

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-002151-MR

JULIAN CLARK

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 12-CI-00649

CYNTHIA DUNCAN

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** * ** * **

BEFORE: COMBS, NICKELL, AND VANMETER, JUDGES.

COMBS, JUDGE: Julian Clark appeals the order of the Warren Circuit Court directing him to pay Cynthia Duncan's attorney fees. Because the order was interlocutory, we must dismiss the appeal.

Only a brief recitation of facts is necessary for this opinion. On May 8, 2012, Duncan filed a complaint seeking Clark's endorsement of an insurance

check for the full amount of the proceeds of an insurance policy. She also asked for attorney fees and punitive damages. She sought the entire proceeds. Clark, however, responded that he was entitled to a portion of the insurance proceeds. The trial court granted Duncan's motion for summary judgment regarding declaratory relief in an order entered on April 2, 2013. It awarded the entire proceeds to Duncan and reserved the issue of attorney fees. On November 22, 2013, the court awarded Duncan attorney fees. As of the filing of this appeal, it has not yet ruled on the issue of punitive damages. Clark now appeals the award of attorney fees.

We first note that the record is inadequate for us to conduct a meaningful review of the merits of Clark's arguments. Both parties' briefs refer to events that took place in hearings; however, they do not provide citations to the record as required by Kentucky Rule[s] of Civil Procedure (CR) 76.12(4)(c)(iv). Furthermore, the record does not include video recordings or transcripts of any courtroom proceedings. Regardless, in this case, the procedural nature of the appeal is dispositive requiring dismissal and precluding our ability to address the merits of this matter.

CR 54.01 provides that in order to be appealable, a judgment must adjudicate "all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." CR 54.02 sets forth that:

[w]hen more than one claim for relief is presented in an action . . . the court may grant a final judgment upon one or more but less than all of the claims or parties only

upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final.

Otherwise, the appeal is interlocutory, and we do not have jurisdiction to consider it. *Wilson v. Russell*, 162 S.W.3d 911, 913-14 (Ky. 2005).

In this case, neither the summary judgment order nor the order pertaining to attorney fees includes language of finality. Additionally, the record contains pleadings entered after the notice of appeal which appear to pertain to the claim for punitive damages. Therefore, the order for attorney fees is interlocutory, and the appeal must be dismissed.

ALL CONCUR.

ENTERED: August 7, 2015

/s/ Sara W. Combs
Judge, Kentucky Court of Appeals

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BRIEF FOR APPELLEE:

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