

RENDERED: NOVEMBER 30, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000102-MR

CREEKWOOD PLACE NURSING & REHAB
CENTER, INC.; SUNBELT HEALTH CARE
CENTERS, INC.; ADVENTIST HEALTH SYSTEM
SUNBELT HEALTHCARE CORPORATION;
ADVENTIST HEALTH SYSTEM/SUNBELT, INC.;
AND ELIZABETH STUART GETTINGS, IN HER
CAPACITY AS ADMINISTRATOR OF CREEKWOOD
PLACE NURSING & REHAB CENTER, INC.

APPELLANTS

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 17-CI-00157

PHYLLIS SITES; EUGENE SITES,
AS EXECUTOR OF THE ESTATE
OF PHYLLIS SITES, DECEASED;
AND EUGENE SITES, INDIVIDUALLY

APPELLEES

OPINION AND ORDER DISMISSING

** ** * * * * *

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

NICKELL, JUDGE: Creekwood Place Nursing & Rehab Center, Inc.; Sunbelt Health Care Centers, Inc.; Adventist Health System Sunbelt Healthcare Corporation; Adventist Health System/Sunbelt, Inc.; and Elizabeth Stuart Gettings, in her capacity as administrator of Creekwood Place Nursing & Rehab Center, Inc. (collectively “Creekwood”), appeal from orders of the Logan Circuit Court denying Creekwood’s motion to dismiss Phyllis and Eugene Sites’ complaint. Following a careful review, we conclude this appeal must be dismissed as having been taken from an interlocutory order.

Phyllis was a resident at Creekwood’s facility on two separate occasions beginning December 27, 2016, and ending February 17, 2017.¹ As part of each admission, Phyllis executed documents furnished by Creekwood titled “Appointment of Representative for Admission Purposes.” Those documents—limited Powers of Attorney (POA)—designated Phyllis’ husband, Eugene, as her legal representative for the sole purpose of completing additional documents relating to Phyllis’ admission to Creekwood’s facility. Creekwood provided voluntary arbitration agreements for each admission to Eugene which he signed as Phyllis’ representative.

¹ Phyllis’ first admission was from December 27, 2016, through January 17, 2017, and her second admission—or readmission—was from February 3, 2017, through February 17, 2017.

On May 19, 2017, the Siteses filed this action against Creekwood alleging negligence, medical negligence, corporate negligence, violations of the Long-Term Care Residents' Rights Act,² and loss of spousal consortium. On June 14, 2017, Phyllis passed away. On October 9, 2017, Creekwood moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted pursuant to CR³ 12.02(a) and (f), claiming the parties had entered valid and enforceable arbitration agreements. On October 11, 2017, Eugene moved to substitute himself as executor of Phyllis' estate in Phyllis' stead and revive the action. Eugene's motion to substitute as party plaintiff was unopposed.

On December 19, 2017, after Creekwood's motion to dismiss was fully briefed and arguments heard, the trial court denied the motion to dismiss finding Creekwood's motion relating to Eugene's claims had no merit and Eugene did not have authority to enter the arbitration agreement on Phyllis' behalf because its execution was unnecessary for her admission to the facility. The trial court also granted Eugene's motion to substitute as party plaintiff. This appeal followed. However, after filing its notice of appeal, Creekwood also moved for entry of an agreed order denying Creekwood's motion to dismiss and granting permission for

² Kentucky Revised Statutes (KRS) 216.510, *et seq.*

³ Kentucky Rules of Civil Procedure.

an interlocutory appeal. The agreed order was subsequently entered on January 9, 2018.

Generally, jurisdiction of the Court of Appeals is limited to final judgments. *See* CR 54.01. We are convinced this appeal was taken from an interlocutory order as no order has yet been entered adjudicating all claims and rights or liabilities between the parties. Although it contained finality language, the trial court's order entered on December 19, 2017, was inherently interlocutory. Creekwood recognized this flaw and moved for entry of an agreed order denying its motion to dismiss and granting permission to bring an interlocutory appeal. Nonetheless—despite the attempt to make the agreed order “final and appealable” by inserting language to that effect—the subsequent order entered on January 9, 2018, was also interlocutory. Although the trial court included the recitations set out in CR 54.02 necessary to allow appellate review, the orders could not be made final because neither conclusively determined the rights of the parties. *Francis v. Crouse Corp.*, 98 S.W.3d 62, 65 (Ky. App. 2002) (citing *Hale v. Deaton*, 528 S.W.2d 719 (Ky. 1975)).

Creekwood asserts its appeal is governed by KRS 417.220 because the trial court denied its motion to dismiss and compel arbitration. KRS 417.220 provides:

(1) An appeal may be taken from:

(a) An order denying an application to compel arbitration made under KRS 417.060;

(b) An order granting an application to stay arbitration made under subsection (2) of KRS 417.060;

(c) An order confirming or denying confirmation of an award;

(d) An order modifying or correcting an award;

(e) An order vacating an award without directing a rehearing; or

(f) A judgment or decree entered pursuant to the provisions of this chapter.

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Review of the record reveals Creekwood never applied to the trial court to compel arbitration; it simply moved to dismiss the action pursuant to CR 12.02. Therefore, the provisions of KRS 417.220 are inapplicable. Thus, this Court lacks subject matter jurisdiction and we have no recourse other than dismissing Creekwood's appeal.

For the foregoing reasons, this appeal must be and hereby is,

DISMISSED.

ALL CONCUR.

ENTERED: November 30, 2018

/s/ C. Shea Nickell
JUDGE, KENTUCKY COURT OF APPEALS

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