

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001210-MR

ANDREW ROBERTS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 09-CI-01081

DANIEL A. THACKER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON, AND KRAMER, JUDGES.

CLAYTON, JUDGE: Andrew Roberts, *pro se*, appeals the Christian Circuit Court's grant of summary judgment to Daniel A. Thacker. Since the statute of limitations had expired prior to Roberts' original filing of the action, the grant of summary judgment was proper, and we affirm the trial court's decision.

Further, during the pendency of the appeal, Thacker moved to dismiss the current appeal, and the motion was passed to this panel for review on the merits. After careful consideration, by separate order, we deny the motion to dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Roberts and Thacker were involved in an automobile accident in Christian County on July 27, 2005. At the time of the accident, Roberts had car insurance through California Casualty Indemnity Exchange (hereinafter “California Casualty”). Roberts admitted that he was insured by this carrier at the time of the accident and at all times since the accident. With regard to the July 27, 2005 accident, California Casualty paid no basic or added reparations benefits.

Roberts filed this action on July 20, 2009, roughly four years after the accident. Approximately five years later, on July 7, 2014, the trial court dismissed the case when it granted Thacker’s summary judgment motion. The motion was granted on numerous grounds, but the most significant ground was that Roberts’ lawsuit was filed after the expiration of the statute of limitations. Roberts now appeals the trial court’s grant of summary judgment. On appeal, he argues that the actual facts of the case were never actually considered and that during the proceeding he was not properly represented. Nonetheless, in his brief Roberts does not point to any error in the trial court’s decision.

After Roberts appealed the trial court’s summary judgment, he failed to comply with some of the rules of appellate practice. Thacker then filed two

separate motions to dismiss the appeal based on this failure. In the second motion, Thacker moved to dismiss Roberts' appeal because, among other things, the brief was not timely filed, and Roberts did not provide service of the brief to either the appellee or the trial court judge. The brief was due on November 26, 2014, but without requesting an extension of time, Roberts Filed the brief on December 2, 2014.

In the earlier motion to dismiss the appeal, Thacker observed that initially Roberts failed to file a prehearing statement, and further, he identified no appealable issues or errors by the trial court. Thacker also noted our Court's recognition of deficiencies in Roberts' appellate brief. Lastly, Thacker pointed out that Roberts did not provide effective service of the prehearing statement or the brief. On April 3, 2015, the Court of Appeals motion panel passed Thacker's motion to the review panel.

ANALYSIS

Dismissal of Appeal

Before we reach the merits of Roberts' appeal, we must first address Thacker's motion to dismiss the appeal. This Court has the power to deny or dismiss an appeal if the Kentucky Rules of Civil Procedure are not followed. As authorized under Kentucky Rules of Civil Procedure (CR) 73.02(2), the appellate court is charged with the burden of deciding the appropriate sanction on a case-by-case basis. *See Kentucky Farm Bureau Mutual Insurance Co. v. Conley*, 456 S.W.3d 814 (Ky. 2015).

Hence, except for tardy appeals and the naming of indispensable parties, we have discretion in making the determination of the appropriateness of the dismissal of an appeal. In general, we follow a rule of substantial compliance. *Johnson v. Smith*, 885 S.W.2d 944, 950 (Ky. 1994). Dismissal is not an appropriate remedy for certain defects if the appealed judgment is certain and if no substantial harm or prejudice is incurred by the opponent.

As noted in *Ready v. Jamison*, appellate courts abandoned the standard of strict compliance with appellate procedural rules in favor of a substantial compliance standard. 705 S.W.2d 479, 481 (Ky. 1986). Therein, the Kentucky Supreme Court explained: “[w]ith this new policy we seek to recognize, to reconcile and to further three significant objectives of appellate practice: achieving an orderly appellate process, deciding cases on the merits, and seeing to it that litigants do not needlessly suffer the loss of their constitutional right to appeal.” *Id.* at 482.

It is indisputable that Roberts failed to comply with many of the procedural rules related to the appeals process. However, in doing so, he primarily harmed his own case. Moreover, at this point in the process, Thacker did not establish any prejudice to his case from Roberts’ procedural deficiencies. Therefore, we deny the motion to dismiss the appeal. It is our belief that the more efficient and fair course of action is to address the merits of the case.

Statute of Limitations

In his appellate brief, Roberts fervently articulates the injustices in the system that he asserts occurred to him after an automobile accident.

Unfortunately, notwithstanding the difficulties encountered by him following the accident, we are a court of review and not fact-finders. And our responsibility here is to maintain the soundness of the judicial process rather than the vagaries and injustices of a regrettable accident. In the case at bar, simply put, Roberts did not present any error on the part of the trial court in granting summary judgment.

As previously noted, the automobile accident occurred on July 27, 2005, and the suit was filed on July 20, 2009. The applicable statute of limitations for personal injuries arising from a motor vehicle accident is two years from the date of the accident. *See* Kentucky Revised Statutes (KRS) 304.39-230. In particular, the statute provides that “(1) [i]f no basic or added reparation benefits have been paid for loss arising otherwise than from death, an action therefor may be commenced not later than two (2) years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four (4) years after the accident, whichever is earlier. *Id.*

In the case at hand, Roberts admitted that he had automobile insurance with California Casualty at the time of the accident and that he continues to have this coverage. With regard to the accident, the insurance carrier paid no basic or added reparations benefits of any kind. Under the plain meaning of KRS 304.30-230, absent such payments for a loss arising from the accident, Roberts had to

commence suit no later than two years after he knew, or in the exercise of reasonable diligence should have known, he suffered a loss as a result of the accident, or no later than four years after the accident, whichever is earlier. Here, Roberts knew about his injuries at the time of the accident since, as stated by him, he was not only injured in the accident but also hospitalized. And these were injuries, which, according to him, were not present prior to the accident.

In sum, tracking the statute's requirements, since he received no basic or added reparations benefits and knew he was injured at the time of the accident, under the statute of limitations, he had to file the action within two years. He did not, and therefore, the statute had expired when he filed the law suit. Thus, as explained in the trial court's order, Roberts' suit is barred by the expiration of the statute of limitations. The grant of summary judgment to Thacker was proper.

CONCLUSION

We affirm the decision of the Christian Circuit Court and deny Thacker's motion to dismiss the appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Andrew Roberts, *pro se*
Clarksville, Tennessee

BRIEF FOR APPELLEE:

J. Matthew Miller
Clarksville, Tennessee