

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000570-DG

JULIE LOCKE

APPELLANT

ON REVIEW FROM JEFFERSON CIRCUIT COURT
v. HONORABLE MITCH PERRY, JUDGE
ACTION NO. 18-XX-000114

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Julie Locke appeals from a decision by the Jefferson Circuit Court affirming the Jefferson District Court. We granted discretionary review. After an examination of the facts presented by the record, we reverse and remand to the circuit court with instructions to vacate the district court's order entered September 28, 2018.

On September 7, 2018, the district court granted Locke expungement for a criminal contempt charge. The order indicated Locke had been arrested on February 28, 2018, for “CONTEMPT OF COURT LIBEL/SLANDER RESISTANCE TO ORDER.” Locke moved to expunge the conviction, and the order noted the Commonwealth had no objection. The district court thereupon granted the motion to expunge. However, seventeen days later, the district court redocketed the matter *sua sponte* and reversed itself in a second order. The reasoning behind the district court’s unprompted reversal forms no part of the record on appeal.¹ In this second order, which was entered September 28, 2018, the district court set aside the previous order and denied Locke’s expungement motion. Locke moved the district court to reconsider, and this motion was denied.

Locke appealed the matter to circuit court, arguing the district court lacked jurisdiction to set aside the expungement order because more than ten days had passed since the first order was entered. The Commonwealth filed no response. Nonetheless, the circuit court affirmed the district court’s order, holding

¹ Although it forms no part of the record on appeal, we note the following for the sake of background. According to *Locke v. Brown*, No. 3:18-cv-697-RGJ, 2019 WL 4675390 (W.D. Ky. Sept. 25, 2019) (slip copy), Locke’s criminal contempt charge was the result of Locke’s contentious relationship with the judge presiding over her family court proceedings. According to allegations presented in the federal case, the family court judge communicated *ex parte* with the district court judge after he issued the first order, telling him he had no jurisdiction to grant Locke an expungement of the criminal charge. *Id.* at *1. The district court judge was also apparently under the impression that the family court judge “would sign an order expunging [Locke’s] criminal record if [the district court judge] vacated his order.” *Id.* at *2.

there was no evidence the district court clearly erred or abused its discretion. We subsequently granted Locke's petition for discretionary review.

The Commonwealth's position throughout these proceedings prior to briefing has been to agree with Locke and admit the district court's second order was erroneous. In a joint motion to this Court, Locke and the Commonwealth requested that we reverse and remand with instructions to set aside the district court's second order and reinstate the expungement order. We denied this motion because there is no authority for this Court to render a decision on the merits without legal argument from the parties and a review of the record in the case. This appeal followed.

For her sole issue on appeal, Locke contends the district court lacked jurisdiction to set aside her expungement in its second order because more than ten days had passed following entry of its first order. The Kentucky Rules of Civil Procedure (CR) generally dictate that a court's orders become final ten days after entry, after which the court loses jurisdiction of the case.

[A]s a general proposition, the court loses control of its judgment ten days after the date of entry unless an authorized motion is made or court action is taken within that time. W. CLAY, KENTUCKY PRACTICE, Civil Rule 59.04, comment 5 (3rd ed. 1974); See also CR 50.02, CR 52.02, CR 59.02, CR 59.04, and CR 59.05.

Ohio River Pipeline Corp. v. Landrum, 580 S.W.2d 713, 718 (Ky. App. 1979).

“[I]t is axiomatic that a court loses jurisdiction once its judgment is final.” *Mullins v. Hess*, 131 S.W.3d 769, 774 (Ky. App. 2004).

The Commonwealth’s position in the matter *sub judice* is something of a curiosity. The record reflects the Commonwealth supported Locke’s position in district court, by supporting her motion to expunge, and it remained silent during Locke’s appeal to circuit court. Furthermore, our records reflect that the Commonwealth supported Locke’s position in motions before this Court.

Conversely, in its brief, the Commonwealth takes the position that “[t]he district court’s jurisdiction to set aside the expungement order is dependent on whether the expungement order was a valid exercise of the trial court’s inherent authority.” (Appellee’s Brief at 2.) The Commonwealth posits that, if the district court’s original order was unlawful, then the district court could vacate the order at any time, pursuant to *Phon v. Commonwealth*, 545 S.W.3d 284, 303 (Ky. 2018) and *Walker v. Commonwealth*, 568 S.W.3d 364, 367 (Ky. App. 2018). After discussing this as a possible ground to affirm, however, the Commonwealth declines to argue the first order was invalid, stating it “takes no position on whether expungement was a valid exercise of the district court’s inherent authority or whether it was an unlawful order rightfully vacated.” The Commonwealth

asserts the state of the record on appeal does not allow for a more definitive argument.

The Commonwealth is correct in its assessment of the state of the record on appeal. The record in this case is meager at best. There are no video recordings of the hearings, and the district court's orders are docket sheet notations. The Commonwealth is also correct in stating an unlawful order should be vacated. However, the record reflects no party below argued the district court's first order was unlawful, and it would be improper for us to consider an argument raised for the first time on appeal. "An appellate court 'is without authority to review issues not raised in or decided by the trial court.'" *Baumia v. Commonwealth*, 402 S.W.3d 530, 546 (Ky. 2013) (quoting *Reg'l Jail Auth. v. Tackett*, 770 S.W.2d 225, 228 (Ky. 1989)). Accordingly, we decline the Commonwealth's invitation to consider the argument at this time.

Returning to the sole preserved issue on appeal, the record supports Locke's contention that the district court's first order was final after ten days, at which time the district court lost control of the judgment. *Kentucky Farm Bureau Ins. Co. v. Gearhart*, 853 S.W.2d 907, 910 (Ky. App. 1993). Consequently, the district court's second order was void for lack of jurisdiction. *Mullins*, 131 S.W.3d at 774.

For the foregoing reasons, we reverse the Jefferson Circuit Court's order affirming the district court. On remand, we instruct the Jefferson Circuit Court to vacate the district court's order entered September 28, 2018.

ALL CONCUR.

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