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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2008-CA-000261-MR

ALAN R. GOSSETT

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 06-CI-00027

ALLSTATE INSURANCE COMPANY  
AND WAYNE HORN

APPELLEES

AND

2008-CA-000324-MR

ALLSTATE INSURANCE COMPANY  
AND WAYNE HORN

CROSS-APPELLANTS

v. CROSS-APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 06-CI-00027

ALAN R. GOSSETT

CROSS-APPELLEE

OPINION  
AFFIRMING

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

STUMBO, JUDGE: Alan R. Gossett appeals from an order of summary judgment of the Muhlenberg Circuit Court in favor of Allstate Insurance Company and Wayne Horn. Gossett argues that the circuit court erred in failing to render findings of fact and conclusions of law in support of the order, and that genuine issues of fact remain for adjudication. Allstate and Horn respond that the court may look to the face of the insurance policy at issue to ascertain the terms of the agreement between the parties. On cross-appeal they contend that Gossett's appeal was not timely filed. For the reasons stated below, we affirm the order on appeal.

On July 8, 2003, Gossett completed an application for homeowner's insurance issued through Allstate. The policy for which Gossett applied covered loss on Gossett's home in Muhlenberg County, Kentucky, and provided for "dwelling protection" up to a limit of \$67,000. Also included was "OPTIONAL/INCREASED COVERAGES SELECTED" to include "Building Structure Reimbursement Extended Limits." The policy became effective on the date of the application. Sometime thereafter, the dwelling protection limit was increased to \$71,000.

On January 16, 2005, Gossett's home was heavily damaged or destroyed by fire. Gossett filed a claim for benefits with Allstate, whereupon Allstate paid the balance of Gossett's \$17,819.09 mortgage and sent him a check

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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 Kentucky Revised Statutes (KRS) 21.580.

for the balance of \$57,730.91, representing the \$71,000.00 policy limit. Gossett later sought reimbursement from Allstate for the full replacement cost of the dwelling, based on policy language which he contended provided for such coverage. When Allstate denied the claim for replacement cost coverage, Gossett filed the instant action on January 13, 2006, against Allstate and its agent, Wayne Horn, who assisted Gossett in filling out the policy application.

Gossett alleged in the complaint entitlement to the full replacement cost of the dwelling. He further alleged that Horn knew or should have known that the policy failed to provide full replacement cost coverage of the dwelling and that Horn's conduct in inducing Gossett to submit the application constituted fraud.

The matter proceeded in Muhlenberg Circuit Court, whereupon Allstate and Horn filed an answer, and discovery was conducted. Citing an inability to effectively communicate with Gossett, his trial counsel moved to withdraw his representation on September 19, 2006. The motion was granted, and Gossett continued *pro se*.

On December 27, 2007, Allstate and Horn filed a joint motion for summary judgment as to all claims made by Gossett. In support of the motion, they relied on Gossett's deposition and answers to interrogatories which they maintained demonstrated the existence of no genuine issue of material fact. Upon considering the motion and Gossett's *pro se* response thereto, the circuit court rendered an order on January 7, 2008, granting the motion for summary judgment. This appeal followed.

Gossett now argues through appellate counsel that the trial court erred in granting the motion of Allstate and Horn for summary judgment. He maintains that the trial court erred in failing to issue findings of fact and conclusions of law in support of its order, and claims that genuine issues of material fact exist which preclude the entry of summary judgment. In support of this latter argument, he notes that while Gossett's deposition appears in the record, no testimony or evidence has been presented by Allstate or Horn. Gossett maintains that his uncontroverted testimony must be taken as true and that "there are many issues of genuine fact which have not been revealed and which must be revealed before the Complaint can be dismissed." The apparent focus of Gossett's argument is that he must be availed of the opportunity to depose Allstate and Horn for the purpose of revealing additional issues of fact.

In their cross-appeal, Allstate and Horn maintain that Gossett's appeal is untimely. They note that Gossett filed his notice of appeal on February 7, 2008, or 31 days after the January 7, 2008 order granting summary judgment became final. On February 29, 2008, this Court rendered a show cause order as to why the appeal should not be dismissed as untimely. Gossett responded that the courthouse in Greenville, Kentucky, was unexpectedly closed on February 6, 2008 due to a tornado, and he tendered the affidavit of a paralegal in support thereof.

On May 14, 2008, this Court rendered an order allowing Gossett's appeal to proceed. The motion of Allstate and Horn to reconsider was denied.

They now maintain that Gossett's appeal should be dismissed because the timely filing of a notice of appeal is both mandatory and jurisdictional.

We have closely examined Gossett's argument seeking reversal of the order granting summary judgment, and find no error. 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 a judgment as a matter of law." Kentucky Civil Rule 56.03. "The record must be viewed 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, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). "Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact." *Id.* Finally, "[t]he 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).

When viewing the record in a light most favorable to Gossett and resolving all doubts in his favor, we cannot conclude that the circuit court erred in granting the motion of Allstate and Horn for summary judgment. In order to prevail on his claim of error, the burden rests with Gossett to demonstrate the existence of at least one genuine issue of material fact requiring adjudication.

*Steelvest, supra*. By stating that “there are many issues of genuine fact which have not been revealed” and directing this Court to none in particular, Gossett has failed to meet that burden. This conclusion is true even when resolving all doubts in his favor.

Gossett’s action centers on the interpretation of an insurance contract. The case law amply demonstrates that the parties to such a contract are bound by the terms appearing on the face of the contract, and the court may not look to parol evidence to render those terms ineffectual. *See Midwest Mutual Insurance Company v. Wireman*, 54 S.W.3d 177 (Ky. App. 2001). The insurance contract at issue was made part of the record, and was expressly relied upon by the circuit court in its determination that Gossett was entitled to a cash value benefit rather than replacement cost. Nothing in the record or the law demonstrates that Gossett is now entitled to additional time to search for genuine issues of material fact arising outside of the insurance contract and which he cannot now articulate. He was availed of the opportunity to depose Allstate representatives and Horn, or to tender interrogatories, but did not do so. Ultimately, since Gossett cannot now demonstrate the existence of a genuine issue of material fact requiring remand, we have no basis for reversing the order on appeal.

Similarly, Gossett may not rely on the circuit court’s failure to render findings of fact and conclusions of law as a basis for reversal of the order on appeal. Findings of fact and conclusions of law are not required on decisions of motions for summary judgment. See CR 52.01, stating that, “[F]indings of fact

and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 [summary judgments] or any other motion except as provided in Rule 41.02.”

Furthermore,

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

CR 52.04. Gossett did not make a written request for findings of fact.

Accordingly, we find no error on this issue.

In support of his claim that he is entitled to remand for the purpose of uncovering additional issues of fact, Gossett also addresses in passing the fraud in the inducement claim which was set out in his complaint. On January 3, 2008, however, Gossett filed a *pro se* motion seeking to dismiss the fraud claim. His motion stated that, “I AM REQUESTING THE COURT TO DROP JUST THE CHARGE OF FRAUDULENT [sic]. AGAINST ALLSTATE INSURANCE AND WAYNE HORN.” The motion was to be heard on “01-07-20008 [sic],” which is the same hearing date referenced in the order on appeal. Though the order did not specifically address this motion, we may reasonably assume that the adjudication of this motion was subsumed in the order on appeal. In any event, the burden rests with Gossett to demonstrate error arising from the order of summary judgment, and he has not met that burden.

For the foregoing reasons, we affirm the order of summary judgment of the Muhlenberg Circuit Court. This affirmation renders moot the cross-appeal of Allstate and Horn on the issue of the timeliness of Gossett's appeal.

ALL CONCUR.

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