

RENDERED: AUGUST 30, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001368-MR

BARBARA MCMICHAEL, AS
ADMINISTRATRIX OF THE ESTATE
OF WILLIAM MCMICHAEL, DECEASED

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 17-CI-003340

GGNSC LOUISVILLE ST. MATTHEWS,
LLC D/B/A GOLDEN LIVINGCENTER
– ST. MATTHEWS; ST. MATTHEWS LEASING,
LLC D/B/A ST. MATTHEWS CARE CENTER;
GOLDEN GATE NATIONAL SENIOR CARE, LLC;
GGNSC ADMINISTRATIVE SERVICES, LLC;
GGNSC CLINICAL SERVICES, LLC; GGNSC
HOLDINGS, LLC; GGNSC EQUITY HOLDINGS,
LLC; GGNSC EQUITY HOLDINGS II, LLC;
GOLDEN GATE ANCILLARY, LLC; GPH LOUISVILLE
ST. MATTHEWS, LLC; REDWOOD HOLDINGS, LLC;
PROVIDENCE HEALTHCARE MANAGEMENT, INC.;
JOSHUA LEE SCHINDLER, IN HIS CAPACITY AS
ADMINISTRATOR OF ST. MATTHEWS CARE CENTER;
LISA S. DAVIS, IN HER CAPACITY AS ADMINISTRATOR
OF ST. MATTHEWS CARE CENTER; AND ALLYSON K.
SKAGGS, IN HER CAPACITY AS ADMINISTRATOR OF
ST. MATTHEWS CARE CENTER

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

ACREE, JUDGE: On July 9, 2019, the Court ordered the Appellant to show cause why this appeal should not be dismissed for failure to name an indispensable party.

The only Appellant is the Estate of William McMichael, identified four times in the notice of appeal as Barbara McMichael, as Administratrix of the Estate of William McMichael, deceased (the “Estate”). The Court concludes the Estate failed to show sufficient cause for this Court’s exercise of appellate jurisdiction and, consequently, this appeal must be dismissed.

The indispensable party is Barbara McMichael, individually. The circuit court granted summary judgment and dismissed her loss of consortium claim. That claim is personal to Barbara McMichael, individually, and is separate and distinct from any personal injury or wrongful death claim brought by the Estate. As the Supreme Court stated:

KRS 411.145 . . . says that a wife or a husband “may recover damages against a third person for loss of consortium” resulting from a negligent or intentional act, clearly establishing a *separate cause of action* for spousal loss of consortium. . . . [I]t is not specifically a part of a wrongful death claim under Kentucky law. . . . [T]here is *not a “common and undivided interest”* in the spouse’s claim for loss of consortium and the underlying tort

claim.

Martin v. Ohio County Hosp. Corp., 295 S.W.3d 104, 108-09 (Ky. 2009)

(emphasis added) (citation omitted); *see also Daley v. Reed*, 87 S.W.3d 247, 249 (Ky. 2002) (“[A] claim for loss of consortium [is one] in which a *survivor* seeks damages for the loss of the decedent’s companionship, services, etc., [which] is a separate and independent cause of action from a wrongful death claim in which the *decedent’s estate* seeks damages for the loss of the decedent’s power to labor and earn money.”).

The circuit court’s summary judgment denied the relief Barbara McMichael sought individually, on her own behalf, and not the relief sought by the Estate she administered. She is an indispensable party to that loss of consortium claim. That claim alone is before this Court for review.

When a notice of appeal separates the claimant from her claim, the appeal patently lacks an indispensable party. As our Supreme Court said, “[A]n indispensable party is defined as a party ‘whose absence prevents the Court from granting complete relief among those already parties.’” *Browning v. Preece*, 392 S.W.3d 388, 391 (Ky. 2013) (quoting *Milligan v. Schenley Distillers, Inc.*, 584 S.W.2d 751, 753 (Ky. App. 1979) (citing CR 19.01), *superseded on other grounds by statute*, KRS 342.285). Neither affirming nor reversing the summary judgment will provide complete relief regarding the loss of consortium claim in the absence

of the claim's legal proponent. Without Barbara McMichael individually before this Court, there is no appellate jurisdiction. Quoting again our Supreme Court:

Unlike proceedings in the trial courts, where failure to name an indispensable party may be remedied by a timely amendment to the complaint, "under the appellate civil rules, failure to name an indispensable party in the notice of appeal is 'a jurisdictional defect that cannot be remedied'" after the thirty-day period for filing a notice of appeal as provided by CR 73.02 has run. *Nelson County Bd. of Educ. v. Forte*, 337 S.W.3d 617, 626 (Ky. 2011) (quoting *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990)).

Browning, 392 S.W.3d at 391 (footnote omitted).

Additionally, only "parties who are aggrieved by a trial court's order are entitled to appeal it. *Civil Service Commission v. Tankersley*, 330 S.W.2d 392, 393 (Ky. 1959) ('In order for a party to maintain an appeal from a judgment it is essential that he shall be aggrieved or prejudiced by the judgment[.]')." *Jenkins v. Best*, 250 S.W.3d 680, 686 (Ky. App. 2007). By enacting KRS 411.145, "the General Assembly made loss of consortium a statutory cause of action, which belongs specifically to a spouse, not to the estate of the deceased." *Martin*, 295 S.W.3d at 107-08. The Estate was not injured by the circuit court's denial of Barbara McMichael's loss of consortium claim. "If one is not injured by a judgment, he cannot complain of its irregularity." *American States Ins. Co. v. Audubon Country Club*, 650 S.W.2d 252, 254 (Ky. 1983).

Because this Court lacks jurisdiction to review the summary judgment, this appeal must be dismissed.

ALL CONCUR.

ENTERED: _____

JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES GGNSC
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LEASING, LLC D/B/A ST.
MATTHEWS CARE CENTER;
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