

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-001050-MR

GREAT WEST CASUALTY COMPANY

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE JEFFREY BURDETTE, JUDGE  
ACTION NO. 15-CI-00592

DAVID DEBORD AND  
NANCY WALTERS, co-administrators  
of the ESTATE OF MEGAN  
DEBORD WILLIAMS, deceased,  
and co-guardians for CEANNA  
WILLIAMS, an unmarried infant;  
JAMES VANHOOK, as guardian  
for JAZMYN VANHOOK, an unmarried  
infant; JOSEPH WILLIAMS, guardian  
and next best friend for KAYLIE  
WILLIAMS, an unmarried infant;  
ROBERT MIDDLETON; and  
NATIONAL INDEMNITY CASUALTY  
COMPANY

APPELLEES

OPINION AND ORDER  
DISMISSING

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BEFORE: DIXON, KRAMER, AND MAZE, JUDGES.

KRAMER, JUDGE: Great West Casualty Company has filed what it characterizes as a “protective appeal” from a June 20, 2016 order entered by the Pulaski Circuit Court. The order in question purports to be “final and appealable[;]” Great West questions whether the order is in fact interlocutory; and Great West asks that we address whether the June 20, 2016 order is subject to our appellate jurisdiction before we address its appeal on the merits. Upon review, the circuit court’s June 20, 2016 order is interlocutory and outside the scope of our jurisdiction.

Accordingly, we dismiss.

On March 4, 2014, Robert Middleton was making a turn at the intersection of Coleman Road and Kentucky Highway 39 in Pulaski County when the tractor-trailer he was operating became stuck in the road, blocking both the northbound and southbound lanes. Megan DeBord Williams, who was driving in the southbound lane, died after colliding with the tractor-trailer. Based upon this incident, Williams’ estate and three children (collectively, “the Estate”) filed loss of consortium and wrongful death claims in Pulaski Circuit Court in an action (hereinafter, “14-CI-00283”) against three separate defendants: (1) Middleton; (2) MS Express, LLC, the motor carrier Middleton was driving for; and (3) Koleaseco, Inc., the alleged owner of the tractor-trailer.

Because Koleaseco's insurance provider, appellant Great West Casualty Company, asserted that the policy it had issued to Koleaseco did not cover the tractor-trailer or Middleton, Middleton's expenses in defending the Estate's suit were paid for by MS Express's insurance provider, National Indemnity Casualty Company (NICC). Great West's assertion of non-coverage also prompted the Estate to initiate a separate action (the litigation forming the basis of the instant appeal) against Great West and Middleton for a declaration of rights pursuant to KRS<sup>1</sup> 418.040 *et seq.* In the words of its complaint, the Estate asked the circuit court to declare that:

- A. Great West Casualty Company provides \$1,000,000 liability insurance coverage for the claims asserted by [the Estate] arising out of Megan DeBord Williams' death;
- B. For their costs herein expended; and,
- C. Any and all other relief to which they may appear entitled.

Other parties also asked for declaratory relief relating to the existence and scope of Koleaseco's insurance coverage through Great West. Middleton, for his part, filed a cross-claim against Great West asking for the same declarations requested by the Estate, but also requested the circuit court declare "[t]he liability insurance policy issued by Great West Casualty Company provides primary

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<sup>1</sup> Kentucky Revised Statute.

coverage for the March 4, 2014 accident.” Similarly, NICC intervened and asked for the following relief in its complaint:

- i. Judgment declaring that the policy issued by Great West Casualty Company provides a minimum of \$1,000,000 liability insurance coverage for the claims asserted against Robert Middleton by [the Estate] arising from out of the March 4, 2014 subject accident;
- ii. Judgment declaring that policy issued by Great West Casualty Company provides primary coverage for the claims asserted against Robert Middleton arising from the March 4, 2014 accident;
- iii. Alternatively, judgment declaring that the policy issued by Great West Casualty Company provides pro rata coverage for the claims asserted against Robert Middleton arising from the March 4, 2014, accident;
- iv. Judgment awarding damages in an amount in excess of the jurisdictional limits of this Court;
- v. Pre-and post-judgment interests on the amount of any damages awarded in favor of the Intervening Plaintiff;
- vi. A bench trial;
- vii. Its costs and attorney’s fees herein expended; and
- viii. Any and all other relief to which it may appear entitled.

After a period of discovery, motions for summary judgment were filed. Specifically, the Estate argued the evidence undisputedly demonstrated Koleaseco owned the tractor-trailer; Middleton had permission to operate it at the time of the accident and was thus an “insured” under the terms of Great West’s

policy; and, that no exceptions in Great West's policy excluded coverage under the circumstances. The Estate also argued that a federally mandated MCS-90 Endorsement applied to Great West's policy and mandated coverage as a matter of law. In relevant part, the MCS-90 Endorsement stated that "[t]he policy to which this endorsement is attached . . . is primary and the company shall not be liable for amounts in excess of \$1,000,000 for each 'accident.'"<sup>2</sup>

NICC adopted the Estate's arguments in its own motion for summary judgment. Additionally, it argued that the circumstances undisputedly demonstrated Great West was the primary insurer; its own coverage was secondary; and that it was consequently entitled to reimbursement from Great West for Middleton's defense costs relating to 14-CI-00283.

Great West, on the other hand, contended in its own summary judgment motion that the terms of the policy it had issued to Koleaseco excluded *any* kind of coverage. In support, it offered two arguments. First, it pointed out that an amendment to its policy, styled "Endorsement CA49960411," had modified coverage under the policy prior to the accident and had specifically precluded coverage relating to any vehicle Koleaseco owned but failed to list on a "schedule of covered autos"; and, that no such schedule mentioned the tractor-trailer that was

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<sup>2</sup> The MCS-90 Endorsement further defined "accident" to include "continuous or repeated exposure to conditions which results in 'bodily injury,' 'property damage,' or environmental damage which the 'insured' neither expected nor intended."

involved in the accident. Second, Great West argued that Middleton was not considered an “insured” as defined in the policy.

Afterward, the circuit court entered two orders. In the circuit court’s first order, entered May 26, 2016, it held that Kleaseco was the owner of the tractor-trailer and that Middleton had been operating it with Kleaseco’s permission at all relevant times. In its second order, entered June 20, 2016, the circuit court determined Middleton qualified as Great West’s “insured” at the time of the accident; and that the MCS-90 Endorsement, rather than Endorsement CA49960411, applied to Great West’s policy. The circuit court then concluded its June 20, 2016 order by stating “This is a final and appealable order.”

This appeal followed. Upon review, we dismiss.

“Jurisdiction is a threshold consideration for any court at any level of the Kentucky court system.” *Commonwealth v. Farmer*, 423 S.W.3d 690, 692 (Ky. 2014). Where no final judgment appears of record, appellate courts are without jurisdiction to consider the appeal. *See Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005).

Here, the circuit court’s June 20, 2016 order is an unreviewable, interlocutory order because, while it determined Middleton was entitled to *coverage* under Great West’s policy with Kleaseco, it failed to determine the *extent* of that coverage. In other words, the circuit court failed to determine the

amount Great West owed the Estate due to that coverage, and thus only resolved part of the Estate's claim.<sup>3,4</sup> See, e.g., *Hale v. Deaton*, 528 S.W.2d 719, 722 (Ky. 1975) (explaining that for a judgment or order to be reviewable even under the standard of CR<sup>5</sup> 54.02, it must finally adjudicate at least one claim in the

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<sup>3</sup> The Estate asserts (in response to Great West's argument that this is an interlocutory and unreviewable appeal) that it was unnecessary for the circuit court to decide whether Great West was obligated to pay it the extent of its policy limits. This, the Estate argues, is because it plans to resolve "[q]uestions regarding how much Great West will have to pay to the Plaintiff/Appellees," along with "other issues . . . in separate litigation against Great West once the declaration of coverage becomes final."

With that said, the Estate's argument is not well taken for at least two reasons. First, it is a tacit admission that the circuit court's adjudication of this matter has not "terminate[d] the uncertainty or controversy which gave rise to the action," and thus should not have been designated final and appealable. See KRS 418.065.

Second, the Estate's argument is disingenuous. On February 18, 2016 (*i.e.*, prior to when the circuit court purported to resolve this litigation in a "final and appealable" manner), the Estate entered into a settlement with every defendant in 14-CI-00283 except for Great West. In pertinent part, their settlement agreement provided:

3. Plaintiffs will release Robert Middleton from all personal liability, collecting only the Great West Casualty Company liability insurance limits available to him, if any, as authorized and allowed by *Medical Protective Co. of Fort Wayne, Indiana v. Davis*, 581 S.W.2d 25 (Ky. App. 1979), as Great West Casualty Company refused to defend or extend insurance coverage to Mr. Middleton;

4. The determination as to whether Great West Casualty Company Insures Robert Middleton, and is liable for payment of its liability insurance limits to Plaintiffs pursuant to this Settlement Agreement will be determined by final judgment, or settlement, in Plaintiffs' Declaration of Rights action, Pulaski Circuit Court Civil Action 15-CI-00592.

(Emphasis added.)

<sup>4</sup> Great West further argues the circuit court neglected to determine whether its coverage was triggered under the circumstances of this case. We agree the circuit court's order is less than clear in this respect and encourage the circuit court to clarify this point.

<sup>5</sup> Kentucky Rule of Civil Procedure.

litigation). Aside from that, it *entirely* failed to resolve NICC’s separate claim against Great West for its costs in defending Middleton in 14-CI-00283.<sup>6</sup> Thus, even if the pair of orders the circuit court entered in this matter resolved something that *could* have been considered a “claim” – and it did not – both orders remained interlocutory because both lacked the finality language mandated by CR 54.02(1). We remind the circuit court that if it wishes to subject a final adjudication that it has entered on at least one but less than all the claims between litigating parties, its judgment must not only state that it is final and appealable, but also that “there is no just reason for delay.” *Id.* Absent those certifications, we otherwise lack jurisdiction. *See Watson v. Best Fin. Serv., Inc.*, 245 S.W.3d 722 (Ky. 2008); *Spencer v. Estate of Spencer*, 313 S.W.3d 534, 540 (Ky. 2010).

In short, the circuit court’s judgment is not subject to our jurisdiction. Accordingly, we are left with no option other than to DISMISS this appeal.

ALL CONCUR.

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<sup>6</sup> The Estate also asserts that, upon information and belief, NICC “abandoned” its reimbursement claim. However, if NICC’s intention was to “abandon” its claim, an order of dismissal was required. *See, e.g.*, CR 77.02(2) (explaining that even where there is “want of prosecution” of a legal claim, a court order must be entered to dismiss it). In the record before us, no such order exists.



ENTERED: February 1, 2019

/s/ Joy A. Kramer  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Sheryl G. Snyder  
Griffin Terry Sumner  
J. Kendrick Wells IV  
Louisville, Kentucky

BRIEF FOR APPELLEES, DAVID  
DEBORD AND NANCY WALTERS,  
CO-ADMINISTRATORS OF THE  
ESTATE OF MEGAN DEBORD  
WILLIAMS, AND CO-GUARDIANS  
FOR CEANNA WILLIAMS, AN  
UNMARRIED INFANT; JAMES  
VANHOOK, AS GUARDIAN FOR  
JAZMYN VANHOOK, AN  
UNMARRIED INFANT; AND  
JOSEPH WILLIAMS, GUARDIAN  
FOR KAYLIE WILLIAMS, AN  
UNMARRIED INFANT:

D. Bruce Orwin  
Richard Hay  
Sarah Hay Knight  
Scott T. Foster  
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Greg Dunn  
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