

RENDERED: March 28, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000415-MR

NATIONAL CASUALTY COMPANY, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 99-CI-006762

BLONDIE-HOFFMAN PRODUCE COMPANY, INC

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** *

BEFORE: COMBS, KNOFF, AND TACKETT, JUDGES.

KNOFF, JUDGE: National Casualty Company appeals from a summary judgment order by the Jefferson Circuit Court in favor of Blondie Hoffman Produce Company, Inc. Finding that this appeal was not taken from a final order, we dismiss the appeal.

The facts of this action are not in dispute and are aptly summarized in the trial court's opinion:

Blondie-Hoffman is a local produce distributor. Lou Alice Fink ("Ms. Fink")

is the owner of Blondie-Hoffman. The company delivers fruits and vegetables to restaurants and hotels. Blondie-Hoffman leased its delivery trucks from General Car & Truck Leasing Systems ("General Leasing"). As part of the lease agreement, Blondie-Hoffman was required to purchase liability and collision insurance on each vehicle, including substitute and additional vehicles. On December 10, 1997, National Casualty issued a Commercial Auto Coverage policy in favor of Blondie-Hoffman. The policy covered two Ford vans and a 1994 Mitsubishi van. Various endorsements and amendments were made to the policy between December 10, 1997 and December 10, 1998, the relative [sic, relevant] policy period. Chris Zavitsos ("Mr. Zavitsos") was the insurance agent for Blondie-Hoffman.

A few days prior to October 3, 1998, the date of the collision which is the subject of this cause of action, the 1994 Mitsubishi van was returned to General Leasing for repairs. On September 26, 1998, General Leasing provided Blondie-Hoffman with a 1995 Mitsubishi van as a temporary substitute vehicle. On October 3, 1998, the 1995 Mitsubishi van struck a rock wall and was determined to be a total loss.

On October 5, 1998, Henrietta Deale ("Ms. Deale"), an employee of Chris Zavitsos Insurance Agency, received a phone call from Sharon, a representative of Blondie Hoffman, advising that an accident involving the 1995 Mitsubishi van had occurred at approximately 9:00 a.m. on October 3, 1998. In her deposition, Ms. Deale stated that the 1995 Mitsubishi van had never been added to the Blondie-Hoffman policy. Ultimately, National Casualty denied coverage for two reasons: (1) The 1995 Mitsubishi van, a temporary substitute vehicle, was never listed on the policy and (2) Assuming the vehicle did not have to be

listed separately, the policy did not provide collision coverage.

On November 10, 1999, Blondie-Hoffman filed a complaint against National Casualty, seeking to recover damages for breach of the insurance policy. National Casualty again denied that the vehicle was covered under the policy. Following a period of discovery, Blondie-Hoffman and National Casualty filed cross-motions for summary judgment. In a memorandum opinion and order issued on January 25, 2002, the trial court granted Blondie-Hoffman's motion. The court found that the 1995 Mitsubishi van was covered under the policy as a "temporary substitute vehicle", and that the policy did not clearly exclude collision coverage for such vehicles. National Casualty now appeals from this order.

Although the parties in this case have not raised the issue, we conclude that the trial court's order lacks finality, thus precluding our review of the merits of National Casualty's appeal. This Court has jurisdiction over appeals from final judgments or orders of circuit courts.¹ "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 CR 54.02."² "This court on its own motion will raise the issue of want of jurisdiction if the

¹ KRS 22A.020(1).

² CR 54.01. *See also* Commonwealth v. Taylor, Ky., 945 S.W.2d 420, 422 (1997).

order appealed from lacks finality."³ In fact, we are required to do so.⁴

The trial court's order of January 25, 2002, does not recite that it is final and appealable, as required by CR 54.02. The omission of this language does not necessarily render the judgment not-final.⁵ Nevertheless, we find that the trial court's order did not conclusively adjudicate all of the claims of the parties.

Specifically, Blondie-Hoffman did not bring a declaratory judgment action seeking a finding that the 1995 Mitsubishi van is covered under the policy. Rather, it brought this action through a complaint against National Casualty, seeking damages for breach of the insurance contract. As a practical matter, the effect is the same. As a procedural matter, however, the summary judgment in favor of Blondie-Hoffman does not finally resolve all of the issues between the parties. The trial court has not yet entered a judgment in favor of Blondie-Hoffman. In fact, the trial court scheduled a hearing on damages in the summary judgment order, but apparently, National Casualty's notice of appeal pre-empted that hearing. In the absence of a final judgment in favor of

³ Huff v. Wood Mosaic Corp., Ky., 454 S.W.2d 705, 706 (1970).

⁴ Central Adjustment Bureau, Inc. v. Ingram Associates, Inc., Ky. App., 622 S.W.2d 681, 683 (1981), *citing* Hook v. Hook, Ky., 563 S.W.2d 716 (1978).

⁵ Federal Savings & Loan Association of Mayfield v. Nesler, Ky., 697 S.W.2d 136, 138 (1985); *citing* Cerwin v. Taub, Ky.App., 552 S.W.2d 675 (1977).

Blondie-Hoffman, National Casualty's notice of appeal was premature.

Based on the foregoing, it is hereby ordered that this appeal is dismissed.

ALL CONCUR.

ENTERED: March 28, 2003

/s/ Wm. L. Knopf
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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No brief for appellees:
Blondie-Hoffman Produce Co.,
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