

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001422-MR

ARTHUR TAPP

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHARLES W. BOTELEER, JR., JUDGE
ACTION NO. 96-CI-00455

JAMES CHAPPELL AND
WANDA CHAPPELL

APPELLEES

OPINION & ORDER
DISMISSING
** **

BEFORE: JOHNSON, KNOFF, AND MILLER, JUDGES.

KNOFF, JUDGE: Arthur Tapp appeals from an order of the Hopkins Circuit Court, entered May 9, 2000, denying his motion for additional findings of fact. Tapp sought the additional findings in response to a judgment that settled a boundary dispute adversely to him. That judgment was originally entered February 15, 2000. The court ruled that James Chappell and his wife, Wanda, the appellees, had established valid record title to a small, triangular tract of land that lies between Tapp's and the Chappells' homes. Pursuant to the Chappells' timely motion to supplement the judgment, the trial court, on March 21, 2000,

appended to the original judgment an order enjoining Tapp to remove from the property an encroaching storage shed. Tapp filed his motion for additional findings on March 31, 2000. In it, he requested the court to address evidence pertaining, he claims, to the Chappells' laches and to his adverse possession of the disputed property. Tapp contends that the court erred by failing to address these issues and, ultimately, that it erred by failing to award the parcel of land to him on one or the other of these grounds. We have reviewed the record and can say that the merits of Tapp's contentions are weak. We doubt, furthermore, that Tapp preserved the issues upon which he seeks review. Regardless of those points, however, we are convinced that Tapp's appeal is untimely. We are obliged, accordingly, to dismiss the appeal.

A motion for additional findings, which is the relief Tapp sought, is to be made "not later than 10 days after entry of judgment."¹ Notice of appeal, of course, is to be filed "within 30 days after the date of notation of service of the judgment."² Counsel must take care not to conflate these rules. A timely post-trial motion requesting the trial court to reconsider its judgment--a motion to alter or amend, for example, under CR 59 or a motion such as Tapp's for additional findings under CR 52--suspends for all parties the deadline for filing an appeal,³ but it does not suspend for any party the deadline for filing other

¹CR 52.02.

²CR 73.02.

³Johnson v. Smith, Ky., 885 S.W.2d 944 (1994).

post-trial motions.⁴ The clerk entered the judgment in this case on February 15, 2000. Tapp's motion for additional findings, filed more than thirty days later, was clearly untimely, and it was not made timely by the Chappells' motion requesting that the judgment be supplemented. Although the Chappells' motion suspended the deadline for filing an appeal, it did not suspend the ten-day deadline governing requests for findings.

Finally, because Tapp's motion was untimely, it did not have the effect of further suspending the deadline for an appeal.⁵ That deadline came thirty days after entry of notice of the supplemented judgment, on or about April 20, 2000. Tapp's notice of appeal was not filed until June 7, 2000, well after this deadline. Under CR 73.02, this court has no authority to entertain an untimely appeal.⁶ Tapp's appeal, therefore, we are obliged to dismiss. It is so ordered.

ALL CONCUR.

Entered: October 12, 2001

/s/ William L. Knopf
Judge, Court of Appeals

⁴Kentucky Farm Bureau Insurance Company v. Gearhart, Ky. App. 853 S.W.2d 907 (1993) (distinguishing State Personnel Board v. Heck, Ky. App. 725 S.W.2d 13 (1986)). A party aggrieved by the granting of a post-trial motion may move subsequently for reconsideration of that ruling, but not, after the original 10-day limit, for additional reconsideration of the original judgment. Cf. McNabola v. Chicago Transit Authority, 10 F.3d 501 (7th Cir. 1993) (discussing the similar federal rules). Tapp sought reconsideration of the original judgment, not of its modification.

⁵Cain v. City of Elsmere, Ky., 440 S.W.2d 259 (1969); Rodgers v. Berry, Ky., 346 S.W.2d 43 (1961).

⁶City of Devondale v. Stallings, Ky., 795 S.W.2d 954 (1990).

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