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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001508-ME

TOYOTA MOTOR MANUFACTURING,
KENTUCKY, INC. APPELLANT

APPEAL FROM SCOTT CIRCUIT COURT
v. HONORABLE ROBERT G. JOHNSON, JUDGE
ACTION NO. 99-CI-00390

PATRICK KELLEY, INDIVIDUALLY AND
ON BEHALF OF A CLASS OF PERSONS
SIMILARLY SITUATED; MARTHA COSTELLO,
INDIVIDUALLY AND ON BEHALF OF A
CLASS OF PERSONS SIMILARLY SITUATED;
CHARLES CERNIGLIA, INDIVIDUALLY AND
ON BEHALF OF A CLASS OF PERSONS
SIMILARLY SITUATED; JEFF CRONIN,
INDIVIDUALLY AND ON BEHALF OF A
CLASS OF PERSONS SIMILARLY SITUATED;
JEFF SERGENT, INDIVIDUALLY AND ON
BEHALF OF A CLASS OF PERSONS SIMILARLY
SITUATED; AND JEFF ALLEN, INDIVIDUALLY,
AND ON BEHALF OF A CLASS OF PERSONS
SIMILARLY SITUATED APPELLEES

OPINION
REVERSING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Toyota Motor Manufacturing, Kentucky, Inc. (TMMK) appeals from the Scott Circuit Court's August 24, 2012, order granting the Appellees/Plaintiffs' motion to maintain a class action in a wage and hour case brought under Kentucky Revised Statutes (KRS) 337, *et seq.*, the Kentucky Wages and Hours Act (the Act). The trial court has not reached the merits of this claim, but has certified a class, thus prompting TMMK to immediately appeal that decision pursuant to Kentucky Rules of Civil Procedure (CR) 23.06. TMMK argues that this case should never have been reopened by the trial court in 2007; that the Act's express language does not allow for class relief; and that the Appellees cannot meet the prerequisites to certify a class under CR 23. After careful review and oral arguments before this Court, we agree that the trial court improperly reopened the case in 2007, and therefore we reverse.

Factual Background

There are two vehicle assembly areas at TMMK, each containing a separate production line. Each line contains a Paint Department located in what are referred to as paint "shops." (Paint 1 and Paint 2). Both Paint 1 and Paint 2 are maintained as "clean" shops in order to prevent defects caused by dust, dirt, and other contaminants. In maintaining the clean paint shops, TMMK: (1) restricts/controls team members and visitor access; and (2) requires all individuals

entering the paint shops to first don the paint coverall (and not doff the coverall until they exit the shops).

The paint coverall is a one-piece "jump suit" weighing about 16 ounces that can be pulled over a team member's street clothes. Most of the Appellees testified it took one minute or less to don the paint coverall and that amount of time or less to doff the paint coverall. Team members donned and doffed their paint coveralls in locker rooms adjacent to the Paint Department. After donning and before doffing the paint coveralls, the team members would walk to and from their work stations. Team members testified to varied one-way walk times ranging from one to six minutes.

Until Spring 2006, TMMK did not pay any employees for the time spent donning and doffing the coveralls. TMMK now pays employees for at least two-tenths of an hour each day to don and doff the required coveralls (which equates to at least ten minutes on the TMMK time scale). TMMK contends that the time spent by employees completing such tasks is *de minimis* and therefore non-compensable.

Procedural History

On or about August 31, 1999, Jeff Sergent and four current or former Paint Department employees of TMMK filed a complaint in the Scott Circuit Court, pursuant to KRS 337.385(1), seeking unpaid wages for work performed during the five years preceding the commencement of the action, as well as liquidated damages, attorneys' fees, and costs. The Plaintiffs purported to

represent a putative class of over 1,000 similarly situated current and former employees who work or worked in TMMK's Paint Department. Their Complaint alleged they were denied wage payments, including overtime payments, for time spent donning and doffing protective coveralls, or paint suits, required in TMMK's Paint Department. They also alleged they were denied wage payments for time spent putting on protective shoes and walking between locker rooms and work stations.

TMMK filed a motion to dismiss in light of existing law that held that the Kentucky Labor Cabinet had both original and exclusive jurisdiction over all claims brought under the Act. On November 22, 2000, the trial court granted TMMK's motion to dismiss, and this Court affirmed that order on January 11, 2002. The Kentucky Supreme Court denied discretionary review on February 12, 2003. Within thirty days of the denial, the Plaintiffs submitted the claims to the forum ostensibly having jurisdiction, the Kentucky Department of Labor (KDOL).

During the KDOL investigation, the Kentucky Supreme Court rendered its decision in *Parts Depot, Inc. v. Beiswenger*, 170 S.W.3d 354 (Ky. 2005). There, the Supreme Court held for the first time that circuit courts have original jurisdiction over wage and hour claims under the Act. Although the *Parts Depot* decision favored the Appellees, they did not seek CR 60.02 relief at the time the decision was rendered because no law limited the KDOL's authority to award liquidated damages, attorneys' fees, and costs.[1] Appellees also had no reason to

[1] The Supreme Court declined to rule on the availability of such damages in administrative cases in *Parts Depot*. *Id*. at 359.

believe that the recovery period would be limited in the administrative proceeding to the five years preceding the issuance of the KDOL's 2006 tentative findings of fact.

On May 19, 2006, the KDOL issued tentative findings of fact. On August 18, 2006, this Court rendered *City of Frankfort v. Davenport*, 2006 WL 2380792 (Ky. App. 2006), which held that the KDOL cannot award liquidated damages, attorneys' fees, or costs. While discretionary review was pending before the Kentucky Supreme Court in *City of Frankfort*, the Appellees filed a motion for relief pursuant to CR 60.02(f).

The KDOL's ALJ limited the recovery period available to the Appellees to the five years prior to the issuance of the tentative findings of fact, *i.e.* 2001 to 2006. Therefore, the Appellees' ability to recover unpaid wages for the seven year period from 1994 to 2001 (which reflects the five year period prior to filing the original civil action and the two year period while the matter pended) was extinguished after the claim languished in the KDOL for three years. The ALJ also prohibited liquidated damages, attorneys' fees, and costs based on *City of Frankfort*.

On March 12, 2007, the trial court granted the Appellees' CR 60.02(f) motion but required them to withdraw their KDOL claims to proceed.[2] TMMK then petitioned this Court to grant relief in the form of a writ of prohibition or mandamus. *See Toyota Motor Manufacturing Kentucky, Inc. v. Hon. Robert G.*

[2] Appellees Sergent, Costello, and Cronin did so in May 2007.

Johnson, et al., 2007-CA-000711. The parties briefed the issues, and TMMK's requested writ relief was denied by this Court in August 2007. TMMK appealed this Court's denial of the writ to the Supreme Court. While that appeal was pending, the Supreme Court rendered *Asset Acceptance v. Moberly*, 241 S.W.3d 329 (Ky. 2007), holding that an immediate appeal from a trial court's reopening of a judgment under CR 60.02(f) is available in certain circumstances.

Relying on *Asset Acceptance*, TMMK filed a direct appeal in this Court of the trial court's order granting CR 60.02(f) relief, albeit many months after the order granting relief was issued. The Kentucky Supreme Court then transferred the direct appeal from the Court of Appeals to itself and dismissed the direct appeal as untimely in March 2009. Simultaneously, the Supreme Court reversed this Court's denial of the writ sought by TMMK.

The Appellees petitioned the Supreme Court for rehearing in April 2009. Rehearing was granted, and soon thereafter, the Court, on its own motion, ordered the parties to submit briefs addressing whether TMMK was entitled to relief under *Asset Acceptance*, *supra*, from the trial court's decision to grant the Appellees' CR 60.02(f) motion. After reviewing the briefs and performing further legal analysis, the Supreme Court withdrew its former opinion and affirmed this Court's denial of the writ sought by TMMK.

In its opinion, the Supreme Court described the two broad classes of cases in which a writ may be properly granted.

> The first is when a lower court "is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court… ." *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004). The second is when a "lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition [for a writ] is not granted." *Id.* Under a special subclass of the second class of writ cases, a writ may issue even absent irreparable injury to the writ-petitioner if the lower court is acting erroneously and a supervisory court believes that "if it fails to act the administration of justice generally will suffer the great and irreparable injury." *Bender v. Eaton*, 343 S.W.2d 799, 801 (Ky. 1961).

Toyota Motor Mfg., Kentucky, Inc. v. Johnson, 323 S.W.3d 646, 649 (Ky. 2010). Regarding the first class of writ cases, the Supreme Court held that it must determine whether the trial court was proceeding outside its jurisdiction. Originally, the Court rendered an opinion granting the writ, finding that the trial court lacked jurisdiction because CR 60.02(f) does not apply to the facts of this case. The Court took the position that a change in the law is not a sufficiently extraordinary circumstance to grant any relief under CR 60.02, except where the direst injustice would result otherwise. The Court found that the underlying plaintiffs did not face such an injustice.

However, upon granting rehearing, the Court changed its original ruling. The Court stated:

> [W]e now state clearly that any attempt on our part in our original opinion to suggest that a trial court lacked jurisdiction to rule on an otherwise properly filed CR 60.02(f) motion—a motion filed in a court having subject

> matter jurisdiction and exercising personal jurisdiction over the parties to the action—was in error.

Id. at 650. The Court then recognized that there were two circumstances in which the trial court would lack jurisdiction to grant relief upon a CR 60.02 motion.

> First, as to subsections (a) through (c) of CR 60.02, some authority would suggest that a trial court lacks jurisdiction to reopen a judgment under these subsections if a year or more has passed since entry of judgment. Second, our opinion in *Asset Acceptance* suggests that the trial court would lack jurisdiction to reopen a judgment essentially on CR 60.02(a)-(c) grounds if the CR 60.02 motion was not filed within one year of the judgment even if the CR 60.02 motion were filed under the guise of CR 60.02(f).
>
> In *Asset Acceptance*, the untimely CR 60.02 motion, filed two years after entry of default judgment, was purportedly based on CR 60.02(f). But the party opposing reopening argued that the motion was actually grounded on excusable neglect under CR 60.02(a). The party seeking reopening alleged that she was unaware of the default judgment, despite receiving notice, and was incapable of managing her own affairs for some time because of substance abuse rehabilitation. Leaving unresolved the issue of whether the CR 60.02 motion had actually been filed on the basis of CR 60.02(a) grounds of excusable neglect, we vacated the Court of Appeals' dismissal of the appeal of the reopening and remanded "for consideration of Asset's contention that Moberly's CR 60.02 motion was barred by limitations and therefore outside the trial court's authority to grant." We instructed the Court of Appeals that:
>
> > If the Court determines that Moberly's motion stated "a reason of an extraordinary nature" rather than mistake, excusable neglect or one of the more common grounds for relief, the availability of which was barred by the one-year limitation period in

> CR 60.02, then the appropriate course would be again to dismiss the appeal.

Id. at 650-51. TMMK contended that it was entitled to a writ because *Asset Acceptance* established that the trial court did not have jurisdiction to grant reopening under CR 60.02(f). The underlying Plaintiffs argued that *Asset Acceptance* was distinguishable because their CR 60.02(f) motion was not a disguised CR 60.02(a)-(c) motion. TMMK contended that the Plaintiffs' motion was a disguised CR 60.02(a) motion premised on mistake, noting that the trial court itself had found that the law had not really changed but instead had been misinterpreted. The Plaintiffs argued that they had not alleged a mistake, but instead that they sought reopening because the change of law constituted extraordinary circumstances.

The Supreme Court found in favor of the underlying Plaintiffs, holding:

> Although we have frequently held that a change in the law, by itself, was not sufficient to create extraordinary circumstances warranting relief under CR 60.02(f), we are not aware of any reported cases holding that such a motion seeking CR 60.02(f) relief was in essence actually a motion seeking relief for mistake under CR 60.02(a).

Id. The Court concluded that the Plaintiffs' underlying dispute could not be termed a mistake, because at the time of entry, the trial court's ruling comported with the prevailing construction of the law that wage and hour claims had to be brought first in administrative proceedings. The Court went on to conclude that because the underlying Plaintiffs' CR 60.02 motion could not reasonably be constructed as premised on mistake by the trial court in originally dismissing the

action, the trial court did not lose jurisdiction to rule on the motion solely by reason that the CR 60.02 motion was filed more than a year after the original judgment of dismissal. Thus, the trial court had jurisdiction to rule on the motion and a writ was not proper.

The Supreme Court then rejected the law of the case doctrine argument perpetuated by TMMK, holding that a trial court's jurisdiction to determine whether extraordinary circumstances merit relief from a judgment includes jurisdiction to determine whether extraordinary circumstances also merit application of one of the exceptions to the law of the case doctrine. The Court held that to the extent the Court of Appeals' unpublished opinion in *Davis-Johnson ex rel. Davis v. Parmelee*, 2003-CA-000848, 2004 WL 1093039 (Ky. App. 2004), holds that the law of the case doctrine would deprive a trial court of jurisdiction to rule on a CR 60.02(f) motion, including the question of whether extraordinary circumstances merited an exception from the law of the case doctrine, it was overruled.

The Supreme Court then evaluated whether the dispute at issue met the requirements of the second class of writ cases; those cases in which the trial court was acting erroneously within its jurisdiction and irreparable injury to a party or the justice system will result for which there is no adequate remedy by appeal. The Court ultimately held that it did not need to reach the merits of the issue, stating:

> Nonetheless, we need not reach the merits of whether the trial court erred in concluding that the change in the law here constituted extraordinary reasons or circumstances

> justifying relief under CR 60.02(f) or in concluding that the CR 60.02(f) motion here was filed within a reasonable time. Even assuming solely for the sake of argument that the trial court did act erroneously within its jurisdiction, relief by writ is still not available unless Toyota can show that absent a writ, either Toyota will suffer an irreparable injury that cannot be remedied on appeal, or the orderly administration of justice itself would suffer an irreparable injury.
>
> As we have made clear, "[i]nconvenience, expense, annoyance, and other undesirable aspects of litigation" are insufficient to constitute irreparable injury. Rather, the injury should be of a ruinous or grievous nature…. We conclude that Toyota would not suffer such a ruinous injury if the writ is not granted.

Id. at 653-54.

Subsequent to the Supreme Court's denial of the writ sought by TMMK, the parties each engaged in further discovery and the Appellees' experts made plant visits for measurements and timing studies, among other activities. The parties briefed and argued whether KRS 337.385 allows for class relief. The trial court determined that the statute, in conjunction with the Civil Rules, did allow for class relief. Thereafter, the parties extensively briefed and argued Appellees' request for class certification. The trial court issued an order certifying a class on August 24, 2012. This appeal now follows.

Argument

TMMK first argues that the trial court erred in certifying the class because it had previously erred when it reopened the case pursuant to CR 60.02(f). The crux of TMMK's argument in its brief and during oral argument is that a

change in decisional or substantive law does not afford a basis for relief under CR 60.02(f), absent extreme circumstances.

CR 60.02 states:

> On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief.
>
> The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

Under CR 60.02(f), relief from final judgment will not be ordered unless a reason of extraordinary nature exists. Kentucky law mandates that a clear showing of extraordinary and compelling equities must be made to justify setting aside a final judgment. *Bishir v. Bishir*, 698 S.W.2d 823 (Ky. 1985). The trial court's holding in this regard was that the Appellees had demonstrated a clear showing of extraordinary and compelling equities that warranted setting aside a six year old judgment. We review that holding for an abuse of discretion. *Dull v. George*, 982 S.W.2d 227, 229 (Ky. App. 1998).

TMMK argues that the trial court erred by reopening the case based only on a change in the law and that the trial court improperly ignored the law of the case doctrine. This action was originally dismissed in 2000, based on two of this Court's decisions from the mid 1980's—*Early v. Campbell Fiscal Court*, 690 S.W.2d 398 (Ky. App. 1985), and *Noel v. Season-Sash, Inc.*, 722 S.W.2d 901 (Ky. App. 1986). Both cases stood for the general proposition that the Kentucky Labor Cabinet had original and exclusive jurisdiction over claims brought for the recovery of minimum wage and overtime payments. The Supreme Court overruled these cases in *Parts Depot*, thus allowing litigants to pursue their wage claims at the Kentucky Labor Cabinet or in a circuit court. However, TMMK argues that *Parts Depot* had no retroactive effect and thus has no effect on the case at bar.

TMMK also points to the fact that for more than a hundred years, Kentucky's highest court has made it clear that a subsequent change in law cannot justify reopening a final judgment. *Thompson v. Louisville Banking Co.*, 21 Ky. L. Rptr. 1611, 55 S.W.1080 (1900). In that case, two banks had successfully argued before the former Court of Appeals in 1895 that they were exempt from municipal taxation. The case was remanded for further proceedings consistent with the opinion of the Court of Appeals. Before final judgment was entered following remand, the Court of Appeals overruled its 1895 decision in a subsequent case. Despite that fact, the trial court proceeded to enter final judgment in favor of the banks and consistent with the 1895 decision. The municipality appealed, arguing

that the reversal of the 1895 decision enabled them to collect the tax. The Court disagreed and explained:

> The opinion rendered in these cases is the law of the cases, however, erroneous it may have been. The fact that it was overruled in a subsequent case between other parties destroys it as a precedent in other cases, but it is nevertheless binding on the parties to this controversy. The rule is elementary that a matter once litigated and determined finally cannot be relitigated between the same parties.

Id. at 1081. *See also City-County Planning Comm'n, Lexington v. Fayette County Fiscal Court*, 449 S.W.2d 766, 767 (Ky. 1970) ("we have grave doubt that an appellate opinion in another case would, alone and of itself, provide a valid basis for reopening a judgment that had become final."); *Reed v. Reed*, 484 S.W.2d 844, 847 (Ky. 1972) (explaining that "a reopening of a judgment, as to its prospective application, on the ground of a change in the law, should be done only in aggravated cases where there are strong equities.").

In the instant case, in the writ action, Chief Justice Minton, writing for the majority, described the above law as follows: "[w]e further note that Kentucky precedent holds that usually a change in the law does not constitute an extraordinary reason meriting relief under CR 60.02(f)." *Toyota Motor Mfg. v. Johnson*, *supra*, at 653. But the Court did not address the finality issue on the merits, finding it was not a jurisdictional issue and that TMMK could not satisfy the heightened writ standard. We agree with TMMK that the writ standard is not relevant here. However, we are cognizant of the fact that no appellate case in

Kentucky history has ever held that a subsequent change in law can justify reopening a final order that contained no prospective relief.

Since the Supreme Court's decision in *Toyota Motor Mfg v. Johnson*, this Court has again held that "[a] change in the law simply is not grounds for CR 60.02 relief except in 'aggravated cases where there are strong equities.'" *Berry v. Commonwealth*, 322 S.W.3d 508, 511 (Ky. App. 2010) (internal citation omitted). Significantly, this Court refused to reopen *Berry* based on a clear change in the law, despite the fact that the personal liberty of an individual was directly impacted. *See also Leonard v. Commonwealth*, 279 S.W.3d 151, 161-62 (Ky. 2009) (denial of Leonard's CR 60.02 relief based on a change in the law despite the fact that he was facing life imprisonment and had no alternative remedies to be heard on the new procedural rule).

In response to TMMK's arguments that the trial court improperly reopened this case, the Appellees argue that because of the highly unusual procedural history of this action and the equities at issue, the trial court properly reopened the case and TMMK's arguments must be rejected. The Appellees argue that they never had a fair opportunity to present their claim at a trial on the merits. The trial court also determined that reopening the case would not be inequitable to TMMK because "the case is still fresh and the parties are still litigating" and the statute of limitations "is the same … that [TMMK] would have faced had the case been able to proceed from the beginning." Furthermore, the trial court held that "the [Appellees] made a clear showing of extraordinary and compelling equities."

The trial court ultimately held that the Appellees were denied their right to proceed in circuit court, their chosen forum, because the courts misinterpreted the law; the Appellees could not receive complete relief through administrative proceedings because the Kentucky Supreme Court's decision in *Parts Depot* and this Court's decision in *City of Frankfort v. Davenport* indicated that liquidated damages and attorneys' fees were unavailable in that forum; the Appellees would be denied their constitutional right to a trial by jury; and, perhaps most importantly, the judicial interpretation of the law applicable to the claims materially changed while the parties were still actively addressing the claims at issue and before the employees' claims had been resolved.

While we are cognizant of the issues raised by the Appellees and relied upon by the trial court, we agree with TMMK that established case law, both in Kentucky and elsewhere, does not establish that there are sufficient equities in the instant case to justify reopening a judgment that has been final for many years, particularly in light of the fact that the Plaintiffs still have an alternative avenue for relief and can pursue their claims with the Kentucky Labor Cabinet. When the Kentucky Supreme Court decided *Parts Depot*, it became the law prospectively. It did not magically revive all cases that had previously been dismissed for lack of jurisdiction. If all dispositive rulings were subject to being reopened based on a change in the law, no case would ever be final. The losing party could simply await a favorable change in an unrelated action and then re-litigate the case. That is not the law, and we agree with TMMK that it is the practical effect of the trial

court's and the appellees' reasoning herein. The trial court was bound by this Court's 2002 ruling and erred in both re-opening the case and in certifying a class.

Other jurisdictions have agreed with this Court's reasoning in similar circumstances and contexts. For instance, in *Ritter v. Smith*, 811 F.2d 1398, 1400-03 (11th Cir. 1987), the Eleventh Circuit Court of Appeals held that "something more than a 'mere' change in the law is necessary to provide the grounds for Rule 60(b)(6) relief." In that case, the Court determined that various factors, in addition to the change in law, justified the extraordinary relief provided in Rule 60(b)(6) relief and re-opened the case. There, the court determined that a significant factor warranting relief was that "the previous, erroneous judgment of this court had not been executed. When a judgment has been executed a concomitantly greater interest in finality exists." The trial court also noted that there was minimal delay between the finality of the judgment and the Rule 60(b)(6) relief, reasoning that the longer the delay between the judgment and the request for Rule 60(b)(6) relief, the more intrusive to the parties a grant of relief would be. The court also emphasized the close relationship between the case before it and the case where the decisional law changed. Finally, the court emphasized that comity warranted relief from the final judgment.

The factors that warranted reversal of the judgment in *Ritter* are not apparent in the case at bar. Here, the final judgment had been executed and relied upon by the parties in this case. When informed that jurisdiction was not proper in the circuit court, the parties chose to proceed in the appropriate forum before the

Labor Cabinet. Further, the six years that passed between the final judgment and the reopening of this case by the trial court is not in any way a minimal delay. Instead, we find such a delay to be intrusive to both parties. Furthermore, there is not a close relationship between the instant case and *Parts Depot*, a case that was decided five years after the trial court granted TMMK's motion to dismiss. Finally, issues of comity do not warrant relief in the instant case.

Similarly, in *Collins v. City of Wichita, Kan.*, 254 F.2d 837 (10th Cir. 1958), the Tenth Circuit held that there were not extraordinary circumstances that warranted overturning a final judgment. The court stated, "[l]itigation must end sometime, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside." *Id.* at 839. *See also Sunal v. Large*, 332 U.S. 174, 67 S.Ct. 1588, 91 L.Ed. 1982 (1947); *Simmons Co. v. Grier Bros. Co*., 258 U.S. 82, 42 S.Ct. 196, 66 L.Ed. 475 (1922); *Berryhill v. United States*, 199 F.2d 217 (6th Cir. 1952).

Because we agree with TMMK that the trial court should never have reopened this case, we need not reach the merits of the argument as to whether KRS 337.385(1) permits class actions. However, were we to reach the merits of this argument, we would agree with TMMK that the text of KRS 337.385(1) provides a clear expression of intent that class actions are not permitted. That statute states:

> Any employer who pays any employee less than wages and overtime compensation to which such employee is entitled under or by virtue of KRS 337.020 to 337.285 shall be liable. . . . Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees **for and in behalf of himself, herself, or themselves.**

(Emphasis added). The statute permits more than one person to bring a cause of action under KRS 337.385(1) in the same case, but they may not do so in a representative capacity. Further, the effect of the "for and in behalf of" language is to limit the individuals who may participate in an action under the Act to those who actually bring the action. Thus, even if the trial court had properly reopened this case under CR 60.02(f), KRS 337.385(1) does not permit class actions and the trial court improperly certified a class.

We agree with TMMK that this case never should have been reopened based on CR 60.02(f). There are not sufficient circumstances that persuade this Court that we should ignore the longstanding precedent that parties are entitled to rely on the finality of judgments. Based on the foregoing, we reverse the trial court's order reopening this case under CR 60.02(f) and remand for proceedings consistent with this opinion.

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