

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001740-MR

NAZARETH HEALTH, INC.,
D/B/A ST. JOSEPH HOSPITAL,
A DIVISION OF SISTERS OF
CHARITY OF NAZARETH CORPORATION

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 98-CI-04219

CAROL ELLINGTON

APPELLEE

OPINION AND ORDER

DISMISSING APPEAL

** ** * * *

BEFORE: COMBS, McANULTY, AND PAISLEY, JUDGES.

McANULTY, JUDGE. Nazareth Health, Inc. (Nazareth) appeals from an order denying summary judgment entered August 12, 2002 by the Fayette Circuit Court. We dismiss the appeal sua sponte.

Carol Ellington (Ellington) brought this negligence suit against Nazareth claiming that she was injured when she fell from a broken chair in a waiting room at St. Joseph's

Hospital. Nazareth moved for summary judgment, arguing that Ellington could produce no facts indicating the length of time the defect in the chair had existed. The trial court denied the motion, ruling as a matter of law that, pursuant to Cornette v. Holiday Inn Express, Ky. App., 32 S.W.3d 106 (2000), Ellington need not prove how long the chair had been broken. The order stated that it was final and appealable.

"The general rule under Kentucky Rule of Civil Procedure (CR) 56.03 is that a denial of a motion for summary judgment is, first, not appealable because of its interlocutory nature and, second, is not reviewable on appeal from a final judgment where the question is whether there exists a genuine issue of material fact." Transportation Cabinet, Bureau of Highways, Commonwealth of Kentucky v. Leneave, Ky. App., 751 S.W.2d 36, 37 (1988), (citing Bell v. Harmon, Ky., 284 S.W.2d 812 (1955)). "The exception applies where: 1) the facts are not in dispute, (2) the only basis of the ruling is a matter of law, (3) there is a denial of the motion, and (4) there is an entry of a final judgment with an appeal therefrom." Id. at 37. In the case sub judice, the facts are in dispute. As such, the exception does not apply and therefore, the August 12, 2002 order was interlocutory. This Court has jurisdiction only of appeals from final orders; and, therefore, an appeal from an interlocutory order will be dismissed, even absent a motion to

dismiss. Vaught v. Vaught, 296 Ky. 754, 755, 178 S.W.2d 590,
591 (1944).

For the stated reasons, IT IS HEREBY ORDERED that this
appeal be and the same is hereby dismissed. Oral argument
scheduled for June 4, 2003 is hereby CANCELED.

ALL CONCUR.

ENTERED: May 9, 2003

/s/ William E. McAnulty
JUDGE, COURT OF APPEALS

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