

RENDERED: February 20, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-2692-MR

PAINTSVILLE MEDICAL
BUILDING CORPORATION,
A Kentucky Corporation;
MADELINE BANGUDI;
DR. N'SUNDA BANGUDI;

APPELLANTS

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JAMES A. KNIGHT, JUDGE
CIVIL ACTION NO. 89-CI-000430

JULIANNE PERRY;
RAMON CHILDERS; and
DR. IRA POTTER

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: COMBS, GUIDUGLI and JOHNSON, Judges.

GUIDUGLI, JUDGE. Paintsville Medical Building Corporation, Madeline Bangudi, and Dr. N'Sunda Bangudi (collectively referred to as Paintsville Medical) appeal an order of the Johnson Circuit Court entered September 18, 1996, which concluded that the judgment of the court previously entered had been completely and fully satisfied and that it was not entitled to any additional interest on the judgment or interest on the interest. We affirm.

On November 3, 1993, the Johnson Circuit Court entered findings of fact, conclusions of law and judgment on the original

complaint after a trial on the merits. An appeal was taken from said judgment and in an unpublished opinion (93-CA-2849-MR) rendered December 2, 1994, the Court of Appeals reversed and remanded the matter to the trial court with specific directions as to how the issues in controversy should be decided. The original complaint sought a declaration of rights as to how certain assets held by Paintsville Medical should be divided and to whom the assets should be distributed. Upon remand to the circuit court, appellant filed a motion on August 25, 1995, requesting the court to enter judgment in conformity with the opinion of the Court of Appeals rendered December 2, 1994. Without further pleadings, the Johnson Circuit Court entered judgment on November 9, 1995. In the judgment, the court, in compliance with the appellate decision, awarded Paintsville Medical the sums of \$17,466.76 and \$90,000 plus accumulated interest in the amount of \$27,978.81 as well as, \$10,746.68 pursuant to KRS 26A.300(3) for a total judgment of \$146,192.25. The judgment also included interest at the rate of 12% per annum from December 4, 1994, until paid.

On November 17, 1995, appellees, Julianne Perry (Perry), Ramon Childers (Childers), and Dr. Ira Potter (Potter) filed a pleading entitled "Motion to vacate judgment and enter new judgment." The motion was timely filed and sought to vacate the November 9, 1995, judgment as to the \$10,746.48 award granted pursuant to KRS 26A.300(3) and to exclude interest at 12% per annum from December 4, 1994, since no final judgment had been

entered at that time. Thereafter, on January 10, 1996, the court entered an order which overruled (sic) appellee's motion. However, in the same order the court granted the plaintiffs (appellants) ten days in which to submit calculations as to the interest "contained" in the judgment. During this period appellees submitted a document to the court stating the interest should only be permitted from January 10, 1996. Appellees also filed a motion to set aside the order entered January 10, 1996, arguing that entry of said order should be withheld until the court makes a determination as to the calculation of interest due on the judgment. This motion was overruled (sic) by order of the court entered January 22, 1996. In a motion for a rule filed on February 9, 1996, appellant sought a rule requiring appellees to pay over to it the sum of \$118,155.69 which represented the amount of judgment plus interest from December 4, 1994, pursuant to the circuit court's order of November 9, 1995.

Three days later on February 12, 1996, the circuit court entered an order by which appellees were ordered to pay to appellant the following sums: Perry to pay \$59,077.85; Childers to pay \$8,480.28; and, Potter to pay \$50,597.56. It was further order that "interest shall run from January 10, 1996, until paid... ." In compliance with the order each appellee tendered payment (principle and interest from January 10, 1996) to Paintsville Medical within five (5) days.

The record next indicates that attorney for appellant filed a motion seeking an order from the court relieving him from

any further representation of Paintsville Medical. Although no order to that effect was entered, the appellant was represented by new counsel when it filed execution orders with the Floyd County Sheriff and orders of garnishment with several local banks. These orders sought monies totaling \$51,097.43 collectively against appellees for sums it claims were still outstanding [interest on the original judgment [\$44,290.03] from December 4, 1994 and interest on that interest [\$6,887.40]. On July 3, 1996, the trial judge deferred the enforcement of any garnishment until further order of the court. Then on September 18, 1996, the court entered its final order which stated that the court had reviewed all pertinent documents and concluded that "the Judgment of the Court herein has been completely and fully satisfied by the Defendants (appellees)", and "that no further executions or garnishees can be raised." This appeal followed.

Appellant raises three arguments as to why the judgment of the Johnson Circuit Court is erroneous and must be reversed. First, appellant contends that the judgment entered was over \$38,000 shy of what it contends was actually due and owing. As such, Paintsville Medical argues that to allow the satisfaction to stand would permit a fraud to be perpetrated upon the court. Relying upon the case of Commonwealth, Ex. Rel., Bates, et al v. Hall, 64 S.W.2d 585 (Ky., 1933), appellant maintains that the court has the power to correct an erroneously entered satisfaction, especially, one in which the appellees committed fraud upon the court. We can all agree with that proposition.

However, Bates and the case sub judice are clearly distinguishable. In Bates the court found that the trial court had jurisdiction to correct an "improper and wrongful entry of satisfaction" which had been "wrongfully secured from her [appellant] through appellee's threats of violence, fraud and duress." This is not the case before the Court. The satisfaction entered herein by the trial court was based upon the court's determination of when the judgment became final and not a product of any fraudulent or malevolent actions by appellees. This argument by appellant is meritless.

The next issue raised by appellant is a claim that it was actually entitled to interest from the date of the original judgment of the circuit court on November 3, 1993. That judgment and order provided that funds of Paintsville Medical were to be distributed to Perry, Potter and Childers in varying amounts. As previously stated, that decision was reversed and remanded with specific directions which led to the judgment entered in this matter that appellees owed the sum of \$118,155.69 to appellant. The judgment entered in favor of appellant was not entered until November 9, 1995, and to argue that Paintsville Medical was entitled to interest prior to that date is contrary to statutory and case law, and therefore, need not be addressed further.

Finally, appellant claims that under the doctrine of "res judicata" the judgment entered November 9, 1995, became final when the trial court overruled (sic) appellees' motion to vacate the judgment and since the order was not appealed, it

became final. A judgment which is not appealed within the statutory time becomes a final judgment and is binding upon the parties. Turner v. Ewald, Ky., 162 S.W.2d 181 (1942). We do not disagree with the law as set forth by appellant. The real issue of this case is when did the judgment of the trial court become final. Appellant argues that it became final on January 10, 1996. Appellees contend that the final order was entered on February 12, 1996. The difference is that the January 10, 1996, order would relate back to the November 9, 1995, order which provided for interest on the judgment from December 4, 1994, while the February 12, 1996, order determined interest to run only from January 10, 1996. A decision as to on which order is controlling is the determinative factor of the case and results in the amount of interest claimed by appellant.

CR 54.01 defines a judgment to be "a written order of a court adjudicating a claim or claims in an action or proceeding. A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." CR 54.02 applies to judgments in cases involving multiple claims or multiple parties, as we have in this case. Under CR 54.02 "any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties." The order does not become final and appealable until all the claims are adjudicated unless certain specific conditions

have occurred and the court specifically states that the order is final and appealable and that there is no just reason for delay.

In this case the November 9, 1995, order adjudicated all the claims and rights and liabilities of all the parties. It was final. However, appellees timely filed a CR 59.05 motion to vacate the previous order and enter a new judgment. The motion, timely filed, stayed the action. Thereafter on January 10, 1996, the trial court overruled (sic) appellant's motion but retained jurisdiction over the matter as it related to the calculations of interest on the judgment. Since all the claims were not resolved, this order, pursuant to CR 54.01 and CR 54.02, was not final. The trial court then, after receiving additional information from the parties, entered its February 12, 1996, order. In that order the court resolved all the issues presented in the original complaint. Specifically, the court directed how much was owed by each of the appellees and that interest would run from January 10, 1996. Since this order resolved all the issues presented to the trial court it, was final. Neither party filed any additional motions which would stay or delay its finality. Security Federal Sav. & Loan Ass'n. v. Nesler, Ky., 697 S.W.2d 136 (1985). Appellees promptly complied with the order and made full payment of all monies due under the order to appellant.

The fact that the court entertained additional motions as to the garnishments filed by appellant and subsequently entered its September 18, 1996, order stating that the judgment

had been completely and fully satisfied does not diminish the finality of the February 12, 1996, order. Nesler, Id.; Turner, supra.

For the foregoing reasons, the judgment of the Johnson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEES:

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