

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-001170-MR

KENTUCKY ASSOCIATION OF COUNTIES, INC.,  
AND MICHAEL MAGEE

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 99-CI-00135

BOYCE & ASSOCIATES, INC.

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: BAKER, BARBER, AND JOHNSON, JUDGES.

BAKER, JUDGE. Kentucky Association of Counties, Inc., and Michael McGee bring this appeal from an April 24, 2002, order of the Franklin Circuit Court. We affirm.

Appellee filed a complaint against appellants alleging tortious interference with contractual rights. The matter proceeded to a jury trial, and the jury returned a verdict in favor of appellants. On December 20, 2000, the circuit court

entered judgment accordingly. The judgment, however, made no provision for an award of costs. Some two months later, on March 5, 2001, appellants filed a motion requesting an award of costs. The circuit court initially awarded costs by order dated March 24, 2001, but it later vacated that award after considering appellee's motion to alter, amend or vacate. This appeal follows.

Appellants contend the circuit court erred by failing to grant the motion for costs under Kentucky Revised Statutes (KRS) 453.040 and Ky. R. Civ. P. (CR) 54.04. We agree with the appellants that KRS 453.040 and CR 54.04 provide the bases for an award of costs to a prevailing party; however, we believe the circuit court was without jurisdiction to amend its judgment to award costs.

The procedural facts are undisputed. Judgment was entered on December 20, 2000; the judgment failed to reference in any manner the issue of costs. As neither a motion to alter, amend or vacate nor a notice of appeal was filed, the judgment became final ten days later on December 30, 2000. CR 52.02. It is axiomatic that the circuit court loses jurisdiction over a judgment upon finality. As the circuit court was without jurisdiction to amend its judgment after December 30, 2000, we are of the opinion that the circuit court properly denied appellants' motion for costs. Additionally, we observe that an

award of costs is not a separate action which can be pursued independently of the underlying claim. By its very nature, an award of costs is dependent upon the success of the underlying claim and may be viewed simply as a claim of relief. Upon the whole, we hold that the circuit court properly denied appellants' motion for costs.

For the foregoing reasons, the order of the Franklin Circuit Court is affirmed.

All CONCUR.

BRIEF FOR APPELLANTS:

Brent Caldwell  
Lexington, KY

BRIEF FOR APPELLEE:

Gerry L. Calvert, II  
Gerry L. Calvert, Sr.  
Lexington, KY