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TO BE PUBLISHED

Supreme Court of Kentucky

2023-SC-0156-DG

DONNA MILLER BRUENGER; AND KIRK HOSKINS — APPELLANTS

V.

ON REVIEW FROM COURT OF APPEALS
NO. 2022-CA-0701
JEFFERSON CIRCUIT COURT NO. 19-CI-004039

COURTENAY ANN MILLER — APPELLEE

OPINION OF THE COURT BY JUSTICE NICKELL

AFFIRMING IN PART, REVERSING IN PART

We granted discretionary review to determine whether the Court of Appeals properly dismissed an appeal and awarded attorney's fees, upon its own motion, as sanctions for the filing of a frivolous appeal under RAP[1] 11(B). Following careful review of the record, law, and briefs, we conclude the imposition of sanctions was inappropriate and must be reversed. Remand is unnecessary, however, because we further hold the appeal was subject to mandatory dismissal for lack of jurisdiction and affirm on this alternative basis. Therefore, we affirm in part, and reverse in part.

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[1] Kentucky Rules of Appellate Procedure.

FACTS AND PROCEDURAL HISTORY

At the outset, this Court acknowledges the long and complicated history underlying the parties' dispute which has spawned litigation ranging from the probate courts of Oklahoma to the United States Court of Appeals for the Sixth Circuit, and back to the courts of Kentucky. We need not thread our way through the entirety of this labyrinth, however, and limit our recitation of the facts to those necessary to resolve the present appeal.

Donna Miller Bruenger is the ex-wife of the late Coleman Miller[2] who was a federal employee. In 2011, the Jefferson Family Court dissolved their marriage and incorporated a property settlement agreement into its decree and judgment. In accordance with the terms of the agreement, the family court entered a qualified domestic relations order[3] ("QDRO"), which required:

> (1) the Office of Personnel Management to pay a portion of Coleman's pension benefits to Bruenger;
>
> (2) Coleman to establish a former spouse survivor annuity for Bruenger under the Federal Employees Retirement System; and
>
> (3) Coleman to assign to Bruenger his Federal Employee's Group Life Insurance ("FEGLI") benefits, which were administered by MetLife.

It is undisputed that Coleman failed to designate any beneficiary to receive his FEGLI benefits and his federal employer did not receive a copy of the QDRO prior to his death.[4]

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[2] For the sake of clarity, we will refer to Coleman Miller by his first name.

[3] This order was also termed a "Court Order Acceptable for Processing under the Civil Service Retirement System."

[4] The distribution of the pension and annuity proceeds are not at issue.

Courtenay Ann Miller, Coleman's only daughter from another marriage, applied to receive his FEGLI benefits. Deeming federal law entitled Miller to the proceeds, MetLife distributed $172,089.00 to her.

On April 1, 2020, Bruenger filed a petition for declaratory judgment against Miller in Jefferson Circuit Court seeking a declaration of entitlement to the FEGLI benefits. Bruenger further requested an order requiring Miller to transfer the proceeds to her. After the parties had fully briefed the issues, the trial court heard oral arguments by telephone conference on May 28, 2020.

Bruenger's argument centered on the contention that Coleman's failure to designate her as the beneficiary of the FEGLI proceeds could not overcome his legal obligation and duty to assign her the benefits under the terms of the QDRO. Miller countered that 5 U.S.C.A.[5] §§ 8705(a) and (e)(2) foreclosed Bruenger's claim to the proceeds because Coleman's employer did not receive a copy of the QDRO prior to his death. Throughout the hearing, the trial court signaled its inclination to rule in Bruenger's favor and specifically stated,

> this is money that belongs to somebody else that was given to [Miller]. And so I will correct that through this order. And then, you're welcome to appeal it again. You know, I just make the call and then you all decide what to do with it. But that's where I am headed on this one.

While the trial court's oral pronouncements may have appeared to be definitive, at another point during the hearing, the court also clarified, "[b]ut I'm going to go through it one more time before I decide[.]" The trial court concluded the

[5] United States Code Annotated.

hearing by informing the parties that an order would be forthcoming. Bruenger filed a notice of submission for final decision later the same day.

After several months passed, Bruenger filed a motion for a status conference on December 8, 2020. Before the motion could be heard, the trial court entered an opinion and order on December 9, 2020 (hereinafter referred to as "judgment"), concluding "that there were no genuine issues of material fact which would make it possible for [Bruenger] to prevail at trial against Ms. Miller as a matter of law." Relying on 5 U.S.C.A. §§ 8705(a) and (e)(2), and federal caselaw, the trial court further stated, "Regrettably and regardless of the moral and ethical implications, there is no remedy available to Ms. Bruenger as a matter of law or equity against Ms. Miller."

On December 14, 2020, the trial court conducted a status conference by telephone to clarify whether any additional claims remained pending. At the time of the conference, the trial court did not have the record before it and Miller had not yet received a copy of the judgment.

The trial court expressed its belief there were additional issues that had not been resolved but also informed the parties that the judgment could "moot[] everything else out or make[] it unlikely or untenable that there will be any other relief on any other claims, but I am not sure what other claims there might be." Bruenger did not clearly articulate the basis of any remaining claims in response to the trial court's inquiries, however.

Instead, the parties sought to reargue the merits of the judgment. The trial court explained it had changed its view of the case after further

deliberation and attempted to re-focus the discussion by stating, "We are all stuck with my answer until the Court of Appeals tells us otherwise, the question today is, are we ready to ask the Court of Appeals to tell us what they think."

In response to this remark, Bruenger directly asked the trial court if she was correct in assuming the judgment was final to which the court responded, "That is what I am asking . . . for whatever reason I decided this wasn't [final] but I could have been wrong about that, if that is the entirety of the relief, I think she had some other claims though." The trial court then suggested that Bruenger confirm whether she had any claims remaining because "if I need to make it final and appealable, then we have to make sure . . . any other ancillary claims are addressed . . . and I don't have the file in front of me, but I think that there are [claims remaining], right?"

Again, Bruenger did not specify any additional claims and maintained it was the trial court's writtten findings which led her to believe the judgment was final. Unsatisfied with this answer, the trial court stated, "But I can't put that [finality language] in there, if there are claims that have not been addressed, if she has other claims, and I don't know, I'm assuming she does, that is why I didn't put it, but if she has other claims that now are effectively thwarted . . . then somebody needs to ask me to find that because I can't just do it on my own[.]"

Miller continued to argue that the judgment was final because the trial court's ruling on the declaratory judgment issue effectively disposed of the

entire case. The trial court refused to explicitly endorse this interpretation and observed:

> One of [Bruenger's] claims was requesting declaratory judgment. I denied that, that was the motion as I recall that was before me. If there are other claims that may have effectively been rendered unwinnable as a result of that, I still have to address those claims. I can't leave claims hanging before it goes to the Court of Appeals. So that is what [Bruenger's counsel] is going to look at, to see is, ok, so here are the three other things we were asking for, can you go on and rule on that so that we can appeal this. . . . And that is not a problem, but I can't do it on my own. I have to have a motion to do it. And if that is wrong, if that is all there was, then I will just put the language on there, but you all have to look at that and let me know.

At various times throughout the conference, the discussion turned to matters of procedure. In response to Miller's argument that the judgment could not be altered or amended more than 10 days after entry, the trial court instructed both parties that CR[6] 59 does not apply to a nonfinal order and it is improper to seek reconsideration on this basis. The trial court further stated it would not add finality language to the judgment or otherwise rule upon the substance of any remaining claims in the absence of a proper motion.

Evidently failing to grasp the import of the trial court's uncertainty on the finality issue, the parties persisted in their requests for clarification and a definitive ruling. The trial court ultimately addressed the parties stating, "it is only final and appealable if I have addressed all the claims," and directed Bruenger to "look at that, and if there are claims that remain to be addressed, somebody ask me to rule on that, and I will do it."

[6] Kentucky Rules of Civil Procedure.

Approximately two and a half months later, on March 3, 2021, Bruenger filed a motion to designate the judgment as final and appealable. However, she did not identify any remaining claims and instead premised the motion upon her conclusion that the terms of the judgment "in conjunction with the Court's comments" at the status conference "would render continued litigation futile." It is clear from the motion that Bruenger understood the trial court to have definitively ruled that the judgment was nonfinal and would not designate it as final without a written motion.

On March 24, 2021, the trial court entered an order granting Bruenger's motion over Miller's objection and "deemed" the judgment to be final and appealable. The trial court further opined:

> The Court specifically rejects Ms. Miller's contention that the Court has lost jurisdiction to make it so [final and appealable], or that the designation constitutes an amendment to the aforementioned Opinion and Order, or that Ms. Bruenger has forfeited or should otherwise be denied the opportunity to appeal same.

Bruenger filed her notice of appeal on April 4, 2021.

Miller filed a motion to dismiss the appeal as untimely. Determining that the trial court's judgment was final upon entry, despite the lack of CR 54.02 finality language, because it resolved the entire case, the Court of Appeals granted Miller's motion to dismiss in a thorough, nine-page order entered on September 14, 2021. *Bruenger v. Miller*, 2021-CA-0382-MR. Bruenger subsequently filed a motion for discretionary review, which this Court denied on February 16, 2022.

Following the dismissal of her appeal, Bruenger returned to the trial court seeking relief under CR 60.02 on the grounds of mistake, inadvertence, or excusable neglect. She did not request any changes to the judgment but simply asked the trial court to vacate and re-issue it for the purpose of restoring her right to appeal. Miller responded in opposition, arguing the dismissal of the appeal was final and that CR 60.02 does not authorize a trial court to correct mistakes of law.

On June 2, 2022, the trial court granted Bruenger's motion for CR 60.02 relief and re-entered its judgment. Although the trial court acknowledged the judgment was "dispositive," it granted relief upon a determination that Bruenger "reasonably concluded that the Court's failure to include the 'final and appealable' language on the Opinion and Order denying her motion for declaratory judgment precluded her from appealing same." The trial court further opined that Bruenger justifiably relied "on her attorney's and the Court's mistaken understanding and belief that the Order was not final and appealable unless or until designated as such[.]" Bruenger filed a notice of appeal on June 15, 2022.

The parties prosecuted the appeal on the merits without specifically raising the propriety of CR 60.02 relief.[7] Following briefing, the Court of Appeals, upon its own motion and without issuing a show cause order, dismissed the appeal as frivolous and further awarded Miller her attorney's fees

[7] Additionally, Bruenger acknowledged in her prehearing statement that the parties had previously appeared before the Court of Appeals in the same matter.

incurred in defending the appeal. However, the Court of Appeals did not fix the amount of fees or otherwise specify the method by which the monetary sanctions would be determined. We granted discretionary review and held oral argument on October 16, 2024.

LAW AND ANALYSIS

1. Court of Appeals had jurisdiction to consider merits of CR 60.02 relief.

Bruenger first argues the Court of Appeals lacked jurisdiction to consider the merits of the trial court's order granting CR 60.02 relief because Miller did not file a cross-appeal or otherwise argue the issue in her appellee brief. We disagree.

In Kentucky, "appeals are taken from judgments, not from unfavorable rulings as such." *Brown v. Barkley*, 628 S.W.2d 616, 618 (Ky. 1982). As a corollary, we have further recognized, "[a] cross-appeal is appropriate only when the judgment fails to give the cross-appellant all the relief he has demanded or subjects him to some degree of relief he seeks to avoid." *Id.* While a judgment or order "may embrace within its four corners opinions, observations, recitations or rulings leading to or in support of its operative effect . . . it is the 'bottom line' that is the ultimate judgment and source of aggrievement providing the basis for an appeal." *Id.* at 618.

We need not parse the source of aggrievement rule to resolve the present issue, however. In *Younger v. Evergreen Group, Inc.*, 363 S.W.3d 337, 339 (Ky. 2012), this Court directly held "[t]here is no reason to require a cross-appeal" where an appellee contends "the trial court abused its discretion in granting

the CR 60.02 relief and, as a result, the time for filing the appeal actually ran" on the underlying judgment. In this situation, the challenge to the CR 60.02 order is collateral to the merits of the appeal and the issue is essentially jurisdictional. *Id.* Thus, in such limited and unusual circumstances, we held the propriety of an order granting CR 60.02 relief may be adjudicated on a motion to dismiss. *Id.*

In this regard, the reasoning of *Younger* extends to the present matter. If the collateral CR 60.02 issue is jurisdictional and may be properly raised on a motion to dismiss, then the appellate court may likewise resolve the question upon its own motion because a court has the duty, power, and "jurisdiction to determine its jurisdiction in a particular case." *Strother v. Day*, 279 S.W.2d 785, 789 (Ky. 1955). Therefore, we conclude the Court of Appeals properly exercised its jurisdiction to consider the propriety of the order granting CR 60.02 relief upon its own motion.

2. RAP 11(B) controls and authorizes the award of attorney's fees.

Bruenger next argues that RAP 11[8] is inapplicable to the present matter because the plain language of the rule does not allow the Court of Appeals to

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[8] We note that Bruenger filed her notice of appeal and appellant brief prior to the effective date of RAP 11 on January 1, 2023. However, because rules designed to curb abusive litigation conduct do not create substantive rights in the parties, they are deemed to be procedural in nature. *Clark Equipment Co., Inc. v. Bowman*, 762 S.W.2d 417, 420 (Ky. App. 1988). Thus, RAP 11 applies to all cases that were currently pending at the time the rule change became effective. *Hallum v. Commonwealth*, 347 S.W.3d 55, 58 n.7 (Ky. 2011). Moreover, neither party has argued the Court of Appeals should have applied the prior version of the rule.

sanction circuit court filings. Alternatively, she contends that RAP 11(B) does not authorize the award of attorney's fees as a sanction. We disagree.

The Kentucky appellate rules strictly "govern appellate procedure[.]" *Compare* RAP 1(A) *with* CR 1(2) ("These Rules govern procedure and practice in all actions of a civil nature[.]"). Thus, as a general matter, we agree with Bruenger that "the rules, and the case law provide for fairly clear separation between conduct on appeal sanctionable by the appellate court and conduct in the trial court sanctionable by the trial court." *Webster v. Sowders*, 846 F.2d 1032, 1040 (6th Cir. 1988). However, we cannot accept her contention that the Court of Appeals improperly sanctioned litigation conduct in the trial court.

While the Court of Appeals severely criticized Bruenger's trial tactics leading up to the appeal and may have employed imprecise verbiage in relation thereto, we perceive the sanctions at issue to have resulted solely from the conclusion that Bruenger's appeal was "wholly frivolous" and "was taken in bad faith and in derogation of the rules governing appellate practice." Therefore, the Court of Appeals properly identified RAP 11 as the governing rule.

Additionally, we reject Bruenger's contention that RAP 11(B) does not authorize the award of attorney's fees as a sanction. RAP 11(B)(3) provides: "If an appellate court determines that an appeal or appellate filing is frivolous, it may impose an appropriate sanction, including but not limited to: . . . [a]warding just monetary sanctions and single or double costs to the opposing party[.]"

The provision for "just monetary sanctions" under RAP 11(B)(3) is analogous to Federal Rules of Appellate Procedure 38, which states, "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee."

In this specific context, the terms "just monetary sanctions" and "just damages" clearly contemplate an award of attorney's fees which serve "not only to compensate [a litigant] for expense and delay in defending against meritless arguments on appeal but to deter frivolous appeals and thus preserve the appellate calendar for cases worthy of consideration." *Sun-Tek Industries, Inc. v. Kennedy Sky-Lites, Inc.*, 865 F.2d 1254, 1255 (D.C. Cir. 1989) (quoting *United States v. Phoenix Petroleum Co.*, 727 F.2d 1579, 1580 n. 4 (TECA 1984)). Therefore, we hold an appellate court may properly award attorney's fees as a monetary sanction for the filing of a frivolous appeal under RAP 11(B)(3).

However, we further observe the award of attorney's fees in the present matter was incomplete because the final order of the Court of Appeals did not specify the method by which the award would be reduced to a definite amount. At the time an appellate court enters a final order imposing monetary sanctions, it must "either establish the amount itself or remand to the [trial] court for that determination." *Braley v. Campbell*, 832 F.2d 1504, 1515 (10th Cir. 1987). Thus, an order imposing appellate sanctions in the form of attorney's fees does not allow for meaningful review unless the court has specified the method by which a sum certain will be determined. *Compare id.*

at 1513 (holding imposition of monetary sanctions by an appellate court must be sufficiently specific to allow for further review on a petition for rehearing en banc or writ of certiorari to a higher court) with *Sabal Trail Transmission, LLC v. 3.921 Acres of Land*, 947 F.3d 1362, 1370 (11th Cir. 2020) (explaining "that when a [trial] court has entered an order determining that a party is liable for attorney's fees and costs but has not set the amount of the award, there is no final order on fees and costs.").

3. Sanctions were imposed in violation of due process.

For her third contention of error, Bruenger argues the imposition of sanctions violated due process because she was not afforded notice and a reasonable opportunity to be heard. We agree.

The Supreme Court of the United States has definitively held that the imposition of sanctions for litigation conduct "must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees[.]"[9] *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991); *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767 (1980) ("Like other sanctions, attorney's

[9] For the sake of clarity, we observe that a court's inherent authority to punish contempt is conceptually distinct from the authority to sanction improper litigation conduct under a rule or statute. *Bell v. Commonwealth, Cab. for Health & Fam. Servs.*, 423 S.W.3d 742, 747 (Ky. 2014). Apart from the mandates of governing statutes and rules, the inherent authority of a court may be invoked to impose appropriate sanctions "when the very integrity of the *court* is in issue." *Id.* at 749. Such a situation amounts to "a contempt action, because the conduct undermined the authority of the court." *Id.* Because the present matter only concerns the imposition of sanctions for the filing of a frivolous appeal under RAP 11(B), the scope of an appellate court's contempt power is not at issue here.

fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record.").

Thus, the general rule is that an "appellate court may raise the issue of a frivolous appeal on its own motion, but it must give notice that it is considering the issue and grant an opportunity for the parties and counsel to be heard *before* it makes a determination." 5 Am. Jur. 2d *Appellate Review* § 842 (2024) (emphasis added). Federal appellate courts have broadly held that "due process is satisfied by issuance of an order to show cause why a sanction should not be imposed and by providing a reasonable opportunity for filing a response." *Braley*, 832 F.2d at 1515.

Similarly, our prior decisions have implicitly approved the use of a show cause order to satisfy basic due process requirements where it appeared to this Court that an appeal or motion for discretionary review was frivolous. *Walker v. Commonwealth*, 714 S.W.2d 155, 156 (Ky. 1986); *Freeman v. Commonwealth*, 697 S.W.2d 133 (Ky. 1985). To be clear, however, we emphasize that, "[a]t the appellate level, the right to respond does not require an adversarial, evidentiary hearing." *Braley*, 832 F.2d at 1515.

This Court is sympathetic to the notion that the requirements of notice and an opportunity to be heard "may seem superfluous when an appellate court has determined, after considering briefs, argument and the record that the appeal is so unmeritorious as to be frivolous." *Id.* at 1514. However, "the determination to impose sanctions . . . for bringing a frivolous appeal involves another step—placing the blame." *Id.*

Thus, "there remains for consideration the defenses which might absolve the lawyer [or party] of the responsibility for taking the frivolous appeal." It is this possibility of mitigation or avoidance which "justifies and requires notice and opportunity to be heard before" sanctions may be properly imposed. *Id.* Because these due process protections were not observed in the present matter, we conclude the sanctions were imposed in error and must be reversed.

4. Remand unnecessary because appeal was properly dismissed for lack of jurisdiction.

Although we have determined the imposition of sanctions violated due process, remand for additional proceedings is unnecessary. While we cannot conclude the appeal was frivolous under RAP 11(B), we hold the appeal was otherwise subject to dismissal on jurisdictional grounds and clarify that relief under CR 60.02 is not available to correct alleged mistakes of law.[10] Additionally, we hold CR 60.02 relief is improper where it is used for the sole purpose of extending the time to file an appeal.

RAP 11(B) authorizes an appellate court to deem an appeal or motion to be frivolous "if the court finds that it is so totally lacking in merit that it appears to have been taken in bad faith." This determination is made under an objective standard based on evidence of record. *Leasor v. Redmon*, 734 S.W.2d 462, 464 (Ky. 1987).

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[10] It is well-established "that an appellate court may affirm a lower court for any reason supported by the record." *McCloud v. Commonwealth*, 286 S.W.3d 780, 786 n.19 (Ky. 2009) (citing *Kentucky Farm Bur. Mut. Ins. Co. v. Gray*, 814 S.W.2d 928, 930 (Ky. App. 1991)).

In applying the objective test, "the court's primary consideration is the reasonableness of the appellant's actions in bringing the appeal[,]" particularly in reference "to what a reasonable party or attorney knew or should have known under the same or similar circumstances." 5 Am. Jur. 2d *Appellate Review* § 821 (2024). Appellate courts must exercise their discretion cautiously in this regard and limit the imposition of sanctions to particularly egregious cases. *Kenton Cnty. Fiscal Ct. v. Elfers*, 981 S.W.2d 553, 559 (Ky. App. 1998). Moreover, the sanctioning power should not be used to "chill vigorous advocacy" within legal and ethical bounds. *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 393 (1990).

We review the imposition of sanctions by an appellate court under the abuse of discretion standard. RAP 11(B); 5 Am. Jur. 2d *Appellate Review* § 820 (2024). An abuse of discretion occurs when the lower court's "decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

The Court of Appeals premised the imposition of sanctions on its determination that Bruenger's second appeal was "aimed directly and solely at avoiding the law of the case irrefutably established" by its prior order of dismissal. Additionally, the Court of Appeals took umbrage at Bruenger's attempt to "outmaneuver" its ruling and otherwise undermine its jurisdiction.

We perceive nothing so nefarious here and cannot uphold the imposition of sanctions based upon our review of the present record. At the outset, we conclude the Court of Appeals overstated the preclusive effect of the law of the

case doctrine relative to the availability of relief under CR 60.02. To be sure, CR 60.02 does not afford parties the right to simply relitigate the legal merits of prior appellate court rulings. *Foley v. Commonwealth*, 425 S.W.3d 880, 884 (Ky. 2014) ("CR 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could reasonably have been presented by direct appeal[.]"). However, neither the law of the case doctrine nor the affirmance by an appellate court necessarily informs this principle. *Bruner v. Cooper*, 677 S.W.3d 252, 269 (Ky. 2023).

In *Bruner*, we directly held "if a movant is properly entitled to relief under any of CR 60.02's subsections, it can overcome law of the case doctrine under the appropriate circumstances." *Id.* The rationale of *Bruner* adheres to longstanding Kentucky precedent which explained, "reason, logic and justice support the theory . . . that the fact of . . . affirm[ance] by an appellate court creates no obstacle to the right of the [party] to obtain the writ [of coram nobis] *if he alleges and proves facts sufficient therefor*."[11] *Smith v. Buchanan*, 291 Ky. 44, 163 S.W.2d 5, 8 (1942) (emphasis added).

CR 60.02(a) plainly provides for relief on the grounds of "mistake, inadvertence, surprise or excusable neglect[.]" As the trial court candidly acknowledged, "mistakes were made that resulted in the loss of a litigant's right to appeal." While we agree that CR 60.02 relief was improperly granted on the merits because CR 60.02 cannot be used to remedy or relitigate an

[11] CR 60.02 replaced the ancient writ of coram nobis. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983).

alleged mistake of law, we cannot conclude it was objectively unreasonable for Bruenger, on these facts, to pursue additional relief notwithstanding the law of the case doctrine.[12]

Moreover, the present circumstances amplify the paramount importance and urgency of determining the date of finality with crystal clear precision. While it is ultimately the litigant's responsibility to take any steps necessary to ascertain the date of finality within the time permitted to properly file an appeal, we cannot conclude that mere mistakes, misconceptions, or even the negligence of counsel support a finding of bad faith without some additional evidence of improper purpose such as delay, harassment, patent implausibility, or intentional misrepresentations or omissions. 5 Am. Jur. 2d *Appellate Review* § 823 (2024).

We are satisfied from the tenor of the status conference on finality, relevant filings, and oral argument before this Court that Bruenger did not fully appreciate the trial court's uncertainty regarding the finality issue and failed to realize the time for appeal would begin to run from the entry of judgment in the event she could not identify any remaining claims. In its order granting CR 60.02 relief, the trial court appropriately shouldered some portion of the blame for contributing to the confusion. Thus, the present record evinces nothing more than grievous procedural missteps and misunderstandings which

[12] Additionally, we note that a mistake of law does not equate to a change in the law. *Toyota Motor Mfg., Kentucky, Inc. v. Johnson*, 323 S.W.3d 646, 651 (Ky. 2010). In *Toyota*, we specifically held that the law of case doctrine does not preclude CR 60.02 relief based on a change in the law. *Id.* at 653.

Bruenger and the trial court earnestly attempted to remedy under the provisions of CR 60.02. We discern no indication of bad faith on the part of Bruenger or her counsel.

The fact remains, however, that Bruenger's appeal from the judgment was untimely and properly dismissed. RAP 3(D) governs the extension of time for appeal and provides:

> Upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment or an order which affects the running of the time for taking an appeal, the trial court may extend the time for appeal, not exceeding 10 days from the expiration of the original time. *This is in addition to any other remedies that may be available, including but not limited to, relief available pursuant to CR 60.02, and any relief recognized by case law or other rule.*

(Emphasis added). This reference to "relief available to pursuant to CR 60.02," however, necessarily implies that such relief must be *properly* available. *Bruner*, 677 S.W.3d at 269.

Our predecessor Court has directly held "[a] party may not resort to CR 60.02 to gain an additional extension of time to prevent the application" of the time-limit for filing a notice of appeal. *United Bonding Ins. Co. v. Commonwealth*, 461 S.W.2d 535, 536 (Ky. 1970). By the plain language of the rule, a motion under CR 60.02 "does not affect the finality of a judgment[.]" *See Lewallen v. Commonwealth*, 584 S.W.2d 748, 749 (Ky. App. 1979) (dismissing appeal where underlying CR 60.02 motion was improper).

Additionally, relief under CR 60.02 "is not available for correction of an error or mistake of law by the court."[13] *James v. Hillerich & Bradsby Co.*, 299 S.W.2d 92, 93 (Ky. 1957). Instead, such relief may only be granted "upon facts or grounds not appearing on the face of the record and not available by appeal or otherwise, and not discovered until after the rendition of the judgment without fault of the party seeking relief." *Hamm v. Mansfield*, 317 S.W.2d 172, 173 (Ky. 1958). In other words, "CR 60.02 is neither a substitute for, nor a separate avenue of, appeal." *Maudlin v. Bearden*, 293 S.W.3d 392, 397 (Ky. 2009).

Here, Bruenger premised her CR 60.02 motion upon her mistaken belief, which the trial court apparently shared, that the underlying judgment remained nonfinal pending the addition of finality language. Unfortunately for her, however, these circumstances amount to a mistake of law which CR 60.02 relief will not lie to correct. *Leonard v. Commonwealth*, 279 S.W.3d 151, 161-62 (Ky. 2009); *James*, 299 S.W.2d at 93. Therefore, the trial court was not

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[13] Recently, the Supreme Court resolved a circuit split and held the term "mistake" encompasses judicial errors of law under Federal Rule of Civil Procedure 60(b), which is the counterpart to CR 60.02. *Kemp v. United States*, 596 U.S. 528, 539 (2022). Admittedly, we have previously relied upon federal decisions in construing CR 60.02. *Howard v. Commonwealth*, 364 S.W.2d 809, 810 (Ky. 1963). However, this Court may properly diverge from federal authority based on relevant Kentucky precedents and tradition. *Thompson v. Killary*, 683 S.W.3d 641, 651 (Ky. 2024) (Nickell, J., concurring). With due respect to our Nation's highest Court, we perceive no basis to depart from our longstanding interpretation of the Kentucky rule. Prior to the enactment of the federal rule in 1938, Kentucky law had recognized the writ of coram nobis "lies to correct errors in fact only, and will not lie to correct errors in law[.]" *Jones v. Commonwealth*, 269 Ky. 779, 108 S.W.2d 816, 818 (1937), overruled on other grounds by *Smith*, 163 S.W.2d at 8.

authorized to resurrect Bruenger's time-barred appeal under the guise of CR 60.02 relief.

It is well-established that "[t]he legal operation and effect of a judgment must be determined from a construction and interpretation of its terms." *Turner v. Begley*, 239 Ky. 281, 39 S.W.2d 504, 506 (1931). Like contracts and other written instruments, the interpretation of a judgment "is a question of law to be determined by the court, and if the terms of a judgment are not ambiguous, then they must be given their usual and ordinary meaning and their legal effect must be declared in the light of the literal meaning of the language used in the judgment." 46 Am. Jur. 2d *Judgments* § 66 (2024).

Thus, the issue of whether the judgment was final upon entry is a question of law, and any resulting misinterpretation amounts to a mistake of law which cannot be remedied or relitigated under CR 60.02. *Leonard*, 279 S.W.3d at 161-62; *James*, 299 S.W.2d at 93. While this principle may seem harsh and unyielding, it is axiomatic that the timely filing of a notice of appeal is mandatory and jurisdictional under our precedents subject only to well-defined exceptions. *Cab. for Health & Fam. Servs. v. D.W.*, 680 S.W.3d 856, 860 (Ky. 2023) ("There is no substantial compliance rule with timely filing a notice of appeal, and the mandatory application of the rule applies 'even when the appealing party makes a good faith effort to file the notice of appeal.'"). Moreover, Kentucky courts are not at liberty to expand the relief available under CR 60.02 through the exercise of equitable powers or otherwise. *Gross*,

648 S.W.2d at 856 ("60.02 does not extend the scope of the remedy of coram nobis nor add additional grounds of relief.").

Further, our decisions in *Younger*, 363 S.W.3d at 338, and *Kurtsinger v. Bd. of Trustees of Ky. Ret. Sys.*, 90 S.W.3d 454 (Ky. 2002), do not compel a different result.[14] In *Younger*, the trial court granted summary judgment. 363 S.W.3d at 338. Due to a clerical error, however, the trial court did not properly notice the judgment to appellant's counsel. *Id.* Upon learning of the judgment, the appellant promptly filed a motion for relief under CR 60.02, which the trial court granted. *Id.* The trial court re-entered judgment and the appellant filed a notice of appeal. *Id.* at 338-39. The Court of Appeals dismissed the appeal as untimely, concluding the trial court abused its discretion by granting CR 60.02 relief. *Id.* at 339. We granted discretionary review and reversed, holding that the trial court properly granted CR 60.02 relief on the basis of excusable neglect. *Id.* at 340.

The critical distinction between *Younger* and the present matter lies in the fact that, in *Younger*, the trial court did not merely vacate and re-enter a prior judgment without taking any other remedial action. Instead, the trial court properly rectified a clerical error that prevented the appellant from receiving adequate notice of the judgment. *Id.* Here, the trial court did not remedy any defect beyond a subjective misinterpretation concerning the finality

[14] The *Younger* analysis relied heavily on *Kurtsinger*, which involved strikingly similar facts. 363 S.W.3d at 338. Thus, we need not recount or otherwise address *Kurtsinger* separately.

of the judgment. As stated above, CR 60.02 does not authorize the correction of such a mistake of law, and there is no indication that any clerical error or other mistake of fact hindered Bruenger's ability to file a timely appeal.

To allow a trial court to simply vacate and re-enter a judgment based solely on an alleged mistake of law would render the jurisdictional time-limit for the filing of appeal meaningless and severely undermine the finality of judgments. We refuse to countenance, and our precedents foreclose, such a dubious and unauthorized procedure.

CONCLUSION

Because the trial court improperly granted CR 60.02 relief based upon a mistake of law, we conclude Bruenger's appeal was properly dismissed as untimely. However, the imposition of sanctions by the Court of Appeals was improper under these circumstances and must be reversed. We need not address any additional issues raised by the parties' briefs in this matter. Therefore, the decision of the Court of Appeals is hereby affirmed in part and reversed in part.

All sitting. VanMeter, C.J.; Conley, Keller, Lambert, and Thompson, JJ., concur. Bisig, J., concurs in part and dissents in part by separate opinion.

BISIG, J., CONCURRING IN PART AND DISSENTING IN PART: I agree with the well-written Majority Opinion that CR 60.02 may not be used by a trial court to vacate and re-enter a final judgment to revive a party's otherwise expired time for the filing of an appeal. However, I must respectfully dissent

from the Majority's conclusion that the Court of Appeals erred in awarding attorney's fees.

Where, as here, the pleadings before an appellate court plainly demonstrate that the appeal is frivolous, the improper nature of the appeal falls within the personal knowledge of the court. In such circumstances, due process requires no notice or opportunity to be heard prior to the imposition of sanctions, given that the factual basis for the sanctions is conclusively established by the court's personal knowledge of the party's frivolous conduct. *See Commonwealth v. Burge*, 947 S.W.2d 805, 808 (Ky. 1996) (holding that direct contempt committed in the presence of the court "may be punished summarily by the court, and requires no fact-finding function, as all the elements of the offense are matters within the personal knowledge of the court.").

Moreover, providing a party that is unquestionably pursuing an improper appeal with an entirely redundant hearing serves only to needlessly increase the ills arising from such conduct. Quite simply, the offending party is given a platform to further continue its frivolous conduct and thereby consume additional time, money, and other resources of the opposing party and the court. Accordingly, because the frivolous nature of the appeal at issue here was evident on the face of the briefing before the Court of Appeals, I find no error in that court's award of attorney's fees. I therefore would affirm the Court of Appeals in full.

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