

RENDERED: February 6, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-1067-MR

JAMES V. GAY;
ELLIS C. GAY; and
EARL GAY

APPELLANTS

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
CIVIL ACTION NO. 94-CI-090077

TONY TIPTON

APPELLEES

OPINION AND ORDER DISMISSING APPEAL

* * * * *

BEFORE: GUDGEL, CHIEF JUDGE; ABRAMSON and GUIDUGLI, Judges.

GUIDUGLI, JUDGE. Appellants, James V. Gay, Ellis C. Gay, and Earl Gay (collectively Gay), appeal from an order entered by the Montgomery Circuit Court on April 8, 1996, dismissing an amended complaint filed by Gay as to appellee, Tony Tipton (Tipton). For reasons set forth below, we must dismiss Gay's appeal.

Gay filed a petition for declaration of rights with the trial court on October 18, 1994, seeking a judgment declaring the three plaintiffs to be the true and lawful owners of a certain tract of land in Montgomery County and awarding damages against the defendant, Jerry Miller, for loss of timber and damage to the land. On January 25, 1996, Gay filed an amended complaint

seeking to add several additional defendants, including Tipton, to the action.

Tipton filed a motion to dismiss the amended complaint against him with the trial court on February 14, 1996, alleging that the amended complaint failed to state a claim against him for which relief could be granted. The trial court entered a motion dismissing the amended complaint against Tipton only on April 8, 1996. The order did not recite that it was final and appealable or that there was no just reason for delay. We have searched the record provided to us in this case and can find no order(s) entered by the trial court disposing of the balance of Gay's complaint.

Under Kentucky Rules of Civil Procedure (CR) 54.01, a judgment is not final unless it adjudicates all rights of all parties to the action. Under CR 54.02, the trial 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." CR 54.02(1). The judgment must set forth that there is no just cause for delay and state that it is final, and if it fails to do so, it will be deemed to be interlocutory. Id.

Because the record does not reveal the outcome of the remaining claims asserted by Gay against the remaining defendants, we must assume that they have yet to be litigated. Marr v. Falls City Stone Co., Ky., 329 S.W.2d 71, 71-72 (1959). Furthermore, because the trial court's order did not dispose of

all claims and all parties, did not recite that it was final, and did not state that there was no just cause for delay as required by CR 54.02(1), it is interlocutory. Marr, 329 S.W.2d at 72. Thus, we lack jurisdiction to address the issues raised by Gay on appeal.

ALL CONCUR.

/s/ Daniel T. Guidugli
JUDGE, COURT OF APPEALS

ENTERED: February 6, 1998

BRIEF FOR APPELLANT:

James A. Crumlin
Louisville, KY

BRIEF FOR APPELLEE:

Alan B. Peck
Mt. Sterling, KY