

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000665-MR

ANGELA F. RANKIN AND
LAVONNA ROGERS

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 13-CI-001205

SYED T. RAZA NAQVI AND
UNITED SERVICES AUTOMOBILE ASSOCIATION

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, J. LAMBERT, AND MAZE, JUDGES.

DIXON, JUDGE: Angela F. Rankin and Lavonna Rogers appeal from an order of the Jefferson Circuit Court denying their CR 60.02 motion. Finding no error, we affirm.

This appeal arises out of a motor vehicle accident wherein Syed T. Raza Naqvi rear-ended a vehicle driven by Rankin. Rankin and her passenger, Rogers, filed a complaint against Naqvi and United Services Automobile Association,¹ alleging they suffered personal injuries as a result of the collision. Following a jury trial, the jury awarded Appellants their medical expenses and declined to award other damages. Appellants filed a motion for a new trial pursuant to CR 59.01; thereafter, the trial court sent a letter to the parties that indicated Appellees had twenty days to respond to the motion, and Appellants would have ten days to submit a reply. Appellees filed their response on September 4, 2014. The following day, the trial court entered an order denying Appellants' CR 59.01 motion. On September 11, Appellants filed a CR 59.05 motion to alter, amend, or vacate the September 5 order. Appellants asserted the court prematurely entered its judgment before the Appellants filed their reply, which they submitted simultaneously with their CR 59.05 motion. On September 15, the court entered a handwritten order stating the CR 59.05 motion was "considered and denied." On October 7, Appellants filed a motion pursuant to CR 60.02, asking the court to correct its September 15 order to indicate that the September 5 order was vacated by the subsequent order so Appellants would have an opportunity to file a timely appeal. On October 13, while the CR 60.02 motion was pending, Appellants filed a notice of appeal of the two September orders. A joint motion to dismiss the appeal was granted by a panel of this Court in March

¹ USAA was the underinsured motorist carrier.

2015. Shortly thereafter, the trial court denied Appellants' CR 60.02 motion. This appeal followed.

“The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion.” *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). Accordingly, we will not disturb the court's ruling unless it was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Appellants contend they were entitled to post-judgment relief pursuant to CR 60.02(a), which allows a trial court to set aside its prior order or judgment due to “mistake, inadvertence, surprise or excusable neglect[.]” According to Appellants, the trial court mistakenly entered the September 5 order prematurely, which prevented them from filing a timely appeal. They rely on *Kurtsinger v. Board of Trustees of Kentucky Retirement Systems*, 90 S.W.3d 454, 456 (Ky. 2002), for the proposition that CR 60.02 relief is available to correct a mistake made by the trial court.

We conclude Appellants' reliance on *Kurtsinger* is misplaced. In *Kurtsinger*, one of the parties did not receive notice the court had denied a pending CR 59.05 motion until after the deadline for appeal had passed. *Id.* at 455. The trial court vacated its previous order and entered a new order denying the CR 59.05 motion, concluding “a CR 60.02 mistake had occurred whereby Appellants failed to learn of entry of the controlling order.” *Id.* at 458.

Unlike *Kurtsinger*, in the case at bar, it is undisputed Appellants received notice of the September 5 order denying their CR 59.01 post-trial motion, and they failed to timely appeal. Appellants chose to file a successive CR 59 motion; however, the civil rules provide no authority “for a party to make more than one motion for reconsideration of a judgment.” *Cloverleaf Dairy v. Michels*, 636 S.W.2d 894, 896 (Ky. App. 1982). Although Appellants believed the trial court mistakenly or prematurely ruled on their CR 59.01 motion on September 5, their recourse was an appeal to this Court. CR 73.02(1)(e) plainly states the time for filing an appeal begins when the trial court enters an order denying a motion under CR 59. Under the circumstances presented here, we conclude the circuit court did not abuse its discretion by denying Appellants’ CR 60.02 motion.

For the reasons stated herein, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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