

RENDERED: May 22, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2969-MR

BENNY ROY MEADE;
PRISCILLA FAYE WHICKER;
FRED WHICKER; and
NYTE TIME ENTERPRISES

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 85-CI-000986

SQUIRE HAMILTON and
MENDA HAMILTON

APPELLEES

OPINION
AFFIRMING

* * *

BEFORE: GARDNER, HUDDLESTON AND KNOX, JUDGES.

KNOX, JUDGE: Appellants take this appeal from the judgment of the Pike Circuit Court striking their complaint, granting judgment to appellees on their counterclaim, and denying appellants' motion for a new trial.

On November 9, 1994, appellants, represented by Mr. Lawrence R. Webster, filed their complaint alleging that appellees had unlawfully exercised control over certain real property in which appellants maintained an interest. Appellees

answered, and filed a counterclaim seeking to quiet title to the disputed real estate.

On March 15, 1995, Mr. Webster filed a motion to withdraw as appellants' counsel, and that motion was granted by order dated March 24, 1995. Meanwhile, on March 16, 1995, Mr. Terrance N. Keesee entered his appearance as counsel for appellants. In August 1995, the trial court entered an order setting the case for a bench trial on April 10, 1996.

In November 1995, appellees moved the court for an order to re-docket and consolidate a related action with this action. That motion was certified as having been sent to appellant Bennie Roy Meade, at Rt. 3, Box 56, Pikeville, Kentucky 41501, as well as to his counsel, Mr. Keesee. The Pike Circuit Court's order, addressing the motion, reflects the order was sent to the same address listed for Mr. Meade in appellees' motion. However, the envelope enclosing the order was returned as "No Such Number".

On January 5, 1996, Mr. Keesee, citing Mr. Meade's refusal to cooperate and his refusal to pay his legal fees, moved to withdraw as Mr. Meade's counsel. That motion likewise certified notice to Mr. Meade at Rt. 3, Box 56, Pikeville, Kentucky 41501. That motion does not reflect Mr. Keesee's request to withdraw as counsel for either Priscilla Whicker or Fred Whicker. On January 12, 1996, the Pike Circuit Court granted Mr. Keesee's motion to withdraw, and directed Mr. Meade

to obtain other counsel within 30 days from the date of the order.

No other attorney entered an appearance on Mr. Meade's behalf within that 30-day period. On February 20, 1996, appellees moved the court for a trial date, again serving Mr. Meade with notice of that motion at the same address previously used in other motions. Appellees also served Mr. Keesee with the same motion. By order dated February 23, 1996, the trial court set the case for a preliminary conference on March 1, 1996. On March 18, 1996, the trial court entered an order setting the case for a bench trial on June 27, 1996. Both orders were mailed to Mr. Meade and to Mr. Keesee. The order mailed to Mr. Meade was returned with the notation "No Such Number."

On June 27, 1996, the hearing set by the court was held. The videotape of the proceedings show that appellees and their counsel appeared, as well as an attorney who had been contacted by Mr. Meade. The attorney who had been contacted by Mr. Meade informed the court that he told Mr. Meade about the hearing and told him to be in court for the hearing. He also informed the court that, because of the short preparation time, he could not represent Mr. Meade in the proceedings. Neither of the Whickers, nor anyone on their behalf, appeared at the hearing.

The trial court thereupon struck appellants' complaint, took proof upon appellees' counterclaim, and entered judgment for

appellees restraining appellants from interfering with appellees' enjoyment of the disputed property.

Mr. Meade filed a CR 59.01 motion for a new trial, arguing that he had received no notice of the trial date set by the court, since the court's "notice" address was one from which he had moved. The trial court denied that motion, and this appeal ensued.

The issue raised by this appeal is whether the trial court abused its discretion in dismissing appellants' complaint. We do not believe that it did. The record reflects that Mr. Meade has done little to promote his case. He did not cooperate with Mr. Keesee in his own representation. He did not procure other counsel within the time provided in the court's order granting Mr. Keesee's motion to withdraw. While Mr. Meade complains that he did not receive notices after Mr. Keesee's withdrawal, it does not appear that appellants cooperated in informing the Pike Circuit Court of any address changes.

Interestingly, the record reflects a communication from Mr. Meade which listed the same address to which all notices had previously been sent. Notwithstanding Mr. Meade's contention that he did not receive notice of the June 27, 1996 hearing, the record refutes this contention. He had contacted counsel who appeared before the court on this day and informed the court that he had told Mr. Meade to appear at the hearing. Nevertheless, Mr. Meade did not appear. We believe that his failure to appear

that day provides further evidence of his failure to cooperate with the court in proceeding with this case.

With respect to the Whickers, the record appears to reflect that Mr. Keesee did not withdraw as their counsel. The record further reflects that all notices of motions and orders of the court were sent to Mr. Keesee, including the order setting the matter for trial. However, the Whickers failed to appear and participate.

Under these circumstances, we believe that the Pike Circuit Court acted fully within its discretion in dismissing appellants' complaint, granting judgment to appellees on their counterclaim, and denying appellants' motion for a new trial.

Accordingly, we affirm the judgment of the Pike Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Dan Rowland
Prestonsburg, Kentucky

BRIEF FOR APPELLEES:

Carole Friend Conway
Pikeville, Kentucky