

RENDERED: JANUARY 25, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000083-MR

GENERAL STAR INDEMNITY COMPANY

APPELLANT

v. APPEAL FROM BATH CIRCUIT COURT
HONORABLE WILLIAM EVANS LANE, JUDGE
ACTION NO. 08-CI-90218

KRISSY MCKENZIE WITHROW AND
JUSTIN MCKENZIE, CO-ADMINISTRATORS
OF THE ESTATE OF KENNETH MCKENZIE

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * **

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

DIXON, JUDGE: General Star Indemnity Company appeals from an opinion of the Bath Circuit Court ordering payment of pre-judgment and post-judgment interest to the Estate of Kenneth McKenzie. Because we conclude the circuit court's order was interlocutory, we dismiss this appeal.

In May 2008, Kenneth McKenzie was killed in a motor vehicle accident involving a tractor-trailer owned by Phoenix Transportation Company.

McKenzie's estate subsequently filed a wrongful death lawsuit against Phoenix and several other defendants, including General Star. The Estate settled the matter for \$5,500,000 as to all defendants except General Star, and the court entered a judgment pursuant to the terms of the settlement agreement on July 26, 2010.¹ As part of the settlement, Phoenix assigned to the Estate any interest it had in the proceeds of an excess liability insurance policy issued by General Star. The Estate sought a declaration of rights as to the excess policy coverage, and it also alleged two counts of bad faith against General Star. In a bifurcated proceeding, the circuit court resolved the coverage issue in favor of the Estate in an order entered September 5, 2014. General Star appealed the decision, and a panel of this Court affirmed. *General Star Indemnity Company v. Withrow*, 2014-CA-001519-MR, 2015 WL 4880292 (Ky. App. Aug. 14, 2015). In May 2016, General Star voluntarily transferred \$1,216,209.84 to the escrow account of the attorneys representing the Estate.² Thereafter, the Estate filed a motion to recalculate interest, arguing it was entitled to pre-judgment and post-judgment interest using the date of the underlying judgment against Phoenix, July 26, 2010. The circuit court agreed with the Estate's position and entered an opinion ordering General

¹ The court also entered an agreed order dismissing the Estate's claims against all defendants except General Star.

² This sum represented the \$1,000,000 policy limit plus post-judgment interest running from September 5, 2014 through May 23, 2016.

Star to pay additional pre-judgment and post-judgment interest. This appeal followed.

Pursuant to Kentucky Rule of Civil Procedure (CR) 54.01, “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.” Pursuant to CR 54.02(1), if multiple claims exist, “the court may grant a final judgment upon one or more but less than all of the claims . . . only upon a determination that there is no just reason for delay.”

Here, the order on appeal did not adjudicate all the claims asserted by the Estate, as the bad faith claims against General Star remained pending. CR 54.01. Further, the court’s order did not include the finality language required by CR 54.02 to make an otherwise interlocutory order final and appealable. It is well-settled that, “[i]n the absence of such finality and a recitation thereof, the order is interlocutory[,]” and an appellate court lacks jurisdiction to consider the matter on appeal. *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005). After careful consideration, we must conclude the circuit court’s order was interlocutory and not reviewable on appeal.

Now, therefore, it is ORDERED that Appeal No. 2017-CA-000083-MR is DISMISSED as having been taken from an interlocutory order.

ALL CONCUR.

ENTERED: January 25, 2019

/s/ Donna Dixon
JUDGE, COURT OF APPEALS

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