

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002444-MR

VICKI COOTS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE WILLIAM CAIN, JUDGE  
ACTION NO. 00-CI-00352

THE ALTON BLAKLEY COMPANY, INC.  
D/B/A ALTON BLAKLEY MAZDA

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND HUDDLESTON, JUDGES.

EMBERTON, CHIEF JUDGE: On April 12, 1999, Vicki Coots allegedly fell and sustained injuries in the parking lot of the Alton Blakley Mazda dealership. On April 12, 2000, the 365<sup>th</sup> day following her alleged fall, Coots' attorney faxed a complaint to the Pulaski Circuit Court requesting that summons be issued upon Alton E. Blakley, Jr., individually and as agent for the Alton Blakley Company d/b/a/ Alton Blakley Mazda. No filing fee was paid until April 13, 2000, when the complaint and fee were received by the circuit clerk via U.S. mail. Coots' counsel contends that he faxed the complaint with assurances from Sharon

Dalton, a deputy clerk in the Pulaski County office, that the faxed complaint followed by a mailed complaint and the filing fee would be sufficient to commence the action. Dalton did not recall a specific conversation with counsel on April 12, 2000. The trial court found that the faxed copy of the complaint was insufficient for purposes of commencing the action within the one-year statute of limitations. We agree with the trial court and affirm the dismissal of the case.<sup>1</sup>

There is no debate that KRS<sup>2</sup> 413.140, requiring personal injury actions to be filed within one year after the action accrued, is applicable or that the last day to file the action was April 12, 2000. The question is whether a complaint and a request for summons to issue faxed to the clerk on the final day of the statutory filing period, with the filing fee unpaid until the following day, is sufficient compliance with CR<sup>3</sup> 3.

CR 3 states that "[a] civil action is commenced by the filing of a complaint with the court and the issuance of a summons or warning order thereon in good faith." CR 3.02 provides that "filing fees for a civil case in Circuit Court (including original actions of administrative agencies, special districts or boards) shall be paid to the circuit clerk at the time the case is filed. . . ." When read together, the civil

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<sup>1</sup> By order dated July 16, 2001, this appeal was placed in abeyance pending rehabilitation of Reliance Insurance Company, and returned to the active docket by order dated May 3, 2002.

<sup>2</sup> Kentucky Revised Statutes.

<sup>3</sup> Kentucky Rules of Civil Procedure.

rules require that a complaint along with the applicable filing fee be presented to the clerk and that summons be issued. A faxed complaint alone is the same as if nothing were done and is insufficient to commence the action.<sup>4</sup>

Coots' counsel attempts to elude the requirement of our civil rules by advancing an argument of detrimental reliance, specifically, that he relied on the assertions of Dalton that the faxed complaint would be sufficient to commence the action. It is beyond argument that an attorney is responsible for his client's case. Reliance upon the advice or legal interpretations of lay people is a dangerous path for counsel to follow. More important, our civil rules concerning the commencement of actions are clear and unambiguous. In Casey v. Newport Rolling Mill,<sup>5</sup> the plaintiff filed an amended complaint before the expiration of the statute of limitations but summons did not issue until after the statutory time. The court rejected counsel's argument that his request to the clerk to issue the summons was sufficient.

If the broad rule contended for by plaintiff were adopted, it would lead to endless confusion. The commencement of an action would be determined by parole evidence instead of the actual issuance of the summons. . . , thus making important property rights depend on an issue of veracity between the clerk and the litigant or his attorney. In our opinion, such was not the purpose of the law-making power. The statute and the code make it clear that an action is

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<sup>4</sup> See Hawkins v. Colbert, 292 Ky. 84, 165 S.W.2d 984 (1942) (where the court held that the filing of a petition contesting the results of an election within the statutory time without the required filing fee was not timely filed).

<sup>5</sup> 156 Ky. 623, 161 S.W. 528 (1913).

commenced by the issuance of the summons, and not be a request to have the summons issued.<sup>6</sup>

Our civil rules are unequivocal that the filing fee must be paid when the complaint is filed and summons issued to commence an action. Counsel cannot avoid the requirements by introduction of evidence that he relied upon some authority outside those rules.

The judgment of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Daniel W. James  
Lexington, Kentucky

BRIEF FOR APPELLEE:

R. David Clark  
CLARK, WARD & CAVE  
Lexington, Kentucky

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<sup>6</sup> Id. at 530.