

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001572-DG

ANTHONY JUSTICE

APPELLANT

v. ON DISCRETIONARY REVIEW FROM
JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL L. PERRY, JUDGE
ACTION NO. 13-XX-000022

CLIFTON WOODS

APPELLEE

OPINION
DISMISSING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; D. LAMBERT AND NICKELL, JUDGES.

D. LAMBERT, JUDGE: This case comes before the Court from the Jefferson Circuit Court which upheld the Jefferson District Court eviction of Appellant from Appellee's property. After a review of the applicable law and facts, we find that this appeal has now been rendered moot and shall be dismissed.

Appellant appeals from a ruling by the Jefferson Circuit Court upholding a finding by the Jefferson District Court in favor of Appellee in a forcible detainer action. Appellant rented a property from Appellee on or about August 1, 2012, entering into a written lease. Appellee filed a petition for and writ of forcible entry and detainer against Appellant on January 29, 2013, due to Appellant breaching the conditions of the written lease, including altering the property by removing a fence, having an unpermitted pet, having cars parked in the yard, and having a third party not mentioned in the original lease residing at the property.

A bench trial in the Jefferson County District Court was held on March 8, 2013. The trial court heard testimony from Appellee and Appellant regarding Appellant removing a fence around the property; having an unpermitted cat at the home; parking vehicles, including a boat, in the back yard; and Appellant's minor son living at the residence but not being mentioned on the lease.

However, after the filing of this appeal, the Jefferson District Court heard evidence on a different set of allegations by Appellee against Appellant in a separate forcible entry and detainer proceeding on September 12, 2013. The court found in favor of Appellee, granting an order of eviction and the Appellant has since vacated the property, and has not appealed the second eviction action.

The Kentucky Supreme Court has found that an appellate court is required to dismiss an appeal when a change in circumstance renders that court unable to grant meaningful relief to either party. *Medical Vision Group, P.S.C. v.*

Philpot, 261 S.W.3d 485, 491 (Ky. 2008), citing *Brown v. Baumer*, 301 Ky. 315, 191 S.W.2d 235 (1945). Further, the court in *Medical Vision Group* referenced *Commonwealth v. Hughes*, 873 S.W.2d 828 (Ky. 1994), which held that the court had no jurisdiction to hear an issue unless there was an actual case or controversy and that the court was “prohibited from producing mere advisory opinions.” *Id.* The court has also held that “a moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then existing controversy.” *Winslow v. Gayle*, 172 Ky. 126, 188 S.W. 1059 (1916).

In the present case, it is clear that the issue here is moot. As the Appellant was evicted on other grounds and has since vacated the premises, no issue remains in controversy and it would be impossible for this court to grant meaningful relief to either Appellant or Appellee. Appellant is essentially seeking an advisory opinion on what constitutes acceptance of rent, but pursuant to Kentucky case law, this Court is prohibited from issuing advisory opinions. Therefore, this case must be dismissed as moot.

ALL CONCUR.

BRIEF FOR APPELLANT:

Soha T. Saiyed
Louisville, Kentucky

BRIEF FOR APPELLEE:

W. Douglas Kemper
Louisville, Kentucky