

RENDERED: JANUARY 4, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001918-MR

STEPHEN CHRIS SANDERS,
CAROLYN ANN JAGGERS AND
PHYLLIS MARIA MOSER,
CO-EXECUTORS OF THE LAST WILL
OF LAVERNE SANDERS, DECEASED

APPELLANTS

v. APPEAL FROM EDMONSON CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 12-CI-00127

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES,
DEPARTMENT OF MEDICAID SERVICES

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: KRAMER, D. LAMBERT, AND MAZE, JUDGES.

LAMBERT, D., JUDGE: Appellants appeal the Edmonson Circuit Court's denial of their motion to dismiss the Appellee's complaint for Medicaid payments made

on behalf of Laverne Sanders, deceased. Finding that the appeal is interlocutory, and therefore not appealable, we dismiss.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Appellants (“Executors”) are the executors of the estate of Laverne Sanders (“Laverne”), now deceased. The Appellees, the Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services (“CHFS”), is the executive agency vested with the power to administer the Kentucky Medicaid Program.

Prior to her death, Laverne received nursing home services through Medicaid totaling \$22,478.11. After her death, CHFS gave notice to the estate by letter dated April 9, 2012, of its claim against the estate in that amount. On June 12, 2012, the Executors sent a Notice of Disallowance of Claim to CHFS, denying its claim for repayment of those expenses. On August 13, 2012, CHFS filed a claim with the Edmonson Circuit Court claiming entitlement to repayment. Thereafter, on August 20, 2012, the Executors filed a motion to dismiss CHFS’s claim. The court denied the Executors’ motion to dismiss on July 8, 2013. However, neither party was served with the court’s order which denied Appellants motion to dismiss, but, for some unidentified reason, the order was not discovered by either party until two years later on September 29, 2015. To cure this defect of process, the parties agreed to have the court reinstate the July 8th order, *nunc pro*

tunc, and the court did so on November 16, 2015. The court’s denial of the Executors’ motion to dismiss is the basis for this appeal.

Additional facts are discussed below as necessary.

II. ANALYSIS

Kentucky Rule of Civil Procedure (“CR”) 54.01 provides in pertinent part: “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.” “In other words, the finality of an order is determined by whether it grants or denies the ultimate relief sought in the action.” *State Farm Mut. Ins. Co. v. Caudill*, 136 S.W.3d 781, 783 (Ky. App. 2003). The general rule is that, absent a showing to the contrary, an order denying the dismissal of an action is interlocutory and is therefore not final and appealable. *Druen v. Miller*, 357 S.W.3d 547, 549 (Ky. App. 2011); *See also Parton v. Robinson*, 574 S.W.2d 679 (Ky. App. 1978) (holding that a denial of a motion to dismiss was not final and appealable).

In this case, the ultimate relief sought by CHFS is repayment of the medical expenses it paid for on behalf of Laverne. The Executors’ motion to dismiss was based on the argument that it was barred by limitations under

Kentucky Revised Statute (“KRS”) 396.055(1).¹ The court’s order dismissing the Executors’ motion to dismiss simply stated that the “[d]efendant’s motion to dismiss the complaint initiating this action as barred by limitations is hereby overruled.” This was not a final and appealable order. The fact that the order issued in November of 2015 stated that it was a final order does not change its fundamentally interlocutory nature. *See City of Covington v. Peare*, 769 S.W.2d 761 (Ky. App. 1989).

III. CONCLUSION

For the foregoing reasons we find that the Executors’ appeal is interlocutory in nature and is therefore not a final, appealable judgment. We dismiss the appeal.

ALL CONCUR.

January 4, 2019
DATE

/s/ Debra Hembree Lambert
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

Natty Bumpo
Brownsville, Kentucky

Catherine E. York
Frankfort, Kentucky

¹ KRS 396.055(1): “Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant commences an action against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.”