

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000424-MR

TIMOTHY THORSEN

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 98-CI-00961

RONALD PENNINGTON

APPELLEE

OPINION AND ORDER
STRIKING APPELLANT'S BRIEF AND DISMISSING APPEAL

** ** * * * * *

BEFORE: DYCHE, GUIDUGLI AND KNOPF, JUDGES.

GUIDUGLI, JUDGE. Timothy Thorsen (Thorsen) appeals from an order of the Boone Circuit Court entered February 13, 2001, which granted summary judgment in favor of Ronald Pennington (Pennington). Because Thorsen's brief does not comply with CR 76.12, we order that his appellate brief be stricken and this appeal dismissed.

On March 17, 1997, Thorsen was struck by a car driven by Leslie Lawson. Thorsen filed suit against Lawson and Pennington in which he alleged that Pennington was the owner of the car and that he negligently entrusted the car to Lawson. On August 26, 1999, the trial court granted summary judgment in

favor of Pennington. Thorsen appealed the grant of summary judgment to this Court, and the appeal was assigned case number 1999-CA-2730-MR.

Thorsen's appellate brief was filed on January 13, 2000. In his statement of the case, Thorsen completely neglected to provide "ample references to the specific pages of the record . . . supporting each of the statements narrated in the summary." CR 76.12(4)(iv). In his brief, Pennington noted that Thorsen's factual statement "is totally lacking in any factual citation or support in the Record before this Court[.]" Despite the fact that Pennington called Thorsen's non-compliance to his attention, Thorsen took no steps to remedy his non-compliance. On January 19, 2001, this Court entered an opinion and order dismissing Thorsen's appeal on the ground that the order granting summary judgment in favor of Pennington did not recite that "there is no just reason for delay" as required by CR 54.02(1).

On February 13, 2001, the trial court entered an order once again granting summary judgment in favor of Pennington. This order contained the language required by CR 54.02(1). Thorsen once again appealed the trial court's entry of summary judgment, and this appeal was assigned case number 2001-CA-0424-MR.

On March 16, 2001, Thorsen and Pennington filed a joint motion with this Court asking us to "process the case based on the Record of pleadings and deposition of [Thorsen], and the Briefs filed previously by these same parties in the earlier appeal[.]" The motion was granted by order entered March 21,

2001, which instructed the Court Clerk "to FILE the prehearing statement, notice of certification of the record, and the parties' briefs filed in appeal No. 1999-CA-002730-MR in the above-styled appeal[.]"

Unfortunately for Thorsen, no steps were taken to cure his previous non-compliance with CR 76.12(4) (iv). Furthermore, a copy of the trial court's order of February 13, 2001, was not appended to Thorsen's brief as required by CR 76.12(4) (vii).

Pursuant to CR 76.12(8) (a), "[a] brief may be stricken for failure to comply with any substantial requirement of this Rule 76.12." Thorsen's brief failed to comply with CR 76.12(4) (iv) when originally filed and no steps were taken to correct the noncompliance after Pennington called the deficiency to Thorsen's attention. The deficiency continued unabated when the same brief was filed in this appeal. Finally, the trial court's February 2001 order was not attached to Thorsen's brief. Due to Thorsen's failure to comply with CR 76.12, we order that his brief be stricken and his appeal dismissed.

ALL CONCUR.

ENTERED: September 14, 2001

/s/ Daniel T. Guidugli
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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