

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-001986-MR

JOSEPH FERRIELL  
AND JANE FERRIELL

APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 10-CI-006446

ESTATE OF WILLIAM MORROW

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: CLAYTON, MAZE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Joseph Ferriell and Jane Ferriell bring this *pro se* appeal from an October 21, 2013, Order of the Jefferson Circuit Court. For the reasons stated, we dismiss this appeal as not being taken from a final and appealable order.

In November 2009, William E. Morrow III died intestate. His estate was admitted for administration in the Jefferson District Court. The district court

appointed William E. Morrow IV as administrator of the estate on December 15, 2009. The Ferriells filed a Notice of Claim Against the Estate in the amount of \$50,931.47. The Ferriells asserted that they extended several loans to the decedent that remained unpaid. The administrator disallowed the claim.

On September 15, 2010, the Ferriells filed a complaint in the Jefferson Circuit Court against the Estate of William Morrow III (Estate) seeking payment of a \$50,931.47 indebtedness owed to them by the decedent.<sup>1</sup> The Estate answered and counterclaimed seeking to recover a gun collection owned by the decedent and in the possession of the Ferriells.<sup>2</sup>

The Estate subsequently filed motions seeking possession and/or auction of the gun collection. The Ferriells opposed the motions. The Ferriells argued that they possessed a security interest in the gun collection asserting that the decedent pledged the gun collection as collateral for the indebtedness owed.

By order entered September 12, 2013, the circuit court determined that the Ferriells did not possess a security interest in the gun collection. The circuit court ordered the gun collection sold and the proceeds held in escrow pending further orders of the court. The Ferriells filed a motion to set aside the

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<sup>1</sup> Joseph Ferriell and Jane Ferriell instituted an “adversarial proceeding” in the circuit court against the Estate of William Morrow, thus transferring jurisdiction from district court to circuit court. *See* Kentucky Revised Statutes (KRS) 24A.120(1)(b); KRS 395.270.

<sup>2</sup> By motion filed April 12, 2012, Jane C. Morrow sought leave to intervene as a creditor and Nathan Morrow sought leave to intervene as an heir of William Morrow III. The motions were filed by attorney George R. Carter, who was also representing the Ferriells. By order entered May 11, 2012, attorney Carter was disqualified in representing the Ferriells. The motions to intervene were never addressed by the circuit court and were further improperly indexed by the circuit clerk as part of the plaintiff’s discovery responses. Presumably, the motions are still pending.

September 12, 2013, order. That motion was denied by order entered September 30, 2013. The Ferriells then filed a motion to set aside the September 30, 2013, order. By order entered October 21, 2013, the circuit court denied the motion and recited that the order was “final and appealable.” The Ferriells filed the instant *pro se* appeal from the October 21, 2013, order.<sup>3</sup>

A final and appealable judgment is one that adjudicates all the rights of all the parties or is made final under Kentucky Rules of Civil Procedure (CR) 54.02. [CR 54.01](#). In an action involving multiple claims and/or multiple parties, [CR 54.02](#) permits the circuit 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 CR 54.02 is mandatory. [Peters v. Bd. of Educ. of Hardin 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 \(Ky. 1956\)](#).

The Kentucky Supreme Court has recently upheld the requirement that both recitations must be made by the trial court to transform an otherwise interlocutory order into a final order. [Watson v. Best Fin. Servs., Inc., 245 S.W.3d 722 \(Ky. 2008\)](#). In [Watson](#), the Kentucky Supreme Court reviewed the purpose

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<sup>3</sup> Although Joseph and Jane Ferriell are proceeding *pro se* in this action, they are still duty bound to follow the Kentucky Rules of Civil Procedure. See [Watkins v. Fannin, 278 S.W.3d 637 \(Ky. App. 2009\)](#).

and functions of [CR 54.02](#). The Supreme Court discussed the historic policy in this Commonwealth against piecemeal appeals balanced with the practical needs of the case before the trial court. *Id.* The Supreme Court held that the trial court must thoroughly review each case before deciding to certify the order final and appealable under CR 54.02.

In this case, the September 12, 2013, order only adjudicated issues raised in the counterclaim related to the ownership and unsecured status of the gun collection. The order did not adjudicate all of the claims of all the parties. CR 54.01. Rather, the Ferriells' claim of indebtedness against the Estate as set out in the complaint remains unadjudicated, and the Estate is still open for administration. Without the separate determination by the circuit court that "there is no just cause for delay" this Court is effectively precluded from reviewing whether the circuit court abused its discretion in releasing the appeal upon one or more but less than all of the claims. *Watson*, 245 S.W.3d at 726. Accordingly, we are legally bound to conclude that the October 21, 2013, order is interlocutory and nonappealable. Therefore, we are without jurisdiction to consider the merits of this appeal. Upon dismissal, the circuit court retains jurisdiction to determine the validity and amount of the Ferriells' claims against the Estate and any other pending matters regarding the Estate administration.

Now, therefore, be it ORDERED that Appeal No. 2013-CA-001986-MR is DISMISSED for having been taken from a nonfinal and nonappealable Order.

ALL CONCUR.

ENTERED: June 26, 2015

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

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