

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000871-MR

STELLA HODGE

APPELLANT

v.

APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
CIVIL ACTION NO. 99-CI-00036

RUTH PHILLIPS

APPELLEE

OPINION AND ORDER
DISMISSING AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; HUDDLESTON AND KNOPF, SENIOR
JUDGES.¹

HUDDLESTON, SENIOR JUDGE: Because we have determined that
Stella Hodge lacks standing to appeal from a Knox Circuit Court
summary judgment, we dismiss this appeal and remand for further
proceedings.

The underlying lawsuit which spawned this appeal began
in 1999 when Henry Sizemore, Sr., sued two of his sons in Knox
Circuit Court. Sizemore's suit concerned disputes over various

¹ Senior Judges Joseph R. Huddleston and William L. Knopf sitting as Special
Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of
the Kentucky Constitution and KRS 21.580.

pieces of real property. A short time later, Ruth Phillips, Sizemore's daughter, sought permission to intervene as a defendant and to file an intervening complaint against Sizemore. In her intervening complaint, Phillips alleged that Sizemore and his late wife had sold ten acres of land to Phillips pursuant to an oral contract. Phillips claimed that she had paid the full purchase price for the property, thereby fulfilling the terms of the oral contract. Sizemore denied Phillips's claim and objected to her motion to intervene. In considering the motion to intervene, the court noted that Phillips had presented no evidence that the oral contract existed, and the court said that, even if she had, the Statute of Frauds makes an oral contract for the sale of land unenforceable. Accordingly, the court denied Phillips's motion to intervene.

After her motion was denied, Phillips appealed to this Court. We reversed the order denying intervention and held that the circuit court was first required to determine whether or not the parties had entered into an oral contract. If the answer was affirmative, the court was required to determine whether or not Phillips had fully performed the contract, *i.e.*, paid the purchase price. If Phillips had fully performed, we held that she was entitled to specific performance of the oral contract: conveyance of the disputed property. We then remanded for further proceedings. Despite the fact that she succeeded on

appeal in 2001, Phillips allowed her cause of action to languish until 2003.

While Phillips was biding her time, Stella Hodge became entangled in the dispute between Sizemore and his daughter. On May 9, 2003, Hodge entered into a written land contract with Sizemore in which she agreed to purchase fourteen acres of land from him. These fourteen acres included the ten acres claimed by Phillips. After the land contract was executed, Hodge dutifully recorded it, on May 12, 2003, in the office of the Knox County Clerk.

Shortly thereafter, on May 22, 2003, Phillips filed notice with Knox Circuit Court that she intended to pursue her claim against her father, Sizemore. More than a year later, in July 2004, Phillips filed an amended intervening complaint naming Hodge as a third-party defendant. Hodge filed an answer to the amended intervening complaint, a cross-claim against Phillips² and a counterclaim against Sizemore. In January 2005, Phillips filed a motion for summary judgment against Sizemore supported by an affidavit that Sizemore had signed in June 2004. In the affidavit, Sizemore swore that he and his late wife had entered into an oral contract with Phillips to convey the ten

² In Hodge's answer to Phillips's amended intervening complaint, she presented what she labeled as a cross-claim against Phillips. In actuality, Hodge asserted a laches defense asserting that Phillips should be estopped from asserting her claims against Sizemore and Hodge because Phillips had waited from August 24, 2001, until May 22, 2003, before resuming her claim against Sizemore.

acres to her upon payment of the purchase price and that Phillips had, in fact, paid him the full price. Although Hodge was not named in Phillips's motion for summary judgment, Hodge, nevertheless, responded to the motion. On March 30, 2005, the circuit court determined that there was no material issue of fact since it was now undisputed that Phillips and Sizemore had entered into an oral contract providing for the sale of the ten acres of land to Phillips and that Phillips had fully performed the contract by paying the purchase price. Despite having made this determination, the circuit court did not order the ten acres conveyed to Phillips nor did it grant Phillips any other relief. Nevertheless, the court included in the summary judgment a finality recital: "there being no just cause for delay this summary judgment is final and appealable on these issues."

Although the summary judgment did not address Phillips's claim against Hodge nor either Hodge's cross-claim against Phillips or her counterclaim against Sizemore, Hodge filed a notice of appeal from the judgment. Phillips responded with a motion to dismiss Hodge's appeal arguing that Hodge lacked standing to appeal. On July 26, 2005, a motion panel of this Court denied Phillips's motion to dismiss.

Since our July 26, 2005, order was only an interim order and we now have the benefit of the parties' briefs and

access to the complete record on appeal, we chose to reconsider Phillips's motion to dismiss Hodge's appeal.³ The issue of standing must be decided on the unique facts that surround each case.⁴ And the party who is asserting standing must have more than a mere expectancy in the outcome; she must have a present and substantial interest.⁵

Turning to this case, when Phillips filed her motion for summary judgment, she only addressed her claim against Sizemore. And, in the March 30, 2005, judgment, the circuit court did not address her entire claim against Sizemore. As has been noted, the court determined that it was undisputed that Phillips and the Sizemores had entered into an oral contract providing for the sale of ten acres of land and that Phillips had fully performed the contract by paying the purchase price. However, the court did not order the property conveyed to Phillips, nor did the court adjudicate any of Hodge's claims. Since the court did not address Hodge's claims, they are still pending before the circuit court. The judgment only resolved two of the several issues in this case and only bound Phillips and Sizemore. It is doubtful that any party has standing to

³ See *Knott v. Crown Colony Farm, Inc.*, 865 S.W.2d 326, 329 (Ky. 1993) (An interim or interlocutory order "is by its nature subject to further review in the court where the case is still pending, either at the request of a party or sua sponte, until a final, appealable decision has been entered, whether by judgment, order or opinion.").

⁴ *Plaza B.V. v. Stephens*, 913 S.W.2d 319, 322 (Ky. 1996).

⁵ *Id.*

appeal since the circuit court did not grant any relief to Phillips or to Sizemore, but it is certain that Hodge was not bound by the judgment since none of her claims were adjudicated. She has no present interest in the judgment and lacks standing to challenge it on appeal.

It is, therefore, ORDERED that this appeal is dismissed because Hodge lacks standing to maintain it, and this case is remanded to Knox Circuit Court for further proceedings.

ALL CONCUR.

ENTERED: September 1, 2006

/s/ Joseph R. Huddleston
SENIOR JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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