

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001531-MR

MURDLE RISNER

APPELLANT

v. APPEAL FROM WOLFE CIRCUIT COURT
HONORABLE JOHN D. CAUDILL, JUDGE
ACTION NO. 95-CI-00071

FAIRMONT HOMES, INC. AND
SHOWPLACE HOMES, INC.

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: Murdle Risner brings this appeal from a June 15, 1999, order of the Wolfe Circuit Court.

On June 1, 1995, Risner filed an action in the Wolfe Circuit Court against Fairmont Homes, Inc. (Fairmont) and Showplace Homes, Inc. (Showplace). Apparently, Risner purchased a mobile home from Showplace which was manufactured by Fairmont. In the complaint, Risner alleged that the mobile home was defective and that Fairmont and Showplace failed to remedy same. On June 15, 1999, the circuit court entered an order which sustained Fairmont's motion for summary judgment. The effect of

this order was to dispose of all pending claims against Fairmont. Risner's claims against Showplace remain before the circuit court. This appeal follows.

In the notice of appeal, Risner names as appellees both Fairmont and Showplace. As the summary judgment only affected the claims against Fairmont, we are unsure as to why Showplace was named as appellee. Again, Risner's claims against Showplace are still pending in the circuit court.

In any event, the order sustaining Fairmont's motion for summary judgment stated, in relevant part, as follows:

Because this Order granting Summary Judgment to Fairmont disposes of all claims asserted by Plaintiff against Fairmont, this is a final and appealable Order. (Emphasis added.)

Ky. R. Civ. P. (CR) 54.02(1) requires, in relevant part, that:

When more than one claim for relief is presented in an action, . . . **or when multiple parties are involved, the 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. The judgment shall recite such determination and shall recite that the judgment is final.** In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than . . . all of the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory. . . . (Emphasis added.)

Under the above rule, the dismissal of an action as to one of several defendants is not appealable unless the order or judgment specifically states that there is no just reason for delay and that such order or judgment is final and appealable. In the case

sub judice, the June 15, 1999, order dismissing the claims against Fairmont failed to recite the language "that there is no just reason for delay." Under CR 54.02(1), we are constrained to hold that the June 15, 1999, order is interlocutory as it failed to include the required recitation of finality. See Derby Road Building Company v. Louisville Gas & Electric Company, Ky., 299 S.W.2d 122 (1957), and Turner Construction Company v. Smith Brothers, Ky., 295 S.W.2d 569 (1956). We note that this Court may, *sua sponte*, raise the issue of want of jurisdiction if the order appealed from lacks finality. See Huff v. Wood-Mosaic Corporation, Ky., 454 S.W.2d 705 (1970).

For the foregoing reasons, the appeal is hereby ORDERED DISMISSED.

ALL CONCUR.

ENTERED: December 8, 2000

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

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