

RENDERED: MAY 13, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002356-MR

CHARLES V. BEALL, AND
MARILYN C. BEALL

APPELLANTS

v. APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE ROBERT OVERSTREET, JUDGE
ACTION NO. 99-CI-00203

EQUINE TRANSITIONAL
TRAINING ALLIANCE, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹
SCHRODER, JUDGE: Charles V. Beall and Marilyn C. Beall, pro se,
appeal an order of the Bourbon Circuit Court entered October 6,
2003, which dismissed their case against the Equine Transitional
Training Alliance, Inc. because the court refused to conduct a
trial for damages against the individual officers of the
corporation, the Sheriff, and others. Because these individuals

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

were never joined, the only appellee was the Equine Transitional Training Alliance, Inc., and the trial court properly refused to conduct a hearing against nonparties. Therefore, we affirm.

At different times the appellants were represented by different attorneys during the litigation involved herein. However, for the most part, they were pro se. In order to help the Bealls understand what happened, we are detailing the procedural events that brought them to our Court for a third time. The civil case² in this matter started with an action in district court to enforce an agister's lien pursuant to KRS 376.400 and KRS 376.410. The agister's lien arose as a result of the Equine Transitional Training Alliance, Inc.'s (ETTA) care of seventeen horses seized from Charles and Marilyn Beall's farm in Bourbon County, for an allegation of neglect and abuse. The Bealls tendered an answer and a counterclaim against ETTA for damages for the wrongful seizure based on the unconstitutionality of the statute which authorized seizure. The answer and counterclaim was served on ETTA's attorney and the Attorney General, but was not filed in the Clerk's Office. Nevertheless, the Attorney General gave notice that it declined to intervene. More importantly, the counterclaim was against

² 99-CI-00203, filed October 12, 1999.

ETTA only and did not join any officers, etc. individually nor any other parties.

The parties worked out an agreement in open court whereby the Bealls would make improvements and the horses would eventually be returned. Meanwhile, ETTA was awarded \$10.00 per day per horse in its care. When the Bealls refused return of the horses, ETTA sought enforcement of its lien, through a levy and sale of the horses. The matter was transferred to circuit court and was eventually set for trial on August 1, 2000. The court later set the matter for a pre-trial conference on October 3, 2000, with briefs due by September 22, 2000. The appellants' attorney was permitted to withdraw before filing a brief and the Bealls filed a pro se motion on October 3, 2000, which stated their position and requested that the suit be thrown out. On the same day, October 3, 2000, the trial court entered another pre-trial order setting the matter for a jury trial on November 10, 2000. Due to a court holiday, the matter was rescheduled to December 18, 2000. On the date set for trial, the Bealls filed a request for a continuance, which was denied, and a default judgment granted when the defendants failed to appear. A damage hearing was set for February 19, 2001. A pro se motion to set aside the default judgment was filed on December 27, 2000, and a notice of appeal filed January 17, 2001. The Court subsequently, on January 29, 2001, entered written findings and

denied the motion to set aside the default. A hearing on damages was held on February 19, 2001, at which time the court heard evidence (neither the Bealls nor an attorney on their behalf were present) and entered a judgment for \$50,213.57. Even though the Bealls failed to appear, they did file a document the same day, reciting their version of the case and requesting \$25,000.00 in damages from Sheriff John Ransdell and \$100,000.00 from Keri Basham. On February 22, 2001, the trial court entered its findings of fact and award for \$41,713.57 against the Bealls in favor of ETTA and \$8,580.00 in costs, for a total of \$50,293.57 (the \$80.00 difference is due to an addition error on the face of the February 19, 2001, docket sheet). A notice of appeal was filed March 5, 2001.

A motion for CR 60.02 relief was filed on March 15, 2001, by counsel for the Bealls. On June 14, 2001, an order was entered setting aside the default judgment and the matter was to be set for trial. Both prior appeals to our Court were dismissed. The case was subsequently set for trial on November 26-27, 2001, but was then continued indefinitely. When the court notified the attorneys of the need for a status conference, Beall's new attorney moved to withdraw. A status conference was scheduled for February 4, 2002, and rescheduled for June 3, 2003. On October 1, 2003, the Bealls pro se filed a nonsensical pleading to be heard on October 7, 2003. On October

6, 2003, the day actually scheduled for the hearing, ETTA's attorney failed to show, but Charles Beall did appear. The court dismissed the case "as against all parties". Charles Beall objected to the dismissal of his counterclaim and filed a notice of appeal, contending he has a right to present a counterclaim for damages, both compensatory and punitive, against certain individuals.

On appeal, Charles Beall contends the trial court erred in dismissing the counterclaim against the ex-officers of the ETTA. We disagree. The only parties to the counterclaim were Charles V. Beall and Marilyn C. Beall, against the Equine Transitional Training Alliance, Inc. Although the Bealls complained throughout the litigation about actions taken by individuals, both within and outside of ETTA, no individual was ever joined or served which would have made them a party. Only if the individuals had been made parties, or had individuals been substituted for ETTA, would the trial court have jurisdiction over the ex-officers or anyone else in this particular suit. See Clements v. Harris, 89 S.W.3d 403, 405-406 (Ky. 2002) for an explanation of jurisdiction, and see Arlinghaus Builders v. Kentucky Public Service Commission, 142 S.W.3d 693 (Ky.App. 2003) for how to obtain jurisdiction over the person. This case illustrates the dangers of representing oneself without legal training. When the Bealls could not get

the others before the trial court, the court's hands were tied and the court could not give the Bealls any additional relief or compensation. Therefore, the circuit court had no alternative but to dismiss the counterclaim.

For the foregoing reasons, the judgment of the Bourbon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

NO BRIEF FOR APPELLEE

Charles V. Beall, pro se
Lexington, Kentucky

Marilyn C. Beall, pro se
Lexington, Kentucky