

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001644-MR

MATTHEW L. DARPEL, EXECUTOR
OF THE ESTATE OF PATTI BYRL STEFFEN,
DECEASED; AND RICHARD A. JARVIS

APPELLANTS

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABL JULIE REINHARDT WARD, JUDGE
ACTION NO. 08-CI-01388

JEFFREY C. ARNZEN, ADMINISTRATOR
OF THE ESTATE OF ANTHONY P.
STEFFEN, DECEASED; AND
SUSAN PEARMAN

APPELLEES

OPINION AND ORDER
DISMISSING

** ** *

BEFORE: ACREE AND WINE, JUDGES; LAMBERT,¹ SENIOR JUDGE.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

ACREE, JUDGE: Matthew L. Darpel, executor of the estate of Patti Byrl Steffen (Byrl), appeals from the Campbell Circuit Court's dismissal of his claim for relief pursuant to Rule of Civil Procedure (CR) 60.03. Because the appeal is brought from an order which has not been made final and appealable, we dismiss the appeal.

Procedural history²

This dispute is one in a long series of disagreements which began in 1999. In that year, Byrl filed a petition for dissolution of her marriage to Anthony P. Steffen. In March 2000, Anthony, realizing his death was imminent, filed a motion to enter a final decree of dissolution but reserving issues regarding the division of marital property. He also filed a separate action seeking partition of certain real property held jointly by himself and Byrl.

The circuit court could not resolve all the necessary matters before Anthony's death on April 2, 2000, and so a decree was not entered. On March 8, 2002, however, the court entered a *nunc pro tunc* decree of dissolution, effective March 17, 2000, a date preceding Anthony's death. This order also divided marital property equally between Anthony (now his estate), and Byrl; included was the real property subject to Byrl's partition action. A *lis pendens* was filed on the property to preserve the interest of Anthony's estate. Byrl died on July 29, 2002.

Darpel, on behalf of Byrl's estate, instituted appeals of the *nunc pro tunc* order of dissolution and the division of the property. They were both unsuccessful.

² Because we lack jurisdiction over the appeal and we will not reach the merits of the case, our description of the relevant factual and procedural background is truncated.

On September 12, 2008, Darpel then filed a complaint in the Campbell Circuit Court requesting two forms of relief: (1) by means of CR 60.03, he sought a declaration that the *nunc pro tunc* decree of dissolution and orders issued in related cases were void; and (2) he sought a declaration setting aside the *lis pendens*. The complaint also sought monetary damages. Jeffrey C. Arnzen, as administrator of Anthony's estate, filed an answer denying Darpel was entitled to any of the relief sought.

Darpel filed a motion for summary judgment asking the court to grant the relief sought in Count One only, the request for CR 60.03 relief. Arnzen asked the court to dismiss the CR 60.03 claim. The circuit court granted Arnzen's motion in an order dated June 15, 2009, overruling Darpel's motion and dismissing Count One of the complaint. This order did not address Count Two of the complaint, nor did it include language that the ruling dismissing Count One only was final and appealable. Darpel appealed nevertheless.

This court lacks jurisdiction to entertain Darpel's appeal

Neither party raised the matter of finality. Yet this Court is "required to raise a jurisdictional issue on its own motion if the underlying order lacks finality." *Tax Ease Lien Investments I, LLC, v. Brown*, 340 S.W.3d 99, 101 (Ky. App. 2011) (citing *Huff v. Wood-Mosaic Corp.*, 454 S.W.2d 705, 706 (Ky. 1970)).

Pursuant to CR 54.01, a judgment becomes final and appealable either by "adjudicating all the rights of all the parties in an action" or by fulfilling the requirements of CR 54.02. The circuit court's order in the present action resolved

only Count One of a two-count complaint; it therefore did not adjudicate all the rights of the parties; therefore, we turn to CR 54.02. That Rule provides, in pertinent part, as follows:

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 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 absence of any such recital, any order . . . which adjudicates less than all the claims or rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order . . . 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.*

CR 54.02(1) (emphasis added).

We note that the parties have labored to present their arguments in a manner that comports with our rules. Having done so, they made the way clear for our proper consideration of the record which, unfortunately, reveals the interlocutory nature of the order from which the appeal is taken. This Court lacks jurisdiction over interlocutory appeals. *See Commonwealth v. Nichols*, 280 S.W.3d 39, 42 (Ky. 2009).

Although the order presented for our review resolves one of the claims for relief between the parties, it contains no recitation that the matter is final and appealable, and that there is no just cause for delay. We therefore lack jurisdiction and have no choice but to dismiss the appeal.

ALL CONCUR.

ENTERED: September 30, 2011

/s/ Glenn E. Acree
JUDGE, COURT OF APPEALS

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