RENDERED: SEPTEMBER 2, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001628-MR

CAROLYN JONES — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM JR, JUDGE
ACTION NO. 12-CI-000584

DR. NANVAKA JAYWEERA DMD; DR. ANAND GUPTA; DR. ANDREW S. MICKLER; and FIRST STOP URGENT CARE, PSC

APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, NICKELL AND TAYLOR, JUDGES.

ACREE, JUDGE: Carolyn Jones, *pro se*, filed several motions to amend her complaint asserting medical negligence claims against Appellees after her case was dismissed without prejudice in March 2012. After her fourth attempt to present her claim, the Jefferson Circuit Court imposed sanctions pursuant to Kentucky Rules

of Civil Procedure (CR) 11 against Jones. Jones appealed to this Court, and for the following reasons, we affirm.

Jones's original complaint attempting to assert a claim of medical negligence against Dr. Nanvaka Jayweera, D.M.D.; Dr. Anand Gupta; and Dr. Andrew Mickler was filed on January 31, 2012. The allegations in her complaint pertained to a dental procedure performed by Dr. Jayweera on Febuary 4, 2011, and medical treatment received thereafter. In response to Jones's complaint, Appellees filed motions to dismiss pursuant to CR 12.02(f), failure to state a claim upon which relief can be granted. The trial court granted Appellees' motions and dismissed Jones's case without prejudice in an order dated March 26, 2012.[1]

On September 23, 2013, eighteen months after her case had been dismissed, Jones filed a motion styled "Motion for Leave to file an Amended Complaint With Two Motions," which included a motion for medical records and a motion to expedite her case for medical treatment. Dr. Jayweera and Dr. Mickler filed motions to strike Jones's amended complaint arguing that there was no active civil action or complaint which Jones could seek to amend. Appellees additionally argued that the statute of limitations on Jones's claim had long expired.

The trial court overruled Jones's motion in an October 21, 2013 opinion and order stating

> [T]he Court finds no persuasive reason to allow the complaint to be amended. Simply stated, the motion is

[1] The record indicates that Jones had contacted at least three attorneys requesting that they review her potential claim. However, each rejection letter stated concerns over the expiration of statute of limitations barring Jones's action.

> not timely and the Court, acting within its discretion, will not allow the complaint to be amended after such a long passage of time. Further, the Court notes that the proposed amended complaint would be insufficient even if it were timely.

The trial court went on to strike the complaint and dismiss the action because Jones admitted that her amended complaint had been prepared by a paralegal.[2]

On August 1, 2014, Jones filed a motion to reopen her case. Her request was denied. Jones again sought to reopen her case on September 3, 2014. In response, Dr. Jayweera requested that the trial court impose sanctions against Jones to cover attorneys' fees and costs pursuant to CR 11 for her repeated and costly attempts to continue prosecution of a previously dismissed and time-barred cause of action. The trial court overruled Jones's motion to reopen her case and denied Dr. Jayweera's request for sanctions, but warned Jones that if she filed anything further in the matter she would be subject to sanctions.

Notwithstanding the court's warning, Jones filed a motion styled "Motion for Leave of Amended Complaint for Subpoenas and Discovery" on September 11, 2014. Dr. Jayweera responded with a motion to strike Jones's most recent filing and a motion for sanctions pursuant to CR 11. The trial court granted Dr. Jayweera's motions in two separate orders entered on September 23, 2014.

The order imposing sanctions against Jones did not specify a dollar amount. Shortly after it was entered, Dr. Jayweera's counsel submitted an affidavit and proof of costs for legal services provided in response to Jones's repeated

[2] The trial court reported the unauthorized practice of law to the Kentucky Bar Association pursuant to Supreme Court Rules (SCR) 3.020 and 3.460.

motions. On September 30, 2014, the trial court entered a final and appealable order imposing $500 in sanctions against Jones for attorney fees and costs.

Jones filed a notice of appeal on October 3, 2014. Her notice of appeal states that she is appealing from the trial court's September 23, 2014 "Order Striking Plaintiff's Pleading Styled 'Motion for Leave of Amended Complaint for Subpoenas and Discovery with One Attachment'" as well as from the trial court's September 23, 2014 "Order Imposing Sanctions and Costs Against Plaintiff Carolyn Jones."

We begin by noting that while Jones's notice of appeal was timely filed, she failed to properly designate a final and appealable order in her notice of appeal as stated in CR 73.03 and defined in CR 54.01. This defect previously subjected appeals to dismissal without consideration of the merits. *See Ready v. Jamison*, 705 S.W.2d 479 (Ky. 1986). However, consideration of Jones's appeal is now saved by the doctrine of substantial compliance. An appellant's failure to specify the final order in the notice of appeal is not fatal if the Court is able to determine such with reasonable certainty. *See id.* As a result, we proceed with our review.

Before addressing the issues presented on appeal, we must acknowledge the deficiencies of Jones's briefs. The form and content of what is required for an appellate brief are provided in CR 76.12. In addition to formatting errors, Jones does not make any citations to the record as required by CR 76.12(4)(c)(iv) and (v). It is true that certain leniency is afforded to briefs filed and

parties proceeding *pro se.* *See Miller v. Commonwealth*, 458 S.W.2d 453 (Ky. 1970). It is within this Court's discretion to strike a brief "for failure to comply with any substantial requirement" of the rule. CR 76.12(8)(a). After thorough review of the record, we choose not to strike Jones's briefs as we are able to fully ascertain the factual and procedural events leading to this appeal.

We first consider the order striking Jones's most recent pleading. Even with the assistance of substantial compliance, we are unable to entertain Jones's arguments on appeal concerning the order sustaining the motion to strike because our jurisdiction is limited to the consideration of final orders and judgments which "adjudicat[e] all the rights of all the parties in an action or proceeding …." CR 54.01. The final and appealable character of an order or judgment is assessed "on the basis of whether the order grants or denies the ultimate relief sought in the action or requires further steps to be taken in order that the parties' rights may be finally determined." *Evans Elkhorn Coal Co. v. Ousley*, 388 S.W.2d 130, 130–31 (1965).

Jones ceaselessly attempted to amend a complaint in a civil action in which she was no longer entitled to plead. Her case was dismissed without prejudice in March 2012, and she did not appeal the dismissal. Jones then filed motions to amend her original and previously dismissed complaint, among other needless requests, in September 2013, August 2014, and September 2014. Now Jones appeals from an order sustaining Appellees' motion to strike her amended complaint for a claim that was never adjudicated. The order undoubtedly fails the

test applied to determine whether the order from which the appeal is taken is final. As the relief sought by Jones in her stricken complaint was never granted or denied, the order sustaining the motion to strike is not a final order, and therefore, not appealable.

The second order Jones misidentifies as final in her notice of appeal is the trial court's September 23, 2014 "Order Imposing Sanctions and Costs Against Plaintiff Carolyn Jones." That order listed the dollar amount in sanctions as "TBD" and it did not contain finality language required by CR 54.02. Nonetheless, we readily discern from the record that what Jones intended to appeal is the trial court's September 30, 2014, final and appealable order imposing sanctions of $500 against her.

We certainly understand the trial court's and Appellees' frustration with Jones. The arguments in her brief and reply brief contain not one allegation of error regarding the trial court's imposition of sanctions against her. She focuses on her stricken pleadings and complains that she has been denied access to the court to have her claim heard.

The decisions of the trial court are presumed to be correct. *Caudill v. Caudill*, 212 Ky. 433, 279 S.W. 656 (1925). The burden rests with the appellant to overcome this presumption by specifically identifying any alleged errors, by referring to where those errors may be found in the record, and additionally, by pointing to evidence of record which supports her argument. *Id.* at 657. Jones has not made any effort to overcome this presumption. "[T]he trial court's

determination of those issues not briefed upon appeal is ordinarily affirmed."

Milby v. Mears, 580 S.W.2d 724, 727 (Ky. App. 1979). Therefore, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carolyn Jones, *Pro se*
Louisville, Kentucky

BRIEF FOR APPELLEES:

Scott P. Whonsetler
Michael F. Arnold
Louisville, Kentucky

Craig L. Johnson
M. Tyler Reynolds
Louisville, Kentucky