

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001226-MR

DAVID B. OGBURN

APPELLANT

v. APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE STEPHEN L. BATES, JUDGE  
ACTION NO. 04-CI-00071

EARL FLOYD FORD-MERCURY, INC.

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: David B. Ogburn brings this appeal from a May 22, 2006, order of the Carroll Circuit Court granting partial summary judgment to Earl Floyd Ford-Mercury, Inc. (Floyd Ford). We reverse and remand.

Ogburn was employed as a service technician for Floyd Ford. On December 12, 2003, Ogburn purchased a used 2003 Ford Taurus from Floyd Ford. The following day Ogburn went to the dealership and questioned the inclusion of a “Ford

Extended Service Plan” on his purchase contract. Ogburn asserted that the signature on the agreement to purchase the extended warranty was not his and that the cost, \$1,420.00, was added to the contract without his knowledge.

Ogburn was unable to resolve his differences with Floyd Ford and subsequently filed a complaint in the Carroll Circuit Court. Therein, Ogburn contended that his signature on the agreement to purchase the extended warranty was forged and the cost of such service plan was added to the purchase contract without his knowledge. Ogburn claimed that Floyd Ford engaged in “deceitful, fraudulent, and wrongful torturous[sic] behavior” in the sale of the vehicle. Ogburn further claimed violations of the Kentucky Consumer Protection Act. Ogburn sought compensation and punitive damages.

On May 22, 2006, the circuit court entered partial summary judgment. Therein, the court granted Floyd Ford's motion to dismiss “the Plaintiff's claim for pain and suffering damages and punitive damages, pursuant to Kentucky contract law and the Kentucky Consumer Protection Act . . . .” The court also noted that the remaining potential damages under the complaint were no longer in excess of \$4,000.00, which is the amount necessary to invoke the jurisdiction of the circuit court. Thus, the circuit court “transferred” the case to the Carroll District Court for further proceedings. This appeal follows.

We initially point out that there exists considerable controversy regarding whether the May 22, 2006, partial summary judgment of the Carroll Circuit Court

constitutes a final and appealable order. A final and appealable order or judgment is one that adjudicates all the rights of all the parties or is made final under Ky. R. Civ. P. (CR) 54.02; CR 54.01. In the May 22, 2006, partial summary judgment, the circuit court “transferred” the case to district court. This “transfer” was tantamount to a dismissal for lack of jurisdiction in the circuit court and constitutes a final adjudication of the parties' rights in the circuit court. Thus, we will undertake a review of the circuit court's partial summary judgment transferring the case to the district court.

In its partial summary judgment, the circuit court plainly states that the case was being transferred to the district court because the remaining damages claimed by Ogburn were no longer in excess of the circuit court's jurisdictional prerequisites of \$4,000.00. *See* KRS 24A.120. We view such reasoning as erroneous.

It is axiomatic that the amount in controversy or the damages claimed at the time the action is instituted determines the jurisdiction of the court. 21 C.J.S. *Courts* § 32 (2006). Once a court acquires jurisdiction, it is generally recognized that such jurisdiction cannot be lost or defeated by subsequent events. *Id.*

In the case *sub judice*, Ogburn instituted this action by filing a complaint in the circuit court. In the complaint, Ogburn prayed for damages in excess of \$4,000.00. Clearly, the circuit court's subsequent dismissal of certain damage claims did not divest the circuit court of jurisdiction. Hence, we are of the opinion that the circuit court improperly concluded that it “lost” jurisdiction over the case and improperly transferred

the case to district court. We believe this matter should be remanded to the circuit court for final determination upon the merits.

As to Ogburn's allegations that the circuit court erroneously dismissed certain claims in the partial summary judgment, we believe review of the circuit court's ruling upon these issues to be premature considering our disposition of this appeal. These allegations may be appealed once the circuit court has entered a final judgment or order under either CR 54.01 or CR 54.02 upon the merits of Ogburn's claims.

For the foregoing reasons, the order of the Carroll Circuit Court is reversed and this matter is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Andrew White  
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BRIEF FOR APPELLEES:

Ruth H. Baxter  
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