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Commonwealth of Kentucky

Court of Appeals

NO. 2004-CA-001234-MR

URSELLA RILES AND JAMES MADDOX III — CROSS-APPELLANTS

v.

CROSS-APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 99-CI-003552

THE KENTUCKY LOTTERY CORPORATION; BOB BEISECKER; LESLIE PEHLKE (NOW FARISON); AND DAWN NELMS — CROSS-APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KELLER, LAMBERT, AND TAYLOR, JUDGES.

LAMBERT, JUDGE: Ursella T. Riles and James Maddox appeal the trial court's denial of a motion to correct a clerical error in their respective final judgments. Riles and Maddox contend that omissions of post judgment interest on their substantial monetary awards against the Kentucky Lottery Corporations and officers thereof for workplace racial discrimination were due to a clerical error correctable under CR 60.01. However,

because we find that the absence of an award of post judgment interest in their judgments is not due to a clerical error, we affirm the decision of the trial court.

Standard of Review

The purpose of an appeal is to review the decision of the court of original jurisdiction. We affirm decisions of lower courts that are correct as a matter of law even when the lower court reaches its decision for incorrect reasons. Here, our task is to review the trial court's decision to deny Riles's and Maddox's motion to correct a purported clerical error that improperly denies them post judgment interest regardless of the validity of the trial court's *ratio decidendi*. *See e.g., Entwistle v. Carrier Conveyor Corp*., 284 S.W.2d 820, 821 (Ky. 1955) (affirming right results reached for the wrong reason); *Vega v. Kosair Charities Committee, Inc.,* 832 S.W.2d 895, 897 (Ky.App. 1992) (same). Consequently, not being bound by the trial court's legal conclusions that are intermediate to its ultimate decision, we may affirm the trial court's decision without relying on its reasoning.

Clerical Error

Under Civil Rule 60.01, a trial court may correct a clerical error in a judgment at any time. Thus, our predecessor court held in *Whittenburg Eng. & Constr. Co. v. Liberty Mut. Life Ins. Co.*, 360 S.W.2d 877, 884 (Ky. 1965), that "where failure to include interest is a clerical error it is correctable under CR 60.01, but where no clerical error is shown . . . then relief may be had only under [other procedural] provisions . . . ." Further, in construing the criminal analog to CR 60.01, the Supreme Court of Kentucky

recently explained that a clerical error in a written judgment is a scrivener's error; one of mistake or inadvertence that incorrectly reflects that which was intended by the court. *See Veirs v. Commonwealth*, 52 S.W.3d 527, 529 (2001). Thus, the Court in *Veirs* reversed the trial court for correcting a written judgment that accurately reflected the trial court's oral judgment at sentencing. The Court reasoned in *Veirs* that notwithstanding the trial court's characterization of its own error as a clerical error, its correction of an erroneous judgment was in fact a correction of a judicial error not a clerical error. Moreover, *Veirs* held that it is error for a court to employ the clerical-error rule to correct even a clear, judicial error.

Here, despite Riles's and Maddox's affirmative requests for an award of post judgment interest, the final written judgments entered in favor of Riles and Maddox do not indicate any interest award to either of them. Also, after successfully moving the trial court to add recovery for attorney's fees and reasserting their request for interest, the trial court entered a written order adding attorney's fees but once again omitting any award of interest. Moreover, when the parties subsequently filed two agreed motions requesting the correction of certain clerical errors in the final judgments, neither motion made any mention of interest. When Riles and Maddox filed one last motion under CR 60.01 in their final bid with the trial court for an award of post judgment interest, the trial court ultimately entered a written order denying interest.

Although we agree with Riles and Maddox that the trial court's decision regarding the Lottery's immunity from interest-bearing judgments is dubious, we find that

to be of no consequence. Rather, we note that the record is conspicuously absent of any indicia that the trial court ever expressed any intent, whether orally or in writing, to award Riles and Maddox post judgment interest. Indeed, even in the order from which Riles and Maddox now appeal, the trial court states that "[*Riles and Maddox*] have *always* requested interest be awarded . . . ," not that the trial court always so intended. Thus, the trial court's conclusion that "[f]ailure to include the provision for interest is clearly a clerical error," is just as specious as the trial court's conclusion in *Veirs*. Indeed, the mere assertion by the trial court that an error is clerical does not make it so. Not all errors, however palpable or obvious, are clerical. Rather, many are judicial, being the result of a judicial mistake of fact or law. Such judicial mistakes are simply not correctable under CR 60.01. *See Whittenburg Eng. & Constr. Co. v. Liberty Mut. Life Ins. Co.*, 360 S.W.2d 877, 884 (Ky. 1965).

Therefore, we conclude that contrary to the trial court's assertion otherwise, the absence of an award of interest to either Riles or Maddox was not the result of a clerical error but rather a judicial determination. The fact that Riles and Maddox repeatedly and persistently requested interest but that the trial court has never once awarded it to them in any of the multiple orders in which it might have done so is persuasive evidence that any error regarding interest is judicial. In any case, Riles and Maddox certainly have not shown clerical error as required by *Whittenburg Eng. & Constr. Co. v. Liberty Mut. Life Ins. Co.*, 360 S.W.2d at 884. As Riles and Maddox have

only sought to amend their final judgments to add interest awards under CR 60.01, which governs clerical errors, the trial court correctly decided not to grant their application.

The judgment of the Jefferson Circuit Court is affirmed.

KELLER, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

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