

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001884-MR

LINDA TAYLOR

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NOS. 98-CI-00041,
99-CI-00150 & 99-CI-00151

COASTAL COAL COMPANY, LLC,
(FORMERLY KNOWN AS ANR COAL COMPANY, LLC);
EARNEST COOK & SONS MINING, INC.;
TERRY W. BAKER; AND
GOLDEN OAK MINING COMPANY, L.P.

APPELLEES

AND: NO. 2000-CA-001978-MR

TERRY W. BAKER

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 98-CI-00041

LINDA TAYLOR;
COASTAL COAL COMPANY, LLC,
(FORMERLY KNOWN AS ANR COAL COMPANY, LLC);
EARNEST COOK & SONS MINING, INC.;
GOLDEN OAK MINING COMPANY, L.P.;

APPELLEES

OPINION
REVERSING AND REMANDING
APPEAL NO. 2000-CA-001884-MR
AND APPEAL NO. 2000-CA-001978-MR
** ** * * * * *

BEFORE: JOHNSON, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: These appeals arise from summary judgments entered by the Letcher Circuit Court on July 12, 2000, and July 27, 2000. We reverse and remand.

This litigation arises from an automobile accident. On April 22, 1997, at about 6:30 a.m., Linda Taylor was driving her 1994 Toyota pickup in a southwardly direction on Kentucky Highway 931 (a two-lane thoroughfare commonly known as Sand Lick Road) toward Whitesburg, Kentucky. She was going to work at Jenkins Home Health. She approached the intersection of Thompson Branch Road, which entered Highway 931 from the west, being on her right. At that point in time, Terry W. Baker was driving his 1989 Jeep after leaving work at a mining operation on Thompson Branch Road. Baker intended to enter Highway 931 and turn to his left to proceed in a northwardly direction toward Colson. As he crossed Taylor's lane, his Jeep was essentially broad-sided by Taylor's Toyota. The road surface was wet as it had been raining on the morning of the accident. Taylor contends she was unable to stop because of mud and debris left on the road by trucks entering Highway 931 from mining operations on Thompson Branch Road.

Two mining operations on Thompson Branch Road are involved. Both of them operate under permits issued to Coastal Coal Corporation, LLC (formerly ANR Coal Company, LLC) (Coastal).

One of the mining operations is, in fact, operated by Coastal. Its coal is hauled by divers trucks, that travel Thompson Branch Road to Highway 931 and turned southwardly toward Whitesburg. The other mining operation is conducted by Golden Oak Mining Company, L.P. (Golden Oak) under a royalty agreement with Coastal. It appears the coal from this operation is transported exclusively by Earnest Cook & Sons Mining, Inc. (Cook & Sons). These trucks enter Highway 931 from Thompson Branch Road, cross the south bound lane of Highway 931, and turn left in a northwardly direction toward Colson.

The circuit court was of the opinion that identification of the depositor(s) of the mud and debris upon the highway was too speculative as to implicate either Coastal or Cook & Sons. Perforce, the circuit court entered summary judgments under the precepts of Ky R. Civ. P. (CR) 56 and Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

In her appeal, No. 2000-CA-001884-MR, Taylor makes two contentions: (1) that the circuit court erred in granting summary judgment to Cook & Sons; and (2) that the circuit court erred in granting summary judgment to Coastal. In his appeal, No. 2000-CA-001978-MR, Baker makes but one contention, to wit: that the circuit court erred in granting summary judgment in favor of Cook & Sons. Because all issues raised emanate from the allegation that the road was rendered unduly slick because of mud tracked thereon by the mining operations, we consider the arguments collectively.

The simple fact of the case is that Taylor, a motorist, is driving over a public highway and strikes Baker, a motorist, entering from a side road. The position of both is that the accident was brought about, at least in part, by mud and debris on the highway that rendered Taylor unable to stop. Both Taylor and Baker desire to attribute the condition of the road to mining operations in the area.

We have examined the evidence in this case in light of Steelvest and are of the opinion that the summary judgments entered by the trial court must be reversed. In Steelvest, it was stated as follows:

Only when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor should the motion for summary judgment be granted.
(Citations omitted.)

Steelvest at 482. Under the precepts of Steelvest, we think there is sufficient evidence to pass the summary judgment "mile-marker." It is common knowledge that dirt and debris upon the surface of a highway, when made wet by rainfall, renders vehicles difficult to stop. There is an abundance of evidence suggesting that there was, in fact, mud upon the highway, at least in the vicinity of the accident. There is also evidence that the mud was attributable to mining operations on Thompson Branch Road. We think it, therefore, reasonable that Taylor and Baker may offer evidence connecting Coastal and/or Cook & Sons with the mud as a causative factor in the accident.

We realize that the circuit court relied upon the case of Myers v. Walker, Ky., 322 S.W.2d 109 (1959). That case

involved a directed verdict. We, therefore, think it not dispositive.

By remanding this case, we are not suggesting that either Taylor and/or Baker will survive a motion for directed verdict. That remains to be seen. We are simply saying that it might be possible for Taylor and/or Baker to prove a submissible case against Coastal and/or Cook & Sons. There is not only the question of who deposited the mud upon the roadway, but also whether the mud, if so deposited, was a substantial factor in causing the collision. As to these matters, we think Taylor and Baker are entitled to offer proof. The circuit court may then reconsider the case in light of Myers.

We hasten to point out that we did not address any matters concerning agency. That remains for the circuit court.

For the foregoing reasons, the judgments of the Letcher Circuit Court are reversed, and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

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