

RENDERED: DECEMBER 22, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001882-MR

WILLIAM ROBERT HAGAN;
JAMES S. HAGAN;
DELBERTA A. HAGAN;
RAYMOND E. DOBSON;
BETTY JANE HAGAN DOBSON;
JOHN W. HAGAN;
LORETTA H. HAGAN;
LARRY L. HAGAN;
CATHERINE K. HAGAN;
ROSE MARY GRAVELL;
AND LILIA HAGAN

APPELLANTS

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 12-CI-02110

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS

APPELLEE

OPINION AND ORDER

** ** * ** * ** *

BEFORE: CLAYTON, D. LAMBERT, AND NICKELL, JUDGES.

NICKELL, JUDGE: In this eminent domain condemnation action, William Robert Hagan, James S. Hagan, Delberta A. Hagan, Raymond Dobson, Betty Jane Hagan Dobson, John W. Hagan, Loretta H. Hagan, Larry L. Hagan, Catherine K. Hagan, Rose Mary Gravell, and Lilia Hagan (collectively “Appellants”) have appealed from the October 21, 2014, final order and judgment of the Hardin Circuit Court condemning a portion of their property for highway purposes and setting appropriate compensation for the taking of the property. We dismiss the appeal for failure to name an indispensable party.

On November 5, 2012, the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways (“Cabinet”), filed a condemnation petition seeking to acquire 4.157 acres for roadway purposes out of a 20.978 acre tract. In addition to Appellants, the petition named Edward Gravell as a defendant, and averred the named defendants were owners of, or had an interest in, the land sought to be condemned. All of the defendants were served, admitted their interests in and to the subject property, participated in discovery, and took exception to the amount of compensation awarded by the commissioners for the property being condemned.

The matter proceeded to a jury trial for the sole purpose of determining the value of the property before the taking, after the taking, and the calculated condemnation value. On October 21, 2014, the trial court entered its final order and judgment conforming to the jury’s determination. The judgment granted the Cabinet fee simple title to the subject property and set the amount of

compensation due from the Cabinet for the taking. Appellants timely filed a notice of appeal. The notice included the named Appellants stated above and the Cabinet as appellee. Edward Gravell was not named as an appellant.

On February 2, 2015, the Cabinet moved to dismiss the appeal for the failure to name an indispensable party. The Cabinet argued Appellants failed to name Edward Gravell as an appellant and that he was an indispensable party to this appeal. Appellants responded, arguing Edward Gravell was not an indispensable party and that the motion to dismiss should be denied. On August 12, 2015, a motion panel of the Court of Appeals passed the Cabinet's motion to dismiss to this merits panel for consideration.

It is fundamental that a court must have jurisdiction before it has authority to decide a case. Jurisdiction is the ubiquitous procedural threshold through which all cases and controversies must pass prior to having their substance examined. So fundamental is jurisdiction that it is the concept on which first-year law students cut their teeth. Here, jurisdiction in the context of appellate procedure is at issue At the outset we note an appeal may be properly considered only if perfected according to our rules of practice and procedure.

Wilson v. Russell, 162 S.W.3d 911, 913 (Ky. 2005).

In Kentucky jurisprudence, it is well-established that failure to name an indispensable party in the notice of appeal is considered a judicial defect that results in dismissal of the appeal. *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990); CR¹ 19.02. A party is viewed as indispensable if such party's interest

¹ Kentucky Rules of Civil Procedure.

would be affected by a decision of the Court. *Browning v. Preece*, 392 S.W.3d 388 (Ky. 2013). Further, our Supreme Court has held “[t]he necessity of joining parties whose interest may be effected is not eliminated simply because the effect upon that interest may be minimal, or even beneficial to them.” *Browning*, 392 S.W.3d at 392. “Whatever the shortcomings [of a Notice of Appeal], except for tardy appeals and *the naming of indispensable parties*, we follow a rule of substantial compliance in regards to notices of appeal.” *Lassiter v. American Exp. Travel Related Services Co., Inc.*, 308 S.W.3d 714, 718 (Ky. 2010) (emphasis added). The failure to name an indispensable party in the notice of appeal is more complex than a simple adding of the names; this is considered a jurisdictional defect. *Stallings*, 795 S.W.2d at 957.² It is a simple maxim of law that without jurisdiction, a court cannot proceed.

Upon thorough review of the record below, we conclude Edward Gravell is an indispensable party to this appeal. It is clear Edward Gravell’s interest would be affected by a decision of this Court. Rose Mary Gravell is the holder of a fee simple interest in the property sought to be condemned. Edward Gravell is her husband. KRS³ 404.030 provides no conveyance or incumbrance of

² CR 73.03(1) provides a “notice of appeal shall specify by name all appellants and all appellees.” However, an appeal does not “lie against one who was not a party to the proceedings in which the judgment was rendered.” *White v. England*, 348 S.W.2d 936, 937 (Ky. 1961). “A notice of appeal, when filed, transfers jurisdiction of the case from the circuit court to the appellate court. It places the named parties in the jurisdiction of the appellate court. . . . Therefore, the notice of appeal transfer[s] jurisdiction to the Court of Appeals of only the named parties.” *Stallings*, 795 S.W.2d at 957. If an appellant fails to name an indispensable party to an appeal, dismissal of the appeal is the appropriate action. *Id.*

³ Kentucky Revised Statutes.

the wife shall bar her husband's right of curtesy unless he joins in the conveyance of incumbrance, or releases his right by a separate instrument. *See also Schaengold v. Behen*, 306 Ky. 544, 208 S.W.2d 726 (1948); *Turner v. Smith*, 306 Ky. 551, 208 S.W.2d 731 (1948). Thus, any decision of this Court impacting the subject property—or its calculated value—would necessarily have a bearing on Edward Gravell's interest. However, he would not be bound by such decision as he would still be bound by the trial court's existing judgment.

For purposes of appeal, 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. *Land v. Salem Bank*, 279 Ky. 449, 130 S.W.2d 818 (1939); *Hammond v. Department for Human Resources*, 652 S.W.2d 91 (Ky. App. 1983). The failure to specify any party whose absence prevents the appellate court from granting complete relief among those already parties is fatal to the appeal. *Levin v. Ferrer*, 535 S.W.2d 79 (Ky. 1975). Therefore, we are of the opinion Edward Gravell is an indispensable party to the above-styled appeal, as a remand back to the trial court could result in inconsistent valuations and obligations by the Cabinet to Appellants and Edward Gravell. Reluctantly, we are duty bound to dismiss this appeal.

Therefore, be it ORDERED that Appeal No. 2014-CA-001882-MR is hereby DISMISSED for failure to name an indispensable party.

ALL CONCUR.

ENTERED: December 22, 2017

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

BRIEF FOR APPELLANT:

John W. Wooldridge
Shepherdsville, Kentucky

BRIEF FOR APPELLEE:

Geraldine M. Guerin
Elizabethtown, Kentucky