

RENDERED: APRIL 7, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000368-MR

KAREN CLARK GREEN, AS NEXT
FRIEND OF WILMA CLARK, AN
INCAPACITATED PERSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 04-CI-009047

BEVERLY HEALTH AND REHABILITATION
SERVICES, INC. D/B/A CAMELOT
HEALTHCARE SPECIALTY CENTER,
BEVERLY ENTERPRISES, INC. AND
EVERETT BEN BAYS, ADMINISTRATOR,
CAMELOT HEALTHCARE SPECIALTY CENTER

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: TACKETT AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Karen Clark Green, as Next Friend of Wilma

Clark, an Incapacitated Person, (Green) appeals from a January

18, 2005, order of the Jefferson Circuit Court dismissing claims

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 Kentucky Revised Statutes 21.580.

for personal and psychological injury against Beverly Health and Rehabilitation Services, Inc. d/b/a Camelot Healthcare Specialty Center, Beverly Enterprises, Inc. and Everett Ben Bays. We dismiss.

The judgment appealed from was entered January 18, 2005. Green thereafter filed a Ky. R. Civ. P. (CR) 59.05 motion to alter, amend or vacate the judgment. The certificate of service indicated that the CR 59.05 motion was served on January 28, 2005. On February 17, 2005, Green filed a notice of appeal in this Court from the January 18, 2005, judgment (Appeal No. 2005-CA-000368-MR). The record on appeal does not contain an order disposing of the CR 59.05 motion.

It is well-established that a timely filed CR 59.05 motion suspends the finality of the judgment. Personnel Board v. Heck, 725 S.W.2d 13 (Ky.App. 1986). Generally, the filing of a notice of appeal before a ruling upon a timely filed CR 59 motion renders the notice premature and results in dismissal of the appeal. See Johnson v. Commonwealth, 17 S.W.3d 109 (Ky. 2000); Cf. Johnson v. Smith, 885 S.W.2d 944 (Ky. 1994) (recognizing an exception in an action involving multiple parties where a CR 59 motion was filed by only some parties.)

In this appeal, Green filed a timely CR 59 motion that effectively suspended the finality of the January 18, 2005, judgment. Green then filed the notice of appeal on February 17,

2005. According to the record on appeal, the CR 59 motion was not ruled upon before the filing of the notice of appeal. In fact, the record on appeal does not include an order disposing of the CR 59 motion. Accordingly, we believe Green's notice of appeal is premature, thus requiring dismissal of this appeal.

NOW THEREFORE be it ORDERED that Appeal No. 2005-CA-000368-MR be and it is hereby DISMISSED.

ALL CONCUR.

ENTERED: April 7, 2006

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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