

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000828-MR

CLARENCE COYLE AND  
ARCHIE KIMBLE

APPELLANTS

v. APPEAL FROM CASEY CIRCUIT COURT  
HONORABLE JAMES G. WEDDLE, JUDGE  
ACTION NO. 94-CI-00199

DOUGLAS RICE AND  
DAVID RICE

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE: This appeal is prosecuted from an order of the Casey Circuit Court assessing "damages in the form of court costs, expenses of litigation and attorney's fees to be awarded to" appellees, Douglas and David Rice. These money damages were to compensate the Rices for the injury they suffered as a result of appellants' wrongful use of civil proceedings, and pursuant to Kentucky Rule of Civil Procedure ("CR") 11. We affirm.

We will not engage in a detailed recitation of this lengthy litigation, other than to say that it has been acrimonious and drawn out. The center of the dispute is the

possession of real estate. A 1991 quiet title action filed by Coyle alone was dismissed for failure to comply with discovery orders in 1994. Shortly thereafter, the present action was begun, again disputing the Rices' title. The Rices filed a counterclaim alleging wrongful use of civil proceedings.

Appellants did not file a reply to the counterclaim. The trial court, after lengthy attempts at discovery of appellants' claims, found that both Coyle and Kimble had utterly failed to show any validity whatsoever to their claims, and dismissed each of the claims with prejudice. In the same order, the trial court found that Coyle and Kimble had also "totally failed to demonstrate that they could have made reasonable inquiry or investigation or had any reasonable basis for commencing or continuing to maintain this action against Rice." This finding of a violation of CR 11, together with the default on the counterclaim, was the basis for the trial court's judgment against appellants. A non-jury trial to set damages was scheduled.

This order was made final under CR 54.02, and Coyle and Kimble filed an appeal, which was dismissed on January 25, 1999, when they failed to file a brief. On February 4, 1999, the Rices filed a motion styled "Motion for Allowance of Court Costs, Expenses of Litigation and Attorney's Fees." Appellants filed a response to the motion, and on March 4, 1999, the trial court entered an order allowing court costs, but denying all other damages. On March 11, 1999, the Rices filed a CR 59.05 motion to alter, amend, or vacate that order and to award damages in

accordance with the May 13, 1998, final order finding liability against appellants, but withholding the amount of damages.

For some reason, that motion lay dormant until the Rices renewed the motion on February 8, 2000. At that time the trial judge who had entered all the orders to that point had retired, and a new judge was on the bench. On February 28, 2000, the new judge entered the present order appealed from; that order recognized the finality of the order finding liability, and indicated that it had considered the record, including the affidavits of counsel and exhibits thereto, and the affidavits of the Rices' surveyor. The order indicated that the court found that the appropriate measure of damages for appellants' conduct was the entire amount of the fees and costs claimed. This appeal followed.

Appellants first argue that the CR 59.05 motion was not timely filed. This is simply not so; we understand that this misstatement might have occurred due to the record not being complete when appellants' brief was filed, and attribute no ill motive to the error.

Coyle and Kimble next argue that there was no basis for the trial court to reconsider the March 4, 1999, order. We disagree. The final order of May 13, 1998, reserved the issue of damages for appellants' wrongful use of legal process and CR 11 violation. This motion was merely a way to get a proper hearing on that issue.

Appellants argue that the trial court's finding of CR 11 violation is clearly erroneous. We find no error, clear or

otherwise, and disagree. The trial court had lived with this litigation for several years. It was familiar with the state of the record and the proof, or lack thereof, presented by each party. It knew how forthcoming each party had been with discovery and the production of requested and ordered documents. It was in the best place to make this judgment. We have examined the record and can find no error.

The same is true with regard to the amount of damages awarded by the trial court. Considering the size of the record, the time spent in defense of this groundless litigation, and the conduct of the parties, we find no error or abuse of discretion in the amount of damages awarded to the Rices.

The order of the Casey Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Matthew B. Troutman  
Louisville, Kentucky

BRIEF FOR APPELLEES:

Jerry L. Foster  
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