

RENDERED: AUGUST 23, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000473-MR

JOHN R. BOWLING

APPELLANT

v. APPEAL FROM JACKSON CIRCUIT COURT
HONORABLE OSCAR GAYLE HOUSE, JUDGE
ACTION NO. 11-CI-00192

APPALACHIAN FEDERAL CREDIT
UNION

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: COMBS, MOORE, AND TAYLOR, JUDGES.

MOORE, JUDGE: By way of background, Appalachian Federal Credit Union filed a foreclosure action in Jackson Circuit Court against John R. Bowling and his wife, April L. Bowling. Appalachian alleged that it had loaned the Bowlings approximately \$125,000; that the Bowlings had reciprocated by jointly executing two promissory notes in favor of Appalachian totaling this amount, plus interest;

these promissory notes were also secured by real property and improvements to that real property that the Bowlings jointly owned; and, that the Bowlings were in default of their joint loan obligations. The Bowlings filed a joint *pro se* answer generally denying these allegations and, after a short period of motion practice, the circuit court entered summary judgment in favor of Appalachian. Specifically, the circuit court found John and April jointly and severally liable for the outstanding balance of the two promissory notes, plus interest and costs, and ordered a judicial sale of the Bowlings' jointly-owned property securing the promissory notes. This appeal followed, and the notice of appeal specifies that the lone appellant is "John Bowling"; it entirely omits April Bowling as a party.

Before we are able to address the merits of this appeal, there is a question of our jurisdiction. It regards the notice of appeal filed in this matter and whether it failed to name an indispensable party, *i.e.*, April Bowling. As the Kentucky Supreme Court has reemphasized,

A notice of appeal is the means by which an appellant invokes the appellate court's jurisdiction and . . . failure to name an indispensable party in the notice of appeal is a jurisdictional defect that cannot be remedied. Neither the doctrine of substantial compliance nor the amendment of the notice after time had run could save such a defective notice because the appellant cannot retroactively create jurisdiction.

Browning v. Preece, 392 S.W.3d 388, 393 (Ky. 2013) (internal quotations and citations omitted).

As to what qualifies as an “indispensable party,” the Court further

explained:

[W]hether a party is indispensable is not determined by whether that party will be adversely affected by a court’s judgment; instead, an indispensable party is defined as a party “whose absence prevents the Court from granting complete relief among those already parties.” *Milligan v. Schenley Distillers, Inc.*, 584 S.W.2d 751, 753 (Ky. App. 1979) (citing CR^[1] 19.01), superseded on other grounds by statute, KRS^[2] 342.285. Unlike proceedings in the trial courts, where failure to name an indispensable party may be remedied by a timely amendment to the complaint, “under the appellate civil rules, failure to name an indispensable party in the notice of appeal is ‘a jurisdictional defect that cannot be remedied’” after the thirty-day period for filing a notice of appeal as provided by CR 73.02 has run. [FN2]

[FN2] Of course if the Appellant catches the deficiency prior to the expiration of the thirty-day notice requirement and timely corrects the deficiency by filing a proper notice of appeal, the deficient notice may thereby be remedied. It is only after the expiration of the thirty-day notice requirement that the defect “may not be remedied” at all.

Nelson County Bd. of Educ. v. Forte, 337 S.W.3d 617, 626 (Ky. 2011) (quoting *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990)).

We recognize that upon occasion a party who was necessary and indispensable [sic] in the trial court may not be necessary and indispensable [sic] to a subsequent appeal. In determining whether a party is truly necessary on appeal, the court must ask “who is necessary to pursue the claim. . . . If a party’s participation in the appeal is

¹ Kentucky Rule of Civil Procedure.

² Kentucky Revised Statute.

unnecessary to grant relief, and requiring its participation would force unnecessary expense on the party, then . . . such a party is not indispensable.” *Id.* at 625. So, the issue is whether [the unnamed party has] an interest that would be affected by the decision of the Court of Appeals, regardless of whether that interest is affected adversely or favorably.

Browning, 392 S.W.3d at 391.

Although John Bowling has added April Bowling to the caption of his appellate brief and has improperly styled himself as “pro se counsel for appellants,”³ he has nevertheless failed to add April Bowling as a party by omitting her from his notice of appeal. Moreover, any review of this matter would affect April Bowling’s interests, and she was therefore an indispensable party; as noted, the circuit court’s judgment at issue impacts property she jointly owns and the validity of debt obligations to which she is a joint obligor. For these reasons, this appeal is hereby DISMISSED.

ALL CONCUR.

³ As a *pro se* litigant, John Bowling cannot represent anyone other than himself. *See, e.g., May v. Coleman*, 945 S.W.2d 426, 428 (Ky. 1997) (“Only persons who meet the educational and character requirements of this Court and who, by virtue of admission to the Bar, are officers of the Court and subject to discipline thereby, may practice law. The sole exception is the person acting in his own behalf.” (quoting *Frazee v. Citizens Fidelity Bank & Trust Co.*, 393 S.W.2d 778, 782 (Ky. 1965))).

ENTERED: August 23, 2013

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

BRIEF FOR APPELLANT:

John R. Bowling, *pro se*
Tyner, Kentucky

BRIEF FOR APPELLEE:

Allen B. Roberts
McKee, Kentucky