

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002068-MR

MALINDA MARTIN

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 11-CI-01288

HOLLY DOLLY INCORPORATED

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Malinda Martin appeals from an order of the Campbell Circuit Court dismissing her amended complaint filed against Holly Dolly Incorporated. We agree with the circuit court that at the time the amended complaint was filed, it no longer had subject matter jurisdiction over the matter and, therefore, affirm.

On September 26, 2011, Martin filed this action against Bobby Mackey's Music World, Inc., and Robert Randall Mackey, individually, alleging she sustained an injury in the parking lot of Bobby Mackey's, a bar located in Wilder, Kentucky. Following discovery, Bobby Mackey's and Robert Mackey filed motions for summary judgment on the basis the premises were leased to Holly Dolly and they had no control over the operation of the business premises. Martin's response to the motion included a request to amend the complaint to include Holly Dolly with a relation back to the filing of the original complaint pursuant to Kentucky Rules of Civil Procedure (CR) 15.01.

On May 24, 2012, the circuit court sustained Bobby Mackey's motion for summary judgment and denied Robert Mackey's motion. Further, the circuit court sustained Martin's motion to amend the complaint but reserved on the issue of whether the amended complaint would relate back to the filing of the original complaint.

On June 1, 2012, Robert Mackey filed a motion to alter, amend, or vacate the May 24, 2012, order denying his motion for summary judgment. After Martin responded, on July 31, 2012, an order was entered granting Robert Mackey's post-judgment motion and summary judgment was entered dismissing him from the action. At that time, Martin had not filed an amended complaint naming Holly Dolly and, therefore, Robert Mackey was the only remaining defendant.

On August, 30, 2012, ninety-eight days after the circuit court granted Martin's motion to amend the complaint and thirty days after the summary judgment in Robert Mackey's favor, Martin filed an amended complaint naming Holly Dolly as a defendant. Holly Dolly filed an answer and motion to dismiss the amended complaint. The circuit court granted Holly Dolly's motion, and this appeal followed.

A judgment that is dispositive of the issues raised in a CR 59 motion readjudicates all prior interlocutory orders and judgments determining claims not specifically disposed of in the latter judgment. CR 54.02(2). Because Martin had not filed her amended complaint naming Holly Dolly as a defendant, the circuit court's July 31, 2012, summary judgment finally adjudicated any claims against the only remaining defendant, Robert Mackey, and was a final and appealable adjudication of the parties' rights. Pursuant to CR 59.05, a motion to alter, amend or vacate must have been filed no later than ten days after July 31, 2012.

CR 15.01 permits a complaint to be amended after a responsive pleading is filed and states "leave shall be freely given when justice so requires." However, that rule cannot be used to confer subject jurisdiction once the court has lost jurisdiction. In *James v. Hillerich & Bradsby Co.*, 299 S.W.2d 92 (Ky. 1957), the court held after ten days had passed to file a CR 59.05 motion, the trial court had no jurisdiction to permit the filing of an amended complaint. Succinctly, it stated: "We think it is obvious that [CR 15.01] applies only to amendments offered during the pendency of the action. Certainly it was not intended to apply in situations

where, by the lapse of a period of 10 days after judgment, the court has lost control of the judgment.” *Id.* at 94.

Martin attempts to avoid the clear dictate of *James* on the basis that, unlike James, she successfully sought a motion to amend her complaint prior to the dismissal of all the existing parties. Her argument is unavailing. Although she had permission to amend her complaint, she did not file an amended complaint until thirty days after the summary judgment in Robert Mackey’s favor was entered. At that point, the court no longer had jurisdiction over the matter.

Based on the foregoing, the order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Erlanger, Kentucky

BRIEF FOR APPELLEE:

W. Robert Lotz
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