

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001872-MR

THE OHIO CASUALTY
INSURANCE COMPANY

APPELLANT

v.

APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE C. RENE WILLAAMS, JUDGE
ACTION NO. 05-CI-00119

CITY OF PROVIDENCE,
KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** *

BEFORE: MAZE, MOORE, AND TAYLOR, JUDGES.

MOORE, JUDGE: On or about October 1, 1997, appellant Ohio Casualty Company (OCC) issued a surety bond to appellee, City of Providence, in which it prospectively agreed to indemnify Providence “in the aggregate and non-cumulative penal sum” of \$300,000 for losses caused by various acts and

omissions attributable to Sara B. Stevens during her indefinite tenure as a Providence city clerk. Providence subsequently terminated Stevens' employment in May, 2004, upon discovering that Stevens had embezzled city funds in excess of \$300,000 over a period of several years. Based upon the previously mentioned bond, Providence then filed an action in Webster Circuit Court against OCC to recover an amount in excess of \$300,000.

Below, the parties asked the circuit court to interpret the language of the bond and renewals thereof to determine whether they had entered into a series of separate, independent contracts that entitled Providence to recover up to the limit of liability (\$300,000) for each policy period in which a loss occurs, or one continuous contract that limited Providence's total recovery, irrespective of the number of number of years it remained in force, to the amount of \$300,000. The circuit court entered an order that gave the bond the former interpretation, rather than the latter, but reserved the question of damages. Thereafter, OCC appealed. Upon review, we dismiss OCC's appeal as interlocutory.

As a general matter, "this court is required to raise a jurisdictional issue on its own motion if the underlying order lacks finality." *Tax Ease Lien Investments I, LLC v. Brown*, 340 S.W.3d 99, 101 (Ky. App. 2011) (citing *Huff v. Wood-Mosaic Corp.*, 454 S.W.2d 705, 706 (Ky.1970)). With that said, the circuit court had the authority to bifurcate Providence's action against OCC into two separate claims (*i.e.*, one claim for the interpretation of the contract and its coverage provisions, another for an assessment of damages pursuant to the

contract). The circuit court also had the authority to render its decision regarding coverage immediately appealable while reserving the separate issue of damages for a later date—provided that it did so by following the requirements of Kentucky Civil Rule (CR) 54.02. *See Preferred Risk Mut. Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 872 S.W.2d 469, 470 (Ky. 1994).

However, CR 54.02 required the circuit court’s order to recite not only that it was final, but that there was “no just reason for delay.” *Watson v. Best Financial Services, Inc.*, 245 S.W.3d 722 (Ky. 2008). “Absent those certifications, the rule is not invoked.” *Spencer v. Estate of Spencer*, 313 S.W.3d 534, 540 (Ky. 2010). Here, the circuit court’s order simply recites that it is “a final and appealable order,” but omits that there was “no just reason for delay”; its subsequent order overruling OCC’s CR 52.02 motion for additional findings did not cure this omission; and, as a consequence, the circuit court’s order, which is the subject of this appeal, is merely interlocutory and unripe for review. *Watson*, 245 S.W.3d 722.

The hard fact is that it was appellant Ohio Casualty’s responsibility to ensure that the circuit court’s judgment was in the proper form to invoke CR 54.02. *Spencer*, 313 S.W.3d at 540. Having failed to do so, Ohio Casualty has left this Court with no option other than to DISMISS its appeal.

ALL CONCUR.

ENTERED: November 16, 2012

/s/ Joy A. Moore
JUDGE, COURT OF APPEALS

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