

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001827-MR

COREY LEA

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 11-CI-01213

BARREN RIVER DISTRICT
BOARD OF HEALTH

APPELLEE

OPINION
DISMISSING APPEAL

** ** * * * * *

BEFORE: DIXON, MOORE, AND THOMPSON, JUDGES.

MOORE, JUDGE: Corey Lea, *pro se*, appeals from an order allowing the Barren River District Board of Health access to his property for the purpose of an inspection to ensure compliance with the public health statutes. Lea argues that: (1) the Board of Health lacked authority to enforce the public health statutes; (2) the trial court lacked jurisdiction because the case had been removed to federal

court; and (3) the trial court erred by failing to recuse itself. We must dismiss this appeal as interlocutory.

The Board of Health filed a verified petition pursuant to KRS 212.245(6) in Warren Circuit Court seeking a prohibitory injunction to restrain Lea from occupying certain real property until there has been full compliance with the provisions of KRS 211.350 regarding on-site sewage disposal systems. The trial court conducted a hearing at which David R. Burton, Environmental Health Program Manager of the Barren River District Board of Health, and Lea testified. Following the hearing, the trial court entered an order on August 18, 2011, finding that there was probable cause to believe that a condition existed which was dangerous or injurious to the public health and that Lea had admitted that such conditions existed and that he had not complied with the requirements for an on-site sewage disposal system as set forth in KRS 211.350. The court ordered that Lea allow the Board access to the property for the purpose of inspecting the property and for the Board to report the results of the inspection to the court. Lea then filed a motion to reconsider arguing that the trial court lacked jurisdiction and that the trial judge should recuse. The trial court denied the motion in an order entered on August 29, 2011. This appeal followed.

Based upon our review of the record, we must dismiss the present appeal as interlocutory. The August 18, 2011 order simply allowed the Board access to Lea's property for inspection and stated that further orders would be entered depending on the results of the inspection. The order did not fully adjudicate any

of the Board's claims. The August 29, 2011 order denying the motion to reconsider and recuse stated, "[t]his is a final and appealable order," but did not state that there was no just reason for delay as required by CR 54.02. *See also Vance v. King*, 322 S.W.2d 485, 487 (Ky. 1959). Further, we find no basis in the judicial disqualification statute, KRS 26A.015, or otherwise, which would permit the taking of an immediate appeal from an interlocutory order denying a motion to recuse. The language of CR 54.02(1) is mandatory, and in the absence thereof "the order is interlocutory and subject to modification and correction before becoming a final and appealable judgment or order." *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005).

Therefore, we must dismiss the present appeal as interlocutory.

ALL CONCUR.

BRIEF FOR APPELLANT:

Corey Lea, *pro se*
Alavaton, Kentucky

BRIEF FOR APPELLEE:

Hoy P. Hodges
Bowling Green, Kentucky