

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000777-MR

ASHLEY REID

APPELLANT

v.

APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NOS. 11-CI-00324

PILGRIM'S PRIDE CORPORATION

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: CHIEF JUDGE ACREE; STUMBO AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Ashley Reid brings this appeal from a March 11, 2014, judgment of the Graves Circuit Court upon a jury verdict in favor of Pilgrim's Pride Corporation and Keith Yarborough.

Yarborough was employed by Pilgrim's Pride as a semi-truck driver. On April 2, 2011, Yarborough loaded his truck at the Pilgrim's Pride feed mill in Mayfield, Kentucky, to deliver feed to local farmers. Sometime around 4:00 a.m., Yarborough was driving on State Highway 305 and noticed something large in the roadway. It was dark outside and Yarborough stated that when he realized it was a group of four cows, he could not stop quickly enough to avoid hitting the cows. Yarborough testified that he attempted to maneuver his truck to miss the cows and successfully avoided three of the cows. Yarborough admitted to hitting the fourth cow but believed the impact thrust the cow off the roadway into the ditch. It is uncontroverted that Yarborough did not stop the semi-truck at that time but rather proceeded to make a delivery at a farm. He did call Pilgrim's Pride feed mill and requested that a security guard call police about the accident. The Kentucky State Police received the call at about 4:20 a.m.

Later that morning after 5:30 a.m., Reid was driving her automobile on State Highway 305. Reid testified that it was still dark outside, but she suddenly spotted a large mass in the roadway. Reid's vehicle struck the mass, which was the dead cow, and her vehicle eventually landed upside down. Reid suffered extensive injuries from the accident.

The cows were the property of Ronnie Alderdice. At the time of both accidents, Alderdice was unaware that his cows were in the roadway.

Reid filed a complaint alleging negligence against Alderdice, Yarborough, and Pilgrim's Pride. Specifically, Reid claims that Alderdice

negligently failed to prevent the cows from wandering onto the roadway. And, Reid also alleged that Yarborough negligently operated his semi-truck and negligently failed to stop after the accident. Reid claimed to have suffered significant injuries as a result of the accident.

On June 21, 2013, the circuit court granted Pilgrim's Pride and Yarborough's motion for partial summary judgment. The circuit court held that Yarborough was not negligent as a matter of law in the operation of the semi-truck when it struck the cow.

Thereafter, the matter was submitted to the jury. The jury found that Alderdice negligently failed to prevent his cows from "running at large" and that such negligence was a substantial factor in causing Reid's accident. The jury was also instructed to only consider Yarborough's conduct after the collision. As to Yarborough, the jury was asked "[d]o you believe from the evidence that the cow struck by [Reid's] vehicle was laying in the roadway immediately after the impact with [Yarborough's] truck." The jury answered "no." Based on the jury findings, the circuit court rendered judgment in favor of Yarborough and Pilgrim's Pride and dismissed Reid's complaint.¹

Reid thereupon filed a timely Notice of Appeal but only named Pilgrim's Pride Corporation as appellee. This Court, *sua sponte*, ordered the parties to show good cause why this appeal should not be dismissed for failure to

¹ Prior to the jury trial, Ronnie Alderdice reached a settlement with Ashley Reid.

name an indispensable party, Yarborough, to the appeal. Both parties filed responses to the show cause order, and our analysis now proceeds.

Kentucky Rules of Civil Procedure 73.03 requires that appellant set forth all parties by name in the notice of appeal. It is well-established that an appeal must be dismissed for failure of appellant to name an indispensable party in the notice of appeal. *Watkins v. Fannin*, 278 S.W.3d 637 (Ky. App. 2009). The Kentucky Supreme Court recently emphasized that strict compliance is required as to the naming of an indispensable party in the notice of appeal. *Ky. Farm Bureau Mut. Ins. Co. v. Conley*, ___ S.W.3d ___ (Ky. 2015). In *Ky. Farm Bureau*, the Supreme Court, in addressing strict compliance versus substantial compliance with appellate rules, stated:

To that end, the appropriate sanction for the violation of a rule is not automatic dismissal; rather, the penalty must be commensurate with the harm caused and the severity of the defect, as determined on a case-by-case basis. Excepting for tardy appeals and the naming of indispensable parties, we follow a rule of substantial compliance. (Citations omitted.)

Id. at ____.

The purpose behind this rule is that the failure to name an indispensable party deprives the appellate court of the power to grant complete relief and of jurisdiction to hear the appeal. *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990). An indispensable party is generally:

“[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.”). . . .

Watkins v. Fannin, 278 S.W.3d 637, 640 (Ky. App. 2009).

In this case, Yarborough is an indispensable party to this appeal. He was the driver of the truck that struck the cow, and Reid named him in her complaint as a tortfeasor. The circuit court rendered a partial summary judgment in favor of Yarborough, and the jury found in favor of Yarborough. The appeal turns on the conduct of Yarborough and his interest would be affected by the appeal.

Reluctantly in this instance, we are duty bound to follow Kentucky Supreme Court precedent. Supreme Court Rule 1.030(8). As Yarborough is an indispensable party to this appeal, this Court is without jurisdiction to consider this appeal on the merits. *See Stallings*, 795 S.W.2d 954.

Now, therefore, be it ORDERED that Appeal No. 2014-CA-000777-MR is hereby DISMISSED for failure to name an indispensable party.

ALL CONCUR.

ENTERED: _____

JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Daryl T. Dixon
Paducah, Kentucky

BRIEF FOR APPELLEE:

R. Craig Reinhardt
Lexington, Kentucky