

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000438-MR

JORDAN R. ALLEN

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 09-CI-00336

HENRY JONES

APPELLEE

OPINION
DISMISSING

** ** * * * * *

BEFORE: COMBS AND DIXON, JUDGES; ISAAC¹, SENIOR JUDGE.

COMBS, JUDGE: Jordan Allen appeals from an order of the Logan Circuit Court dismissing his action against Henry H. Jones for lack of personal jurisdiction.

After our review, we dismiss this appeal.

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

On the afternoon of Sunday, September 28, 2008, Jordan Allen, a Kentucky resident, suffered catastrophic and permanent injuries when the bicycle that he was riding was struck by a pick-up truck driven by Brett Wood, also a Kentucky resident. Allen and Wood were traveling along Halls Store Road, a rural area of Russellville, Kentucky, when the collision occurred. Wood had purchased his pick-up truck from Henry Jones, a Tennessee resident, at Jones's home in Joelton, Tennessee, on Friday, September 26, 2008. There is nothing in the record to indicate that Jones failed to transfer the vehicle in accordance with Tennessee law.

On July 22, 2009, Allen filed a personal injury action against Wood in Logan Circuit Court. On October 28, 2009, Allen filed a motion for leave to file an amended complaint seeking to add Henry H. Jones as a party defendant. In his motion, Allen alleged that Jones was the true owner of the pick-up truck and that he had negligently entrusted Wood with his vehicle. A copy of the proposed amended complaint was attached to the motion. A hearing was scheduled for November 12, 2009. On November 12, 2009, Allen filed a re-notice of hearing. The hearing was rescheduled for December 17, 2009.

On December 15, 2009, Allen filed two additional motions for leave to file a second amended complaint. Allen sought to include State Farm Insurance Company, the uninsured motorist policy carrier, as another party defendant in the action. In the second motion, he sought leave to add State Auto Insurance Company, the insurer of the Allen family farm, as a party defendant. A copy of the

second proposed amended complaint was attached to the motions. A hearing on these motions was also scheduled for December 17, 2009.

Jones was not mentioned at all at the hearing conducted on December 17, 2009. The court's "calendar order" indicates that Allen's motions for leave were granted -- with respect to State Farm and State Auto.

On December 21, 2009, Allen filed an amended complaint against State Farm and State Auto. The complaint's caption included Henry Jones as a party defendant, but it did not include any specific allegations against him. There is no order in the record granting or denying the motion for leave to file an amended complaint asserting a cause of action against Jones.

On January 6, 2010, pursuant to the provisions of Kentucky Rule(s) of Civil Procedure (CR) 12.02, Jones filed a motion to dismiss for lack of jurisdiction over the person. Jones contended that there were no facts or circumstances surrounding the sale of his truck to indicate that he had purposefully availed himself of the privilege of acting in Kentucky or that he purposefully caused a consequence here. He argued that any attempt by a Kentucky court to exercise personal jurisdiction over him did not comport with federal standards of due process. A hearing was scheduled for February 5, 2010. Allen responded to Jones's motion on February 5, 2010. The trial court's order granting Jones's motion to dismiss was entered on February 8, 2010.

This appeal followed. On appeal, Allen contends that the trial court erred in concluding that Kentucky lacks jurisdiction over Jones. He also suggests that

the transfer of the pick-up truck from Jones to Wood in Tennessee may not have complied with Kentucky law. Finally, Allen argues that Tennessee should not permit sellers of vehicles to transfer them without proof of insurance. We cannot address these issues.

CR 3 provides that a civil action is commenced “by the filing of a complaint with the court and the issuance of a summons” The record does not indicate that Allen ever consummated his attempt to file a complaint nor did he have a summons issued against Jones. Consequently, the trial court had no authority to consider Jones’s dispositive motion, and there is no substantive matter for this court to review. Accordingly, we dismiss this appeal.

DIXON, JUDGE, CONCURS IN RESULT.

ISAAC, SENIOR JUDGE, DISSENTS BY SEPARATE OPINION.

ISAAC, JUDGE, DISSENTING: I dissent and would affirm the trial court’s order dismissing Jones for lack of *in personam* jurisdiction. Although there is no order specifically adding Jones as a defendant, all parties and the court were apparently operating under the assumption that he had been made a party. Jones was named in the amended complaint which was filed of record. The subsequent motion to dismiss filed by Jones’ attorney constituted an appearance in the case and put Jones before the court for the purpose of challenging jurisdiction. As stated in the case of *Smith v. Gadd*, 280 S.W.2d 495 (Ky. 1955), “...the nature of the act of the defendant was the determining factor, and that he is deemed to have entered a general appearance when his act may be considered as submitting his

person to the jurisdiction of the court.” (at 497). Jones’ motion was a submission to the court’s authority to decide the jurisdictional question. The court had authority to decide the motion and decided it correctly. Pursuant to KRS 454.210, a Kentucky court does not have any authority to exercise jurisdiction over Jones as he did not transact any business in Kentucky, nor did he contract to supply goods or services or cause tortious injury in Kentucky, nor did otherwise subject himself to the jurisdiction of the Commonwealth in any way. There is no evidence of record to support a theory that Jones acted in any manner which put him within the authority of a Kentucky court. The trial court correctly dismissed Jones.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Christopher J. Pittman
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