

RENDERED: OCTOBER 2, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000038-MR

PAUL MILLER FORD, INC.

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT
HONORABLE OSCAR G. HOUSE, JUDGE
ACTION NO. 14-CI-00282

KRISTY GARRISON

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * **

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

KRAMER, JUDGE: Paul Miller Ford, Inc. (Paul Miller) appeals from a December 29, 2014 order of the Clay Circuit Court which denied its motion to compel arbitration. We vacate and remand.

According to her complaint in this matter, Kristy Garrison purchased a Ford F150 pickup truck from Paul Miller on or about March 13, 2014, upon Paul

Miller's representation that the vehicle was new. Subsequently, she discovered the vehicle had been previously owned by another individual who had returned it due to a defect. Based upon this circumstance, Garrison filed the instant matter and sought compensatory and punitive damages, alleging Paul Miller had violated Kentucky's Consumer Protection Act (KCPA), codified in Kentucky Revised Statutes (KRS) 367.110 *et seq.*

Paul Miller responded with a motion to dismiss or alternatively stay Garrison's action based upon an arbitration agreement clause that had been incorporated into the purchase agreement it and Garrison had entered regarding the vehicle. Garrison did not file any response to Paul Miller's motion. Thereafter, the circuit court entered an order overruling Paul Miller's motion. Aside from stating that the circuit court had "reviewed the record" and was "otherwise sufficient [sic] advised," however, the circuit court's order fails to indicate why Paul Miller's motion was overruled.

Pursuant to KRS 417.220(1)(a), Paul Miller then filed the instant interlocutory appeal.

Upon review, we vacate and remand. As to why, our reasoning mirrors the reasoning of our prior opinion in *Kindred Nursing Centers Ltd.*

Partnership v. Sloan, 329 S.W.3d 347, 348-49 (Ky. App. 2010):

Appellate review of an otherwise unappealable interlocutory order arises under KRS 417.220(1)(a). The standard of review by our Court from appeals arising under this statute was discussed in *Conseco Finance*

Servicing Corp. v. Wilder, 47 S.W.3d 335, 340 (Ky. App. 2001) as follows:

It may also be well to note that our review of a trial court's ruling in a KRS 417.060 proceeding is according to usual appellate standards. That is, we defer to the trial court's factual findings, upsetting them only if clearly erroneous or if unsupported by substantial evidence, but we review without deference the trial court's identification and application of legal principles. . . .

Here, the circuit court made no factual findings nor can we determine whether the circuit court's ruling was based upon the application of legal principles justifying a *de novo* review by this Court. [FN]

[FN] We cannot determine from review of the circuit court's order whether the court found the existence of a valid arbitration agreement which must be resolved first under KRS 417.050 . . .

The circuit court's order does indicate that the court "considered the record" and "heard arguments of counsel." Under the circumstances presented in this case, in reliance upon *Conseco*, we believe the circuit court is bound by Kentucky Rules of Civil Procedure (CR) 52.01, which mandates that a court set forth specific findings of fact and separate conclusions of law in its order or judgment.

As such, the circuit court erred when it entered its [December 29, 2014] order denying arbitration because, in that order, it merely stated that [Paul Miller's] motion to compel arbitration was denied; it did not contain any findings of fact or conclusions of law. In the absence of such findings and conclusions, we cannot discern the basis of the circuit court's decision and there can be no meaningful review of this case. [FN] *See Brown v. Shelton*, 156 S.W.3d 319 (Ky. App. 2004).

[FN] This is distinguished from a case where the circuit court makes inadequate findings of fact. In such a case, a party is bound to make a request for more definite findings under Kentucky Rules of Civil Procedure 52.04 before reversal may be predicated upon such error.

We remind the circuit court that it speaks only through written orders entered upon the official record. *See Midland Guardian Acceptance Corp. of Cincinnati, Ohio v. Britt*, 439 S.W.2d 313 (Ky. 1968); *Com. v. Wilson*, 280 Ky. 61, 132 S.W.2d 522 (1939). Thus, any findings of fact and conclusions of law made orally by the circuit court at an evidentiary hearing cannot be considered by this Court on appeal unless specifically incorporated into a written and properly entered order.

Upon remand, the circuit court shall reconsider [Paul Miller's] motion to compel arbitration in accordance with KRS 417.050 [and] KRS 417.060 . . . and shall render an order that sets forth specific findings of fact and separate conclusions of law as required by CR 52.01. We view [Paul Miller's] remaining contentions of error to be moot.

For the foregoing reasons, the order of the Clay Circuit Court is VACATED and this cause REMANDED for proceedings consistent with this opinion.

ALL CONCUR.

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