

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002697-MR

FRANCIS MAYFIELD

APPELLANT

v.

APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 00-CI-00010

LEE DANIELS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, McANULTY, SCHRODER, JUDGES.

McANULTY, JUDGE: The appellant, Francis Mayfield, appeals from an order of summary judgment dismissing her claim in the Knox Circuit Court. We affirm.

On January 10, 1999, Appellant, in the course of looking for an apartment, slipped and injured herself while visiting rental property belonging to Appellee, Lee Daniels. Exactly, one year later, on January 10, 2000, Appellant filed a personal injury claim against Appellee in the Knox Circuit Court. That same day, a summons was issued and delivered to Appellant's attorney, who planned to personally serve Appellee.

Appellant's attorney, however, claims that personal service on Appellee was difficult at best. In fact, the Attorney claims he attempted to serve notice on Appellee once each month until the summons was finally "served" some seven months later on August 19, 2000. Even then, it was served by the attorney himself, who is not authorized by KRS 454.140(1) to make valid service of process. He claimed that he mistakenly thought he could effectuate service of process as an officer of the court.

A month after the service of process was made, Appellee filed a motion for summary judgment on the basis that Appellant's claim was barred because the summons was served after the termination of the one-year statute of limitations required for personal injuries by KRS 413.140. The trial judge agreed and entered judgment against Appellant in October, 2000. This appeal followed.

On appeal, both Appellant and Appellee agree the claim was timely filed. However, Appellee argues that the summons was not issued in good faith as required by CR¹ 3 within the one-year statute of limitations period. Also, Appellee challenges delivery by the Appellant's attorney, claiming that proper service was never made because Appellant's attorney was not authorized to serve Appellee. Appellant argues that although the summons was not served until after the end of the limitation period, it was issued in good faith within the statutory period, and that the failure to deliver the summons to the sheriff for service on Appellee was negligence on behalf of the attorney that

¹Kentucky Rules of Civil Procedure

should not affect his case. We are unpersuaded by Appellant's contentions and thus affirm the judgment of the circuit court.

At the outset, we note that the standard of review on appeal of a summary judgment is whether the trial court correctly determined that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996). There is no dispute between the parties as to the facts of this case. Our sole consideration is whether Appellee was entitled to judgment as a matter of law.

KRS 413.250 addresses the commencement of an action in Kentucky courts, reading, "[a]n action shall be deemed to commence on the date of the first summons or process issued in good faith from the court having jurisdiction of the cause of action." Further, CR 3 provides "[a] civil action is commenced by the filing of a complaint with the court and the issuance of a summons or warning order thereon in good faith." It is well established that the good faith admonition in both KRS 413.250 and CR 3 means that the summons be issued with a good faith intention that it be served presently or in due course. Roehrig v. Mercants and Businessmen's Ins. Co. Ky., 391 S.W.2d 369, 371 (1965). "[I]n the absence of a showing of a valid excuse for the delay, a summons issued by the clerk and delivered to the plaintiff or his attorney is not deemed to have been issued in good faith until it is given to the sheriff or other proper officer to be served." Wooten v. Begley, Ky., 305 S.W.2d 270, 271 (1957).

In the present case, the complaint and summons were never delivered to any officer of the court who might lawfully serve it pursuant to KRS 454.140(1). Indeed, nearly two and a half years after Appellant initially filed her suit, Appellee has yet to be properly served. Although it is true that Appellee has been provided with a copy of Appellant's complaint and summons, even such "improper" service was made some seven months after the statute of limitations expired in Appellant's suit. As such, we cannot say that Appellee was properly or otherwise timely provided with a copy of the complaint and summons as required by KRS 413.250 and CR 3. Therefore, we affirm the judgment of the circuit court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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