

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000271-MR

SANDRA ZIMMERMAN

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 13-CI-00546

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: J. LAMBERT, NICKELL, AND TAYLOR, JUDGES.

LAMBERT, J., JUDGE: Sandra Zimmerman appeals from the Oldham Circuit Court order granting summary judgment to the Commonwealth of Kentucky, Cabinet for Health and Family Services (Cabinet). Because we conclude that the order appealed from was not final and appealable, we dismiss the appeal.

Zimmerman was employed through Crown Services as a corrections officer at Kentucky Correctional Psychiatric Center (KCPC). On July 7, 2013, during roll call, Lieutenant Officer Keith Pierce conducted impromptu training concerning maintaining safe distances from patients (convicted felons that were housed at KCPC for psychiatric services). Pierce requested that Zimmerman step forward, and he engaged in role-playing with her, pretending that he was a patient asking Zimmerman to go to his room. Pierce then grabbed Zimmerman by the hair to demonstrate the inherent danger of allowing close proximity to a patient.

Zimmerman claimed that the yanking of her hair by Pierce resulted in a devastating neck injury. She filed a worker's compensation claim against Crown Services; that claim was dismissed by the administrative law judge and affirmed by the Workers' Compensation Board. No appeal has been filed in that action.

On August 8, 2013, Zimmerman filed a claim against the Cabinet for violations of the Kentucky Civil Rights Act (KCRA). She also included in her complaint a claim against Lieutenant Pierce individually for civil battery. Zimmerman sought damages from both parties.

The Cabinet moved for summary judgment, arguing that by filing her workers' compensation claim Zimmerman opted out of her KCRA claim because both claims arose from the same injury and under the same set of facts. *See Am. Gen. Life & Acc. Ins. Co. v. Hall*, 74 S.W.3d 688, 692 (Ky. 2002) ("Having previously elected to pursue and collect her workers' compensation remedy, [plaintiff] is deemed by [Kentucky Revised Statute] KRS 342.610(4) to have

waived her right to pursue this civil action for damages.”). The Oldham Circuit Court granted the Cabinet’s motion, and Zimmerman appeals.

We need not reach the merits of Zimmerman’s arguments on appeal.

It is clear from the record that the Oldham Circuit Court’s order was interlocutory, and therefore unappealable.

[Kentucky Rule of Civil Procedure] CR 54 .02 provides the manner in which a judgment or order that is otherwise not final may be made final and appealable. That rule provides in pertinent part:

- (1) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Francis v. Crouse Corp., 98 S.W.3d 62, 65 (Ky. App. 2002). The Oldham Circuit Court order from which Zimmerman appeals contains no such finality language.

In fact, the order specifically stated that Zimmerman’s claims against Pierce (for

battery and concomitant damages) were “not before the Court at this time.” The order specified that the circuit court was only ruling on Zimmerman’s claims against the Cabinet.

“A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02.” CR 54.01; *see also Watson v. Best Fin. Servs., Inc.*, 245 S.W.3d 722, 726 (Ky. 2008). Given that the circuit only ruled upon one claim and that its order contained no finality language, we conclude that the order entered by the circuit court was interlocutory. *Francis, supra*, at 68.

This appeal is dismissed as being from a nonfinal order.

ALL CONCUR.

ENTERED: 9-22-16

/s/ James H. Lambert
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

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