

RENDERED: JANUARY 24, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001185-MR

WILLIAM TID GRIFFIN; HARTLEY BLAHA;
RONALD BOWMAN, JR.; STEVEN STENGELL;
JEFF VARNER; CHAD ESTES; ALLIED
ENERGY; AND JAMES E. SHANE

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM JR., JUDGE
ACTION NO. 09-CI-003347

R. DEAN LINDEN

APPELLEE

OPINION AND ORDER

DISMISSING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; JONES AND MOORE, JUDGES.

MOORE, JUDGE: The Jefferson Circuit Court granted R. Dean Linden's motion to stay arbitration proceedings initiated by Gryphon Environmental, LLC (Gryphon LLC) and William Tid Griffin, the Chairperson and CEO of Gryphon LLC. Linden was previously the CEO and a board member of Gryphon LLC. The

LLC consists of the following members: William Tid Griffin, Hartley Blaha, Ronald Bowman, Jr., Steven Stengell, Jeff Varner, Chad Estes, Allied Energy, and James E. Shane. The Gryphon Members, in their individual capacities, appeal the order granting a stay of arbitration. Notably, Gryphon LLC has not been named a party to this appeal; for this reason, we are compelled to dismiss this appeal because we do not have jurisdiction in this matter.

This case has a tortured history, to say the least. Because of the disposition of this matter, it is unnecessary for the Court to revisit all the prior proceedings. Rather, we will in a cursory matter set forth the facts and procedural issues that are relevant to the dismissal of this appeal.

Linden commenced an action against the individual members of Gryphon LLC in Jefferson Circuit Court in 2009, alleging numerous claims against them. The amended and restated operating agreement contained an arbitration clause, which has been hotly litigated and the subject of several proceedings, both at the circuit court level and the appellate level.

Moving forward to the issue for which the Gryphon Members seek relief before this Court, on February 14, 2012, Gryphon, LLC and William Tid Griffin, as claimants, filed a demand for arbitration with the American Arbitration Association. In the demand, the nature of the dispute against Linden, the respondent, was stated as “fraud, breach of fiduciary duty, and abuse of process.” Thereafter, Linden filed a motion to stay the arbitration in the circuit court case (99-CI-003347). The circuit court granted Linden’s motion to stay. In its order,

the circuit court decided that “Gryphon is not an intended beneficiary but merely an incidental beneficiary. Therefore, the motion to stay the arbitration must be granted as Linden never agreed to arbitrate any dispute with Gryphon.”

The members of Gryphon LLC timely appealed that order. Notably, however, Gryphon LLC was not named a party to the appeal. Moreover, Gryphon LLC was never named as a party to any of the prior proceedings; and from a review of the decisions of this Court, the Supreme Court and the circuit court, the issue of Gryphon LLC’s not being a party to this action has not been the subject of any prior decisions in this action. There is certainly an issue of whether Gryphon LLC was properly before the circuit court pursuant to KRS¹ Chapter 417 (the Uniform Arbitration Act) when it granted Linden’s motion to stay arbitration; however, none of the parties ever moved the circuit court for a ruling on this issue. Consequently, the circuit court’s order is silent on this issue. Notwithstanding this omission, this Court must dismiss this appeal.

There certainly are a number of interesting procedural and legal issues presented to the Court; however, we are without jurisdiction to reach them.

Despite all the legal wrangling in this action, the bottom line as this appeal stands is that Gryphon LLC is not a named party to this appeal. ““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[.]

Therefore, the notice of appeal transfer[s] jurisdiction to the Court of Appeals of

¹ Kentucky Revised Statute.

only the named parties.”” *Watkins v. Fannin*, 278 S.W.3d, 637, 640 (Ky. App. 2009) (quoting *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky.1990)). “It is beyond dispute that a court generally should not issue an opinion or judgment against an entity that is not a party to the action or is not otherwise properly before the court.” *Mason v. Commonwealth*, 331 S.W.3d 610, 629 (Ky. 2011); *Watkins* 278 S.W.3d at 640 (quoting *City of Devondale*, 795 S.W.2d at 957). This Court precisely stated the fate of an appeal wherein a necessary party is absent in *Watkins* as follows:

When a circuit court renders judgment in favor of multiple parties, each of those parties becomes a potential appellee. The appellant is not required to name them all, but he is required to name each party that is “necessary” to adequate and proper appellate review and disposition. Our Supreme Court said, “a person is a necessary party if the person would be a necessary party for further proceedings in the circuit court if the judgment were reversed.” *Kesler v. Shehan*, 934 S.W.2d 254, 257 (Ky. 1996). Such persons are “regarded as indispensable[.]” because without them, disposition could prejudice the absent person “or those already parties[.]” Kentucky Rules of Civil Procedure (CR) 19.02; *West v. Goldstein*, 830 S.W.2d 379, 382 (Ky. 1992) (“The true meaning of ‘all necessary parties,’ [is] those persons whose interest would be divested by an adverse judgment.”). A decision of this Court rendered in the absence of an indispensable party necessarily will be inadequate. *Liquor Outlet, LLC v. Alcoholic Beverage Control Board*, 141 S.W.3d 378, 387 (Ky. App. 2004) (Such “absence prevents the Court from granting complete relief among those already parties[.]”) (Internal citations and quotation marks omitted).

278 S.W.3d at 640.

We are compelled to agree with the argument set forth by Linden that in the absence of Gryphon LLC being named as party to this appeal, this Court lacks particular case jurisdiction. The Circuit Court's order staying arbitration was based

primarily on its conclusion that Gryphon LLC was not an intended/incidental beneficiary of the operating agreement, and therefore, there was no enforceable arbitration agreement between Linden and Gryphon LLC. Any substantive action by this Court on appeal would unquestionably affect Gryphon LLC's rights in the lower court. Accordingly, we conclude that Gryphon LLC "is 'necessary' to adequate and proper appellate review and disposition." *Id.* at 640.

We must therefore dismiss this action without addressing any of the issues on the merits. Even though there are questions regarding whether Gryphon LLC was properly before the circuit court and whether the circuit court even had jurisdiction over this matter given the prior rulings by this Court, and given that discretionary review is currently pending before the Supreme Court, we cannot render an advisory opinion in the absence of our own jurisdiction. *Medical Vision Group, P.S.C. v. Philpot*, 261 S.W.3d 485, 491 (Ky. 2008) (citing *Commonwealth v. Hughes*, 873 S.W.2d 828, 829 (Ky. 1994)); Ky. Const. § 110. The Civil Rules may have mechanisms, when properly applied, which may allow this issue to be reviewed. Nonetheless, the procedural posture before this Court, at this time, does not allow review.

Because the Court lacks jurisdiction over this matter, this appeal is hereby ORDERED DISMISSED.

ALL CONCUR.

ENTERED: January 24, 2014

/s/ Joy A. Moore
JUDGE, COURT OF APPEALS

BRIEFS AND ORAL ARGUMENT
FOR APPELLANTS:

Kent Wicker
Jennifer A. Schultz
Louisville, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

Ann B. Oldfather
R. Sean Deskins
Louisville, Kentucky

Donald L. Cox
John D. Cox
Louisville, Kentucky