

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002713-MR

KATHY BAILEY DUVALL;
AND J. ANDREW WHITE

APPELLANTS

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 99-CI-00441

JAMES F. CLAY, JR.;
JUDY TANNER CLAY;
AVERY HILL; AND
NATIONAL CITY BANK

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

BARBER, JUDGE: Duvall appeals the dismissal of a judgment lien she held on property owned by James F. Clay Jr., and Judy Tanner Clay. The lien was dismissed by the Boyle Circuit Court as invalid.

Duvall was granted a judgment against Clay for a sum certain in 1998. Clay filed a "Motion for Relief" in that

action, but the motion was not heard as scheduled. In July, 1998, prior to any final decision on the motion, Duvall filed a judgment lien against "all real estate in which" Clay had an interest. On August 18, 1998, Clay purchased real property. Appellee National City Bank held a valid recorded mortgage on Clay's property. Clay filed the underlying action to contest attachment of Duvall's July 1998 lien to the real property, claiming that it was not based on a valid and final judgment. National City Bank joined in the action, claiming a first and prior interest in the property under its valid and duly recorded mortgage. Valid liens recorded first are properly considered first and primary liens. Strong v. First National Mortgage Corp., Ky. App., 959 S.W.2d 785, 788 (1998).

The trial court held that Clay's motion for relief was a timely filed motion for new trial, citing Griffith v. Schultz, Ky., 609 S.W.2d 125, 126 (1980), which requires the trial court to look to the substance of a motion to determine what relief is requested. The trial court found that while the motion did not cite CR 59, the grounds cited in the motion clearly showed that Clay was asking for a new trial. The motion requested that the judgment be set aside, and argued that the judgment was not supported by sufficient evidence. These allegations meet the requirements of CR 59.01(e) and (f) for a motion for new trial. The mere fact that the motion was styled one for "relief" does

not convert the motion into something other than a request for new trial. Smith v. Brown, Ky., 251 S.W.2d 881 (1952). We affirm the trial court's finding that the motion was, in essence, a motion for new trial.

The trial court ruled that the motion for new trial converted the final judgment against Clay into an interlocutory judgment until a decision on the motion was rendered. Personnel Bd. v. Heck, Ky. App., 725 S.W.2d 13, 18 (1986). A judgment lien on real property cannot be issued until a judgment is final. KRS 426.010. The trial court held that the lien based on the July 2, 1998 judgment was void, since the judgment was not final at the time it was used as support for the lien.

Kentucky law requires that a judgment lien be based on a final judgment. Pearman v. West Point Nat. Bank, Ky. App., 887 S.W.2d 366, 367 (1994). The record shows that Duvall received notice of Clay's motion for new trial, and filed a response to the motion. As Duvall had filed a response to Clay's motion for new trial, and was aware that no hearing had been held on the motion, and no final determination had been made on Clay's request, she was, or should have been, aware that there was no final judgment supporting her lien. The trial court found that Duvall's lien was not valid and must be dismissed. We agree.

The determination of the Boyle Circuit Court is affirmed.

ALL CONCUR.

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