own contributory negligence, and expiration of the statute of limitations. Coupled with the answer was a counterclaim by Kenton County against Chandler for reimbursement of a portion of his jail booking fee and medical treatment as permitted by local ordinances and KRS[1] 441.265. Chandler moved to dismiss the counterclaim because Kenton County was not a party to the action and therefore could not file a counterclaim. The motion to dismiss prompted counsel for the defendants to

[1] Kentucky Revised Statutes.

move to amend the counterclaim to be brought by Carl in his individual capacity as the elected jailer of Kenton County. In dismissing the counterclaim without prejudice on May 25, 2007, the trial court stated:

> [Carl] did not move to remain before the Court in his official capacity for any purpose. As he is not now in this case in his official capacity as Kenton County Jailer he may not bring the claim for reimbursement within this action but must do so, if at all, as a separate case.

After the matter was set for a jury trial, the defendants moved for summary judgment on October 28, 2008. Defense counsel argued the plaintiff's theory—that the named defendants did not personally provide negligent care to Chandler, but were liable as policymakers for negligently hiring and training the jail deputies and medical personnel who allegedly deprived Chandler of prompt emergency medical care—was not well-founded because all the government officials named as defendants were immune from suit. *Rowan County v. Sloas,* 201 S.W.3d 469 (Ky. 2006); *Yanero v. Davis,* 65 S.W.3d 510 (Ky. 2001); *Franklin v. Malone,* 597 S.W.2d 195 (Ky. 1997) (*overruled on other grounds*) (citing *Moores v. Fayette County*, 418 S.W.2d 412 (Ky. 1967)). Additionally, while a defense medical expert had opined that three individuals had provided negligent care to Chandler, none of them had been named as defendants, and all the named defendants were protected by qualified good faith immunity.

On January 5, 2009, following discovery, Deters moved to amend the complaint again—this time to add the names of three deputy jailers, the jail LPN[2] and

[2] Licensed Practical Nurse.

the jail CMA[3] who had tended to Chandler while he was a prisoner in the jail. Deters argued the second amendment was not barred by the statute of limitations and CR[4] 15.03(1) allowed the second amendment to relate back to the filing of the original complaint. The defendants opposed the second motion to amend arguing it would be futile because the statute of limitations had expired and the allegedly negligent actions were discretionary.

On March 30, 2009, the trial court entered an order denying Deters' motion to file a second amended complaint. Citing *Cox v. Treadway,* 75 F.3d 230, 240 (6th Cir. 1996), the court found the second amended complaint did not relate back to the original complaint because the alleged error was not one of mistaken identity of a party, but rather lack of identification of a party. Furthermore, it was disputed by Chandler's own deposition in which he said he told counsel from the beginning who had tended to him in the jail. The court went on to say there was no potential party to replace the unknown deputies and medical personnel, and no warning order attorney had been appointed for them, nor had constructive service been attempted upon them. As a result, the trial court dismissed the "Unknown Deputy Kenton County Jailers" and "Unknown Medical Personnel of the Kenton County Jail" from the case.

That same day, summary judgment was entered against Chandler. After that order became final, the defendants moved the trial court on May 6, 2009, to sanction Deters for violating CR 11 which states in relevant part:

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[3] Certified Medical Aide.

[4] Kentucky Rules of Civil Procedure.

> The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. The Court shall postpone ruling on any Rule 11 motions filed in the litigation until after entry of a final judgment.

Eighteen months later, on November 22, 2010, the trial court entered an order finding none of the complaints filed by Deters were "warranted by existing law, and that the filing of these complaints naming the improper parties was not reasonable under the circumstances and as such were signed in violation of Kentucky Rules of Civil Procedure Rule 11." In the same order, the court found it proper to impose a monetary sanction for the CR 11 violation and ordered Deters to pay Kenton County $29,381.41 for the legal fees it had incurred in defending against the litigation.

On appeal, Deters sought to: (1) challenge the trial court's finding of a CR 11 violation due to lack of jurisdiction; (2) argue his actions were reasonable; and (3) argue that ordering him to pay more than two years of legal fees was unreasonable. After reviewing the record, the briefs and the law, we must dismiss the appeal.

"In an appeal, the notice of appeal is the means by which an appellant invokes the appellate court's jurisdiction." *Nelson County Board of Education v. Forte,* 337 S.W.3d 617, 626 (Ky. 2011). "A notice of appeal, when filed, transfers jurisdiction of the case from the circuit court to the appellate court. It places the named parties in the jurisdiction of the appellate court." *City of Devondale v. Stallings,* 795 S.W.2d 954, 957 (Ky. 1990). The notice of appeal Deters filed in this case states as follows:

> JAMES CHANDLER PLAINTIFF
>
> v.
>
> TERRY W. CARL, et. al., DEFENDANTS
>
> Eric Deters and James Chandler appeals the Order entered November 22, 2010, the June 25, 2009 Order, the September 22, 2009 Order and the May 5, 2010 Order. Eric Deters and James Chandler are the Appellants. The Defendant, Kenton County, is the Appellee.

Although not mentioned by either party, we deem this notice to be fatally flawed for the following reasons.

First, the notice of appeal is governed by CR 73.03(1) which directs:

> The notice of appeal shall specify by name all appellants and all appellees ("et al." and "etc." are not proper designation of parties) and shall identify the judgment, order or part thereof appealed from. It shall contain a certificate that a copy of the notice has been served upon all opposing counsel, or parties, if unrepresented, at their last known address.

Thus, using the term "et al." in the style of the case, as Deters did, is expressly disapproved by CR 73.03. *Lassiter v. American Exp. Travel Related Services Co., Inc.*, 308 S.W.3d 714, 718 (Ky. 2010).

Second, while Kenton County paid the legal costs of this litigation for the defendants below, Kenton County has never been a named party to this suit. In fact, while this case was pending in the trial court, Deters forcefully argued Kenton County was not a party to the lawsuit and successfully convinced the trial court to dismiss a counterclaim Kenton County had attempted to file to recoup a portion of Chandler's jail booking fee and the costs of his medical care. Thus, Deters' naming of Kenton County as the appellee in the body of the notice of appeal is both inaccurate and ineffectual.

Third, ordinarily naming a party in the style of a case alone, without mentioning it in the body of the notice of appeal, is sufficient to satisfy CR 73.03. *Lassiter,* 308 S.W.3d at 718. However, the general rule does not hold forth in this case because of Deters' concomitant use of the term, "et al." At most, the notice of appeal filed by Deters transferred jurisdiction to us over Terry W. Carl. But "[f]ailure to specify any party whose absence prevents the appellate court from granting complete relief among those already parties would be fatal to the appeal." *Braden v. Republic-Vanguard Life Insurance Co.*, 657 S.W.2d 241, 243 (Ky. 1983) (citing *Levin v. Ferrer,* 535 S.W.2d 79 (Ky. 1975)). Carl was but one of five defendants named in Deters' first amended complaint and we cannot grant complete relief with jurisdiction over him alone. *Forte,* 337 S.W.3d at 625-26. Thus, as the notice of appeal failed to

transfer jurisdiction to us of all necessary defendants from the action below, we must dismiss the appeal.

Due to the lack of appellate jurisdiction, this appeal is dismissed.

ALL CONCUR.

ENTERED: February 17, 2012

/s/ C. Shea Nickell
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANTS:

Eric C. Deters
Independence, Kentucky

BRIEF FOR APPELLEE:

Christopher S. Nordloh
Covington, Kentucky