

RENDERED: MARCH 31, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002254-MR

RICKY ALLEN HAYS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOHN W. POTTER, SPECIAL JUDGE
ACTION NO. 78-CR-001014

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** * * *

BEFORE: GUIDUGLI AND SCHRODER, JUDGES; MILLER, SENIOR JUDGE.¹

MILLER, SENIOR JUDGE: Ricky Allen Hays (Hays), *pro se*, brings this appeal from an opinion and order of the Jefferson Circuit Court, entered June 25, 2003, denying his Kentucky Rules of Civil Procedure (CR) 60.02(d) and (f) motion; and from an opinion and order entered August 6, 2003, denying his CR 52.02 and 59.05 motion to amend the June 25, 2003, opinion and order;

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

and from an opinion and order entered September 24, 2003, denying his CR 52.02 and 59.05 motion to amend the August 6, 2003, opinion and order. Because Hays did not timely file his notice of appeal, we have no jurisdiction to consider the appeal. Therefore, it must be dismissed.

On June 20, 1979, pursuant to Hays' unconditional guilty plea to trafficking in a controlled substance (schedule II non-narcotic phencyclidine [PCP]),² Hays was sentenced to two years' imprisonment, probated for five years. According to the record before us, Hays served out this sentence on probation.

On March 19, 2002, Hays filed a CR 60.02 motion. An evidentiary hearing was held, and on June 25, 2003, the trial court entered an opinion and order denying Hays' motion.

On June 30, 2003, Hays made a timely motion for amendment of the June 25, 2003, opinion and order, which tolled his time for filing an appeal. On August 6, 2003, the trial court entered an opinion and order summarily denying the requested relief.

It is at this juncture that the jurisdictional issue arises. Pursuant to CR 73.02(1)(a) and (e), following the denial of his motion on August 6, 2003, Hays had thirty days, or until September 5, 2003, in which to timely file a notice of appeal. Instead of filing a notice of appeal within that time

² Kentucky Revised Statutes 218A.140, class D felony.

period, on August 13, 2003, Hays made another motion for amendment, this time of the August 6, 2003 opinion and order. Thereafter, on September 24, 2003, the trial court entered an opinion and order summarily denying the requested relief.

There is no provision, however, in the situation herein for the filing of a motion to modify an order ruling on a previous order. In Cloverleaf Dairy v. Michels, 636 S.W.2d 894, 896 (Ky. 1982), in concluding that there was no provision in the Civil Rules allowing a motion to reconsider a previous CR 59 ruling, the court stated:

In the case of Rodgers v. Berry, Ky., 346 S.W.2d 43 [44] (1961), the former Court of Appeals stated:

We deem it appropriate to say that it is doubtful whether there is any authority for the trial court to entertain a motion to reconsider an order ruling upon a motion for a new trial, even if such second motion is filed within 10 days after judgment... We find no basis in the Civil Rules for permitting such a motion . . .

We likewise find no authority in the Civil Rules for a party to make more than one motion for reconsideration of a judgment.

The Cloverleaf court went on to indicate that the running of the time for appeal, although terminated by the filing of a timely CR 59 motion (such as herein with the filing of the first motion on June 30, 2003), commenced again when the trial court refused to reconsider its original order (here, on August 6, 2003). See also Mingey v. Cline Leasing Service, Inc., 707 S.W.2d 794, 796

(Ky.App. 1986), concluding that "a ruling on a CR 59.05 motion is not a final or an appealable order. . . (t)here is no authority in the rules to ask for reconsideration of a mere order which rules on a motion to reconsider a judgment."

Based on the above, therefore, the time for filing the notice of appeal began to run on August 6, 2003. The notice of appeal was not filed until October 23, 2003. Compliance with the time requirements of CR 73.02 is mandatory and jurisdictional. CR 73.02(2); Cobb v. Carpenter, 553 S.W.2d 290, 293 (Ky.App. 1977); Burchell v. Burchell, 684 S.W.2d 296, 299 (Ky.App. 1984). As we lack jurisdiction to consider the appeal, it must be dismissed.

It is hereby ORDERED that this appeal be, and it is, DISMISSED.

ALL CONCUR.

ENTERED: March 31, 2006

/s/ John D. Miller
SENIOR JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

BRIEF FOR APPELLEE:

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