

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001744-MR

KELLY J. KING, ADMINISTRATRIX OF
THE ESTATE OF SHARON K. GETTE,
DECEASED; AND BARBARA RODGERS

APPELLANTS

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NOS. 09-CI-00033 & 09-CI-01653

BLUEGRASS REGIONAL
PSYCHIATRIC SERVICES, INC.;
ENEDINO CORALES, M.D.;
AND SEAN NOAKES

APPELLEES

AND NO. 2012-CA-001745-MR

KELLY J. KING, ADMINISTRATRIX OF
THE ESTATE OF SHARON K. GETTE,
DECEASED; AND BARBARA RODGERS

APPELLANTS

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NOS. 09-CI-00033 & 09-CI-01653

ENEDINO CORALES, M.D.;
AND SEAN NOAKES

APPELLEES

AND

NO. 2012-CA-001820-MR

ENEDINO CORALES, M.D.

CROSS-APPELLANT

v.

CROSS-APPEAL FROM BOONE CIRCUIT COURT
HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NOS. 09-CI-00033 AND 09-CI-01653

KELLY J. KING, ADMINISTRATRIX OF
THE ESTATE OF SHARON K. GETTE,
DECEASED; AND BARBARA RODGERS

CROSS-APPELLEES

AND

NO. 2012-CA-001821-MR

BLUEGRASS REGIONAL
PSYCHIATRIC SERVICES, INC.

CROSS-APPELLANT

v.

CROSS-APPEAL FROM BOONE CIRCUIT COURT
HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NOS. 09-CI-00033 AND 09-CI-01653

KELLY J. KING, ADMINISTRATRIX OF
THE ESTATE OF SHARON K. GETTE,
DECEASED; AND BARBARA RODGERS

CROSS-APPELLEES

OPINION
VACATING, REMANDING,
AND DISMISSING

BEFORE: CLAYTON, D. LAMBERT, AND NICKELL, JUDGES.

NICKELL, JUDGE: Kelly J. King, Administratrix of the Estate of Sharon K. Gette (“King”), and Barbara Rodgers have appealed from the Boone Circuit Court’s September 13, 2012, order dismissing their claims against Bluegrass Regional Psychiatric Services, Inc. (“Bluegrass”), and Enedino Corales, M.D. (“Dr. Corales”). Bluegrass and Dr. Corales have each separately appealed from the Boone Circuit Court’s denial of their motions for summary judgment. These appeals have been consolidated in this Court and shall be considered and disposed of by rendition of this single Opinion. For the following reasons, we vacate and remand Case Nos. 2012-CA-1744 and 2012-CA-1745, and dismiss Case Nos. 2012-CA-1820 and 2012-CA-1821.

While fascinating, the historical facts precipitating these appeals are all but irrelevant to our review. Therefore, our recitation of them will be truncated. Sean Noakes was released from a court-ordered involuntary hospitalization at Eastern State Hospital, a psychiatric facility operated by Bluegrass, on June 27, 2008. Dr. Corales was designated as Noakes’ treating psychiatrist during his hospitalization. Less than two weeks after his release, on July 9, 2008, Noakes visited the home of Sharon Gette and her mother, Barbara Rodgers. During the visit, Noakes perpetrated a brutal knife attack on the women, resulting in Gette’s death and serious injuries to Rodgers. Noakes was arrested the same day and was

ultimately convicted of numerous criminal offenses related to the attack. He is currently serving two life sentences.

On January 6, 2009, King and Rodgers filed a civil action against Noakes¹ and Bluegrass² seeking compensatory and punitive damages for Rodgers' injuries and Gette's death. On July 9, 2009, King and Rodgers instituted a second action against Dr. Corales. The two actions were consolidated for discovery purposes. Shortly after the suits were instituted, Bluegrass and Dr. Corales challenged the Boone Circuit Court's jurisdiction to adjudicate claims against them and moved for dismissal based on their allegations of improper venue. In the alternative, they sought transfer of the claims against them to the Fayette Circuit Court. The Boone Circuit Court denied the motions as being premature and a lengthy period of discovery ensued.

On February 14, 2011, Bluegrass moved for summary judgment. The trial court denied the motion as being premature. Bluegrass renewed its motion on August 4, 2011, and the trial court again denied the requested relief. Similarly, the trial court denied the October 19, 2011, motion for summary judgment filed by Dr. Corales.

In March of 2012, Bluegrass and Dr. Corales requested the trial court reexamine its holding regarding venue in light of this Court's recent opinion in

¹ Although Noakes was a defendant in the actions below and is named in these appeals, it appears he has not taken an active role in this litigation.

² The complaint also included claims against unknown defendants.

O'Bannon v. Allen, 337 S.W.3d 662 (Ky. App. 2011) (venue is proper where alleged negligence occurs, not where resulting damage is suffered). King and Rodgers objected to any transfer and maintained Boone Circuit Court was the proper venue for their actions. On June 4, 2012, the trial court entered an order in each action transferring venue to Fayette Circuit Court on the strength of *O'Bannon and Copass v. Monroe County Medical Foundation, Inc.*, 900 S.W.2d 617 (Ky. App. 1995). The combined record was duly transferred to the Fayette Circuit Court Clerk who opened a new case in that county and a judge was assigned to preside over the proceedings. Approximately thirty-seven days after entry of the Boone Circuit Court's order—and thirty-three days after the transfer of venue was complete, King moved the trial court to reconsider the June 4, 2012, order. The motion contained no new allegations of fact or law. At a hearing conducted on July 17, 2012, the trial court questioned whether it had jurisdiction to rule on the motion as more than ten days had elapsed since its entry and ordered the parties to brief the issue.

Citing CR³ 59.05, Bluegrass argued the Boone Circuit Court lost jurisdiction to amend its order ten days after its entry. Dr. Corales contended a trial court loses jurisdiction upon transferring venue. Alternatively, both alleged the motion raised no new allegations and should therefore be denied even if the trial court concluded it had authority to act.

³ Kentucky Rules of Civil Procedure.

In response, King alleged CR 59.05 applies only to final judgments and the June 4, 2012, orders did not qualify as such. Further, King contended the June 4, 2012, orders were void *ab initio* because the Boone Circuit Court had no discretion to change venue to Fayette County in the absence of an agreement to do so or compliance with the provisions of KRS 452.010, *et seq.* Finally, King argued since neither Bluegrass nor Dr. Corales had complied with the mandates of KRS 452.070 regarding payment of the expenses of transfer to the circuit clerk, the June 4, 2012, order had become void by operation of law.

On September 13, 2012, the Boone Circuit Court entered an order setting aside its previous orders transferring venue to Fayette County. It then concluded dismissal of the claims against Bluegrass and Dr. Corales for improper venue was appropriate, citing *Copass*. The court stated King and Rodgers could “avail themselves of the saving provisions of KRS 413.270.” Noticeably absent from the order is any discussion regarding whether or how the trial court believed it had authority to enter the order in light of the earlier transfer to Fayette Circuit Court. King and Rodgers timely appealed from the dismissal. Bluegrass and Dr. Corales filed protective cross-appeals from the trial court’s denials of their motions for summary judgment.

Although the parties have comprehensively briefed the issue of which court was the appropriate forum to litigate the claims and have vehemently defended their respective positions, the issue before this Court is *not* whether Boone County or Fayette County is the proper venue for this action; the issue is

whether the Boone Circuit Court had authority to enter the September 13, 2012, order after it had already transferred the case to Fayette County for disposition.

Clearly, it did not.

In the recent case of *Cabinet for Health and Family Services v. J.T.G.*, 301 S.W.3d 35, 38-39 (Ky. App. 2009), a panel of this Court analyzed the jurisdiction of a circuit court following transfer in the context of a civil matter and held:

[a]lthough the specific question of the transferor court’s jurisdiction after a transfer takes place is one of first impression regarding civil matters, this issue has been addressed by Kentucky courts in the criminal law context.

In *Woods v. Commonwealth*, 285 Ky. 275, 147 S.W.2d 690, 691 (1941), the Court held that “when a case has been removed the court from which it came has been divested of jurisdiction[.]” Similarly, section 25:14 of the Kentucky Criminal Practice Manual, entitled “Procedure after venue is changed,” provides that “[t]he original court making the transfer has no further jurisdiction to prosecute the action as long as the transfer is in effect.” 9 Ky. Prac. Crim. Prac. & Proc., § 25:14 (2008–2009).

. . . .

It is well established in Kentucky law that any order issued by a court that did not have proper jurisdiction is “void *ab initio* . . . is not entitled to any respect or deference by the courts.” *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 833 (Ky. App. 2008) (internal citations omitted). Moreover, the Jefferson Family Court order is considered “a legal nullity, and a court has no discretion in determining whether it should be set aside.” *Id.* (citing *Foremost Ins. Co. v. Whitaker*, 892 S.W.2d 607, 610 (Ky.

App. 1995)); *see also* *Wedding v. Lair*, 404 S.W.2d 451 (Ky. 1966).

Applying the foregoing analysis to the case *sub judice*, it is plain that the Boone Circuit Court did not have general jurisdiction when it entered the September 13, 2012, order in light of the fact it had transferred the action to Fayette Circuit Court on June 4, 2012, and no order returning the matter to Boone Circuit Court had been sought nor entered. Consequently, the September 13, 2012, order was of no consequence or legal effect. We have no discretion and must conclude it should be vacated and set aside. *S.J.L.S.*, 265 S.W.3d at 833. These actions were validly transferred to Fayette Circuit Court, and there they must proceed.

We now turn to the protective cross-appeals prosecuted by Bluegrass and Dr. Corales. Based on our resolution above, we believe these cross-appeals are not ripe for review. Only judgments entered pursuant to a final order may be reviewed on appeal. An order denying a motion for summary judgment is viewed as interlocutory and, therefore, not appealable. *Battoe v. Beyer*, 285 S.W.2d 172 (Ky. 1955). “[A]n order denying a summary judgment can in no sense prejudice the substantive rights of the party making the motion since he still has the right to establish the merits of his motion upon the trial of the cause.” *Bell v. Harmon*, 284 S.W.2d 812, 814 (Ky. 1955). Because we have held the only final order entered below must be vacated and held for naught, the orders denying the motions for summary judgment remain interlocutory and any arguments regarding the

propriety of those orders are not yet reviewable and no further comment is necessary.

For the foregoing reasons, the September 13, 2012, order of the Boone Circuit Court is vacated and the matters are remanded with instructions to reinstate the June 4, 2012, orders transferring the cases to Fayette Circuit Court where they shall proceed in due course. Additionally, due to their interlocutory nature, the appeals in Case Nos. 2012-CA-001820 and 2012-CA-1821 must be and hereby are DISMISSED.

ALL CONCUR.

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BRIEF FOR SEAN NOAKES:

No brief filed.