

RENDERED: AUGUST 26, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002030-MR

JASON WADE

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 06-CI-00149

MILLIE BRADSHAW; SHARRON
WADE; AND GEORGE WADE

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * **

BEFORE: ACREE, DIXON AND KELLER, JUDGES.

ACREE, JUDGE: Jason Wade has taken an appeal from a partial summary judgment entered in favor of appellees. Because the partial summary judgment is interlocutory, we lack appellate jurisdiction of the case. Therefore, we dismiss the appeal.

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). The partial summary judgment from which this appeal is taken lacks finality. Specifically, the judgment states, in pertinent part,

1. That Plaintiff's [Appellant's] Motion for Summary Judgment be and same is hereby DENIED.
2. That Defendants' [Appellees'] Motion for Summary Judgment be and same is hereby PARTIALLY SUSTAINED.
3. That Defendants' Motion for Summary Judgment regarding the damages to Defendants' property be and same is hereby reserved for determination at a later date.

.....

THIS IS A FINAL AND APPEALABLE ORDER.

(Summary Judgment, September 29, 2009, p. 4).

By definition, the September 29, 2009 Summary Judgment, granting “partial summary judgment” and reserving the issue of damages for later adjudication, was not a final and appealable judgment because it did not “adjudicat[e] all the rights of all the parties” and it was not “made final under Rule 54.02.” CR 54.01 (defining “final or appealable judgment”).

Furthermore, the partial summary judgment could not be made final by including CR 54.02 recitations. As our Supreme Court held in *Chittum v. Abell*,

the judgment to the extent it adjudged [appellant] liable to [appellees], reserving the determination of damages for a later trial, was not a final judgment, notwithstanding the trial court's CR 54.02 recitations, because it did not

fully adjudicate the damage claim. . . . [A] determination that adjudicates only part of a claim cannot be made final.

485 S.W.2d 231, 237 (Ky. 1972); *see Tax Ease Lein Investments 1, LLC v. Brown*, 340 S.W.3d 99, 101-03 (Ky. App. 2011) (for a more thorough discussion of finality in this context).

This Court does not have jurisdiction to review the September 29, 2009 summary judgment because it is interlocutory and incapable of being made final by including finality recitations from CR 54.02.¹

Accordingly, we dismiss this appeal.

ALL CONCUR.

ENTERED: August 26, 2011

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

BRIEFS FOR APPELLANT:

David B. Mour
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BRIEF FOR APPELLEE:

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¹ Even if the judgment under review could have been made final, the circuit court failed to comply with the finality recitation requirements of CR 54.02 because it does not include the statement that “there is no just reason for delay.” CR 54.02(1).