RENDERED: NOVEMBER 26, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001785-MR

KENTUCKY SCHOOL BOARDS INSURANCE TRUST APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 01-CI-00345

LINDA REDMOND APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BAKER, COMBS, AND SCHRODER, JUDGES.

BAKER, JUDGE: Kentucky School Boards Insurance Trust brings this appeal from a July 20, 2002, Order of the Bell Circuit Court. We affirm.

Appellee was involved in an automobile accident while acting in the course and scope of her employment with the Bell County Board of Education ("the Board of Education"). The Board of Education's insurance carrier, appellant, paid workers' compensation benefits to appellee in the amount of $21,567.82.

Appellee subsequently filed an action in the Bell Circuit Court against the tortfeasor. Appellant intervened in the action by asserting its subrogation rights under Kentucky Revised Statute (KRS) 342.700. Prior to jury trial, appellee settled her claim against the tortfeasor for $85,000.00. Appellee thereupon filed a motion for summary judgment seeking to dismiss appellant's intervening complaint. The circuit court granted the motion and entered an order on July 24, 2002, dismissing the intervening complaint. Therein, the circuit court concluded:

> The plaintiff, Linda Redmond, has settled her claim against the . . . , [tortfeasor] Henry Stigall, and her total attorney fees and costs [$36,000] incurred in prosecuting this claim exceeded the subrogation claim [$21,567.82] of the intervening plaintiff, Kentucky School Boards Insurance Trust. Pursuant to AIK Selective Self Insurance Fund v. Bush, Ky., 74 S.W.3d 251 (2002), the intervening plaintiff is entitled to recover nothing on its Intervening Complaint.

Order at 1. This appeal follows.

Appellant contends that the circuit court erred by dismissing its intervening complaint. Specifically, appellant claims that (1) appellee "sought summary judgment because she was preparing to execute a release in which she agreed to indemnify the tortfeasor from claims of KSBIT" and (2) appellant "continues with a right of subrogation against the tortfeasor

regardless of [appellee's] settlement." Brief for Appellant at iii.

Both of the above claims revolve around the purported settlement agreement between appellee and the tortfeasor. We, however, are unable to locate a copy of the settlement agreement, and appellant has failed to direct us to the agreement's location in the record. We also observe that appellant's initial brief was stricken by a March 19, 2003, order of this Court because the brief included the settlement agreement in the appendix and the agreement was not included in the appellate record.

It is well-established that the burden is on appellant to insure that this Court is supplied with sufficient record to decide the appeal. See Fanelli v. Commonwealth, Ky., 423 S.W.2d 255 (1968), reversed on other grounds, 455 S.W.2d 126 (1969). To resolve the above claims, it is necessary for this Court to review the terms of the settlement agreement. As such, we summarily reject the above contentions of error.

Appellant further argues that AIK Selective Self Insurance Fund v. Bush, Ky., 74 S.W.3d 251 (2002) is distinguishable from the case at hand. Specifically, appellant argues that there was no settlement agreement with an indemnity provision in Bush and that in Bush, the workers' compensation carrier was attempting to subrogate against a final judgment.

We view these distinctions as illusory, and we view Bush as clearly dispositive. We thus reject this contention.

Appellant finally urges this Court to "clarify" Bush so as "to direct that only a proportionate share of attorney fees and expenses be used to offset the compensation carrier's lien." Brief for Appellant at 5. Under the Rules of Supreme Court 1.030(8)(a), the Court of Appeals is bound to follow the applicable precedents established by the Supreme Court. In Bush, the Supreme Court specifically stated that KRS 342.700(1) "requires that the employee's entire legal expense, not just a pro rata share, be deducted from the employer's or insurer's portion of any recovery." Id. at 257. As we are bound by Supreme Court precedent, we decline to so "clarify" Bush.

For the foregoing reasons, the Order of the Bell Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEE:
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