

RENDERED: MARCH 31, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2004-CA-001736-MR

HEATHER CLAYCOMB

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE THOMAS L. WALLER, JUDGE  
CIVIL ACTION NO. 03-CI-01135

VISION INSURANCE GROUP;  
BETTY ICE; LORETTA PERKINS;  
WILLIAM PERRY; MELISSA TILLICH;  
COURTNEY TILLICH, A MINOR;  
AND PATRICIA WALKER, A MINOR

APPELLEES

OPINION AND ORDER  
DISMISSING APPEAL

\*\* \*\* \* \* \*

BEFORE: GUIDUGLI AND MINTON, JUDGES; ROSENBLUM, SENIOR JUDGE.<sup>1</sup>

MINTON, JUDGE: Heather Claycomb asks us to reverse the trial court's decision to dismiss Jeremy Baumgardner from this action. But Claycomb's failure to name Baumgardner as a party to this

---

<sup>1</sup> Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

appeal means that we have no jurisdiction over Baumgardner. So we must dismiss this appeal.

The facts relevant to this appeal are simple and largely uncontradicted. Baumgardner allegedly drove his vehicle across the centerline of a roadway in Bullitt County, Kentucky, causing it to strike another vehicle. That vehicle, in turn, collided with a third vehicle. Several people occupied the three vehicles, including Claycomb, Baumgardner's passenger. Several of them, including Claycomb, allegedly sustained personal injuries in the collisions.

Faced with the possibility of multiple claims, Baumgardner's automobile liability insurer, Vision Insurance Group, filed an interpleader action in the Bullitt Circuit Court under Kentucky Rules of Civil Procedure (CR) 22. That rule provides that "[p]ersons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability."

Vision named all of the drivers and passengers of the three vehicles as defendants, except for its insured, Baumgardner. In its interpleader complaint, Vision requested the court to permit it and Baumgardner to be released from any liability to the named defendants once Vision paid Baumgardner's \$50,000 policy limits into the registry of the court. Two other

named defendants were granted leave to file an intervening complaint against Baumgardner, but neither Claycomb nor any of the other defendants made any claims against him.

Almost eight months after the interpleader action was filed, the circuit court, over Claycomb's objection, granted Vision's motion to pay insurance proceeds in return for a dismissal from the action and from all future liability stemming from the accident. That order provided that once Vision deposited the \$50,000 policy limits into the registry of the court, "Plaintiff [Vision] and its insured, Intervening Defendant Jeremy Baumgardner, are fully and finally released from liability from any and all claims brought, or that could have been brought, by the Defendants herein and are hereby dismissed from this action, with prejudice."

Dissatisfied with Baumgardner's release and dismissal, Claycomb filed this appeal. None of the other defendants below objected to Baumgardner's dismissal. Consequently, Claycomb is the sole appellant. Claycomb did not name Baumgardner as an appellee in either the body or the caption of her notice of appeal. We perceived that Claycomb's failure to name Baumgardner as a party presented a potential jurisdictional problem, so we asked the parties to submit supplemental briefs.

As a prefatory matter, we do not believe it was a proper use of an interpleader action for Baumgardner to be

released from liability. Furthermore, we are troubled by the trial court's decision to release and dismiss Baumgardner from a case to which he was, at least in relation to Claycomb, not a party. As of the time of the trial court's order of dismissal, Claycomb had filed no action against Baumgardner; and the statute of limitations governing any potential claim Claycomb may have had against Baumgardner had not yet expired. Thus, it appears to us that the trial court may have acted improperly when it ordered Baumgardner fully released from liability.

But we are without jurisdiction to rectify that error because Claycomb failed to name Baumgardner as an appellee in either the caption or the body of her notice of appeal. CR 73.03(1) requires a notice of appeal to "specify by name all appellants and all appellees . . . ." Because an appellate court has jurisdiction over only the parties named in a notice of appeal, an appellant's failure to include an indispensable party in the notice of appeal generally results in the dismissal of the appeal.<sup>2</sup>

---

<sup>2</sup> See City of Devondale v. Stallings, 795 S.W.2d 954 (Ky. 1990) (holding that appellate court acquires jurisdiction over only parties named in notice of appeal, denying appellant's request to file a belated notice of appeal to add additional parties inadvertently left out of notice of appeal, and dismissing appeal for failure to name indispensable parties); Commonwealth v. Blincoe, 34 S.W.3d 822, 824 (Ky.App. 2000) ("If a party fails to name an indispensable party in the notice of appeal, the appeal must be dismissed.").

All Claycomb asks us to do is to vacate the trial court's order releasing Baumgardner from any potential claim she may have against him as a result of the accident. So it is clear that Baumgardner is an indispensable party since his rights are directly affected by the issues raised in Claycomb's appeal.<sup>3</sup> The fact that Baumgardner may have had notice of the appeal, contrary to Claycomb's argument, is of no importance because we do not acquire jurisdiction over someone merely because that person is aware that he or she is discussed in an appeal.

Furthermore, the fact that Claycomb listed Baumgardner as an appellant in her prehearing statement is not sufficient to confer retroactive jurisdiction over Baumgardner because a prehearing statement, although important, is, at its core, merely a device to assist us in clarifying and narrowing the issues in an appeal. As such, it is not a substitute for a complete, timely notice of appeal.

Finally, because the failure to name Baumgardner as an appellee in the notice of appeal presents a jurisdictional issue, it is of no moment that Baumgardner has not questioned

---

<sup>3</sup> Blincoe, 34 S.W.3d at 824 ("An indispensable party is one whose absence prevents the court from granting complete relief among those already parties.").

our jurisdiction. An appellate court may not acquire jurisdiction through waiver.<sup>4</sup>

Because Claycomb failed to name an indispensable party, Baumgardner, in her notice of appeal, it is ORDERED that this appeal is dismissed.

ALL CONCUR.

ENTERED: March 31, 2006

/s/ John D. Minton, Jr.  
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

Brian L. Schuette  
James Blake Hornal  
Bowling Green, Kentucky

BRIEFS FOR APPELLEES VISION  
INSURANCE GROUP AND JEREMY  
BAUMGARDNER:

Jason B. Bell  
Eric A. Hamilton  
Elizabethtown, Kentucky

BRIEF FOR APPELLEES BETTY ICE  
AND LORETTA PERKINS:

J. Andrew White  
Louisville, Kentucky

---

<sup>4</sup> See, e.g., Wilson v. Russell, 162 S.W.3d 911, 913 (Ky. 2005).