

RENDERED: NOVEMBER 15, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2012-CA-001204-MR

ERIKSEN CHIROPRACTIC OF DIXIE, P.L.L.C.

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 12-CI-000760

GEICO GENERAL INSURANCE COMPANY;  
GOVERNMENT EMPLOYEES INSURANCE  
COMPANY; AND DEBORAH BURNAM

APPELLEES

### OPINION AND ORDER DISMISSING APPEAL

\*\* \*\* \* \* \* \* \*

BEFORE: CAPERTON, TAYLOR, AND THOMPSON, JUDGES.

CAPERTON, JUDGE: Eriksen Chiropractic of Dixie, P.L.L.C., appeals from an order by the Jefferson Circuit Court remanding the case to district court on the basis that the amount in controversy requirement of subject matter jurisdiction was

not met. Appellees Geico General Insurance Company, Government Employees Insurance Company, and Deborah Burnam have filed a motion to dismiss the appeal with this Court, arguing that the appeal was taken from an interlocutory order and, thus, dismissal of the appeal is appropriate at this time.

A motion panel of this Court passed consideration of this motion to the panel considering the appeal on the merits, as the merits panel has the benefit of the trial court record. Having now considered the motion to dismiss, the response thereto, and being otherwise sufficiently advised, the Court ORDERS that the motion be GRANTED and the appeal is hereby DISMISSED.

At issue, Eriksen Chiropractic sought \$37<sup>1</sup> in actual damages from Geico's refusal to pay a bill for copies of chiropractic records related to one patient. Eriksen Chiropractic sought punitive damages in the amount of \$400,000. Geico moved the circuit court to remand this matter to the district court. Geico argued that even if punitive damages were awarded in this case, the amount would not exceed \$5,000, the jurisdictional threshold amount established by Kentucky Revised Statutes (KRS) 24A.120<sup>2</sup> for district court. The circuit court remanded this case to district court. It is from this order that Eriksen now appeals.

---

<sup>1</sup> This amount represents a \$22 fee for the copies and a \$15 late fee.

<sup>2</sup> KRS 24A.120 states in part:

District Court shall have exclusive jurisdiction in:

(1) Civil cases in which the amount in controversy does not exceed five thousand dollars (\$5,000), exclusive of interest and costs, except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of District Court....

Generally, our appellate jurisdiction is restricted to final judgments. Absent an order determining all the rights of all the parties in an action or proceeding or having been made final by reciting the Kentucky Rules of Civil Procedure 54.02(1) language, an order is interlocutory and we are without jurisdiction to hear an appeal therefrom. *Wilson v. Russell*, 162 S.W.3d 911, 913–941 (Ky. 2005). *See also Stice v. Leonard*, 420 S.W.2d 672, 674 (Ky. 1967), citing *First Nat. Bank of Mayfield v. Gardner* 330 S.W.2d 409 (Ky. 1959). *Sub judice*, we believe the order at issue to be the very definition of an interlocutory order: it is an order transferring the case from circuit to district court and does not adjudicate any rights of the parties or dispose of any claim; instead the order determined which court would hear the claims of Eriksen.

Similarly, in *Lebus v. Lebus*, 382 S.W.2d 873 (Ky. 1964), the trial court denied a motion to dismiss made on the ground of lack of jurisdiction. In dismissing the appeal, the appellate court held that “[t]he decision of a court that it has jurisdiction of a cause and that the venue is proper does not determine the ultimate rights of the parties, and is well recognized as an interlocutory order.” *Id.* at 874 citing 4 Am.Jur.2d, *Appeal & Error* § 89 (page 604).

Most persuasively, the court in *Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978), held “This “jurisdiction order” was plainly an interlocutory determination. The recitals made by the trial judge added nothing. It was not reviewable by direct appeal.”

In light of *Lebus* and *Hook* we must conclude that this Court is not at liberty to view the single issue advanced in this appeal from the interlocutory order.<sup>3</sup>

For the foregoing reasons, the appeal is dismissed.

ALL CONCUR.

ENTERED: November 15, 2013

/s/ Michael O. Caperton  
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

Shem D. Beard  
Elizabethtown, Kentucky

BRIEF FOR APPELLEES:

Kim F. Quick  
Elizabethtown, Kentucky

---

<sup>3</sup> We note that this issue may be taken up again after a judgment has been rendered below.