

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001269-MR

NATHANIEL HARDEN

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 04-CI-01729

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ABRAMSON AND STUMBO, JUDGES; KNOPF,¹ SENIOR JUDGE.

ABRAMSON, JUDGE: Nathaniel Harden appeals from the June 2, 2006 judgment of the Franklin Circuit Court dismissing his due process and other claims brought against the Kentucky Parole Board as a result of an order issued by the Board requiring Harden to serve out the balance of a life sentence. Finding no error, we affirm.

In June 1976, Harden was convicted of murder and other felonies. On September 20, 1976, he was sentenced to life in prison. Though Harden was later paroled

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5) of the Kentucky Constitution and KRS 21.580.

on September 6, 1984, the Board subsequently revoked that parole in 1994 and then ultimately reinstated it in February 1996. Shortly thereafter, Harden once again violated the conditions of his parole by failing to find a job and a suitable home. Although initially deciding to once again defer his parole, the Board subsequently issued an order requiring Harden to serve out the remainder of his life sentence.

On December 30, 2004, Harden filed a Petition for Declaration of Rights and Permanent Injunctive Relief. He alleged that his due process rights were violated because the Board lacked authority to issue a “serve-out order,” or, alternatively, the Board erred because it failed to give him any explanation for the decision. As a result, Harden sought an order preventing enforcement of the serve-out order and compelling the Board to reconsider his parole and conduct periodic parole reviews.

The trial court granted summary judgment in favor of the Board on September 26, 2005, dismissing all but one of Harden's claims, reserving for later decision those alleging due process violations. Subsequently, on June 2, 2006, the trial court entered a second order dismissing the due process claims after finding that the Board had given Harden satisfactory written notification of the reasons for the serve-out order. Harden now appeals arguing that the trial court abused its discretion by entering the June 2, 2006 judgment because it lacked the authority to do so. Harden contends that the September 26, 2005 judgment was a final adjudication of his case and thus foreclosed any further action by the trial court. We disagree.

Kentucky Rule of Civil Procedure (CR) 54.02 addresses the finality of a judgment entered by a trial court that adjudicates some, but not all, of a party's claims.

This rule provides, in pertinent part:

- (1) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties.
- (2) When the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and judgments determining claims which are not specifically disposed of in such final judgment.

The purpose of this rule is to prevent staggered or piecemeal proceedings in our appellate courts. *Cornett v. Wilder*, 307 S.W.2d 752 (Ky. 1957).

Examining the trial court's September 26, 2005 judgment in light of this rule, we find that the requirements of CR 54.02(1) for identifying a “final” judgment have not been met. The order explicitly reserved Harden's due process claims for future adjudication, contained no “finality” language, and did not state that there was “no just reason for delay.” Because of this, CR 54.02 plainly instructs that the September 26, 2005 judgment was merely interlocutory in nature and did “not terminate the action as to

any of the claims or parties.” *See also Signer v. Arnold*, 436 S.W.2d 493 (Ky. 1969) (where judgment did not adjudicate all claims, it did not meet test for final judgment and was not appealable); *McCreary County Bd. Of Educ. v. Stephens*, 454 S.W.2d 687 (Ky. 1968) (where judgment did not adjudicate claim between plaintiff and one of multiple defendants and was not made final under CR 54.02, it was interlocutory); *Steely v. Hancock*, 317 S.W.2d 171 (Ky. 1958) (where trial judge dismissed plaintiff's complaint but reserved issue of defendant's counterclaim, judgment is not final); *Stewart v. Jackson*, 311 S.W.2d 568 (Ky. 1958) (where court granted injunction but expressly reserved issue of damages for future orders, judgment was not final and appealable because it did not contain required finality recitals).

Accordingly, pursuant to CR 54.02(2), final disposition of Harden's case could not occur, and in fact did not occur, until Harden's remaining due process claims, reserved for later resolution in the September 26, 2005 order, were dismissed in the trial court's June 2, 2006 order. Only with the disposition of the due process claims were “all prior interlocutory orders and judgments” (*i.e.*, the September 26, 2005 judgment) deemed fully and finally adjudicated. *See also Bank of Danville v. Farmers Nat'l Bank of Danville, Kentucky*, 602 S.W.2d 160 (Ky. 1980) (where judgment did not comply with CR 54.02, it was interlocutory and subject to change by the trial court at any time prior to final adjudication).

In sum, because the trial court's September 26, 2005 judgment was interlocutory, the trial court acted within its authority and did not abuse its discretion

when it later dismissed Harden's due process claims in its June 2, 2006 judgment. Thus, we affirm the Franklin Circuit Court's June 2, 2006 judgment.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Nathaniel Harden, *pro se*
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BRIEF FOR APPELLEE:

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