

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002649-MR

ADAH LEE MILLER AND
DONALD MILLER

APPELLANTS

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 99-CI-00395

PAUL FARRIS, EXECUTOR OF
THE ESTATE OF MARY AGNES
WOOSLEY, DECEASED

APPELLEE

OPINION DISMISSING APPEAL

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

DYCHE, JUDGE. This appeal is prosecuted from a document styled, "Factual Background, Conclusions of Law and Partial Summary Judgment" entered by the Grayson Circuit Court on November 7, 2001. That judgment decides several of the issues of contention in this case, but reserves for future decision several more.

CR 54.01 declares: ". . . 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."

. . . .

Although the question is not raised by the parties or referred to in the briefs, the appellate court should determine for itself whether it is authorized to review the order appealed from.

Hook v. Hook, Ky., 563 S.W.2d 716, 716-7 (1978).

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. Com., Dept of Highways v. General Refractories Corporation, Ky., 453 S.W.2d 531 (1969).

Hale v. Deaton, Ky., 528 S.W.2d 719, 722 (1975).

The judgment from which this appeal is taken neither determines all the rights of all the parties nor contains the necessary language to make it appealable under CR 54.02(1). The appeal is therefore dismissed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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