

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001028-MR

BARBARA J. MUDD

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 07-CI-03319

DEUTSCHE BANK NATIONAL
TRUST COMPANY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: DIXON AND MOORE, JUDGES; ISAAC,¹ SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Barbara J. Mudd appeals from a Kenton Circuit Court order which granted summary judgment to Deutsche Bank National Trust Company in a foreclosure action. The order does not resolve all of the claims amongst the parties in this action and it does not contain the recitations mandated

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

by Kentucky Rules of Civil Procedure (CR) 54.02(1). Consequently, we must dismiss this appeal.

On November 1, 2007, Deutsche Bank National Trust Company instituted foreclosure proceedings in Kenton Circuit Court against Lawrence K. Mudd and Barbara J. Mudd. Deutsche Bank claimed that the Mudds had failed to pay the amounts due under the terms of a note which they executed in 1990. The note was in the amount of \$90,000, secured by a mortgage on property located in Fort Mitchell, Kentucky. The Mudds are now divorced.

Barbara Mudd filed a *pro se* answer on December 4, 2007, in which she generally denied the allegations of the complaint and asserted the following defenses: that Deutsche Bank had violated the Real Estate Settlement Procedures Act; the Fair Debt Collection Practices Act; engaged in predatory lending practices; had committed fraud, misrepresentation, tortious conduct and breach of contract; and had violated Kentucky's banking and insurance statutes and federal banking and insurance regulations. Lawrence K. Mudd, also acting *pro se*, filed an almost identical answer on December 20, 2007.

Deutsche Bank moved the court for summary judgment on February 24, 2009. On May 1, 2009, the court entered an order granting the motion as to Barbara and granting partial summary judgment against Lawrence on one issue only, relating to a law firm's alleged conflict of interest. Deutsche Bank was denied summary judgment as to Lawrence on thirteen other issues, including the applicability of the Fair Debt Collection Procedures Act; the amount and selection

of forced-place insurance; and the refusal of payments following default. This appeal by Barbara followed.

The Kentucky Rules of Civil Procedure (CR) specify which orders are subject to review on appeal. CR 54.01 defines a judgment as follows:

A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding. **A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02.** Where the context requires, the term “judgment” as used in these rules shall be construed “final judgment” or “final order.”

(Emphasis supplied.) In the case before us, the circuit court’s order did not adjudicate all the rights of all the parties in the action because summary judgment was not granted to Lawrence on numerous claims. We must turn, then, to CR 54.02(1), which addresses situations involving multiple claims or parties:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The Kentucky Supreme Court has explained how CR 54.02 operates:

In any case presenting multiple claims or multiple parties, CR 54.02 . . . , vests the trial court - as the tribunal most familiar with the case - with discretion to release for appeal final decisions upon one or more, but less than all, claims in multiple claims actions. In such a case, the trial court functions as a dispatcher. If the trial court grants a final judgment upon one or more but less than all of the claims or parties, that decision remains interlocutory unless the trial court makes a separate determination that there is no just reason for delay. And the trial court's judgment shall recite such determination and shall recite that the judgment is final.

Watson v. Best Financial Services, Inc., 245 S.W.3d 722, 726 (Ky. 2008) (internal citations and quotation marks omitted).

These recitations on the part of the trial court are mandatory:

For the purpose of making an otherwise interlocutory order final and appealable, the trial court is required to determine “that there is no just reason for delay,” and the judgment must recite this determination and also recite that the judgment is final. CR 54.02(1). The omission of one of these requirements is fatal.

Hale v. Deaton, 528 S.W.2d 719, 722 (Ky. 1975).

In this case, the circuit court order granting summary judgment to Barbara and partial summary judgment to Lawrence did not contain these mandatory recitations. Therefore, the order is interlocutory and unappealable. Accordingly, this appeal is dismissed.

ALL CONCUR.

ENTERED: March 18, 2011

/s/ Sheila Isaac
SENIOR JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

Barbara J. Mudd, *pro se*
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