

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

**CATHERINE HARVEY, ET AL. V. MASSAGE ENVY OF TENNESSEE,
LLC, ET AL.**

**Appeal from the Circuit Court for Shelby County
No. CT00528612 John R. McCarroll, Jr., Judge**

No. W2014-00674-COA-R3-CV - Filed September 12, 2014

Because the order appealed is not a final judgment, we dismiss this appeal for lack of jurisdiction.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

J. STEVEN STAFFORD, P.J., W.S., DAVID R. FARMER, J., AND HOLLY M. KIRBY, J, NOT PARTICIPATING.

Martin R. Kriger, Memphis, Tennessee, for the appellants, Catherine Harvey and Harry Harvey.

Reid R. Phillips, Memphis, Tennessee, for the appellee, Massage Envy of Tennessee, LLC.

MEMORANDUM OPINION¹

Pursuant to the mandates of Rule 13(b) of the Tennessee Rules of Appellate Procedure, we reviewed the appellate record for this matter to determine if the Court has subject matter jurisdiction to hear this matter. After this review, it appeared to the Court that it does not have jurisdiction. Specifically, the trial court's order of March 13, 2014 only disposes of the claims of Plaintiffs/Appellants Catherine Harvey and Harry Harvey as to

¹Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Defendant/Appellee Massage Envy of Tennessee, LLC and does not dispose of Appellants' claims as to Defendants Carriage Avenue, LLC and Cousins Properties Incorporated, as set forth in the Amended Complaint filed in the trial court on December 20, 2012. Moreover, the order does not adjudicate the cross-claim of Carriage Avenue, LLC and Cousins Properties Incorporated against Defendant/Appellee Massage Envy of Tennessee, LLC as set forth in "Defendants, Carriage Avenue, LLC and Cousins Properties, Inc.'s Amended Answer and Cross-Claim Against Massage Envy of Tennessee, LLC" filed in the trial court on April 25, 2014.

By Order entered on June 16, 2014, the Court directed Appellant to obtain entry of a final judgment in the trial court within ten (10) days of the entry of that Order or else show cause why this appeal should not be dismissed for failure to appeal an appealable order or judgment. On or about July 9, 2014, the Clerk of this Court received a supplemental record from the trial court clerk containing an order of the trial court entered on June 27, 2014. The order appears to amend the original order appealed by certifying the judgment as final pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure.

We note, however, that the order does not dispose of the cross-claim of Carriage Avenue, LLC and Cousins Properties Incorporated against Defendant/Appellee Massage Envy of Tennessee, LLC as set forth in "Defendants, Carriage Avenue, LLC and Cousins Properties, Inc.'s Amended Answer and Cross-Claim Against Massage Envy of Tennessee, LLC" filed in the trial court on April 25, 2014. Consequently, the order does not dispose of all claims as to Massage Envy of Tennessee, LLC.

Rule 3 of the Tennessee Rules of Appellate Procedure provides that if multiple parties or multiple claims are involved in an action, any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not final or appealable. Except where otherwise provided, this Court only has subject matter jurisdiction over final orders. See *Bayberry Assoc. v. Jones*, 783 S.W.2d 553 (Tenn. 1990).

Although the trial order certified its order as a final judgment pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure, we conclude that the order was improvidently certified as final. Rule 54.02 of the Tennessee Rules of Civil Procedure provides:

When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court, whether at law or in equity, may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such

determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer 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 subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

Tenn. R. Civ. P. 54.02.

Thus, according to the language of the Rule, certification of an order as final pursuant to Rule 54.02 is not appropriate “unless it disposes of an entire claim or is dispositive with respect to a party.” *Irvin v. Irvin*, No. M2010–01962–COA–R3–CV, 2011 WL 2436507, at *8 (Tenn. Ct. App. June 15, 2011). Rule 54.02 does not apply to all orders that are interlocutory in nature, but rather only comes “into play when there are multiple parties, multiple claims, or both.” *Duffer v. Lawson*, No. M2009–01057–COA–R3–CV, 2010 WL 3488620, at *5 (Tenn. Ct. App. Sept. 3, 2010). Even if a trial court's order includes the necessary language from Rule 54.02, a final judgment pursuant to the rule is not appropriate unless it disposes of a claim or party. *Irvin* at *8. Thus, based on the language of the Rule, certification of an order as final pursuant to Rule 54.02 is not appropriate “unless it disposes of an entire claim or is dispositive with respect to a party.” *Id.* at *8.

Clearly, the cross-claim of Carriage Avenue, LLC and Cousins Properties Incorporated against Defendant/Appellee Massage Envy of Tennessee, LLC is still pending in this matter. Therefore, the order appealed was improvidently certified as final pursuant to Rule 54.02 and no final judgment exists.

Conclusion

Because no final judgment exists, the appeal is dismissed without prejudice and the case remanded to the trial court for further proceedings consistent with this Opinion.² Should a new appeal be filed, the Clerk of this Court shall, upon request of either party, consolidate the record in this appeal with the record filed in the new appeal. Costs of this appeal are taxed to the appellants, Catherine Harvey and Harry Harvey, and their surety for which execution may issue if necessary.

PER CURIAM

² On August 13, 2014, Appellee Massage Envy of Tennessee, LLC filed a motion requesting that the Court dismiss this appeal, because Appellants had not filed a brief. Appellants filed a response to the motion on August 21, 2014. This opinion renders moot the relief requested in Appellee’s motion.