

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000870-MR

RAYMOND L. DAVIS AND  
PATRICE K. SNIDER A/K/A  
PATRICE DAVIS

APPELLANTS

v. APPEAL FROM GREEN CIRCUIT COURT  
HONORABLE ALLAN RAY BERTRAM, JUDGE  
ACTION NOS. 04-CI-00011 & 11-CI-00078

WILLIAM WELLS

APPELLEE

OPINION  
REVERSING

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BEFORE: ACREE, J. LAMBERT, AND MAZE, JUDGES.

ACREE, JUDGE: Raymond Davis and Patrice Snider, Appellants, appeal the May 6, 2014 order of the Green Circuit Court granting summary judgment in favor of William Wells. After careful review of the record, we reverse.

## **I. Factual and Procedural Background**

Raymond Davis and Patricia Snider have been involved in foreclosure litigation of certain property located at 1477 Bucknersville Road, Greensburg, Kentucky since 2004. The litigation has involved a host of parties. In 2011, the Green Circuit Court permitted William Wells to intervene in the action. Wells alleged that he had a valid mechanics' and materialman's lien on the subject property for \$15,200 plus interest, for roofing work he had done, but for which he had not been compensated by Appellants. Wells' attorney represented to the court that lien documentation had been tendered to the county clerk, but he had not yet received a filed copy of the lien. Appellants filed an answer to Wells' intervening complaint in which they denied Wells' allegations, and also alleged that Wells had not complied with statutory requirements that would entitle him to a lien. Also, Appellants asserted a counterclaim which accused Wells of performing inadequate work resulting in damage to the residence.

Nothing further took place between Wells and Appellants until Wells filed a summary judgment motion on October 4, 2012. Appellants did not file a response to Wells' motion. At this time, one of the other remaining parties, Centex Home Equity Company I, LLC,<sup>1</sup> the mortgage holder on the subject property, also prepared a motion for summary judgment. However, that motion was not filed until March 5, 2013. The idea was to have the two summary judgment motions ruled upon at the same time so that all of the creditors and lienholders involved

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<sup>1</sup> Centex Home Equity Company I, LLC was originally included in this appeal; however, Appellants and Centex settled their dispute prior to the rendering of this opinion.

could be prioritized and provided to the Master Commissioner in the order to sell the property. Appellants filed a response to Centex's motion. On May 6, 2014, the Green Circuit Court granted summary judgment in favor of Centex as well as Wells, and additionally, ordered the sale of the property. The judgment stated that Wells had a valid lien on the subject property for the sum of \$15,200. This appeal followed.

## **II. Standard of Review**

The standard of review on appeal when a trial court grants a motion for summary judgment is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996); Kentucky Rule of Civil Procedure (CR) 56.03.

## **III. Analysis**

Appellants now argue that the circuit court erred in granting summary judgment for Wells because Wells failed to prove the existence of a valid mechanics' and materialman's lien. We consider Appellants' argument in conjunction with Wells' failure to file an appellee brief. Pursuant to CR 76.12(8)(c), when an appellee does not file a brief within the time allowed, the court may, in its discretion, choose among three courses of action: (i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the

appellee's failure as a confession of error and reverse the judgment without considering the merits of the case. CR 76.12(8)(c).

Appellants assert in their brief, and our review reveals, that the record contains no evidence of a valid mechanics' and materialman's lien. That lack of proof, coupled with Wells' failure to file a brief wherein he might have directed us to such proof, causes the Court to conclude that reversal of the summary judgment award is warranted.

The party moving for summary judgment bears the initial burden of convincing the court by evidence of record that no material issues of fact are in dispute. *Hallahan v. The Courier-Journal*, 138 S.W.3d 699, 705 (Ky. App. 2004) (citing *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991)). Here, Wells filed the motion for summary judgment, and thus, bore the initial burden. "A party, to be entitled to a summary judgment, has the burden of showing that the facts, which would warrant judgment in his favor under applicable substantive law principles are indisputable." *Robert Simmons Const. Co. v. Powers Regulator Co.*, 390 S.W.2d 901, 905 (Ky. 1965) (quoting Moore's Federal Practice, § 56.13 (Vol. 6, p. 2092)).

Our review of the record demonstrates that Wells never produced any evidence supporting his summary judgment motion as to the validity or existence of his lien. Requirements for perfecting a mechanics' and materialman's lien are provided by statute. See Kentucky Revised Statutes (KRS) 376.010. And, "Kentucky adheres to the rule that the statutory provisions for perfecting a lien

must be strictly followed.” *Laferty v. Wickes Lumber Co.*, 708 S.W.2d 107, 108 (Ky. App. 1986). Wells’ attorney indicated to the court, when asking to intervene in the action, that he had only tendered a lien to the county clerk. The only evidence of record relevant to these specific parties and the lien in dispute is (1) Appellants’ answer to Wells intervening complaint and (2) a copy of Wells’ summary judgment motion. The motion is not accompanied with any support demonstrating that Wells has a valid lien on the subject property. Because Wells’ motion for summary judgment was not properly supported by evidence of record, and he failed to file a brief indicating otherwise, he did not meet the initial burden required of the movant for summary judgment.

We understand the court’s desire to bring an end to these proceedings, but in doing so, it presumed certain facts to be true for the purpose of granting Wells’ summary judgment motion. Accordingly, we reverse because the circuit court erred in concluding no genuine issue of material fact existed and that Wells was entitled to judgment as a matter of law.

#### **IV. Conclusion**

The summary judgment of the Green Circuit Court is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Joseph R. Stewart  
Lebanon, Kentucky