

RENDERED: JUNE 20, 2008; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000702-MR

VALERIE MAY HOPKINS

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE STEVEN D. COMBS, JUDGE  
ACTION NO. 06-CI-00676

EQUITABLE PRODUCTION COMPANY

APPELLEE

### OPINION AFFIRMING

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BEFORE: ACREE AND STUMBO, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Valerie May Hopkins appeals from a summary judgment entered in favor of Equitable Production Company. We affirm.

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Hopkins owns a parcel of property that is situated at the confluence of the right hand fork of Biggs Creek and “main” Biggs Creek. Equitable installed two gas pipelines in the vicinity of Hopkins’s property. Although the pipelines did not actually cross any portion of Hopkins’s property, the installation process caused two of Hopkins’s bridges to wash out. In consideration of a \$1,000.00 payment by Equitable, Hopkins signed a release on September 1, 2004. The scope of the release was for “all claims or causes of action for surface damages resulting from the installation of a 4” and 8” pipeline(s), and any and all surface damages, due to EPC operations, prior to the date herein.” Subsequent to the execution of the release, Hopkins alleges that Equitable constructed a drainage tank and silt pond in a nearby area that did not drain properly and caused additional damage to her property. Hopkins filed a claim for damages in Pike Circuit Court. The court entered summary judgment in favor of Equitable. This appeal followed.

Hopkins argues that there is a genuine issue of material fact regarding the nature and date of the action that caused damage to her property. She also argues that the release is not effective to bar her claim because the actions taken by Equitable were outside its scope.

The standard for summary judgment is well known.

A moving party is entitled to summary judgment as a matter of law when the record reveals the existence of no genuine issue of material fact. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Further, “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence that there is a genuine issue of material fact for trial.” *Id.* at 482 (citations omitted).

We have reviewed the record in this case. Hopkins has not produced affirmative evidence of any actions taken by Equitable subsequent to the release. Her complaint only alleges further damages in connection with the installation process of the pipelines in the summer of 2004. The release encompassed the installation of the pipelines and “any and all surface damages, due to EPC operations...” prior to September 1, 2004. “[A] release is an agreement between parties where one party surrenders the right to sue the other party for a claim that might arise.” *Larkins v. Miller*, 239 S.W.3d 112, 115 (Ky.App. 2007). The terms of the release were plain and unambiguous. Hopkins received valuable consideration for her release. We find that the release is a valid and enforceable contract.

Accordingly, the judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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