

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002730-MR

TIMOTHY THORSEN

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
CIVIL ACTION NO. 98-CI-00961

RONALD PENNINGTON

APPELLEE

OPINION AND ORDER

DISMISSING AND REMANDING

** ** * * **

BEFORE: BUCKINGHAM, HUDDLESTON and GUIDUGLI, Judges.

HUDDLESTON, Judge. Boone Circuit Court granted Ronald Pennington's motion for summary judgment and dismissed Timothy Thorsen's complaint seeking damages for personal injuries sustained when Thorsen was struck by an automobile allegedly owned by Pennington and driven by Leslie Lawson. Thorsen's complaint against Lawson remains pending in the circuit court.

On March 17, 1997, Thorsen went to the apartment of his step-daughter, Kristie Miller, where she was engaged in an argument with Ronald Pennington, with whom she had a romantic relationship, over property that he felt belonged to him. Because of the heated

nature of the confrontation, Thorsen called the police and told Pennington of their pending arrival. Thorsen alleges that Pennington forced his way into Miller's apartment and verbally threatened him. When the police arrived at the scene, Pennington left the area on foot leaving behind the automobile in which he had driven to the apartment complex parked near the apartment. The police attempted to capture Pennington but were unsuccessful and left the area.

A short time later, Leslie Lawson appeared and attempted to remove the vehicle. Thorsen asked her to give him the key to Miller's apartment that was on the key ring he believed belonged to Pennington but was in Lawson's possession. Lawson refused the request and left without the car. Approximately twenty minutes later, Lawson reappeared and again attempted to move the vehicle. While she was driving out of the parking lot, Miller jumped onto the rear of the vehicle and Thorsen tried to block its path at the front. While attempting to leave the scene, Lawson grazed Thorsen with the side of the vehicle knocking him down.¹ Lawson then stopped the vehicle and gave Miller a key to the apartment from the key ring. Lawson then left in the car. Thorsen call the police, who returned and took a report of the incident. Thorsen did not seek immediate medical attention but was treated a few days later for pain in his lower back and leg. An MRI indicated that Thorsen apparently had suffered an injury to his lower spine from the incident.

¹ Thorsen filed a criminal complaint against Lawson charging the misdemeanor offense of wanton endangerment in the second degree (Ky. Rev. Stat. 508.070).

On September 17, 1998, Thorsen filed a civil complaint against both Lawson and Pennington which, inter alia, included a count against Pennington for negligent entrustment. Thorsen alleged that Pennington had entrusted his vehicle to Lawson and that he "actually knew or by the exercise of reasonable care, should have known that [Lawson] was reckless in the operation of motor vehicles." On January 28, 1999, Thorsen was deposed by Pennington and admitted that he did not know the nature of the relationship between Lawson and Pennington and had no information that Pennington knew that Lawson had acted recklessly in operating vehicles in the past.

On August 5, 1999, Pennington filed a motion for summary judgment pursuant to Kentucky Rule of Civil Procedure (CR) 56 alleging that Thorsen had failed to present sufficient factual evidence to support his claim of negligent entrustment. Thorsen filed a response to the motion asserting that genuine issues of material fact existed sufficient to preclude summary judgment. Pennington filed a reply to the response. On August 26, 1999, the circuit court granted Pennington's motion and dismissed Thorsen's complaint against him. On September 7, 1999, Thorsen filed a CR 59.05 motion to alter, amend or vacate the judgment. After Pennington responded, the court summarily denied the CR 59.05 motion, and this appeal followed.

CR 54.02(1) provides that:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, 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 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, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The summary judgment granted by the circuit court recites that it is "a final and appealable judgment." It does not, however, recite, as required by CR 54.02(1), that "there is no just reason for delay." That recitation is a prerequisite to the invocation of this Court's appellate jurisdiction.²

Accordingly, this appeal from an interlocutory summary judgment is dismissed and this case is remanded to Boone Circuit Court for further proceedings

ALL CONCUR.

² See Signer v. Arnold, Ky., 436 S.W.2d 493, 494 (1969); Fruchtenicht v. United States Fidelity & Guaranty Co., Ky., 451 S.W.2d 835, 837 (1969); Bellarmino College v. Hornung, Ky. App., 662 S.W.2d 847, 848 (1984) "when a judgment or order is made final as to less than all parties or claims, the judgment or order must recite that it is final and appealable and that there is no just cause for delay"); and see generally Kurt A. Philipps, Jr., 7 Kentucky Practice - Rules of Civil Procedure Annotated, Rule 54.02, Cmt. 7, p. 271 (1995).

Entered: January 19, 2001

/s/ Joseph R. Huddleston
Judge, Court of Appeals

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