

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001601-MR

GEORGE R. HALL, III, Individually and as
Administrator of the Estate of Paul L. Hall;
JANE ADAMS VENTERS, Individually and as Counsel
for the Estate of Paul L. Hall, deceased APPELLANTS

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WILLIAM CAIN, JUDGE
CIVIL ACTION NO. 91-CI-00865

LAKE CUMBERLAND REGIONAL MENTAL HEALTH/MENTAL
RETARDATION BOARD, INC., doing business as
THE ADANTA GROUP HUMAN DEVELOPMENT SERVICES;
BETTY DOWELL; PHYLLIS HARRIS; JAMES R. WOOD,
Counsel for Original Plaintiffs; WILLIAM N. DOUGLASS and
ODESSA H. DOUGLASS, Guardians and Next of Friends
for Paul L. Hall, a developmentally disabled person APPELLEES

AND

NO. 2000-CA-001710-MR

JAMES R. WOOD, Individually and as Counsel CROSS-APPELLANTS
for Original Plaintiffs; WILLIAM N. DOUGLASS and
ODESSA H. DOUGLASS, Guardians and Next of Friends
for Paul L. Hall, a developmentally disabled person

v. CROSS-APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WILLIAM CAIN, JUDGE
CIVIL ACTION NO. 91-CI-00865
JANE ADAMS VENTERS, Individually and as Counsel
for the Estate of Paul L. Hall; GEORGE R. HALL, III,
Individually and as Administrator of the Estate of
Paul L. Hall, deceased CROSS-APPELLEES

OPINION AND ORDER

DISMISSING

** ** * * **

BEFORE: DYCHE, HUDDLESTON and MCANULTY, Judges.

HUDDLESTON, Judge: George R. Hall, III, administrator of the estate of Paul L. Hall, appeals from an order that directed Jane Adams Venters, George's attorney, to disburse an attorney's fee and expenses to James R. Wood for services rendered on behalf of Paul L. Hall. Venters joins in the appeal from this order because the court did not award her a portion of the fee paid to Wood in connection with services she claims to have provided for Paul's estate. Wood cross-appeals from the same order and seeks disbursement of funds allegedly owed him from the estate of Paul L. Hall.

Wood filed a tort action for Paul¹ in 1991 in connection with an injury incurred in November 1990. A settlement was reached in February 1997 with the tortfeasors. However, because medical bills were outstanding,² Wood's contingent fee was not disbursed at that time. In June 1997, Paul died. George was appointed administrator of Paul's estate and was subsequently substituted as the party plaintiff in the tort action.

Medicare eventually submitted a demand in the amount of \$178,180.61 for reimbursement of medical expenses paid on behalf of Paul. By an order entered April 25, 2000, George was directed to

¹ Because Paul was developmentally disabled, the action was filed by William W. Douglass and Odessa H. Douglas, as guardians and next friends of Paul.

² Claims had been submitted to both Medicare and Medicaid.

pay Medicare and to inquire as to the status of a claim made by Medicaid. Due to the settlement of the Medicare claims, the court ordered George to disburse an attorney's fee of \$94,075.88 and expense reimbursement totaling \$4,883.77 to Wood.³ The court recognized that this was only a partial payment of Wood's contingent fee and ordered that the action remain on the docket pending review of the status of the Medicaid claim and an outstanding issue concerning Wood's contingent fee.

George filed a motion to alter, amend or vacate⁴ the order of April 25, 2000. This motion was not designated as a motion under Kentucky Rule of Civil Procedure (CR) 59.05; however, we can reasonably assume that this was the intended mechanism for making this motion. We note in passing that this motion was premature since the April 25, 2000, order was interlocutory,⁵ and CR 59.05 permits a motion to alter, amend or vacate only final judgments or orders.

On June 2, 2000, an order was entered denying George's motion to alter, amend or vacate the April 25, 2000 order. The order of June 2, 2000, also stated that the April 20, 2000, order should be made final and that there being no just cause for delay, the order was final and appealable. This appeal and cross-appeal followed.

³ The total settlement for Paul's tort claim was \$400,000.00 and Wood's contingent fee was 1/3 of the settlement amount.

⁴ See Ky. R. Civ. P. (CR) 59.05.

⁵ See CR 54.01.

While Wood's claim for an attorney's fee and expenses is but a single claim, the court's decision to disburse only part of the fee due renders Wood's claim for fees a multiple claim. CR 54.02 governs multiple claims and requires the court to determine, and recite, that judgment is appealable and that there is no just cause for delay.⁶ "Where an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable."⁷

Even if Wood's claim is deemed to be only a single claim, it is only final and appealable if all the rights of Wood have been adjudicated.⁸ The order of April 25, 2000, does not adjudicate all Wood's rights.

Venters has inferentially conceded that this appeal is not ripe for adjudication. On November 18, 1999, Venters told the circuit court that:

No disposition of the settlement proceeds can be made until the claims of Medicare and Medicaid are satisfied. It is anticipated at that time there will be competing claims for attorney's fees to be adjudicated by the Court with any remaining funds to be paid to the Estate of Paul L. Hall. This matter is not ripe for adjudication inasmuch as the claims of Medicare and Medicaid have not been satisfied.

⁶ See CR 54.02(1).

⁷ Hook v. Hook, Ky., 563 S.W.2d 716, 717 (1978) (citations omitted).

⁸ See Signer v. Arnold, Ky., 436 S.W.2d 493 (1969); CR 54.01.

We agree with Venters's analysis. The Medicaid obligation has not yet been satisfied; the amount of the Medicare obligation is still uncertain.

Whether Wood's claim for attorney's fees and expenses is a single or multiple claim, we must dismiss his appeal as interlocutory and thus not appealable.⁹ Because the cross-appeal is from the same interlocutory order it is not appealable. When the estate's obligations to Medicare and Medicaid are settled, the court can adjudicate the claims of Wood and Venters.

The appeal of George R. Hall, III and Jane Adams Venters from the order entered April 25, 2000, is dismissed as having been taken from a nonfinal order. The cross-appeal of James R. Wood from the same order is also dismissed as having been taken from a nonfinal order.

ALL CONCUR.

ENTERED: August 31, 2001

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

BRIEF FOR APPELLANTS/
CROSS-APPELLEES:

Jane Adam Venters
ADAMS and VENTERS
Somerset, Kentucky

BRIEF FOR APPELLEES/
CROSS-APPELLANTS:

James R. Wood
Owensboro, Kentucky

⁹ Hook, supra, n. 7, at 717 ("Although the question is not raised by the parties or referred to in the briefs, the appellate court should determine whether it is authorized to review the order appealed from"). See Cornett v. Wilder, Ky. 307 S.W.2d 752 (1957).