

Supreme Court of Kentucky

2018-SC-000611-DG

GEOFFREY HAMPTON

APPELLANT

V. ON REVIEW FROM COURT OF APPEALS
CASE NO. 2017-CA-000480-MR
MUHLENBERG CIRCUIT COURT NO. 15-CI-00280

INTECH CONTRACTING, LLC;
AND
ZURICH AMERICAN INSURANCE COMPANY

APPELLEES

OPINION OF THE COURT BY JUSTICE BUCKINGHAM

AFFIRMING IN PART AND REVERSING IN PART

Appellant Geoffrey Hampton filed a workers' compensation enforcement action in the Muhlenberg Circuit Court against his employer, Intech Contracting, LLC, and its workers' compensation insurance carrier, Zurich American Insurance Company (collectively, Intech/Zurich). The circuit court entered an order granting Hampton's third, fourth, and fifth motions for partial summary judgment.

Intech/Zurich appealed, and the Court of Appeals dismissed the appeal of the portion of the order granting Hampton's fourth motion for partial summary judgment as an appeal from an interlocutory order, but it refused to dismiss the remainder of the appeal. Rather, it reversed the portion of the circuit court's order granting summary judgment to Hampton on his third and fifth partial summary judgment motions and directed the circuit court to

dismiss Hampton's claims relating to those two motions on the grounds that the circuit court lacked subject matter jurisdiction.

Hampton moved for our discretionary review of the portion of the Court of Appeals opinion reversing the circuit court's order granting him partial summary judgment on his third and fifth motions for partial summary judgment. Intech/Zurich did not move for our review of the portion of the Court of Appeals opinion dismissing its appeal of the portion of the circuit court's order granting Hampton's fourth motion for partial summary judgment.

We agree that the Court of Appeals properly dismissed the appeal from the circuit court's order granting partial summary judgment to Hampton on his fourth partial summary judgment motion as being an appeal from a nonfinal order.¹ However, we conclude the Court of Appeals erred in not dismissing the Intech/Zurich appeal from the portion of the circuit court's order granting summary judgment to Hampton on his third and fifth motions for partial summary judgment as also being an appeal from a nonfinal order. Therefore, we affirm in part and reverse in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 9, 2009, Hampton suffered a severe workplace injury which resulted in multiple severe injuries, including a below-the-knee amputation, a C2 fracture with spinal cord injury, a C6 level ASIA-C tetraplegia, multiple spinal fractures, lower extremity deep vein thrombosis,

¹ Again, neither Hampton nor Intech/Zurich have challenged this part of the Court of Appeals' opinion.

traumatic brain injury, a vocal cord injury, fractured teeth, and underlying anxiety related to the multiple injuries. As a result of these injuries, Hampton filed a workers' compensation claim wherein he was awarded permanent total disability benefits and future medical benefits related to his injuries, including certain specific benefits applicable to his specific injuries.

According to Hampton, notwithstanding his entitlement to the awarded benefits, Intech/Zurich has consistently failed to timely approve medical treatment, reimburse his out-of-pocket expenses, or pay him the correct amount of past due principal and interest for his income benefits. The validity of Hampton's claim is supported by the fact the Department of Workers' Claims opened an Unfair Claims Settlement investigation that resulted in Zurich agreeing to pay a civil penalty of \$18,500.

On August 5, 2015, Hampton filed a workers' compensation enforcement action in the Muhlenberg Circuit Court against Intech/Zurich, alleging that Intech/Zurich had failed to timely pay certain medical benefits to which he was entitled. As authority for his filing, Hampton cited KRS² 342.305, which provides as follows:

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the administrative law judge, or of an order or decision of the administrative law judge or board, or of an award of the administrative law judge unappealed from, or of an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending under KRS 342.125. The court

² Kentucky Revised Statutes.

shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals, shall be modified to conform to any decision of the administrative law judge ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

Hampton's complaint alleged that on October 6, 2014, he had received a workers' compensation award entitling him to income and medical benefits; that Intech/Zurich was obligated to pay for those benefits; that Intech/Zurich had "failed to pay all benefits awarded and found compensable"; that Intech/Zurich had "failed to approve all medical treatment found compensable in the opinion, award and order rendered on October 6, 2014"; and that he was seeking enforcement of Intech/Zurich's obligations to pay for those benefits, along with an award of attorney's fees.

Thereafter, through a succession of motions for partial summary judgment, Hampton made a variety of piecemeal enforcement requests. By order dated March 6, 2017, the circuit court granted Hampton's third, fourth, and fifth motions for partial summary judgment³ and ordered as follows: an award directing payment for the cost of a power wheelchair (third motion); an award of past-due income benefits in the amount of \$6,579.59 for the underpayment of past permanent total disability benefits plus interest (fourth motion); and an award of \$1,884.68 for the reimbursement of expenses for a

³ The circuit court had earlier ruled on Hampton's first and second motions for partial summary judgment.

medically-related trip to Oklahoma (fifth motion). Significantly, the order does not contain CR⁴ 54.02 finality language. Furthermore, the order did not resolve all the issues between all the parties because Hampton's claim for attorney fees remained pending. Therefore, the order was by definition an interlocutory order, and it also lacked CR 54.02 finality language.

After Intech/Zurich filed its appeal in the Court of Appeals, Hampton filed a motion to dismiss, arguing that the circuit court's order was interlocutory and did not contain CR 54.02 finality language. The Court of Appeals agreed that the underpayment of benefits aspect of the appeal was interlocutory as Hampton's complaint in the circuit court had claimed attorney fees and that claim remained pending. Therefore, the Court of Appeals dismissed that aspect of the appeal pursuant to CR 54.02 because the order appealed from did not resolve all the issues between all the parties and did not contain the necessary finality language.

The Court of Appeals concluded relative to the circuit court's granting of Hampton's third and fifth motions for partial summary judgment, however, that the "[Intech/Zurich] argument that the circuit court was acting outside the scope of its subject matter jurisdiction in this type of context was the functional equivalent of asserting an absolute immunity defense, the denial of which was subject to interlocutory review." Thus, the Court of Appeals held that although the circuit court order was interlocutory and otherwise did not comply with CR 54.02, it (the Court of Appeals) nevertheless had jurisdiction to

⁴ Kentucky Rules of Civil Procedure.

address the issues concerning Hampton's third and fifth partial summary judgment motions under the absolute immunity doctrine that permits a party to immediately appeal from a ruling that the party is not entitled to immunity.

The Court of Appeals reasoned that "the circuit court lacked subject matter jurisdiction to approve Hampton's requests for a camouflaged power wheelchair with all-terrain tires (as set forth in his third motion for summary judgment) and reimbursement for mileage and other costs associated with his November 2015 trip to Tahlequah, Oklahoma (as set forth in his fifth motion for partial summary judgment)." It stated, "Neither of those expenses were approved in Hampton's award, and they were required to be approved, in the first instance, by the ALJ."

Hampton's motion for discretionary review, which we granted, followed.

II. THE CIRCUIT COURT'S MARCH 6, 2017 ORDER WAS A NONFINAL ORDER THAT DOES NOT INCLUDE CR 54.02 FINALITY LANGUAGE.

As noted above, the Court of Appeals dismissed in part the Intech/Zurich appeal insofar as Intech/Zurich sought to challenge the past-due income benefits as an appeal from an interlocutory order that did not resolve all the issues between all the parties and did not contain CR 54.02 finality language. We agree with that disposition, and Intech/Zurich did not ask us to review it. We conclude, however, that Intech/Zurich's appeal from the portion of the circuit court's order addressing the wheelchair and the Oklahoma trip issues suffers from the same infirmity and that the entire appeal should have been dismissed as being an appeal from a nonfinal order.

CR 54.01 provides in pertinent part that “[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.” Here, Hampton’s request for attorney fees remained pending in the circuit court at the time the appeal was filed; thus, the circuit court’s order did not resolve all the issues between all the parties. *See Francis v. Crounce Corp.*, 98 S.W.3d 62, 68 (Ky. App. 2003). And because the order did not adjudicate all the rights of all the parties, the order was not a final and appealable order as it did not contain finality language.

CR 54.02(1) addresses interlocutory appeals involving multiple claims or parties. The Rule states as follows:

When more than one claim for relief is presented in an action, . . . the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

In *Watson v. Best Financial Services, Inc.*, we explained the operation of CR 54.02 as follows:

In any case presenting multiple claims or multiple parties, CR 54.02 . . . , vests the trial court—as the tribunal most familiar with the case—with discretion to release for appeal final decisions upon one or more, but less than all, claims in multiple claims actions. In such a case, the trial court functions as a dispatcher. If the trial court grants a final judgment upon one or more but less than all of the claims or parties, that decision remains interlocutory

unless the trial court makes a separate determination that there is no just reason for delay. And the trial court's judgment shall recite such determination and shall recite that the judgment is final.

245 S.W.3d 722, 726 (Ky. 2008) (internal citations and quotations omitted).

Hale v. Deaton makes clear the lethal effect of failing to include finality language in an otherwise interlocutory order:

These [CR 54.02] recitations on the part of the trial court are mandatory: For the purpose of making an otherwise interlocutory order final and appealable, the trial court is required to determine "that there is no just reason for delay," and the judgment must recite this determination and also recite that the judgment is final. CR 54.02(1). The omission of one of these requirements is fatal.

528 S.W.2d 719, 722 (Ky. 1975); *see also Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978).

Here, it is uncontested that Hampton's complaint included a claim for attorney fees and costs pursuant to KRS 342.310. Further, it is uncontested that the claim remained pending when the circuit court entered the order from which Intech/Zurich appealed.⁵ And, the circuit court's order did not contain finality language. In *Francis v. Crounce Corp.* we held that where the claim for attorney fees was a part of the claim and not merely collateral to the merits of the action and was pending when the appeal was filed, then the order appealed

⁵ Intech/Zurich argues in its brief that the order "was intended as a final and enforceable Order by both parties, with the only recourse being through appeal." It further argues that "[t]he finality of the Order was fundamentally understood by virtue of all claims being resolved. There was, and remains, no additional orders to enforce." These arguments, however, ignore the uncontested fact that the attorney fees issue remained pending when Intech/Zurich filed its appeal. That was the basis of the Court of Appeals opinion that the order was interlocutory, and Intech/Zurich failed to rebut that in its brief. Furthermore, despite the assertions of Intech/Zurich as to what the parties intended, the fact is that Hampton filed a motion to dismiss the appeal as nonfinal soon after Intech/Zurich filed its appeal.

from was nonfinal. *Francis*, 98 S.W.3d at 67-8. Likewise, the circuit court's order here is a nonfinal order.

We further note that Hampton cites another unresolved issue in his brief as follows: "Hampton is still seeking benefits and said medical benefits are still being denied or not approved by Zurich Insurance and Intech." Intech/Zurich responds in its brief that "the few medical expenses that are currently being denied have been appropriately challenged in the concurrent workers' compensation case, which is the only appropriate forum. There are no accrued medical dispute claims currently before the Muhlenberg Circuit Court." Hampton did not respond to this statement in his reply brief. Regardless, whether these disputes currently remain pending in the circuit court or are being challenged in the workers' compensation case, the fact remains that the circuit court's order was interlocutory as it did not adjudicate the claim for attorney fees.

III. THE COURT OF APPEALS ERRED IN HOLDING THAT THE CIRCUIT COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT HAMPTON'S THIRD AND FIFTH PARTIAL SUMMARY JUDGMENT MOTIONS AND IN REVERSING WITH DIRECTIONS TO DISMISS HAMPTON'S CLAIMS IN THAT REGARD.

Inconsistently with its review of the past-due income benefits, the Court of Appeals concluded that the wheelchair and Oklahoma trip issues were properly before it. The Court of Appeals reached that result through the following rationale:

Hampton also argues that even if the circuit court did lack subject matter jurisdiction to grant his third and fifth motions for partial

summary judgment, its March 6, 2017 order – which granted those motions – was interlocutory and not a proper subject of this Court’s review. Again, however, Hampton is incorrect. Zurich’s argument that the circuit court was acting outside the scope of its subject matter jurisdiction in this type of context was the functional equivalent of asserting an absolute immunity defense, the denial of which was subject to interlocutory review. See *Ervin Cable Constr., LLC v. Lay*, 461 S.W.3d 422 (Ky. App. 2015) (discussing interlocutory review of a denied defense of workers’ compensation immunity); see also *Kentucky Employers Mut. Ins. v. Coleman*, 236 S.W.3d 9, 14-15 (Ky. 2007) (explaining “[worker’s compensation] immunity is extensive, ranging from disputes over the payment for injuries of the employee, *Brown Badgett, Inc. v. Calloway*, 675 S.W.2d 389 (Ky. 1984), to allegations of tortious conduct related to dealing with the workers’ compensation claim itself.”).

We disagree with the Court of Appeals’ conclusion that “Zurich’s argument that the circuit court was acting outside the scope of its subject matter jurisdiction in this type of context was the functional equivalent of asserting an absolute immunity defense, the denial of which was subject to interlocutory review.”

In *Breathitt Cty. Bd. of Education v. Prater*, 292 S.W.3d 883 (Ky. 2009), we addressed “whether Kentucky’s appellate courts have jurisdiction to consider an appeal from an interlocutory order denying a motion to dismiss or motion for summary judgment premised on the movant’s claim of absolute immunity.” *Id.* at 884. Relying on *Mitchell v. Forsyth*, 472 U.S. 511 (1985), and *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), we applied the absolute immunity doctrine to interlocutory appeals by government officials claiming immunity and held orders denying such immunity are “appealable even in the absence of a final judgment.” *Prater*, 292 S.W.3d at 887. We further focused on the

purpose of the common law grant of immunity to government officials noting that its purpose is to free its possessor “from the burdens of defending the action, not merely ... from liability.” *Id.* at 886 (quoting *Rowan County v. Sloas*, 201 S.W.3d 469, 474 (Ky. 2006)).

In *Commonwealth v. Samaritan Alliance, LLC*, 439 S.W.3d 757 (Ky. App. 2014), the Court of Appeals explained that “[a]lthough a party can immediately appeal from the denial of a motion to dismiss based on absolute immunity, most other substantive defenses must wait for adjudication by a final order.” *Id.* at 760. In other words, if a defense is to liability only rather than immunity from suit, it can be vindicated after a final judgment. Immunity from suit derives from “an explicit statutory or constitutional guarantee that trial will not occur[.]” *Midland Asphalt Corp. v. United States*, 489 U.S. 794 (1989). *See also Walker v. Brock*, 2016 WL 4410706, at *2 (Ky. App. 2016); CR 12.02.

Here, the Court of Appeals erred by perceiving an alleged procedural flaw in Hampton’s failure to first seek an ALJ adjudication concerning the wheelchair and the Oklahoma trip before initiating his KRS 342.305 complaint, which arguably may have deprived the circuit court of particular case jurisdiction over the two issues, as tantamount to depriving the circuit court of subject matter jurisdiction.⁶

⁶ As we conclude neither this Court nor the Court of Appeals has jurisdiction to adjudicate the merits of Intech/Zurich’s appeal, we take no position on whether Hampton was within his rights in filing the enforcement action on the wheelchair issue and the Oklahoma trip expenses issue when he did or whether he was required to first seek an adjudication in the workers’ compensation proceeding.

A procedural error as purportedly occurred here does not result in Intech/Zurich having absolute immunity from the type of action brought by Hampton, an enforcement action pursuant to KRS 342.305. There is no “explicit statutory or constitutional guarantee that trial will not occur” with respect to the wheelchair and Oklahoma trip issues. *See Midland Asphalt Corp.*, 489 U.S. at 801.

Rather, Hampton arguably failed to jump through a procedural hoop so as to properly present his KRS 342.305 claims. Such an alleged procedural failure, however, does not confer absolute immunity upon Intech/Zurich as envisioned in *Prater*, 292 S.W.3d at 887, which contemplates immunity from suit regardless of such a contingent procedural error.

The Court of Appeals places great reliance on *Brown Badgett, Inc. v. Calloway*, 675 S.W.2d 389 (Ky. 1984), in support of its determination that the circuit court lacked subject matter jurisdiction. The Court of Appeals asserted that this Court determined in *Brown Badgett* that the circuit court there did not have subject matter jurisdiction to determine the compensability of medical fees associated with a workers’ compensation award.

We have closely reviewed our opinion in *Brown Badgett*, which also involved a workers’ compensation enforcement action, and find no statement, holding, or implication that the circuit court in that case was without subject matter jurisdiction. Although in *Brown Badgett* we held that the several statutes cited therein granted “exclusive jurisdiction in the Workers’

Compensation Board to determine the issue in this case,” *id.* at 391, and that the circuit court was without jurisdiction, we did not distinguish between subject matter jurisdiction and particular case jurisdiction. The phrase “subject matter jurisdiction” is not in the opinion.

Again, the Court of Appeals, by perceiving Hampton’s alleged procedural flaw of not first seeking an ALJ adjudication as providing Intech/Zurich with “immunity,” has determined lack of subject matter jurisdiction when, at best, there may be a lack of particular case jurisdiction. We plainly stated in *Privett v. Clendenin*, 52 S.W.3d 530, 532 (Ky. 2001), that “[s]ubject matter jurisdiction refers to a court’s authority to decide ‘this type of case’ as opposed to ‘this case.’” As we have explained above, although there may have been a lack of particular case jurisdiction, the circuit court here clearly had subject matter jurisdiction as it had the authority to decide this type of case under KRS 342.305.⁷

Further, there is no indication in *Brown Badgett* that the circuit court order appealed from in that proceeding did not resolve all the issues between all the parties so as to qualify as a final and appealable order, or, alternatively, if other issues remained pending at the time the appeal was taken, that the order did not include CR 54 finality language. In other words, that decision does not address at all the CR 54 infirmities present in this proceeding and, therefore, is not useful authority for resolving the present issue.

⁷ See *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422 (Ky. App. 2008), for the Court of Appeals’ more in-depth discussion of subject matter jurisdiction, particular case jurisdiction, and the differences between the two.

In addition, *Brown Badgett* unquestionably does not hold that a nonfinal order in a proceeding brought in a KRS 342.305 case that has failed to obtain any necessary preclearance from a workers' compensation tribunal is the "functional equivalent" of absolute immunity so as to qualify for an exemption to the CR 54 finality rules. In short, the Court of Appeals' reliance on *Brown Badgett* for the proposition that an appeal from a nonfinal order without finality language in a proceeding brought pursuant to KRS 342.305 is the functional equivalent of absolute immunity is misplaced.

Nor do we construe the other cases cited by the Court of Appeals, *Ervin Cable Constr., LLC v. Lay*, 461 S.W.3d 422 (Ky. App. 2015), and *Kentucky Employers Mut. Ins. V. Coleman*, 236 S.W.3d 9, 14-15 (Ky. 2007), as demonstrating that Intech/Zurich has absolute immunity under the circumstances of this case.

Ervin Cable addressed the appealability of an order denying an immunity claim based upon "up-the-ladder immunity," a corollary that "refers to a contractor's immunity from tort lawsuits where the plaintiff was injured at work and workers' compensation benefits are the plaintiff's exclusive remedy under KRS 342.690." *Ervin Cable*, 461 S.W.3d at 424 (citing *Beaver v. Oakley*, 279 S.W.3d 527, 528 n.1 (Ky. 2009)). This case is distinguishable from an up-the-ladder immunity case because that type of case involves the immunity of a party pursuant to the exclusive remedy provisions of KRS Chapter 342, whereas the enforcement provisions sought here are specifically provided for in a circuit court action filed under KRS 342.305.

Similarly, the *Coleman* case involved the denial of a petition for a writ of prohibition/mandamus by the Court of Appeals wherein the workers' compensation insurance carrier sought a writ to bar further circuit court proceedings on a tort action related to a workers' compensation claim, arguing that the exclusive remedy provisions of the Workers' Compensation Act barred that court from exercising jurisdiction. *Coleman*, 236 S.W.3d at 10. Again, unlike *Coleman*, this case does not involve a conflict between a civil tort lawsuit and the exclusive remedy provisions of the Workers' Compensation Act; rather, Hampton brought his enforcement action relying upon the specific provisions of KRS 342.305. In short, in *Coleman* and *Ervin* there was immunity from suit; in this case there was not.

In summary, the central allegation is that Hampton committed a procedural error by failing to obtain ALJ approval for the claimed expenses before filing the enforcement action. The error, if any, merely failed to confer the circuit court with particular case jurisdiction. Even under this analysis, any lack of particular case jurisdiction in the circuit court does not equate to the immunity of Intech/Zurich from suit for benefits enforcement. Because the circuit court had subject matter jurisdiction under KRS 342.305 and immunity was not an issue as it was in *Ervin* and *Coleman*, and because the order appealed from was interlocutory and did not contain finality language, the Court of Appeals lacked jurisdiction to consider this interlocutory appeal and was required to dismiss it.

**IV. ASSUMING THE COURT OF APPEALS WAS CORRECT IN
STATING THAT THE CIRCUIT COURT LACKED SUBJECT
MATTER JURISDICTION AND THAT SUCH WAS THE
FUNCTIONAL EQUIVALENT OF ABSOLUTE IMMUNITY, IT
NONETHELESS WAS WITHOUT JURISDICTION TO CONSIDER
THE APPEAL.**

The Court of Appeals determined that the circuit court improperly denied Intech/Zurich's absolute immunity defense and that such denial was subject to interlocutory review. Assuming the Court of Appeals was correct in stating that this was a case of denial by the circuit court of an absolute immunity defense, the Court of Appeals nonetheless was without jurisdiction to consider the appeal.

In *Commonwealth v. Farmer*, 423 S.W.3d 690 (Ky. 2014), this Court explained the elements of the collateral order doctrine that must be met before an interlocutory order denying immunity would be appealable. *Id.* at 696-97. We recently reiterated those elements in the to-be-published case of *Maggard v. Kinney*, ___ S.W.3d ___, 2019 WL 2462878 (Ky. 2019), rendered June 13, 2019.⁸ "The collateral order doctrine requires an order (1) conclusively decides an important issue separate from the merits of the case; (2) is effectively unreviewable following final judgment; and (3) involves a substantial public interest that would be imperiled absent an immediate appeal." *Id.* at *4 (citing *Farmer*, 423 S.W.3d at 696-97).

As noted above, the third element is the presence of a "substantial public interest." *Farmer*, 423 S.W.3d at 697 (quoting *Will v. Hallock*, 546 U.S. 345,

⁸ Opinion by Justice Hughes. All sitting, all concur.

352-53 (2006)). As in *Farmer*, the element of “substantial public interest” has not been met in this case. Whether or not the circuit court had jurisdiction to consider a workers’ compensation enforcement action against Intech/Zurich is not a matter of “substantial public interest.”

Concerning the two cases cited by the Court of Appeals in support of its determination that interlocutory review was proper, we first note that *Coleman* is easily distinguishable as it involved a petition for a writ and not an interlocutory appeal. *Coleman*, 236 S.W.3d at 10. Distinguishing *Ervin Cable* is problematic, however.

In *Ervin Cable* the Court of Appeals, relying on *Prater*, claimed jurisdiction in addressing an interlocutory appeal rather than dismissing it and stated that “the denial of a substantial claim of immunity is an exception to the finality rule that interlocutory orders are not immediately appealable.” *Ervin Cable*, 461 S.W.3d at 423. The Court of Appeals there reversed a summary judgment of the circuit court and remanded the case for the entry of a summary judgment granting an employer up-the-ladder immunity. *Id.* at 425. In *Maggard* Justice Hughes explained: “Perhaps because *Farmer* was a criminal case, the discussion of the narrow confines of the collateral order doctrine – in every case, civil or criminal – has been overlooked.” *Maggard*, ___ S.W.3d at ___, 2019 WL 2462878 at *4. Likewise, Justice Hughes noted: “Like the federal courts, Kentucky courts have in some instances allowed the collateral order doctrine to expand beyond its logic and ... the [*Cohen*] criteria.” *Maggard*, ___ S.W.3d at ___, 2019 WL 2462878 at *5 (quoting

Ashcroft v. Iqbal, 556 U.S. 662, 672, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

We conclude that *Ervin Cable* is such a case and that all elements of the collateral order doctrine, including the presence of a substantial public interest, must be met before there will be jurisdiction to consider an interlocutory appeal based on a denial of immunity. Thus, even assuming the Court of Appeals was correct that the circuit court improperly denied Intech/Zurich immunity, under the collateral order doctrine the Court of Appeals was without jurisdiction to consider the interlocutory order in this case.

V. CONCLUSION

For the foregoing reasons, the opinion of the Court of Appeals is affirmed in part and is reversed in part. Intech/Zurich's appeal is dismissed.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Charles William Gorham
The Law Offices of Charles W. Gorham

COUNSEL FOR APPELLEES:

Donnie James Niehaus
Walter A. Ward
Ward, Hocker & Thornton, PLLC