

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001215-MR

THE JERUSALEM RIDGE
BLUEGRASS MUSIC FOUNDATION
OF KENTUCKY, INC. (A/K/A THE
MONROE FOUNDATION) (F/K/A
THE BILL MONROE/BUEGRASS
MUSIC FOUNDATION OF KENTUCKY, INC.)

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 11-CI-00525

HNS INVESTMENTS, LLC;
JACK R. SPINKS; VIRGINIA
SPINKS; JACK R. SPINKS,
AS TRUSTEE OF MARY
DIANE TAYLOR SPINKS
UNIFIED CREDIT TRUST;
OHIO COUNTY, KENTUCKY;
AND FRANKLIN CAMPBELL MERCER

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: DIXON, J. LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: The Jerusalem Ridge Bluegrass Music Foundation of Kentucky, Inc. (a/k/a The Monroe Foundation) (f/k/a The Bill Monroe/Bluegrass Music Foundation of Kentucky, Inc.) (hereinafter referred to as Jerusalem Ridge) brings this appeal from an April 25, 2013, summary judgment and a June 25, 2013, order of the Ohio Circuit Court. For the reasons hereinafter stated, we dismiss this appeal as being taken from an interlocutory order.

Jerusalem Ridge operates an annual bluegrass music festival on the grounds of the Bill Monroe Homeplace Park in Ohio County, Kentucky. HNS Investments, LLC, owns real property adjoining the park and for many years has permitted Jerusalem Ridge to use its property in conjunction with the festival. Jerusalem Ridge has constructed stages on HNS's property as well as placed a doublewide manufactured home thereon that Franklin Campbell Mercer had claimed to reside for over nine years.

In December 2011, HNS Investments, LLC, Jack R. Spinks, Virginia Spinks, and Jack Spinks, as Trustee of the Mary Diane Taylor Spinks Unified Credit Trust, Ohio County, Kentucky, (collectively referred to as plaintiffs) filed a declaratory judgment action and complaint against Franklin Campbell Mercer, Jerusalem Ridge, and Ohio County, Kentucky.¹ Therein, plaintiffs alleged to be fee simple owners of certain real property located in Ohio County adjacent to Jerusalem Ridge's property which, as noted, had previously been utilized by

¹ The defendants, Franklin Campbell Mercer and Ohio County, Kentucky, did not appeal the June 25, 2013, order of the Ohio Circuit Court but were named as appellees in the Notice of Appeal filed by Jerusalem Ridge. Jerusalem Ridge is the sole appellant in this action.

defendants for the purpose of conducting a bluegrass music festival. While plaintiffs permitted defendants access and use of their property for several years, the defendant's use of the property has been in dispute since at least 2011. Since October of 2011, plaintiffs claimed that defendants have trespassed upon and damaged their real property. Plaintiffs subsequently initiated this declaration of rights action to resolve the respective rights of the parties in regard to plaintiffs' real property and appellant's alleged trespass thereon. Additionally, plaintiffs alleged that any previously executed license agreements between the parties for use of the property had terminated and sought such a declaration by the court.²

The defendants, Jerusalem Ridge and Mercer, answered the complaint and denied all allegations therein. Subsequently, plaintiffs filed a motion for summary judgment against the answering defendants. By summary judgment entered April 25, 2013, the circuit court concluded:

- a) That the Defendants of this action have no legal rights to the Plaintiffs' property described in Exhibit "A" attached to Plaintiffs Amended Complaint (less the five acre exception described on Exhibit "F" attached to said Amended Complaint), and said Defendants must immediately vacate and cease using same;
- b) That all license agreements between Plaintiffs (or any of them) and the Defendants (or any of them) have terminated and the double wide mobile home must be removed from Plaintiff's property; [handwritten in "w/in 60 days and initialed by RCD]
- c) [Has been handwritten marked through, as deleted, and initialed by RCD.]

² The last temporary license agreement for use of the real property agreed to by HNS Investments, LLC, Jack R. Spinks, Virginia Spinks, and Jack Spinks, as Trustee of the Mary Diane Taylor Spinks Unified Credit Trust, Ohio County, Kentucky, expired in October of 2011.

d) That any improvements constructed by Defendants Jerusalem Ridge Bluegrass Music Foundation of Kentucky, Inc., and/or Defendant Franklin Campbell Mercer must be removed from Plaintiffs' property;

e) The Ohio County Sheriff is directed to assist Plaintiffs in the enforcement of the terms of this Judgment;

f) The Plaintiffs have no legal obligations or duties to Defendants; and

g) The Court retains jurisdiction over this matter to enter such further Orders as may be necessary to effectuate the terms hereof.

This is a final and appealable order and there is no just cause for delay.

The April 25, 2013, summary judgment adjudicated all the rights of all the parties in the action and was final per Kentucky Rules of Civil Procedure (CR) 54.01. Mercer and Jerusalem Ridge then filed a CR 59.05 motion to vacate the April 25, 2013, summary judgment. This converted the final judgment to an interlocutory judgment. *Wright v. Ecolab, Inc.*, ___ S.W.3d ___ (Ky. 2015).

By order entered June 25, 2013, the circuit court denied the motion as to defendant Jerusalem Ridge but granted the motion as to defendant Mercer.³ In the June 25, 2013, order, the circuit court set a bench trial to adjudicate “the remaining issues in this case.” June 25, 2013, order, paragraph 3. However, this order did not include CR 54.02 language, nor was there a new final judgment

³ Kentucky Rules of Civil Procedure (CR) 59.05 motion was timely filed and thus tolled the running of time for filing an appeal of the summary judgment until entry of the order granting or denying the CR 59.05 motion. CR 73.02(1)(e).

entered. *See Tax Ease Lien Investments 1, LLC v. Brown*, 340 S.W.3d 99 (Ky. App. 2011). Jerusalem Ridge then filed a notice of appeal from the April 25, 2013, summary judgment and the June 25, 2013, order, which precipitated our review.

Before this Court can exercise jurisdiction of any appeal, we review the record to ascertain that a final judgment or order has been appealed. A final and appealable judgment is one that adjudicates all the rights of all the parties or is made final under CR 54.02. CR 54.01. In an action involving multiple claims and/or multiple parties, as is now before this Court in this appeal, CR 54.02 permits the trial court to make an otherwise interlocutory order final and appealable in certain circumstances. However, under CR 54.02, an interlocutory order may only be made final and appealable if the order includes both recitations – (1) there is no just cause for delay and (2) the decision is final. It is well-recognized that strict compliance with the rule is required. *Peters v. Bd. of Educ. of Hardin Co Cnty.*, 378 S.W.2d 638 (Ky. 1964). A court's failure to include both recitations in a judgment renders it interlocutory and nonappealable. *Turner Constr. Co. v. Smith Bros., Inc.*, 295 S.W.2d 569 (Ky. 1956).

Our Supreme Court reviewed the role of the circuit court under CR 54.02 in *Watson v. Best Financial Services, Inc.*, 245 S.W.3d 722 (Ky. 2008). The Supreme Court stressed that a circuit court's decision to certify the immediate appealability of an interlocutory judgment under CR 54.02 should not be done routinely or as a courtesy to counsel. *Id.* Rather, the Supreme Court held that the

circuit court must evaluate each case separately before determining finality certification under CR 54.02:

[T]he trial judge must balance this Court's historic policy against piecemeal appeals and the practical needs of the particular case before him. The entering of certification under CR 54.02 is no more automatic than is an extension of time to file a record on appeal under CR 73.08. The trial judge should always determine in entering a certification under CR 54.02 that the order being certified is sufficiently important and severable to entitle a party to an immediate appellate review.

Watson, 245 S.W.3d at 727.

There is no dispute that this action involves multiple claims and multiple parties. In the April 25, 2013, summary judgment, the circuit court granted the plaintiffs' summary judgment upon all claims against all defendants. Thus, the April 25, 2013, summary judgment constituted a final judgment under CR 54.01 and effectively terminated the action.⁴

On May 3, 2013, Jerusalem Ridge and Mercer timely filed a CR 59.05 motion to vacate the April 25, 2013, summary judgment. In its June 25, 2013, order, the circuit court denied the motion as to Jerusalem Ridge but granted the motion as to Mercer. By so doing, the circuit court adjudicated less than all the claims against all the parties and effectively transformed the April 25, 2013, summary judgment into an interlocutory judgment. At this point, to be appealable,

⁴ In the April 25, 2013, summary judgment, we note that the circuit court included CR 54.02 language. Because all claims between all parties were resolved in this judgment, the inclusion of CR 54.02 language by the circuit court was of no consequence and otherwise not necessary. *See Sec. Fed. Sav. & Loan Ass'n of Mayfield v. Nesler*, 697 S.W.2d 136 (Ky. 1985).

the circuit court should have included both recitations under CR 54.02 in the June 25, 2013, order or otherwise entered a new judgment to that effect, with the proper CR 54.02 recitations. It is readily apparent that the circuit court did not certify the June 25, 2013, order final under CR 54.02 by including the required citations. Consequently, we conclude that this appeal is hereby taken from an interlocutory order and otherwise was not properly appealed. *Watson*, 245 S.W.3d at 726-27.⁵

Now, therefore, be it ORDERED that Appeal No. 2013-CA-001215-MR is DISMISSED for having been taken from nonfinal and nonappealable Orders.

ALL CONCUR.

ENTERED: July 17, 2015

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

M. Stephen Pitt
Sara C.M. Veeneman
Louisville, Kentucky

BRIEF FOR APPELLEES:

John G. Thacker
Terra W. Knight
Owensboro, Kentucky

⁵ The court acknowledges that by order entered November 7, 2013, a motion panel of the Court of Appeals granted a stay of enforcement of the judgment against Jerusalem Ridge pursuant to CR 65.08 during the pendency of this appeal. Unfortunately, that motion panel was not privy to the entire record of this case and otherwise did not address the finality issue upon which this Opinion and Order is based. A motion panel's review is only limited to the motions(s) pending before it. Upon entry of the order dismissing the appeal, the stay of enforcement proceedings below shall be dissolved.