

RENDERED: SEPTEMBER 4, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001683-MR

JOSEPH F. BRADFORD

APPELLANT

v.

APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JAY A. WETHINGTON, JUDGE
ACTION NO. 01-CI-00278

ANDY ANDERSON INSURANCE
AGENCY, INC.; AND ELIZABETH
ROBY

APPELLEES

OPINION
DISMISSING

** ** * * * * *

BEFORE: KELLER, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Joseph Bradford appeals from a partial summary judgment entered by the Daviess Circuit Court in favor of appellees Andy Anderson Insurance Agency, Inc. and Elizabeth Roby (“Agency”). For the reasons

stated, we must dismiss this appeal as having been taken from an interlocutory order.

Bradford purchased fire insurance coverage through the Agency. Subsequently, when he made a claim after a fire, he discovered the Agency had not increased his coverage as he allegedly had requested.

Bradford made claims for relief based on breach of contract, negligence, fraud, oppression and/or malice, violations of state and federal laws, bad faith breach of implied fair dealing, and breach of fiduciary duty. He sought punitive damages, as well as damages relating to property loss, clean up costs, loss of rent and future earnings, and emotional distress.

The trial court granted partial summary judgment, for the Agency, insofar as Bradford sought punitive damages and damages relating to emotional distress. The merits of Bradford's underlying claims were not addressed, but the court's order included the finality language prescribed by CR¹ 54.02(1). This appeal followed.

The Agency asserts that the appeal must be dismissed as having been taken from an interlocutory order. CR 54.02(1) provides in pertinent part:

When more than one claim for relief is presented in an action . . . the court may grant a final judgment upon one or more but less than all of the claims . . . 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

¹ Kentucky Rules of Civil Procedure.

and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

However, if “an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable.” *Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978) (citing *Hale v. Deaton*, 528 S.W.2d 719 (Ky. 1975)).

Moreover, although Bradford urges us to find that the Agency waived any issue of finality by failing to address the issue prior to its appellate brief, this court is required to raise a jurisdictional issue on its own motion if the underlying order lacks finality. *Huff v. Wood-Mosaic Corp.*, 454 S.W.2d 705, 706 (Ky. 1970); *Central Adjustment Bureau, Inc. v. Ingram Associates, Inc.*, 622 S.W.2d 681, 683 (Ky.App. 1981). Thus, the record must be examined to determine whether the trial court’s summary judgment completely disposed of at least one claim.

As noted above, Bradford’s underlying claims of breach of contract, negligence, fraud, oppression and/or malice, statutory violations, bad faith, breach of implied fair dealing, and breach of fiduciary duty were not addressed by the partial summary judgment. Although the court’s award of summary judgment eliminated two elements of the damages sought by Bradford, it did not wholly dispose of any of the underlying claims for relief, all of which related to the Agency’s alleged failure to obtain certain insurance coverage. As noted in an unpublished opinion of this court,² at trial the Agency might be exonerated from

² *Ferriel v. Podgursky*, No. 2005-CA-000403-MR, 2006 WL 200519 (Ky. App. Jan. 27, 2006).

any liability as to the claims against it, rendering moot the issues raised on appeal as to damages. Alternatively, the opposite result could occur. In these circumstances we must conclude that Bradford's appeal was taken from an interlocutory order.

This appeal must be dismissed as having been taken from an interlocutory order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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