

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001119-MR

THE ESTATE OF LENA CARTER PINCHUM,
BY AND THROUGH CHRISTINE GEE, EXECUTRIX

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 00-CI-00617

PAULINE BROWN; CLAUDIA BUSH;
UNKNOWN HEIRS OF CLAUDIA BUSH;
ROOSEVELT DAVIES; UNKNOWN HEIRS
OF ROOSEVELT DAVIES; ROBERT
DOUGLAS AVERITT; EUGENE AVERETT;
ALL OTHER UNKNOWN HEIRS OF TOM
CARTER; DAVID BRAME; ROBERT L.
CUMBEE; WILLIAM T. WILLIAMS, INC.;
HERNDON PARTNERS, LLC; STEVE B.
BOREN; AND LISA BOREN

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; BAKER AND JOHNSON, JUDGES.

BAKER, JUDGE: The Estate of Lena Carter Pinchum by and through
Christine Gee, Executrix, brings this appeal from an April 30,

2002, summary judgment of the Christian Circuit Court. We dismiss as interlocutory.

In its April 30, 2002, summary judgment, the circuit court specifically held:

The exceptions to the Commissioner's report are overruled. The plaintiffs' motion for summary judgment is sustained for the reasons stated by the court at the conclusion of the hearing. All other motions for summary judgment are denied. The true owners of this property are the heirs of John Carter, in proportions and shares as yet undetermined. To the extent that this order disposes of the principal issue of the case, it is final and appealable. Other matters await further proof and the court intends to retain jurisdiction over these issues even if an appeal is filed. (Emphasis added).

Where a judgment adjudicates one or more claims but less than all the claims in an action, the judgment is interlocutory and may not be appealed. Ky. R. Civ. P. 54.02; see Peters v. Board of Education, Ky., 378 S.W.2d 638 (1964). Here, the summary judgment only resolved the issue of ownership, specifically reserving the additional issues of proportions and shares for further adjudication; hence, the summary judgment is clearly interlocutory, as the circuit court specifically intended to retain jurisdiction over all unresolved issues.

The circuit court, however, may transform a judgment into a final one by including the recitals that there is no just cause for delay and this is a final order. See Derby Road

Building Company v. Louisville Gas & Electric Company, Ky., 299 S.W.2d 122 (1957). It is well-established that both recitations must be included in the judgment in order that it be final and, thus, appealable. See Vance v. King, Ky., 322 S.W.2d 485 (1959).

In the case at hand, the circuit court only included the recitation that the judgment was final but failed to include the recitation that there was no just cause for delay. In the absence of such recitation, the April 30, 2002, summary judgment remained interlocutory. Id.

Upon the Court's own motion, it is hereby ORDERED that the appeal is DISMISSED as being interlocutory.

ALL CONCUR.

ENTERED: September 5, 2003

/s/ Matthew J. Baker
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT - ESTATE
OF LENA CARTER PINCHUM:

John J. Chewning
CHEWNING & CHEWNING
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BRIEF FOR APPELLEES - PAULINE
BROWN AND ROBERT D. AVERETT:

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