

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000704-MR

GOLDEN RULE PUBLISHERS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
ACTION NO. 98-CI-00158

HOWARD O. EDWARDS; GLENNA
EDWARDS; H.V.A.C. PARTS AND
SUPPLY, INC.; SHARON STAFFORD;
WEST AMERICAN INSURANCE COMPANY;
AND HAMILTON MUTUAL INSURANCE COMPANY

APPELLEES

OPINION AND ORDER

DISMISSING

** ** * * *

BEFORE: BUCKINGHAM, McANULTY AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is an appeal from a decision entered by the Pulaski Circuit Court following a hearing in which the court found that appellee Sharon Stafford was an employee and/or agent of appellant Golden Rule Publishers. Appellant asserts that Stafford was not an employee or an agent of Golden Rule, and

therefore, no liability arising out of an auto accident should be imputed to it. However, on this court's own motion the appeal must be dismissed as having been taken from an interlocutory order.

Unfortunately, while Stafford was on her way to collect a payment from one of appellant's customers, her vehicle struck and injured a pedestrian, Howard Edwards. Edwards, his wife, and his business, filed an action against appellant, Stafford, and the remaining appellees seeking compensation for damages related to his injuries. Edwards alleged that Stafford was appellant's employee and/or agent, and that appellant was therefore liable for the injuries caused by Stafford while she was performing her duties. Appellant asserted, however, that Stafford was not its employee or agent but merely that she had temporarily filled in for an unavailable employee. The court conducted a hearing solely on the issue of whether appellant could be held liable for the injuries caused by Stafford. In a "judgment" which included CR 54.02 finality language, the court found that Stafford was an agent and/or employee of appellant for purposes of imputing liability to appellant based on the theory of respondeat superior. Appellant's motion to alter, amend, or vacate was denied, and this appeal followed.

According to CR 54.01, "[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." Further, CR 54.02(1) states in pertinent part that

[w]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final.

However, "[b]efore the processes of CR 54.02 may be invoked for the purposes of making an otherwise interlocutory judgment final and appealable, there must be a final adjudication upon one or more of the claims in litigation." Hale v. Deaton, Ky. App., 528 S.W.2d 719, 722 (1975). Moreover, "[w]here an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable." Hook v. Hook, Ky., 563 S.W.2d 716, 717 (1978) (citation omitted). Further, even if the parties do not raise a finality issue in their briefs, "the appellate court should determine for itself whether it is authorized to review the order appealed from." Id. at 717 (citation omitted).

Here, although the trial court's order included CR 54.02 finality language, it is clear that the order simply resolved an issue without disposing of any of the claims or

parties. As the order therefore did not finally adjudicate any of the claims in litigation, it is by its very nature an unappealable, interlocutory order which cannot be made final by the inclusion of CR 54.02 language. It necessarily follows that the appeal from that order is not properly before this court.

This appeal is therefore ordered dismissed.

ALL CONCUR.

ENTERED: June 27, 2003

/s/ Lewis G. Paisley
Judge, Court of Appeals

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