

RENDERED: July 15, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001929-MR

RALPH FRANKLIN, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 03-CI-000759

BOBBIE HOLSCLAW, JEFFERSON COUNTY
CLERK'S OFFICE, DENISE HARPER ANGEL,
JEFFERSON COUNTY PROPERTY VALUATION
ADMINISTRATION,¹ J. ROBBINS, ROBERT
HENDERSON, AND ROGER WILSON

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Ralph Franklin, Jr., pro se, has appealed from an order of the Jefferson Circuit Court entered on July 10, 2003, which denied Franklin's motion for summary judgment, granted Bobbie Holsclaw's motion for summary judgment, and dismissed the complaint with respect to the Jefferson County

¹ Apparently, Franklin is referring to the Jefferson County Property Valuation Administrator.

Property Valuation Administrator. Having concluded that the order appealed from is not a final and appealable judgment whereby this Court lacks jurisdiction to decide the issues presented, we dismiss this appeal.

The relevant facts to this appeal were stated by the trial court in its July 10, 2003 order, as follows:

On or about December 11, 2002, [Franklin], an inmate in the Green River Correctional Complex, mailed to the Jefferson County Clerk's Office a document entitled "Request To Inspect Public Records Re KRS Ch. 61." In this form, [Franklin] requested that the Clerk "send [him] the name and zip code of the address commonly known as 14502 Pauly Gap, Louisville, Ky." A similar written request was made by [Franklin] to the Jefferson County Property Valuation Administrator ("PVA") on January 3, 2003, seeking a "copy of valuation report on the property commonly known as 14502 Pauly Gap Louisville, Jefferson County, Ky [sic] (township commonly known as Valley Station) or at a minimum, the name(s) of the property owners."

[Franklin] alleges that as of January 8, 2003, he had received no response to his initial request from the Jefferson County Clerk (the "Clerk"). Because of this, he filed his Complaint herein seeking relief in the form of an order requiring the Clerk to provide the requested information to [him], as well as monetary damages. Subsequent to the filing of the Complaint, on a form letter dated January 13, 2003, the Clerk responded to [Franklin's] request with a handwritten notation stating that "[y]ou need to contact an attorney in order to get this information." By another letter also dated January 13, 2003, the PVA responded to [Franklin's] January 3 request stating that "14502 Pauley Gap Rd. is not located in Jefferson Co., my map shows it located in Bullitt County."

On January 20, 2003, [Franklin] appealed to the Kentucky Attorney General the Clerk's failure to provide the requested information. Shortly thereafter, on January 31, 2003, the Clerk responded to the appeal by stating that [Franklin] provided an incorrect street name and address number in his request. Further, the Clerk pointed out that its records are "set up to locate deeds and other documents by deed book and page number," and that [Franklin] did not provide any such information. Nonetheless, the Clerk contacted the PVA in an attempt to assist [Franklin], but was told that the address in question could not be found. On this same date, the Clerk sent a separate letter to [Franklin] outlining these efforts and findings.

On April 7, 2003, the Attorney General's Office issued its Open Records Decision, No. 03-ORD-067, regarding [Franklin's] appeal ("Open Records Decision"). In sum, while the Attorney General found the Clerk's January 13 response stating that [Franklin] needed an attorney "procedurally deficient," he concluded that all other aspects of the response were materially correct. [Franklin] has now appealed the Attorney General's decision to [the Jefferson Circuit] Court.

On April 30, 2003, [Franklin] filed a Motion for Summary Judgment on the ground that the Clerk failed to timely respond to his open records request. He further refers to that part of the Attorney General's decision referencing the "procedurally deficient" response as support for his motion.

On May 21, 2003, the Clerk filed a Motion for Summary Judgment relying on the Attorney General's decision and the pleadings. On May 27, 2003, the PVA filed a Motion to Dismiss on the ground that it fully complied with [Franklin's] request, and even sent out an inspector to the area of the county described by [Franklin] to search out the address. According to the PVA, the inspector found that it was

"located as part of another lot which was filed under another taxing lot, with another address. It was part of a larger parcel of several acres."

Plaintiff acknowledges that the relief originally sought in this action "would not be possible . . . for the requested address." He concedes that there is no address of 14502 Pauly Gap and now seeks production of a deed to "14300 Pauleys Gap, Louisville, Ky," an address apparently uncovered as a result of the Defendants' efforts on Plaintiff's behalf.

The trial court entered an order on July 10, 2003, denying Franklin's motion for summary judgment, granting Holsclaw's motion for summary judgment and the PVA's motion to dismiss. Franklin then filed a motion on July 21, 2003, requesting the trial court to alter, amend, or vacate its earlier decision. The circuit court denied the motion in an order entered August 15, 2003, and this appeal followed.

Prior to briefs being filed in this appeal, the appellees filed a motion to dismiss arguing that this Court lacked jurisdiction because the July 10, 2003, order was not final and appealable. In an order entered October 8, 2004, a motion panel of this Court denied the appellees's motion to dismiss, but noted that "this ruling is without prejudice to a reconsideration of the matter addressed in appellees's motion by the merits panel, at the panel's discretion."² After reviewing

² Knott v. Crown Colony Farm, Inc., 865 S.W.2d 326 (Ky. 1993) (noting that a decision made by a Court of Appeals motion panel is not binding on the merits panel).

the record, we agree with the appellees's argument and dismiss this appeal.

Pursuant to CR³ Rule 54.02(1), an order that does not address all of the claims in an action is interlocutory in nature:

When 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. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The trial court in its July 10, 2003, order stated with regard to the Jefferson County Clerk's Office as follows:

The Clerk's Motion for Summary Judgment was filed only on behalf of Bobbie Holsclaw. While the ruling in this Opinion would seem to apply with equal effect as to those employees of the Clerk's office named in Plaintiff's Amended Complaint, as the Motion was not made on their behalf they cannot be awarded summary judgment at this time.

Likewise, with regard to the PVA's office, the circuit

³ Kentucky Rules of Civil Procedure.

court stated:

As with the Clerk, the PVA's Motion to Dismiss was made only on behalf of the Property Valuation Administrator. The reasoning in this Opinion would seem to apply with equal force to the PVA employees named in the Plaintiff's Amended Complaint, but since the Motion to Dismiss was not made on their behalf, summary judgment cannot be granted for them at this time.

Thus, Holsclaw and the PVA were the only two defendants who received final disposition of the claims against them. Since there has not been a final disposition regarding the claims against the additional defendants named in the complaint, the July 10, 2003, order is interlocutory.

For an interlocutory order to be treated as a final and appealable order, "the trial court is required to determine 'that there is no just reason for delay,' and the judgment must recite this determination and also recite that the judgment is final. CR 54.02(1). The omission of one of these requirements is fatal" [citation omitted].⁴ Since the July 10, 2003, order did not include the CR 54.02(1) finality language, this appeal is from an order which is not appealable and this Court lacks jurisdiction of this matter.

Having concluded that the trial court's order entered on July 10, 2003, is not final and appealable and this Court lacks jurisdiction, the appeal is hereby ordered dismissed.

⁴ Hale v. Deaton, 528 S.W.2d 719, 722 (Ky. 1975) (citing Commonwealth, Dept. of Highways v. General Refractories Corp., 453 S.W.2d 531 (Ky. 1969)).

ALL CONCUR.

ENTERED: July 15, 2005

/s/ Rick A. Johnson
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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