

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000006-MR

DARRELL PERRY

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE GARLAND HOWARD, JUDGE
ACTION NO. 94-CI-00540

BARBARA HAYDEN; and
MARTY HAYDEN

APPELLEES

AND

NO. 1998-CA-000007-MR

DARRELL PERRY

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE GARLAND HOWARD, JUDGE
ACTION NO. 94-CI-00571

CHERYL NEWBERRY CURETON;
and RICHARD A. ROBERTSON

APPELLEES

AND

NO. 1998-CA-001050-MR

DARRELL PERRY

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE GARLAND HOWARD, JUDGE
ACTION NO. 89-CI-00674

MARTY HAYDEN; and
BARBARA HAYDEN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, GARDNER AND MILLER, JUDGES.

EMBERTON, JUDGE: Appellant was married to Mary Coomes, the mother of appellee, Barbara Hayden, and the grandmother of appellee, Marty Hayden. In May 1989, a petition was filed requesting that the trial court declare the marriage of appellant to Mary to be invalid. Barbara contacted her attorney, the appellee, Richard Robertson,¹ to move for entry of an ex parte temporary restraining order to vacate the premises occupied by Mary and appellant. A signed order was taken to the Daviess County Sheriff's Office to be served on appellant. When the deputy attempted to serve appellant, he shot the deputy and attempted to run over him with the cruiser. He then went to Barbara's home and shot Marty Hayden. Mary died shortly after the shooting incident. Appellant is currently serving a life sentence in the penitentiary for his offenses.

Appellant and the Haydens reached an agreement resolving the dispute between them as to the validity of the marriage and issues concerning property distribution. The agreement was reduced to a judgment on May 31, 1991.

¹ Mr. Robertson is now deceased and appellant has not attempted to revive the action against him.

In May 1994, appellant filed separate actions arising from the motion for the restraining order which he alleges caused him to suffer extreme emotional distress and engage in acts of violence. In March 1998, the court denied appellant's motion to "Modify, Amend or Vacate the May 31, 1991, Judgment pursuant to RCr 13.04 and CR 60.02."

The basis for appellant's motion to vacate the judgment is unclear. We understand appellant is pro se in this appeal and has difficulty conveying his arguments to this court. Having reviewed the record, however, we find that the judgment was entered pursuant to an agreement between the concerned parties, including appellant, who at the time was represented by counsel. There is nothing to suggest that there are any reasons of an extraordinary nature which would justify the relief requested. Ky. R. Civ. P. (CR) 60.02.

The actions for intentional infliction of emotional distress against the appellees were dismissed for lack of prosecution. Finding that no pretrial steps had been taken within the past year, the trial court, in its discretion, dismissed the actions pursuant to CR 77.02. The notice to dismiss for lack of prosecution was mailed on May 21, 1997, and for well over one year prior to that time there was no activity initiated by the appellant. Nor was action taken prior to August 27, 1997, when the dismissal order was entered. The trial court's dismissal of the actions was not an abuse of discretion. Wright v. Transportation Cabinet, Ky. App., 891 S.W.2d 412 (1995).

The orders of the Daviess Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Darrell F. Perry, Pro Se
LaGrange, Kentucky

BRIEF FOR APPELLEE CHERYL
NEWBERRY CURETON:

Cheryl N. Cureton
Owensboro, Kentucky