

RENDERED: JULY 23, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001291-MR

PHYLLIS CAMPBELL

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 05-CI-01218

WALLACE CAMPBELL, JR.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT TAYLOR, CHIEF JUDGE; DIXON, JUDGE; HENRY, SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Phyllis Campbell brings this *pro se* appeal from a June 9, 2009, judgment of the Boyd Circuit Court after a bench trial in which the court concluded that an easement by necessity existed over Campbell's property. We affirm.

The record in this case reveals that the trial court's Findings of Facts and Judgment was entered on June 9, 2009. Thereafter, on July 9, appellant filed a

pro se notice of appeal and listed the June 9, 2009, judgment as the judgment appealed. Even though the action was appealed to this Court, appellant, nonetheless, then filed a motion for new trial pursuant to Kentucky Rules of Civil Procedure (CR) 59 on July 28, 2009. This motion challenged the trial judge's impartiality and sought recusal of the judge. By order entered August 7, 2009, the trial court denied the motion. Appellant did not file an appeal from the August 7, 2009, order.

In this appeal, appellant filed a *pro se* brief that fails to comply with CR 76.12. Most importantly, the brief does not contain an "argument" section as required by CR 76.12(4)(c)(v).¹ We have, however, utilized our best efforts to discern appellant's argument. It seems that appellant's argument surrounds her belief that the trial judge was "not fair and impartial." Also, in appellant's prehearing statement, she listed the issues on appeal to be:

CR 59.01 (G) and (A). Transcription to be entered upon completion as evidence. A new trial granted on basis of testimony of Judge Hagerman indicating improper influence and also abuse of discretion. This information to be transcribed by court report[er] do not know.

As previously set forth, appellant did not appeal the August 7, 2009, order wherein the trial judge refused to recuse. In fact, this Court harbors grave doubt as to whether appellant's CR 59 motion for new trial was proper as an appeal was already pending and as the motion was filed more than ten days after entry of judgment. CR 59.04; *Prichard v. Bank Josephine*, 723 S.W.2d 883 (Ky. App.

¹ Appellant's brief also contains numerous other violations of Kentucky Rules of Civil Procedure 76.12(4).

1987). In any event, appellant has failed to demonstrate that the trial court committed reversible error as to any issue in either the June 9, 2009, judgment or the August 7, 2009, order. *See Stuckert v. Keller*, 430 S.W.2d 773 (Ky. 1968).

For the foregoing reasons, the judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Phyllis Campbell, *Pro Se*
Catlettsburg, Kentucky

BRIEF FOR APPELLEE:

W. Jeffrey Scott
Grayson, Kentucky