RENDERED: JANUARY 15, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000602-MR

CHARLOTTE HARE APPELLANT

v.

APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE JUDY D. VANCE, JUDGE
ACTION NO. 12-CI-00005

GRANGE MUTUAL CASUALTY COMPANY APPELLEE

OPINION AND ORDER DISMISSING

** ** ** ** **

BEFORE: CLAYTON, NICKELL AND VANMETER, JUDGES.

NICKELL, JUDGE: Charlotte Hare appeals from the Adair Circuit Court's July 19, 2013, order granting summary judgment in favor of Grange Mutual Casualty Company, and from the trial court's March 19, 2014, order denying her motion to reconsider the prior order or alternatively for relief pursuant to CR[1] 60.02.

[1] Kentucky Rules of Civil Procedure.

Following a careful review, we conclude this appeal must be dismissed as having been untimely taken from interlocutory orders.

Hare was involved in an automobile collision on March 26, 2006, and sustained physical injuries. The first $10,000.00 of her expenses related to the accident were paid under the basic reparations benefits (BRB) provisions of a policy written by Occidental Fire & Casualty Company (Occidental), insurer of the vehicle in which Hare was an occupant. On December 15, 2006, after coverage under the BRB policy was exhausted, Hare applied for added reparations benefits (ARB) under a policy issued by Grange. Grange accepted the application and began paying Hare's medical expense claims. On December 12, 2008, Grange ceased payments on Hare's submitted medical bills without explanation. At that time, Grange had made payments totaling $9,940.00. Following a significant delay, Grange resumed payments on January 27, 2010, and ultimately paid $10,420.00 of Hare's medical expenses.

Hare was also covered under an insurance policy issued by Maryland Casualty Company at the time of the March 26, 2006, motor vehicle collision. That policy also contained a provision for ARB coverage for which Hare applied.

Apparently, at some point in time, Grange and Maryland disagreed as to which company was obligated to provide primary ARB coverage for Hare's injuries and the extent of coverage under each policy. Although Hare incurred additional medical expenses of approximately $2,700.00, both insurance

companies refused to process further payments, prompting Hare's medical providers to cease rendering care absent assurances of receiving payment for their services.

Based on both company's failure to pay the outstanding medical bills, Hare filed suit against Grange and Maryland. In the suit, Hare alleged she was due ARB under both policies. She further alleged ARB payments had been unreasonably denied without basis by both companies, entitling her to interest and attorneys' fees under the Kentucky Motor Vehicle Reparations Act (MVRA).[2] After many months of pre-trial discovery and motion practice, Grange and Maryland each filed dispositive motions for summary judgment concerning some of Hare's claims. The issues presented in the motions concerned the amount of ARB available and which company's policy should be considered as primary.

In an interlocutory order entered on July 19, 2013, the trial court determined the Grange policy was primary and a total of $20,000.00 was available thereunder. However, the trial court found Grange was entitled to deduct the $10,000.00 in BRB which had been paid by Occidental. The court further concluded Grange had exhausted its policy limits and was entitled to summary judgment on any claims for ARB payments; Maryland's policy constituted "excess" coverage which could be pursued by Hare following exhaustion of

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[2] Kentucky Revised Statutes (KRS) 304.39, *et seq.* The MVRA provides an exclusive remedy where an insurance company wrongfully denies or delays payment of no-fault benefits. KRS 304.39-210 provides for a penalty of up to 18% interest on the delayed benefits, while KRS 304.39-220 permits the award of reasonable fees for the claimant's attorney.

Grange's policy; and genuine issues of material fact remained as to Hare's claim of unreasonable withholding of payments by Maryland. No mention was made of Hare's bad faith claims against Grange in the motions or order. By agreed order entered on October 17, 2013, Hare's remaining claims against Maryland were dismissed with prejudice. Finality language appeared at the end of the October 17, 2013, order.

On October 30, 2013, Hare moved to reconsider the July 19, 2013, interlocutory order, or alternatively to grant relief pursuant to CR 60.02. Therein, Hare raised issues of "stacking" benefits under Grange's policy. She alleged this issue had not previously been ruled upon by the court and had not been addressed by the parties during the summary judgment practice although evidence related to the argument was contained in the record. After a hearing was conducted, the trial court denied Hare's motion in a cursory order entered on March 19, 2014. This appeal followed.

Hare admits the orders appealed from are interlocutory and requests the matter be remanded to the trial court. Although Grange does not address the interlocutory nature of the orders, it asserts Hare's post-judgment motion for relief was untimely and failed to state grounds for relief. Grange further contends Hare failed to preserve her appellate arguments by raising them below. We are convinced this appeal was taken from interlocutory orders as no order has yet been entered which adjudicates all of the claims and the rights or liabilities as between Hare and Grange.

Generally, the jurisdiction of the Court of Appeals is limited to final judgments. *See* CR 54.01. Clearly, Hare's claim that Grange in bad faith refused to tender payment for her medical expenses as required under its ARB policy has not been adjudicated. This statutory claim is still properly pending on its merits before the trial court. Furthermore, the trial court did not include the recitations set out in CR 54.02[3] which are necessary to allow appellate review. Even if the recitations had been included, the order could not be made final because it did not conclusively determine the rights of the parties in regard to that particular phase of the proceeding. *Francis v. Crounse Corp.*, 98 S.W.3d 62, 65 (Ky. App. 2002) (citing *Hale v. Deaton,* 528 S.W.2d 719 (Ky. 1975)). Thus, this Court lacks subject-matter jurisdiction and we have no other recourse than to dismiss Hare's appeal. The action must then proceed along the normal course pending entry of a final judgment by the trial court. At that time, the party aggrieved by an adverse

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[3] In relevant part, CR 54.02 provides:

> (1) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

judgment will have an adequate right to appeal. *Foster v. Overstreet*, 905 S.W.2d 504, 505-06 (Ky. 1995).

Finally, we note the October 17, 2013, order which contained finality language pursuant to CR 54.02 adjudicated all of the claims as between Hare and Maryland and as between Grange and Maryland. However, it had no effect on the remaining claims between Hare and Grange. Thus, Grange's reliance on the language contained in that order—in support of its contention Hare's October 30, 2013, motion for relief was untimely filed—is misplaced as the trial court retained jurisdiction to modify or correct its prior interlocutory orders relating to Hare's bad faith claim against Grange.

For the foregoing reasons, this appeal must be and hereby is, DISMISSED.

ALL CONCUR.

ENTERED: January 15, 2016

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

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