RENDERED: DECEMBER 7, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001904-MR

ROBERT H. JONES — APPELLANT

v.

APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 05-CI-00601

JOHN CHARLES; NORMA CHARLES; AND
JARED CHARLES — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: HOWARD,[1] NICKELL, AND TAYLOR, JUDGES.

HOWARD, JUDGE: Robert H. Jones, *pro se*, (hereinafter Jones) brings this appeal from the summary judgment of the Shelby Circuit Court, entered July 16, 2006, in favor of the appellees John Charles, Norma Charles and Jared Charles. We affirm.

[1]Judge Howard authored this opinion prior to Judge Michael Caperton being sworn in on December 7, 2007, as Judge of the Third Appellate District, Division 1. Release of this opinion was delayed by administrative handling.

On November 21, 2005, Jones, along with co-plaintiffs Steve and Jenny Harker, filed a *pro se* complaint in Shelby Circuit Court against the appellees. In their complaint, Jones and the Harkers alleged that the appellees engaged in terroristic threatening, various acts of terror, wanton and reckless misconduct, wanton destruction of personal property, illegal trespass and destruction of property while committing an illegal act, reckless endangerment of a minor, emotional and mental anguish and deprivation of life, health and pursuit of happiness. Jones and the Harkers supported their complaint with allegations that the appellees shot, wounded or killed their pets, fired guns in the direction of their residences, illegally trespassed on their property, destroyed their mailboxes, harassed them with gunfire and made threats. However, during the entire course of this litigation, Jones never produced any direct evidence that the appellees in any way damaged his property or caused him any trouble.

On July 16, 2006, the Shelby Circuit Court entered an order granting summary judgment in favor of the appellees with respect to Jones' claims after finding that Jones failed to produce any evidence to support any cause of action against the appellees, and also finding that he was not the real party in interest, as to the allegations regarding damage to the Harkers' property. The circuit court, in an order entered August 9, 2006, then denied Jones' motion to reconsider the July 16, 2006, judgment. This appeal followed.

On appeal, Jones argues that the Shelby Circuit Court erred when it granted the appellees summary judgment with respect to his claims. We disagree. Summary

judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56.03. The trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Thus, summary judgment is proper only "where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest*, *supra.*

However, "a party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial." *Hubble v. Johnson*, 841 S.W.2d 169, 171 (Ky. 1992), *citing Steelvest*, *supra*. *See also O'Bryan v. Cave*, 202 S.W.3d 585, 587 (Ky. 2006); *Hallahan v. The Courier Journal,* 138 S.W.3d 699, 705 (Ky.App. 2004). The trial court's focus should be on what is of record rather than what might be presented at trial. *Welch v. American Publishing Co. of Kentucky,* 3 S.W.3d 724 (Ky. 1999).

The standard of review on appeal of a summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Since summary judgment involves only legal

questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue de novo. *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001).

We disagree with the trial court that the record established that Jones was not a real party in interest. He alleged, for instance, that the appellees shot and killed his dog. He was certainly the real party in interest as to this allegation. His problem is that he failed to offer any evidence to support this or any of the allegations contained in his complaint. By the time summary judgment was granted on July 16, 2006, Jones had ample opportunity to produce evidence to support his allegations. A review of the record demonstrates that he failed completely to do so.

Perhaps the best illustration of this failure is found in Jones' answers to interrogatories. In these answers, he stated that dogs were murdered (including his), farmland was damaged and that he was subjected to harassing gunfire, but he never directly stated that the appellees committed any of these acts, or that he had any personal knowledge of who may have done so.

Although a summary judgment is a final order, and therefore should not be entered as a form of penalty for failure of the plaintiff to prove his case quickly enough, it is proper when, as here, the opportunity was given to conduct discovery, yet the party opposing the motion fails to offer any controverting evidence. *Pendleton Bros. Vending, Inc., v. Commonwealth Financing and Administration Cabinet*, 758 S.W.2d 24, 29 (Ky. 1988).

Based on the foregoing, the summary judgment entered by the Shelby Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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