

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000958-MR

KATIE MCCORMICK AND KEVIN MCCORMICK

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 11-CI-05306

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

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: Appellants appeal from the entry of an order granting summary judgment in favor of Appellees. We dismiss this appeal because the summary judgment granted in this case was not final and appealable.

On October 22, 2010, Katie McCormick was injured by a dog owned by Cody Reed. At the time of the injury, Cody Reed was residing at a property

owned by Appellees. Cody Reed is the nephew of James and Kristen Reed. Appellants brought suit against Cody Reed and the Appellees. Appellants argued that Appellees were subject to liability for the injuries under common law negligence as they “were on notice of the dog’s vicious propensities and continued to harbor the vicious animal.”

After some discovery, Appellees moved for summary judgment. Cody Reed was not a party to this motion. On June 6, 2012, the trial court entered an order granting summary judgment in favor of Appellees.

Appellants appealed that order and a previous panel of this Court dismissed the appeal. The Court found as 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.

McCormick v. James Scott Reed Revocable Trust, No. 2012-CA-001135-MR, 2014 WL 272412, at 1-2 (Ky. App. 2014).

The appeal was dismissed as being taken from an interlocutory and nonappealable order. The trial court then entered another order on May 16, 2014. That order stated that the summary judgment order entered on June 6, 2012, was “FINAL AND APPEALABLE.” This appeal followed.

Again, we must dismiss this appeal. The previous panel of this Court instructed that an interlocutory order may be appealed if the order states that it is

final and that there is no just cause for delay. The new order entered on May 16, 2014, only states that it is final, it does not state that there is no just cause for delay. This may seem trivial, but both recitations are required pursuant to CR 54.02, *Watson*, and this Court's previous ruling.

For this reason, we ORDER that this appeal be DISMISSED as being taken from an interlocutory and nonappealable order.

ALL CONCUR.

ENTERED: December 4, 2015

/s/ Janet L. Stumbo
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANTS:

James R. Martin, II
Lexington, Kentucky

BRIEF FOR APPELLEES:

Ernest H. Jones, II
Jamie Wilhite Dittert
Franklin C. Paisley
Lexington, Kentucky