

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000653-MR

RODERICK L. KNIGHT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 00-CI-005705

UNIVERSITY OF LOUISVILLE HOSPITAL,
INC. and STUART URBACH, M.D.

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE: In September 2000, proceeding pro se, Roderick Knight filed suit against the University of Louisville Hospital, Inc. and several physicians including Stuart Urbach, M.D. He alleged that the defendants had negligently failed to diagnose his back injury. In January 2001, after Knight had failed to respond to discovery requests and to a motion for summary judgment, the Jefferson Circuit Court entered judgment dismissing the suit.

Knight did not appeal from the dismissal, but in March 2001 he moved to have the judgment reopened pursuant to CR

60.02. Serious health problems, he claimed, had incapacitated him during November and December 2000, and therefore the court should excuse his failure to respond to the discovery requests and to the motion for summary judgment. By order entered July 6, 2001, the court denied the motion. It noted that the only evidence substantiating Knight's assertions was a record indicating that he had been hospitalized for three days in early December. The defendants, on the other hand, produced pleadings Knight had filed during those months in other law suits plus his December 13, 2000, letter seeking settlement in this case. Based on this evidence, the trial court rejected Knight's claim of incapacity or excusable neglect.

Knight did not appeal from the denial of his motion. Instead, in December 2001, he filed a new motion under CR 60.02 alleging again that mental disorders and hospitalizations had prevented him from responding to the summary judgment motion. At a hearing on this CR 60.02 motion in February 2002, Knight failed to present any additional evidence of incapacity. Accordingly, by order entered March 18, 2002, the trial court again rejected Knight's request to reopen the summary judgment.

It is from this order that Knight has appealed. He contends that the trial court should have excused his temporary neglect of the case. We may reverse the trial court's order

only if we are persuaded that the court abused its discretion.¹ As noted, however, there was evidence that, in November and December of 2000, at the time Knight claims to have been incapable of meeting his responsibilities in this case, he was capable of pursuing other cases and of making settlement demands upon these defendants. This is substantial evidence in support of the trial court's finding that Knight's mental problems were not as debilitating as he claims. We are persuaded, therefore, that the trial court did not abuse its discretion when it concluded that Knight had failed to provide an excuse for his neglect of this law suit. Accordingly, we affirm the March 18, 2002, order of the Jefferson Circuit Court.

ALL CONCUR.

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¹ Barnett v. Commonwealth, Ky., 979 S.W.2d 98 (1996).