

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001199-MR

ALANYA HOPPIUS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM JR., JUDGE
ACTION NO. 12-CI-004833

METROPOLITAN LIFE INSURANCE COMPANY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; D. LAMBERT AND STUMBO,
JUDGES.

D. LAMBERT, JUDGE: This matter is on appeal from an order entered by the Jefferson Circuit Court which set aside a portion of damages awarded to the Appellant, Alanya Hoppius, upon motion by the Appellant, Metropolitan Life Insurance Company (hereinafter “Met Life”). For the reasons discussed herein, we dismiss the appeal.

I. FACTUAL AND PROCEDURAL HISTORY

Hoppius filed suit on September 10, 2012, alleging several causes of action relating to an allegedly wrongful denial of contractual and employment wage payments. Hoppius specified that the claims arise solely under state law, going as far as to assert, in paragraph two of the complaint, that “Plaintiff expressly *does not* assert any claim arising under federal law” (emphasis in original). Hoppius was an employee of M-I, LLC, whose short term disability benefits plan was administered by Met Life. Among the claims asserted by Hoppius was a claim for tortious interference with contract, stemming from Met Life’s allegedly intentional inducement of M-I, LLC, to breach its contract by “failing to provide an accurate review of Ms. Hoppius’ short term disability wage payment claim. . . .” In her brief to this Court, Hoppius contends this alleged action prejudiced her ability to receive long term disability benefits.

Met Life failed to answer the complaint within 20 days.

Notwithstanding this default, Hoppius served Met Life with requests for admissions on December 27, 2012. Among the requests served on Met Life was Request for Admission No. 3, which asked Met Life to admit the following: “Ms. Hoppius’ damages resulting from Met Life’s intentional interference with her short-term disability benefits total \$543,175, representing the value of her long-term disability insurance policy insured by Met Life.” Request for Admission No. 5 asked Met Life to admit that Hoppius was entitled to punitive damages equaling

four times the total of her compensatory damages. Met Life again failed to participate in this action by not responding to the requests for admissions.

Hoppius filed a motion for default judgment on February 8, 2013, and noticed a hearing thereon for February 18, 2013. When Met Life continued to fail to participate in this action, the trial court entered a default judgment tendered by Hoppius. The judgment awarded Hoppius damages in the amount of \$11,692.00 for her unpaid short-term disability benefits, statutory damages pursuant to KRS 337.385 in the same amount, and \$543,175.00 “representing the present value of her long-term disability insurance policy insured by Met Life. . . .” The judgment further awarded punitive damages in an amount equal to four times the total compensatory damages. The judgment also awarded an amount of attorney fees to be calculated at 35% of the total damages. This judgment, entered on April 3, 2013, lacked any recitation of finality language, and was amended upon Hoppius’ motion to include such language on April 22, 2013.

No action was taken by either side until May 7, 2014, when Hoppius filed an affidavit for writ of non-wage garnishment. After the service of a garnishment order regarding its account at J.P. Morgan Chase Bank came to its attention, Met Life filed its first pleading in this case on May 22, 2014. Met Life moved to set aside the judgment pursuant to Civil Rule (“CR”) 60.02.

The trial court, on July 1, 2014, issued an order granting the motion in part, and denying the motion in part. The trial court denied the motion to set aside as it concerned the \$11,692.00 award for the unpaid short-term disability benefits,

and similarly denied the motion as it related to the award of \$11,692.00 in statutory damages. The trial court noted that Met Life had “essentially conceded” Hoppius’ entitlement to those damages at oral argument on the motion. On the other hand, the trial court granted the motion as it related to the award of \$543,175.00. The court reasoned that the award of damages for long-term disability in the tendered judgment was “impossible to reconcile” with the language of the complaint expressly denying Hoppius sought damages pursuant to the long-term disability policy. The trial court stated that it was setting aside the award as an inequitable result under CR 60.02(e). The trial court likewise set aside the award of punitive damages, in favor of further hearing on the issue where a trier of fact could set an appropriate award. Finally, the trial court denied the motion as it related to the separate award of attorney fees, but quantified the award at an amount certain, \$8,184.40.

The July 1st order did not contain a recitation of any language indicating finality. In fact the trial court explicitly made the order interlocutory: “Unless and until both sides advise the Court they would like to have this ruling reviewed by the appellate courts sooner rather than later, this ruling is interlocutory.”

Hoppius filed her Notice of Appeal on July 21, 2014. A month later, on August 21, 2014, this Court’s motion panel issued a show cause order, directing Hoppius to provide cause as to why this appeal should not be dismissed as interlocutory. Hoppius responded on September 4, 2014, contending that an

immediate appeal is available pursuant to the rule of *Asset Acceptance, LLC v Moberly*, 241 S.W.3d 329 (Ky. 2007). The issue was passed to this merits panel on November 13, 2014.

II. ANALYSIS

1. THIS COURT LACKS JURISDICTION TO ENTERTAIN THIS APPEAL

Jurisdiction cannot be conferred on this Court by consent of the parties, an appellate court must determine whether it may properly exercise jurisdiction. *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 886 (Ky. 2009). When an appeal arises out of an interlocutory order, this Court lacks jurisdiction to decide the issues raised therein, unless authorized by some other rule. *See* KRS 22A.020(2). Civil Rule 60.02 has six subsections, of which five of those have been found not to give rise to the right to immediately appeal. *Asset Acceptance, LLC v. Moberly*, 241 S.W.3d 329 (Ky. 2007).

Hoppius argues that the case exception created in *Asset Acceptance* renders the order setting aside the final and appealable judgment in this case immediately appealable. We conclude the exception does not apply here. *Asset Acceptance* indicates that two elements must be satisfied before the exception applies: 1) the judgment must have been entered more than one year prior to its disruption, and 2) the reason for reopening the judgment was “extraordinary circumstance” contemplated in CR 60.02(f). *Id.* at 334.

The facts here do not support this Court exercising jurisdiction. The first element is unquestionably fulfilled, as the entry of the final and appealable default judgment occurred on April 22, 2013, and the motion to set it aside was filed on May 7, 2014. However, it is equally beyond question that the trial court did not disrupt the judgment based on extraordinary circumstances from 60.02(f). The trial court's order clearly reflects that the basis for granting the motion to set aside a portion of the award was the prevention of an inequitable result as contemplated in CR 60.02(e). Thus, the exception does not apply here, and the general rule controls to preclude this Court from entertaining the appeal at this time.

III. CONCLUSION

Based on the foregoing, IT IS THEREFORE ORDERED that Appeal No. 2014-CA-001199-MR is DISMISSED as having been taken from an interlocutory order.

ALL CONCUR.

ENTERED: NOVEMBER 23, 2016

/s/ Debra Lambert
JUDGE, COURT OF APPEALS

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