

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001309-MR

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEVE MERSHON, JUDGE  
ACTION NO. 95-CI-002116

CHARLES E. DAVIS, JR.

APPELLEE

### OPINION AND ORDER

#### DISMISSING

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BEFORE: HUDDLESTON, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Nationwide Mutual Fire Insurance Company (Nationwide) brings this appeal from a March 1998 judgment of the Jefferson Circuit Court. We dismiss.

In April 1994, the home of Charles E. Davis Jr. (Davis) was severely damaged by fire. The home was insured by a standard homeowner's policy issued by Nationwide. Dispute arose between the parties concerning repair cost. As a result, Davis filed an action in the Jefferson Circuit Court against Nationwide. Therein, Davis contended that Nationwide breached the terms of its insurance contract and did so in "bad faith" contrary to Ky. Rev. Stat. (KRS) 304.12-230. The trial court bifurcated the

proceedings, trying the breach of contract allegation initially and reserving the bad faith allegation for later adjudication. The jury found in Davis's favor on breach of contract, and, in conformance therewith, the court entered judgment on March 3, 1998, in the amount of \$11,997.97 for home repairs. The March judgment included the following Ky. R. Civ. P. (CR) 54.02 language: "This is a final judgment and there is no just cause for delay in its entry." Thereupon, Nationwide filed a CR 59 motion to set aside the jury verdict. The trial court denied the motion and further indicated that "[t]his matter remains on the Court's docket on August 19<sup>th</sup>, 1998, at 9:30 a.m. for trial on all remaining issues." Nationwide pursued the instant appeal from the March judgment.

We believe the March judgment is interlocutory and this appeal should be dismissed for lack of jurisdiction. CR 54.01 provides for appeals only from final judgments. A final judgment is generally one that adjudicates all the rights of all parties or one that is made final pursuant to CR 54.02. Under CR 54.02, a judgment may be made final if it adjudicates one claim as to all parties or adjudicates all claims as to some of the parties. It is, however, well established that where a judgment is, by its very nature, interlocutory, a recitation making it final and appealable under CR 54.02 will not render same appealable so as to provide the appellate court with jurisdiction. See Hook v. Hook, Ky., 563 S.W.2d 716 (1978). Doubtless, the March judgment was given CR 54.02 finality based upon the belief that it fully adjudicated a claim between the parties. We disagree.

Under CR 54.02, the "determination of multiplicity of claims must rest on whether the underlying factual basis for recovery states more than one claim which could have been separately enforced." Jackson v. Metcalf, Ky., 404 S.W.2d 793, 794 (1966); see also Webster County Soil Conservation District v. Shelton, Ky., 437 S.W.2d 934 (1969). In the case at hand, we perceive but one claim within the meaning of CR 54.02 as the allegations of bad faith and breach of contract cannot be separately enforced. We believe this determination bolsters the public policy of CR 54.02, which is, of course, to prevent piecemeal appeals. See Cornette v. Wilder, Ky., 307 S.W.2d 752 (1957).

For the foregoing reasons, we are of the opinion that the March judgment is interlocutory and that this appeal should be **DISMISSED** for lack of jurisdiction.

ALL CONCUR.

/S/ John D. Miller  
JUDGE, COURT OF APPEALS

ENTERED: July 16, 1999

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