

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002625-MR

GOOD SAMARITAN HOSPITAL OF LEXINGTON,
KENTUCKY; GOOD SAMARITAN FOUNDATION,
INC.; GOOD SAMARITAN FOUNDATION; GOOD
SAMARITAN CORPORATION;¹ GOOD SAMARITAN
SERVICE CORPORATION, II; GOOD SAMARITAN
SERVICE CORPORATION, III; INTERNET
SERVICE CORP.; AND WWW.CHARITYBALL.INC.

APPELLANTS

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 00-CI-01901

KENTUCKY ANNUAL CONFERENCE OF THE
UNITED METHODIST CHURCH, INC.; AND
GENERAL BOARD OF GLOBAL MINISTRIES
OF THE UNITED METHODIST CHURCH

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.²

GUIDUGLI, JUDGE: The appellants (hereinafter "Good Samaritan")
have appealed from an Opinion and Order entered by the Fayette

¹ This party should properly have been named "Good Samaritan Service
Corporation" in the notice of appeal.

² Senior Judge Joseph R. Huddleston, sitting as Special Judge by assignment of
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution
and KRS 21.580.

Circuit Court on October 28, 2003, as well as from a November 26, 2003, order ruling on several CR 59.05 motions to alter, amend or vacate. The issue in the limited proceedings below and before this Court concerns the existence of a trust relating to the proceeds of the 1995 sale of Good Samaritan Hospital for \$30,000,000. Because we have determined that this appeal was taken from a non-final, non-appealable decision, we are constrained to dismiss the above-styled appeal.

For a better understanding of the underlying facts and background of this dispute, we shall rely upon a portion of the circuit court's findings of fact contained in its Opinion and Order:

The Women's Guild of Christ Church, Lexington conveyed the Old Protestant Infirmary property to Good Samaritan Hospital Corporation in February 1899. The deed contained a reversionary interest, which provided:

. . . in the event that said property or the property in which the proceeds of same may be reinvested, shall cease to be used for the purposes of a Hospital conducted under a general Protestant control vested in the Protestant denomination upon the principle of equality prescribed in the present Articles of Incorporation of said Good Samaritan Hospital, then the property, or the property representing the invested proceeds of same, shall pass to, and the title thereto vest in the

corporation known as the "Rector, Wardens and Vestries of Christ Church in the City of Lexington or other such persons or corporate body as may at that time hold the title to the property of Christ Church Cathedral in the City of Lexington subject, however, to any incumbrances that may have been created thereon by the said party of the second part.

Legal title and the above reversionary interest to the hospital property remained with "Old" Good Samaritan Hospital from the date of the 1899 deed until June 15, 1918 at which time the reversionary interest was deleted and replaced by a liquidated payment deed restriction. Under the new deed restriction "Old" Good Samaritan Hospital would pay \$8,000 to the Rector, Wardens and Vestries of Christ Church in the City of Lexington ". . . in the event the hospital property ceased to be used for the purpose of a hospital under Protestant control."

On March 24, 1925 the hospital property was sold by "Old" Good Samaritan Hospital to the General Hospital Board of the Methodist Episcopal Church, South. The deed set forth a provision whereby the Methodist Hospital Board or its successors would pay certain funds in the event the property was no longer used for operating a hospital under Protestant control. Should that event occur, the Methodist Hospital Board agreed to pay \$5,000 to the City of Lexington for a loan which enabled "Old" Good Samaritan Hospital to acquire some property; \$5,000 to Fayette County for a similar loan; \$8,000 to the Rector, Wardens and Vestries of Christ Church in the City of Lexington; and, \$232,000 to the Protestant Churches of Lexington.

On August 27, 1929 the "New" Good Samaritan Hospital was incorporated. The Articles of Incorporation state:

. . . the present Board of Trustees of The Good Samaritan Hospital of Lexington, Kentucky, duly elected by the Kentucky Conference of the Methodist Episcopal Church[,] South at its regular Session held at London, Kentucky from September 7, 1927 to September 11, 1927, do under the power and authority granted by said Session of said Kentucky Annual Conference of the Methodist Episcopal Church South, by resolution duly adopted hereby associate ourselves and our successors in office to and hereby become a body corporate. . .

In reviewing the minutes of the September 7, 1927 to September 11, 1927 session of the Kentucky Annual Conference of the Methodist Episcopal Church, South referred to in the above Articles of Incorporation, said trustees are clearly instructed to:

. . . take over from the General Hospital Board a deed of conveyance to the Good Samaritan Hospital and hold the same in trust for the Methodist Episcopal Church, South, and to manage the same for the Kentucky Conference.

The trustees were granted all traditional powers to manage the hospital, but they did not have the power to sell the hospital without the assent of the Church. The 1927 Kentucky Methodist Minutes further contain action by the church as it authorized the issuance of bonds in the amount of \$144,000 to pay certain indebtedness on the property. The resolution states:

. . . Whereas, The Good Samaritan Hospital property at Lexington, Kentucky, has come under the supervision, control and ownership of the Kentucky Conference of the Methodist Episcopal Church, South, the title to which said Good Samaritan Hospital property is to be taken in the name of a corporation to be organized for the purpose of acquiring and holding title to the said property, the trustees of which said corporation have been elected at this annual meeting of the aforesaid Conference, . . .

In compliance with the mandate of the 1927 Methodist minutes, the hospital property was conveyed by the Methodist Hospital Board to the Good Samaritan Hospital of Lexington, Kentucky on September 3, 1929. The grantee in the 1929 Deed was not the "Old" Good Samaritan Hospital Corporation, which was incorporated in 1899. It was the new corporation that had been incorporated just two weeks earlier to the conveyance as authorized in 1927 by the Methodist church. The Premises of the 1929 Deed state:

Witnesseth: That Whereas the property hereinafter described was conveyed to the party of the first part [The General Hospital Board of The Methodist Episcopal Church, South], to hold until such time as the Kentucky Conference of the Methodist Episcopal Church, South desired to take same into the name of one of its subsidiary organizations, and

Whereas, the said Conference has authorized the incorporating of the [New] Good Samaritan

Hospital, and has requested that said property be conveyed to said Corporation. . .

The 1928 Deed goes on to stipulate that the "New" Good Samaritan Hospital trustees agreed to comply with the terms of the 1925 Deed and would make the required payments to the Christ Church, Fayette County, the city of Lexington, and the Lexington Protestant churches in the event the property ceased to be used for hospital purposes under Protestant control.

In 1995, the property of Good Samaritan Hospital was sold by its trustees to CHCK, Inc., for \$30,000,000. The trustees then paid \$8,000 to Christ Church and \$10,000 to Lexington-Fayette Urban County Government, thereby obtaining a release of the covenants, reverters, and restrictions in the 1925 Deed. The trustees also filed a petition to assume possession of the \$232,000, which was to have been paid to the Protestant Churches of Lexington. As a result of the 1995 sale, the Kentucky Annual Conference of the United Methodist Church, Inc., (hereinafter "the Annual Conference") instituted this lawsuit against Good Samaritan, seeking a declaration that a trust existed, by which Good Samaritan held the proceeds of the 1995 sale in trust for the benefit of the Annual Conference, as well as an accounting of the sale. Additionally, the Annual Conference named as defendants attorney Foster Ockerman, Jr., Arch Mainous, Jr., and attorney Ockerman's law firm, Martin, Ockerman & Brabant, alleging claims that the individuals

breached their fiduciary duties and conspired to convert the proceeds of the sale.³ Good Samaritan filed a third-party complaint against the General Board of Global Ministries of the United Methodist Church (hereinafter "the General Board"), seeking indemnification, by way of a 1929 warranty deed, for any economic loss it might incur.

By a scheduling order entered May 21, 2001, the parties were ordered to file motions for summary judgment limited to the existence of a trust. With the exception of the General Board, all of the parties filed motions for summary judgment pursuant to the order. On October 28, 2003, the circuit court entered an Opinion and Order granting the Annual Conference's motion for summary judgment, thereby finding the existence of an express trust in its favor, and denying the remaining motions. The circuit court further ordered that all Good Samaritan trustees were to be replaced by persons designated by the Annual Conference, that Good Samaritan's business records and accounts were to remain intact and where they were currently located, and that Good Samaritan was to refrain from disposing of any assets, without the written consent of the Annual Conference, until new trustees were appointed. With the exception of Mainous, who immediately filed a notice of appeal, all of the parties filed CR 59.05 motions to

³ The Annual Conference settled its claims with the individual defendants during the pendency of the present appeal.

alter, amend or vacate. By order entered November 26, 2003, the circuit court reaffirmed the previous Opinion and Order, but deleted the references in the judgment to the appointment of new trustees. The circuit court also included the recitation in the judgment that "THERE BEING NO JUST REASON FOR DELAY, THIS IS A FINAL AND APPEALABLE ORDER PURSUANT TO CR 54.02." This appeal followed.⁴

On appeal, the Good Samaritan argues that its properties had always been held subject to a charitable trust in favor of the Lexington community, that the Annual Conference had not demonstrated that it was the legal successor to the earlier conference, and because there was no trust relationship established in favor of the earlier conference. On the other hand, the Annual Conference asserts that a parol trust was created in its favor. The General Board limits its arguments to issues not addressed by the circuit court in its Opinion and Order, namely that no proof establishes that it was the successor in interest to the conveyor of the property and that it cannot be held to indemnify Good Samaritan. The General Board is essentially seeking a dismissal of all claims against it.

⁴ In addition to this appeal, several other appeals and cross-appeals were filed, each of which was dismissed as settled by order of this Court entered November 24, 2004.

Before we are permitted to reach the merits of this appeal and in spite of the failure of the parties to raise the issue, we must first determine whether the orders from which this appeal was taken are final and appealable. In other words, we must determine whether we have the requisite jurisdiction to review this appeal. Because the circuit has not finally resolved the trust issue, we are forced to conclude that the orders are not final or appealable at this time.

CR 54.01 defines a final and appealable judgment as "a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." CR 54.02(1) provides:

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.

In Hale v. Deaton,⁵ the former Court of Appeals held:

Before the processes of CR 54.02 may be invoked for the purpose of making an otherwise interlocutory judgment final and appealable, there must be a final adjudication upon one or more of the claims in litigation. The judgment must conclusively determine the rights of the parties in regard to that particular phase of the proceeding.

Furthermore, the Supreme Court of Kentucky later emphasized that "[w]here an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable."⁶ While none of the parties in this appeal raised the issue of finality in their respective briefs (although the issue was raised by counsel for Good Samaritan in the circuit court during the hearing on the CR 59.05 motions), we note that "jurisdiction may not be waived, and it can not be conferred by consent of the parties. [The appellate] court must determine for itself whether it has jurisdiction."⁷

The present matter concerns multiple parties as well as multiple claims, meaning that CR 54.02 would apply if the correct circumstances existed. Although the Opinion and Order, in conjunction with the Order ruling on the CR 59.05 motions, contained the necessary recitals, the rulings are nevertheless

⁵ 528 S.W.2d 719, 722 (Ky. 1975).

⁶ Hook v. Hook, 563 S.W.2d 716, 717 (Ky. 1978).

⁷ Hubbard v. Hubbard, 197 S.W.2d 923, 923 (Ky. 1946). See also Wilson v. Russell, ___ S.W.3d ___ (Ky. 2005).

interlocutory because they fail to finally resolve at least one claim, namely, the trust issue. Based upon the complaint, the Annual Conference sought a declaration that a trust existed, which would mean that Good Samaritan held the proceeds of the 1995 sale in trust for the benefit of the Annual Conference. In its answer, Good Samaritan asserted a number of affirmative defenses, any of which could prevent the enforcement of a trust, if one existed. Those defenses included the doctrines of laches, equitable estoppel, and waiver, as well as violations of the applicable statutes of limitation, among others. None of those defenses had been litigated at the time the circuit court entered its Opinion and Order or the subsequent ruling on the CR 59.05 motions. Therefore, it does not appear that the trust issue has been finally resolved, as there remains a question as to the enforcement of the trust. Until the trust issue has been fully and conclusively resolved in favor of one party or the other, a ruling limited to whether a trust existed is not final and cannot be presently appealed.

For the foregoing reasons, the above-styled appeal is ORDERED DISMISSED this date.

ALL CONCUR.

ENTERED: July 8, 2005

/s/ Daniel T. Guidugli
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANTS:

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ANNUAL CONFERENCE OF THE
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BRIEF FOR APPELLEE, GENERAL
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Elizabeth S. Feamster
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