

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-002005-MR

RICCA FELTY

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 97-CI-345

CAROLYN SUE LITTLE AND  
ANNA LEE ALEXANDER

APPELLEES

OPINION  
AFFIRMING  
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BEFORE: DYCHE, EMBERTON AND GARDNER, JUDGES.

GARDNER, JUDGE: Ricca Felty (Felty) appeals from an order of the Greenup Circuit Court dismissing her action with prejudice. Felty brought a complaint against her sisters, Carolyn Sue Little (Little) and Anna Lee Alexander (Alexander) seeking an injunctive order to require Little and Alexander to permit her to visit with her elderly father. The parties have raised issues concerning jurisdiction and the viability of Felty's action. This Court, after reviewing the record and the applicable law, must affirm the court below.

The parties are the daughters of Roy Snoddy (Snoddy), a ninety-five year old man who lives part of the time with Little in Greenup County and part of the time with Alexander in South Carolina.<sup>1</sup> Snoddy originally owned property in Greenup County, Kentucky, but sold it several years before Felty filed her action. In June 1991, Snoddy signed a power of attorney giving power to Little and Alexander. Felty has contended that Little and Alexander have prevented her from visiting with Snoddy by not allowing her to take him from Little's premises and by Little acting unconscionably when Felty attempted to visit with Snoddy.

In June 1997, Felty filed a verified complaint and motion for visitation. She sought an injunctive order on the ground that immediate and irreparable injury would result. She presented persuasive authority from other jurisdictions recognizing the right of adult children to visit with their elderly parents. She asked the circuit court to recognize her right to visit with her father and grant the requested injunctive relief. She set out several suggested conditions for the visits with Snoddy. Little filed an answer contending that she had no legal authority over Snoddy and that Snoddy was a South Carolina resident, because he spends the majority of his time there. She moved the court to dismiss Felty's action, contending that it failed to state a cause of action upon which relief could be

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<sup>1</sup>There is a dispute regarding whether Snoddy is a resident of South Carolina or Kentucky. Appellees contend that Snoddy spends the majority of his time in South Carolina while Felty maintains his residence is in Greenup County which is reflected through voter registration records and the fact that he receives his pension checks at a Greenup County address.

granted and maintaining that the action should have been brought in South Carolina. Little filed a response to the motion to dismiss, which included voter registration records, Snoddy's power of attorney and letters from the postmaster and Snoddy's former employer showing he received mail and pension checks in Greenup County.

In July 1997, the circuit court dismissed Felty's action with prejudice. The order provided no reasons for the dismissal or any factual findings. The record does not reflect that a hearing was held regarding the matter. Neither side moved the court to make findings. Felty has appealed from this order.

Felty on appeal asks this Court to recognize her right to visit her father and urges us to reverse the circuit court and grant an order allowing visitation by a child with an elderly parent without interference. We decline to disturb the lower court's dismissal of Felty's action.

The state of the record from the lower court has made our review of this case very difficult. Little and Alexander sought to have Felty's case dismissed on jurisdictional grounds as well as on the merits of the visitation argument. The circuit court in its order of July 25, 1997, dismissed Felty's case but provided no concrete findings of fact nor reasons for its dismissal. None of the parties moved the circuit court to provide additional findings of fact. Kentucky Rules of Civil Procedure (CR) 50.02 and 52.04 require parties to bring to a trial court's attention its failure to make adequate findings of fact. Cherry v. Cherry, Ky., 634 S.W.2d 423, 425 (1982). The

failure to do so results in waiver of the argument. Id.  
Further, CR 46 requires a party to make known to the trial court  
the action which he or she desires the court to take and has an  
obligation to assist the trial court in the avoidance of error.  
Loew v. Allen, Ky., 419 S.W.2d 734, 737 (1967). See also Skaggs  
v. Assad, By and Through Assad, Ky., 712 S.W.2d 947 (1986);  
Elwell v. Stone, Ky. App., 799 S.W.2d 46 (1990). In the instant  
case, Felty has waived any arguments regarding the circuit  
court's failure to make adequate findings in its order.  
Therefore, we must affirm.<sup>2</sup>

For the foregoing reasons, this Court affirms the order  
of the Greenup Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kenneth R. Reed  
Greenup, Kentucky

BRIEF FOR APPELLEE:

James E. Armstrong  
Greenup, Kentucky

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<sup>2</sup>We also note that the record clearly indicates that Anna  
Lee Alexander is a resident of South Carolina. Thus, the circuit  
court would not have jurisdiction over her.