

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000943-MR

OLIE WATKINS AND  
WILMA WATKINS, HIS WIFE;  
AND WIDE CREEK COAL COMPANY, INC.

APPELLANTS

v. APPEAL FROM BREATHITT CIRCUIT COURT  
HONORABLE LARRY MILLER, JUDGE  
ACTION NO. 81-CI-00042

PAUL WATKINS; AND  
CLINT CHILDRESS

APPELLEES

OPINION  
REVERSING

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BEFORE: JOHNSON, SCHRODER AND TACKETT, JUDGES.

JOHNSON, JUDGE: Olie Watkins and his wife, Wilma Watkins, and Wide Creek Coal Company, Inc. have appealed from two orders entered by the Breathitt Circuit Court on January 15, 2002, and April 5, 2002, which ruled pursuant to KRS<sup>1</sup> 413.090(1) that the 15-year statute of limitations for bringing an action to enforce a judgment had expired with respect to the judgment against Paul

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<sup>1</sup> Kentucky Revised Statutes.

Watkins which had been entered on January 5, 1984. We conclude that the motion for a new trial filed on January 6, 1984, by Clint Childress, who was found to be jointly and severally liable with Paul Watkins, caused the judgment entered on January 5, 1984, to become interlocutory and unenforceable as to both Watkins and Childress, until November 24, 1999, when the trial court ruled upon Childress's motion for a new trial. Hence, we reverse.

This case has a long and convoluted history. On February 24, 1981, the appellants filed a complaint against Watkins and Childress in the Breathitt Circuit Court, in which they alleged that Watkins had "willfully and wrongfully" obtained a restraining order prohibiting them from entering and removing coal from a certain parcel of land.<sup>2</sup> The case proceeded to trial and on March 3, 1983, the jury returned a verdict against Paul Watkins and Childress and awarded the appellants damages in the amount of \$120,000.00. On January 5, 1984, the trial court entered a judgment against Paul Watkins and Childress in the amount \$120,000.00.<sup>3</sup> On January 6, 1984, Childress filed a motion for a new trial. Paul Watkins did not file any post-judgment motions, nor did he file an appeal. For

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<sup>2</sup> Childress acted as a surety for Paul Watkins and signed a bond for the restraining order.

<sup>3</sup> The trial court ruled that Paul Watkins and Childress were jointly and severally liable to the appellants.

whatever reason, the trial court failed to rule on Childress's motion for a new trial until November 24, 1999.

On June 26, 1999, the appellants filed a motion requesting a ruling on Childress's motion for a new trial, which had been pending since January 6, 1984. On November 24, 1999, the trial court entered an order ruling that due to inactivity by Childress, his motion for a new trial had been waived. The trial court's order stated, in relevant part, as follows:

Based on the requirements of the Rules of Civil Procedure the Defendants were timely [in] filing the motion for a new trial, thereby converting the final judgment into an interlocutory judgment. However, since the motion has not been ruled on for the past fifteen years, the Court of Appeals of Kentucky has held in cases such as this, the motion is to be considered waived.<sup>4</sup>

Therefore, the Order granting judgment to the Plaintiffs on January 5, 1984, is upheld as final and appealable.

This is a final judgment without just cause for delay.

No appeal was filed from this order.

Thereafter, the appellants attempted to enforce the judgment against Watkins. Consequently, on November 3, 2000, Watkins filed a motion to quash execution of the judgment. In sum, Watkins contended that pursuant to KRS 413.090(1) the 15-year statute of limitations for bringing an action to enforce a

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<sup>4</sup> As previously discussed, Paul Watkins did not file any post-judgment motions, nor did he join in Childress's motion for a new trial. Thus, the trial court's reference to "the Defendants" is a misstatement.

judgment had expired. Watkins claimed that the motion for a new trial filed by Childress had no effect on the finality of the judgment entered against him on January 5, 1984.

On January 15, 2002, the trial court entered an order granting Paul Watkins's motion to quash execution of the judgment. The order stated, in relevant part, as follows:

When there are multiple parties in a lawsuit, a judgment may be binding against one and not all of the defendants. Smith v. Overstreet[']s Adm['r,] 258 Ky. 781, 81 S.W.2d 571 (1935). In the instant case, the Motion for New Trial filed by Defendant, Childress, had no effect on the finality of the judgment as against Defendant, Paul Watkins. Defendant Watkins filed no post judgment motions nor did he file an appeal. Therefore, pursuant to KRS 426.030, the Plaintiffs were free to execute on their judgment against Defendant Watkins at any time after the expiration of 10 days from January 5, 1984.

A judgment expires and becomes unenforceable 15 years from the date of entry[.] KRS 413.090. An execution may be issued upon a judgment at any time until the collection of it is barred by the Statute of Limitation[s][.] KRS 426.035.

The Statute of [L]imitation[s] on judgments begins to run from the date of entry of the judgment. In the instant case, the date of the judgment was January 5, 1984. Thus, the judgment against Defendant Watkins expired on January 5, 1999. Therefore, the 15 year [S]tatute of [L]imitations precludes the Plaintiff from executing on the judgment, because it is time barred by the [S]tatute of [L]imitations.

On January 26, 2002, the appellants filed a motion pursuant to CR<sup>5</sup> 59.05 requesting the trial court to reconsider, alter, amend, or vacate the order entered on January 15, 2002. On April 5, 2002, the trial court entered an order denying the appellant's CR 59.05 motion.<sup>6</sup> This appeal followed.

The appellants contend that the motion for a new trial filed by Childress on January 6, 1984, suspended the finality of the January 5, 1984, judgment as to both Paul Watkins and Childress until the motion was disposed of by the order entered on November 24, 1999.<sup>7</sup> We agree.

It is well established that a timely-filed motion for a new trial renders an otherwise final judgment interlocutory until it is ruled upon.<sup>8</sup> A writ of execution cannot be issued upon a judgment which is interlocutory in nature.<sup>9</sup> The trial court's conclusion that the motion for a new trial filed by

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<sup>5</sup> Kentucky Rules of Civil Procedure.

<sup>6</sup> Although the trial court denied the appellant's CR 59.05 motion, it nevertheless amended its November 24, 1999, order to reflect that "the defendant, Clint Childress and not the defendant, Paul Watkins, timely filed his motion for a new trial, thereby converting the January 5, 1984 Judgment into an interlocutory judgment as to the defendant, Clint Childress[.]"

<sup>7</sup> Paul Watkins did not file an appellate brief.

<sup>8</sup> See Personnel Board v. Heck, Ky.App., 725 S.W.2d 13, 18 (1986) ("[a] motion pursuant to CR 59 . . . converts a final judgment to an interlocutory judgment" [citation omitted]). See also Kurtsinger v. Board of Trustees of Kentucky Retirement Systems, Ky., 90 S.W.3d 454, 458 (2002) ("[t]he timely filing of a CR 59.05 motion postpones finality, and a ruling on the CR 59.05 motion is necessary to achieve finality"); and Cornett v. Wilder, Ky., 307 S.W.2d 752, 753-54 (1957).

<sup>9</sup> See City of Louisville v. Verst, 308 Ky. 46, 213 S.W.2d 517, 521 (1948). See also 30 Am.Jur.2d Executions and Enforcement of Judgments § 53 (1994).

Childress had no effect on the finality of the January 5, 1984, judgment as it applied to Paul Watkins was erroneous. CR 54.02 provides, in pertinent part, as follows:

(1) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties [emphasis added].

(2) When the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and judgments determining claims which are not specifically disposed of in such final judgment.

As the Supreme Court of Kentucky stated in Hale v. Deaton:<sup>10</sup>

For the purpose of making an otherwise interlocutory order final and appealable, the trial court is required to determine 'that there is no just reason for delay,' and the judgment must recite this

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<sup>10</sup> Ky., 528 S.W.2d 719, 722 (1975).

determination and also recite that the judgment is final CR 54.02(1). The omission of one of these requirements is fatal [emphasis added].<sup>11</sup>

In the case sub judice, the judgment entered on January 5, 1984, did not contain either of the recitals required by the rule.<sup>12</sup>

Thus, when Childress filed a motion for a new trial on January 6, 1984, it caused the January 5, 1984, judgment to become interlocutory. During the time period of over 15 years that the trial court failed to rule on this pending CR 59.01 motion, the January 5, 1984, judgment continued to be interlocutory. Only when the trial court ruled on the motion for a new trial on November 24, 1999, did the January 5, 1984, judgment become final.<sup>13</sup> Accordingly, the 15-year statute of limitations for enforcing the judgment did not begin to run until the judgment became final on November 24, 1999.

Based on the foregoing reasons, the orders entered by the Breathitt Circuit Court on January 15, 2002, and April 5, 2002, are reversed.

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<sup>11</sup> The trial court's reliance on Smith, supra, is misplaced as the case was decided prior to the enactment of CR 54.02. See, e.g., Hawks v. Wilbert, Ky., 355 S.W.2d 655, 656 (1961).

<sup>12</sup> The January 5, 1984, judgment stated, in relevant part, as follows: "It is therefore ordered by the Court that the plaintiffs recover of the defendants, jointly and severally the sum of \$120,000.00 and their costs herein for which plaintiffs may have execution."

<sup>13</sup> See Heck, 725 S.W.2d at 18 ("[a] judgment which is dispositive of the issues raised in [a] CR 59 motion readjudicates all prior interlocutory orders and judgments determining claims which are not specifically disposed of in the latter judgment" (citing CR 54.02(2) and CR 73.02(1)(e))). See also White v. Hardin County Board of Education, Ky., 307 S.W.2d 754, 755-56 (1957); and 7 Philipps, Kentucky Practice, CR 54.02, cmt. 7 (5th ed. 1995).

ALL CONCUR.

BRIEF FOR APPELLANT:

Donna R. Hale  
Stanton, Kentucky

BRIEF FOR APPELLEE:

No brief filed.