

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000671-MR

JOYCE ANN FIELDS AND
DARRELL FIELDS

APPELLANTS

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 96-CI-00135

ROBERT B. COLLINS AND
JEAN C. COLLINS

APPELLEES

OPINION AND ORDER

DISMISSING

** ** *

BEFORE: BUCKINGHAM, McANULTY AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is an appeal from an order entered by the Letcher Circuit Court in a proceeding to partition land. For the reasons stated hereafter, we dismiss the appeal.

It is undisputed that appellees Robert B. Collins and Jean C. Collins owned an undivided 15/16 interest in certain tracts of land, and that appellant Joyce Ann Fields owned the remaining 1/16 undivided interest in the property. The Collinses filed a complaint in Civil Action No. 96-CI-135 in May 1996, seeking a division of the property as well as compensation

for improvements, costs, and attorney's fees. Commissioners were appointed, the land was surveyed, and a report was made to the court. The Collinses thereafter filed a motion requesting the court to approve the report and survey, to order the parties to pay their respective court costs and attorney's fees, and to order them to split the commissioners' and survey fees. On June 15, 1998, the court entered an order approving the commissioners' report and the survey. The parties were ordered to pay their respective court costs, attorney's fees, and costs relating to the deeds of conveyance, as well as to share the costs of the commissioners' and survey fees. The court directed that since there was "no just reason for delay this is a final and appealable Order as Ordered on this 12th day of June, 1998." No appeal followed.

In October 2001, the Collinses and the subsequent purchasers of their property filed a postjudgment motion in No. 96-CI-135 seeking a declaration of rights as to whether the June 1998 order was a final judgment. They indicated that deeds had been prepared and recorded in accordance with the earlier order, but that the matter was before the court because Joyce Fields had filed Civil Action No. 01-CI-203, in which she contested the Collinses' title "to the property awarded by this Court" by the June 1998 order.

Although the court did not enter an order in No.

96-CI-135 resolving the motion for a declaration of rights, the circuit court record of that action does include a copy of an order entered by the court in No. 01-CI-203 on March 11, 2002. In the latter order, the court held that its June 1998 order in No. 96-CI-135 "decided all issues to be decided and nothing remained in issue before the Court," with the result that the order "was the final judgment of this Court adjudicating all issues between the parties to be decided by the Court. Nothing remained to be decided." The court therefore concluded that appellants lacked standing in No. 01-CI-203 to seek a restraining order concerning the use of the property deeded to the Collinses in the earlier proceeding.

Appellants then filed a notice of appeal which listed No. 96-CI-135 in its caption, even though the document's body recited that "[t]he order appealed" was the order which was entered on March 11, 2002, i.e., the order entered in No. 01-CI-203. Although the notice of appeal did not at any point refer by number to No. 01-CI-203, both No. 96-CI-135 and No. 01-CI-203 are listed on the cover of appellants' brief on appeal.

The appeal now before us clearly must fail for several reasons. Contrary to appellants' contention on appeal, there is no basis for concluding that the trial court did not enter a final judgment in No. 96-CI-135 in June 1998. The judgment

clearly addressed all of the matters set out in the Collinses' motion requesting the court to approve the commissioner's report and to allocate costs. More specifically, the record clearly shows that although appellants initially requested a sale rather than a partition of the land, they did not pursue that issue after mentioning it in their initial responsive pleading. Further, any question as to whether the order in No. 96-CI-135 adjudicated all of the claims was resolved by the order's inclusion of proper CR 54.02 finality language. It necessarily follows, therefore, that the trial court did not err in No. 01-CI-203 by concluding that it previously had entered a final order in No. 96-CI-135 adjudicating all issues between the parties, and that appellants therefore had no standing to complain about logging operations on the property awarded to the Collinses in the earlier proceeding.

Moreover, in any event it is clear that this appeal is not properly before us. Although both circuit court case numbers are listed on the cover of appellants' brief on appeal, only No. 96-CI-135 is listed in the notice of appeal. Clearly, the time expired long ago for appealing the orders entered in No. 96-CI-135. Further, although appellants wish to appeal the order which was entered in No. 01-CI-203, the scope of this appeal simply cannot be expanded through the inclusion of No. 01-CI-203 on the cover of appellants' brief on appeal. It

follows, therefore, that this appeal must be dismissed as untimely. It is so ordered.

ALL CONCUR.

ENTERED: <u>May 2, 2003</u> _____	<u>/s/ Lewis G. Paisley</u> _____
	JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANTS:

James W. Craft, II
Whitesburg, Kentucky

BRIEF FOR APPELLEES:

L.M.(Mike)Caudill
Whitesburg, Kentucky