

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000413-MR

CECIL WILLIAMS

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE A. WILSON, JUDGE
ACTION NO. 91-CI-00127

WILLIAM C. OATES;
WILLIAM C. OATES ESTATE,
BILLY OATES, A/K/A WILLIAM
C. OATES, JR., ADMINISTRATOR;
BILLY OATES, A/K/A WILLIAM C.
OATES, JR., AS AN INDIVIDUAL;
AND JOE WALTON

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY AND WINE, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

WINE, JUDGE: This appeal stems from a case that initiated in February of 1991 in an action by Cecil Williams to recover for an unpaid debt. On April 15, 1991, the Warren Circuit Court entered a default judgment on behalf of the Appellant, Cecil

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Williams, against the Appellee, William C. Oates, in the amount of \$62,500.00 plus interest for the unpaid debt. Appellant diligently pursued post-judgment discovery efforts to collect the debt, but all efforts were unsuccessful. William C. Oates died intestate on November 26, 1996, leaving his wife, Esther, and son, Billy, who was later named the Administrator of the estate in July of 1998. Appellant filed a judgment lien against Appellee and continued in his efforts to enforce the judgment to no avail. On October 22, 2003, more than ten years after the original default judgment, Appellant filed a motion with the court to amend and supplement the original complaint. The court granted leave to amend and supplement pursuant to Kentucky Rules of Civil Procedure (CR) 15.01. A second motion to amend was also granted and entered on March 26, 2004. Appellant remained unable to collect on the original default judgment and filed a motion to reinstate and reenter the original judgment on January 12, 2006, due to the approaching end of the fifteen-year statute of limitations on this action pursuant to KRS 413.090. The Warren Circuit Court reinstated and reentered the judgment on February 9, 2006, and additionally reversed the previous two orders allowing Appellant to amend the original complaint. We now affirm.

Appellant's main contention on appeal is that the circuit court improperly reversed the orders allowing him to

amend and supplement his original complaint. We find no error or abuse of discretion by the Warren Circuit Court.

The Kentucky Rules of Civil Procedure and Kentucky case law support amending and or supplementing a pleading within a specified period of time to prevent situations exactly like the appeal now before us. As the Kentucky Court of Appeals has already stated in James v. Hillerich & Bradsby Co., 299 S.W.2d 92, 93 (Ky. 1956), "Under CR 59.05, a motion to alter or amend a judgment must be served not later than 10 days after entry of the judgement." The amendment of a complaint afforded by CR 15.01 applies only to an amendment offered during the pendency of the action. Id. at 94. "Certainly it was not intended to apply in situations where, by the lapse of a period of 10 days after judgment, the court has lost control of the judgment." Id. The Court of Appeals maintained that the circuit court had lost jurisdiction to reopen or amend the judgment or to permit the amended complaint to be filed after the lapse of ten days. Id. at 93.

Later, in Yocum v. Oney, 532 S.W.2d 15 (Ky. 1975), the Court reiterated that the circuit court lost jurisdiction ten days from the date the order was signed and entered. The Yocum case involved an order signed on November 1, 1974, and a later order of January 23, 1975, that were found to be void because the court was without jurisdiction at the time they were signed

and entered. Id. at 16. In Yocum the Court addressed the two alternatives for the court to either declare the order void and reverse the case or to *sua sponte* dismiss the appeal. Id.

The appropriate procedure for this issue was again addressed in Security Federal Savings & Loan Association of Mayfield v. Nesler, 697 S.W.2d 136 (Ky. 1985). In Nesler, an order was entered directing property to be sold in satisfaction of an earlier judgment. Id. at 138. The Court reiterated that had the earlier order been incorrect, the appropriate remedy would have been to file a motion under CR 59.05, which provides that a court cannot change, on motion or *sua sponte*, a judgment it has entered after ten days. Id. at 139. CR 59.05 states that "a motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment." The Court in Nesler held that the original order was a final and appealable order and the subsequent order to pay on the first judgment had no effect on the first judgment.

The Appellant's default judgment was entered on April 15, 1991, and was a final and appealable order. The amendments that were made and then reversed by the trial court have no bearing on the effect of the original default judgment.

Later in Jude v. Morwood Sawmill, Inc., 726 S.W.2d 324 (Ky.App. 1987), the Court discussed a similar issue involving

the entry of a corrected judgment. At the time the corrected judgment was entered, the time for appeal from the original judgment had run, and the ten-day timeframe for motions to amend or for a new trial had also expired under CR 52.02 and CR 59. Id. at 326. Neither party had filed a motion for relief under CR 60.02, thus leaving the "only avenue open to the court to change the original judgment" under CR 60.01 which allows for the correction of a clerical mistake. Id. There is no clerical mistake involved here to necessitate an amendment by the Appellant. The Appellant simply seeks to enforce the judgment that became effective April 15, 1991, and remains effective to the present.

We find all of these cases controlling in this circumstance. The Warren Circuit Court lost jurisdiction of the judgment ten days from the date the original default judgment was signed and entered on April 15, 1991. The orders of October 2003 and March 2004 amending and/or supplementing the original complaint were void *ab initio*. The trial court simply did not have jurisdiction to allow them, and the recognition of this error and reversal was proper.

This appeal stems from two orders that were void. The original default judgment of April 15, 1991, remains in effect. The judgment was reinstated and reentered to provide notice to all parties of the time period of the statute of limitations.

It is clear that the Appellant wants to enforce the default judgment. Appellant has not lost any rights or remedies for the enforcement of this judgment, but the appropriate procedure is not found in an attempt to amend a pleading more than ten years after the entry of a default judgment. The orders allowing the amended and supplemental pleadings were properly reversed.

For the foregoing reasons, we affirm the decision of the Warren Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Chester I. Bays
Bowling Green, KY

BRIEF FOR APPELLEES, WILLIAM
C. OATES, WILLIAM C. OATES
ESTATE, AND BILLY OATES:

Samuel Frank Smith, Jr.
Bowling Green, KY

NO BRIEF FOR APPELLEE,
JOE WALTON