

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001257-DG

HEIDI LORI TYLER

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN D. MINTON, JR., JUDGE  
ACTION NO. 97-XX-00033

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: COMBS, HUDDLESTON, and KNOPF, Judges.

HUDDLESTON, Judge. Heidi Lori Tyler was convicted in absentia in Warren District Court for driving under the influence, refusing a blood alcohol test, improper start of a parked vehicle and failure to illuminate her headlamps. Warren Circuit Court denied Tyler's motion to set aside the judgment on the ground that the alleged error in conducting her trial in absentia could have been raised in a timely appeal. This Court granted discretionary review limited to the issue of whether Tyler should have been granted a belated appeal by the circuit court.

On January 23, 1997, after Tyler was arrested and released on bond, she appeared in district court for arraignment and entered a plea of not guilty. At that time, she was informed that her case would be set for pretrial conference; that an attorney would be appointed for her; and that she would be notified by mail of her next court date. On the same day, the district court clerk mailed the order scheduling the pretrial conference for March 5, 1997, and the order appointing a public defender to the address listed on the citation, "1001 Hadley-Corn [sic, Cohron] Road, Bowling Green, KY 42101." The letter was returned to the district court marked, "RETURN TO SENDER NO MAIL RECEPTACLE".

Tyler did not appear at the pretrial conference held on March 5, 1997. The district court set the trial date for April 11, 1997, and mailed the order scheduling the trial to the address listed on the citation. Once again, the letter was returned marked, "RETURN TO SENDER NO MAIL RECEPTACLE". Tyler did not appear for trial on April 11, 1997. A bench trial was held in her absence resulting in a judgment of conviction. The district court sentenced Tyler to seven days in jail for driving under the influence and imposed various fines, court costs and service fees. Tyler did not learn of the conviction until she was notified by the Department of Transportation that her license had been suspended.

Upon learning of the conviction, Tyler retained counsel, who filed a motion to set aside judgment on June 26, 1997. The district court denied Tyler's motion to set aside judgment on August 14, 1997. Tyler appealed to Warren Circuit Court. The

circuit court affirmed the district court's order, following which Tyler filed a motion for discretionary review with this Court.

The circuit court properly characterized Tyler's motion to set aside judgment as a motion made pursuant to Ky. R. Civ. Proc. (CR) 60.02.<sup>1</sup> The rule provides that upon motion, the court may relieve a party from its final judgment for "any . . . reason of an extraordinary nature justifying relief." CR 60.02(f). Kentucky's highest court has warned, however, that "because of the desirability of according finality to judgments, this clause must be invoked only with extreme caution, and only under most unusual circumstances." Bishir v. Bishir, Ky., 698 S.W.2d 823, 826 (1985); Cawood v. Cawood, Ky., 329 S.W.2d 569, 571 (1959).

As Warren Circuit Court has expressed our views, we adopt, in part, its analysis of this case:

The "extraordinary" ground advanced by Tyler warranting relief under her CR 60.02 motion is essentially since she did not receive notification of the April 11, 1997 judgment until the Department of Transportation revealed to her that her license had been suspended, she did not know to file her appeal. The Court disagrees with Tyler's contention. Her court-appointed attorney knew of the court's ruling and, for whatever reason, elected not to pursue a timely appeal. This Court finds that any relief for the alleged errors in conducting her trial in

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<sup>1</sup> The Rules of Civil Procedure are applicable in criminal proceedings to the extent not superseded or inconsistent with the Rules of Criminal Procedure. Ky. R. Crim. Proc. (RCr) 13.02.

absentia could have been presented on a timely appeal noticed within ten days of the April 11, 1997 conviction. Therefore, since it has long been the policy of the Kentucky Supreme Court that mistakes occurring during the trial should be corrected on direct appeal, Howard v. Commonwealth, Ky., 364 S.W.2d 809, 810 (1963), and since Tyler's court-appointed attorney knew of the conviction following the bench trial in absentia, this Court must affirm the lower court's denial of Tyler's CR 60.02 motion.

For the reasons stated above, the opinion of Warren Circuit Court is affirmed.

ALL CONCUR.

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