

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001135-MR

KATIE MCCORMICK AND
KEVIN MCCORMICK

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 11-CI-05406

JAMES SCOTT REED REVOCABLE TRUST;
KRISTEN REED REVOCABLE TRUST;
JAMES SCOTT REED; AND KRISTEN REED

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: CAPERTON, CLAYTON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Katie McCormick and Kevin McCormick appeal an order of the Fayette Circuit Court entered June 6, 2012, granting summary judgment to appellees, James Scott Reed, the James Scott Reed Revocable Trust, Kristen Reed,

and the Kristen Reed Revocable Trust. We dismiss this appeal as discussed below, because the summary judgment granted in this case was not final and appealable.

This is a dog bite case against a tenant and a landlord. On October 19, 2011, Katie McCormick and Kevin McCormick, her husband, initiated this action in the Fayette Circuit Court against Cody Reed (Cody), James Scott Reed, Kristen Reed, James Scott Revocable Trust, and Kristen Reed Revocable Trust, for alleged injuries to Katie arising from a dog attack that occurred on October 22, 2010, at or near 708 Woodward Lane in Lexington, Kentucky. This residence was owned by James and Kristen and their respective trusts (hereinafter collectively referred to as James and Kristen) but was occupied by Cody, James and Kristen's nephew at the time of the alleged attack. Katie asserted claims against Cody as owner of the dog and against James and Kristen as the landlord of the premises where the attack occurred.

James and Kristen filed an answer to the complaint denying liability for all claims asserted by Katie and Kevin. A motion for default judgment was filed against Cody, but the record does not reflect how the motion was resolved. Presumably, the motion was denied as an answer was filed for Cody by counsel on May 30, 2012. Also, counsel for Katie and Kevin subsequently served discovery requests on counsel for Cody. Cody is not a party to this appeal.

On May 22, 2012, James and Kristen filed a motion for summary judgment with the circuit court. Cody was not a party to this motion. After a response was filed by Katie and Kevin, the court conducted a hearing with counsel

on June 1, 2012, and rendered summary judgment in favor of James and Kristen on June 6, 2012. This appeal follows.

A final and appealable judgment is one that adjudicates all the rights of all the parties or is made final under Kentucky Rules of Civil Procedure (CR) 54.02. CR 54.01. In an action involving multiple claims and/or multiple parties, CR 54.02 permits the trial court to make an otherwise interlocutory order final and appealable in certain circumstances. However, under CR 54.02, an interlocutory order may only be made final and appealable if the order includes both recitations – (1) there is no just cause for delay, and (2) the decision is final. It is well-recognized that strict compliance with the rule is required. *Peters v. Bd. of Educ.*, 378 S.W.2d 638 (Ky. 1964). A court’s failure to include both recitations in a judgment renders it interlocutory and nonappealable. *Turner Constr. Co. v. Smith Bros., Inc.*, 295 S.W.2d 569 (Ky. 1956). The Kentucky Supreme Court has recently upheld the requirement that both recitations must be made by the trial court to make an otherwise interlocutory order final. *Watson v. Best Fin. Servs., Inc.*, 245 S.W.3d 722 (Ky. 2008).

The underlying case involves multiple claims and multiples parties. The summary judgment entered June 6, 2012, did not adjudicate any claims against Cody. The summary judgment only addressed those claims against James and Kristen, but did not contain the necessary recitations – that there is no just cause for delay and that the judgment was final as required by CR 54.02. The summary judgment is at best a partial summary judgment and is clearly interlocutory and

nonappealable.

In *Watson v. Best Fin. Servs., Inc.*, 245 S.W.3d 722 (Ky. 2008), the Kentucky Supreme Court reviewed the purpose and functions of CR 54.02 in determining whether interlocutory rulings should be subject to appellate review. The Supreme Court discussed the historic policy in Kentucky against piecemeal appeals balanced with the practical needs of the case before the trial court. *Id.* The Supreme Court held that CR 54.02 certifications look to the sound discretion of the trial court and must be thoroughly reviewed by the trial court before making a ruling. The court noted:

A trial court should not grant CR 54.02 requests routinely or as a courtesy to counsel. Each case must be evaluated on a case-by-case basis.

Watson, 245 S.W.3d at 727.

The McCormicks have asserted claims against Cody as tenant and owner of the dog and against James and Kristen as the landlord of the premises where the attack allegedly occurred. The circuit court's summary judgment did not adjudicate all the claims between all the parties; rather, it was only a partial summary judgment in James and Kristen's favor. Unfortunately, the summary judgment did not contain the required CR 54.02 recitations – that there was no just cause for delay and that the judgment was final. Obviously, the circuit court has not reviewed the application of CR 54.02 to this case. Accordingly, this Court has no jurisdiction to entertain this appeal.

For the reasons stated, it is hereby ORDERED that Appeal No. 2012-CA-001135-MR is hereby DISMISSED as being taken from an interlocutory and nonappealable order.

ALL CONCUR.

ENTERED: January 24, 2014

/s/ Jeff S. Taylor
Judge, Kentucky Court of Appeals

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