

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001140-ME

THE SULLIVAN UNIVERSITY
SYSTEM, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 10-CI-001130

MARY E. MCCANN, INDIVIDUALLY;
and MARY E. MCCANN, ON BEHALF
OF OTHERS SIMILARLY SITUATED

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * * **

BEFORE: ACREE, LAMBERT, AND SPALDING, JUDGES.

LAMBERT, JUDGE: The Sullivan University System, Inc., appeals from the Jefferson Circuit Court's determination that the appellees' claims can proceed as a class action under Kentucky Rule of Civil Procedure (CR) 23. We vacate and remand to the Jefferson Circuit Court for further findings.

The facts and procedural history are summarized in *McCann v.*

Sullivan University System, Inc., 528 S.W.3d 331, 332-33 (Ky. 2017):

The Sullivan University System, Inc., hired Mary McCann as an admissions officer in March 2006 at its Fort Knox Campus. In May 2007, Sullivan transferred McCann to its Spencerian College campus in Louisville. In April 2008, Sullivan terminated McCann's employment.

Following her termination, McCann filed an action in Jefferson Circuit Court. Sullivan removed McCann's action to federal court after the United States Department of Labor filed a complaint against Sullivan under the federal Fair Labor Standards Act. Sullivan disputed the Department of Labor's allegations, but as part of that settlement, agreed to treat its admissions officers as non-exempt employees, to pay overtime wages, and to pay back wages to certain admissions officers. By agreed order, the federal district court dismissed McCann's federal Fair Labor Standards Act claims against Sullivan and remanded the remaining state law claims to Jefferson Circuit Court.

When McCann moved to certify a class, the Jefferson Circuit Court denied the motion on purely legal grounds. In its order denying class certification, the trial court relied upon dicta in an unpublished Court of Appeals' opinion, *Toyota Motor Mfg., Kentucky, Inc. v. Kelley*, 2012-CA-001508-ME, 2013 WL 6046079, at *9 (Ky. App. Nov. 15, 2013). The Court of Appeals in *Kelley* did not reach the merits of whether a class action is available for claims brought under KRS 337.385.¹ Yet, the panel opined that if it were to reach that question, it would conclude that a class action is not

¹ KRS 337.385 is titled: "Employer's liability; unpaid wages and liquidated damages; punitive damages for forced labor or services."

available for claims brought under KRS 337.385. McCann appealed the trial court's judgment to the Court of Appeals.

In the instant case—unlike in *Kelley*—the Court of Appeals did reach the question whether a class action is available for claims brought under KRS 337.385. The Court of Appeals ultimately held that KRS 337.385 does not authorize class actions. The court reasoned this provision constitutes a special statutory proceeding that displaces our Rules of Civil Procedure. The court also noted that the statutory provision does not explicitly authorize class actions. We must determine whether the Court of Appeals erred in its reading of this provision. Determining the correct reading of a statute is a question of law that we review de novo without affording deference to lower courts. *Board of Educ. of Fayette County v. Hurley-Richards*, 396 S.W.3d 879, 885 (Ky. 2013).

The Kentucky Supreme Court ultimately held:

CR 23 remains an available procedural mechanism applicable to McCann's cause of action brought under KRS 337.385. Because the trial court denied the motion to certify a class as a matter of law, we need not determine whether McCann's class meets the requirements set forth by this Court in CR 23. The trial court must make that determination upon remand.

McCann, 528 S.W.3d at 336.

On remand, the parties briefed the issues, and the matter was argued before the circuit court. On July 17, 2018, the circuit court entered its order

granting McCann’s motion to certify the class and appointing counsel. This interlocutory appeal was filed by Sullivan pursuant to CR 23.06.²

Our standard of review of the circuit court's decision whether to certify a class action is stated succinctly in *Hensley v. Haynes Trucking LLC*, 549 S.W.3d 430 (Ky. 2018):

A trial court’s determination as to class certification is reviewed on appeal for an abuse of discretion. Under an abuse-of-discretion standard, this Court may reverse a trial court’s decision only if “the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” “Implicit in this deferential standard is a recognition of the essentially factual basis of the certification inquiry and of the [trial] court’s inherent power to manage and control pending litigation.” Importantly, “As long as the [trial] court’s reasoning stays within the parameters of [CR] 23’s requirements for certification of a class, the [trial court’s] decision will not be disturbed.”

Hensley, 549 S.W.3d at 444 (footnoted citations omitted). “[T]he only question that is before us is: Was the trial court’s decision to certify the class in this case ‘arbitrary, unreasonable, unfair, or unsupported by sound legal principles?’” *Id.* at 445.

However, in the instant case, the circuit court’s order lacks any analysis whatsoever, thus making it impossible for us to determine whether the

² CR 23.06 states, “An order granting or denying class action certification is appealable within 10 days after the order is entered.”

decision to certify the class was an abuse of discretion. The circuit court's order merely states: "The Court finds that the Plaintiffs have satisfied the requirements for numerosity, commonality, typicality and representativeness. The Court further finds that counsel for the Plaintiffs are well versed in these matter and competent counsel to represent the class."

To conduct meaningful review of the issues, we must vacate the order and remand this matter to the circuit court so that we might be "satisfied that the trial court did 'probe behind the pleadings' and perform a 'rigorous analysis' in this case, and that its findings are supported by the record." *Hensley*, 549 S.W.3d at 446. "[O]n remand the trial court should enter detailed factual findings and legal conclusions resolving the motion to certify a class. Should the trial court elect to certify a class on remand, its order must address the four prerequisites of CR 23.01 (numerosity, commonality, typicality, and adequacy) and one of the three requirements of CR 23.02." *Nebraska Alliance Realty Company v. Brewer*, 529 S.W.3d 307, 317 (Ky. App. 2017).

We vacate the grant of class certification and remand this matter with instructions for the Jefferson Circuit Court to conduct the required analysis for maintainability under CR 23.01 and 23.02.

ALL CONCUR.

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