

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002775-MR

KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY;
KENTUCKY FARM BUREAU INSURANCE AGENCY, INC.;
KENNETH PATTON, INDIVIDUALLY; AND
KENNETH PATTON, AGENT, SERVANT, AND EMPLOYEE APPELLANTS

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 96-CI-00187

DONALD COLLINS, INDIVIDUALLY,
KIM COLLINS, INDIVIDUALLY,
AND AS CO-ADMINISTRATORS
OF THE ESTATE OF DANIEL METCALF APPELLEES

OPINION AND ORDER
DISMISSING APPEAL
** **

BEFORE: EMBERTON, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Kentucky Farm Bureau Mutual Insurance Company (Farm Bureau) brings this appeal from a November 3, 2000, partial summary judgment entered by the Letcher Circuit Court. Ky. R. Civ. P. (CR) 54.02. We dismiss this appeal as being interlocutory.

This is a case involving an underinsured motorist (UIM) insurance claim.

On May 29, 1994, Eulah Maggard, a widow, died. Maggard, at her death, owned a vehicle insured by Farm Bureau. The circuit court found that also resident in Maggard's household were her daughter, Kim Collins, her daughter's husband, Donald Collins, her granddaughter, Shana Collins, and her grandson, Daniel Metcalf.

On September 26, 1994, Daniel was killed while a passenger in an automobile operated by one, Brian Adkins. Daniel's mother, Kim Collins, and stepfather, Donald Collins were appointed co-administrators of his estate. As administrators, the Collinses filed a wrongful death action against Adkins and others seeking recovery of damages. They also made claim for UIM coverage against Farm Bureau under the terms of three liability insurance policies which covered vehicles owned and maintained by Donald and Kim, individually. The claims against Adkins and others were settled. Farm Bureau paid to Daniel's estate \$100,000.00 representing all UIM coverage available under the policies owned by Donald and Kim. Later, the Collinses also made a UIM claim under Maggard's automobile insurance policy. That claim was denied by Farm Bureau.

On June 28, 1996, the Collinses filed a complaint against Farm Bureau, Farm Bureau Insurance Agency, Inc., and Kenneth Patton, an insurance adjuster for Farm Bureau, as a result of the denial of coverage. After some pre-trial discovery, Farm Bureau moved for summary judgment, and the Collinses moved for summary judgment against Farm Bureau on the issue of coverage. The circuit court denied Farm Bureau's

summary judgment motion and granted a partial summary judgment in favor of the Collinses on June 2, 1998. This partial summary judgment was interlocutory as the claim against Kenneth Patton, the adjuster, remained.¹ On November 3, 2000, the circuit court entered, *sua sponte*, a second order which attempted to amend the interlocutory judgment to the extent of making it final and appealable under CR 54.02. That order reads, in pertinent part;

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

That the Findings of Fact, Conclusions of Law and Partial Summary Judgment entered by the Court on June 2, 1998, is hereby amended to reflect that it is a final and appealable order. . . .

When multiple parties are involved in an action, the court may grant final judgment as to less than all of the parties; however CR 54.02 requires a determination that there is "no just cause for delay," and that the judgment is final and appealable. The judgment must include both recitations in order to be final under CR 54.02. In the absence of such recitals, any order which adjudicates less than all the rights and liabilities of all parties is interlocutory. CR 54.02; Derby Road Building Co. v. Louisville Gas & Elec. Co., Ky., 299 S.W.2d 122 (1957).

In the case *sub judice*, the order made a determination only as to one party in this action. The amended order did not include a recitation that there was "no just cause for delay." As such, we view the November 3, 2000 partial summary judgment as not final and appealable; therefore this Court is without

¹The Collinses, as co-administrators of the estate of Daniel Metcalf, allege Patton misrepresented available insurance coverage.

jurisdiction. CR 54.01, CR 54.02²; American Fidelity & Casualty Co. v. Patterson, Ky., 237 S.W.2d 57 (1951).

For the foregoing reasons, this appeal is hereby
DISMISSED.

ALL CONCUR.

ENTERED: August 24, 2001

John D. Miller
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANTS:

Michael J. Schmitt
Paintsville, Kentucky

BRIEF FOR APPELLEES:

Donald F. Dotson
Whitesburg, Kentucky

²Hook v Hook, Ky., 563 S.W.2d 716 (1978) contains a detailed explanation of CR 54.02.