

RENDERED: September 18, 1998; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-000148-MR

JAMES A. DOLL and M. BRIGID  
DOLL

APPELLANTS

V. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE EDWIN A. SCHROERING, JR., JUDGE  
ACTION NO. 96-CI-0255

THOUSAND ADVENTURES OF  
KENTUCKY, INC.

APPELLEE

### OPINION AND ORDER DISMISSING

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BEFORE: GUDGEL, Chief Judge; ABRAMSON and COMBS, Judges.

COMBS, JUDGE: The appellants, James A. Doll and M. Brigid Doll (the Dolls), appeal from the judgment of the Jefferson Circuit Court. They contend that the court erred by failing to award late charges and interest in their counterclaim against the appellee, Thousand Adventures of Kentucky, Inc. (Thousand Adventures). Due to the fact that it was not filed in a timely fashion, we must dismiss the Dolls' appeal.

This appeal arises from an action filed by the appellee seeking specific performance of a lease into which it had entered with the Dolls regarding real estate referred to as "The Resort."

"The Resort" property was located in Meade County, Kentucky; the Dolls had developed this real estate into a vacation and resort area, including cabins, camp sites, and other recreational facilities; they leased this resort to Thousand Adventures. In its complaint, Thousand Adventures contended that it had attempted to exercise a purchase option contained in the lease and that the Dolls had refused to convey the property. In response, the Dolls filed a counterclaim alleging that Thousand Adventures had breached the lease.

On October 2, 1996, the Jefferson Circuit Court entered an order compelling the Dolls to convey the subject property to Thousand Adventures within forty-eight (48) hours. On November 15, 1996, the court entered findings of fact and conclusions of law following the Dolls' motion to vacate and amend the order of October 2, 1996. The court again ordered the Dolls to transfer a deed and a title policy to Thousand Adventures within forty-eight (48) hours. On December 19, 1996, the court denied the Dolls' second motion to modify and vacate the judgment. On January 13, 1997, a hearing was held on the Dolls' third motion to modify and vacate the original judgment of October 2, 1996 (amended November 15, 1996).

The Dolls filed a notice of appeal on January 15, 1997, requesting interest and late charges for the subject property. On January 27, 1997, the Jefferson Circuit Court entered "Additional Findings of Fact, Conclusions of Law and Order" denying the Dolls' request for interest and late charges. This appeal followed.

After a thorough examination of the record, it is clear that the Dolls' notice of appeal filed on January 15, 1997, is procedurally defective. RCr 59.05 provides: "A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment." According to Cloverleaf Dairy v. Michels, Ky. App. 636 S.W.2d 896 (1982), there is no authority in the Civil Rules for a party to make more than one motion for reconsideration of a judgment. Consistent with Cloverleaf Dairy v. Michels, supra, the time for appeal began to run on November 15, 1996, when the Jefferson Circuit Court denied the Dolls' first motion under RCr 59.05 to vacate the judgment and order of October 2, 1996. The dates of the filing of the second and third motions to vacate the judgment are irrelevant. Clearly, the filing of the notice of appeal on January 15, 1997 (two months later) is not timely. Therefore, this appeal must be dismissed.

For the foregoing reasons, it is hereby ORDERED that this appeal be dismissed.

ALL CONCUR.

ENTERED: September 18, 1998

/s/ Sara Combs  
JUDGE, KENTUCKY COURT OF APPEALS

BRIEF FOR APPELLANT:

Bert M. Edwards  
Louisville, KY