

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-002225-MR

ED JORDAN AND  
DAVE BOWLING

APPELLANTS

v. APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE DANIEL SPARKS, JUDGE  
ACTION NO. 03-CI-00481

EVERETT ADKINS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

DYCHE, JUDGE: Ed Jordan appeals from a summary judgment of the Johnson Circuit Court awarding possession of a Case bulldozer to appellee, Everett Adkins.<sup>1</sup> Because we believe that the summary judgment was correctly granted, we affirm.

Adkins entered into a contract with Dave Bowling and Bowling's son Kirby for Adkins to remove standing timber from a

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<sup>1</sup> Although Dave Bowling is listed as an appellant in the Notice of Appeal, he was dismissed as a plaintiff below without objection, and presents no argument on appeal.

tract of realty owned by Kirby Bowling. Adkins was also to build a road and perform some clean-up work as part of the agreement. After he left the job site, Adkins left the bulldozer in question on the property for nearly one and one-half years.

Jordan observed the piece of equipment lying idle, made inquiries, and eventually negotiated its "purchase" from Dave Bowling for the price of \$2,000.00, which he paid to Dave Bowling in cash. Adkins got wind of the transaction and regained possession of the bulldozer with the assistance of local law enforcement agents. Jordan and Dave Bowling then brought this suit for money damages and unspecified injunctive relief.

Adkins moved for a summary judgment, asserting that Dave Bowling had no title to transfer to Jordan. No cross-claim was ever pursued by Jordan against Dave Bowling, and Kirby Bowling was never made a party to the action.

We have read the deposition testimony of Jordan, Adkins, and Dave Bowling, and are compelled to agree with the trial court. Dave Bowling had no title to convey to Jordan. Jordan has not pursued any action against Dave Bowling, who "sold" him the bulldozer. Adkins testified that he had conversed with members of the Bowling family concerning the continued presence of the bulldozer on Kirby's land, and that he

had permission for its remaining. He also testified that he had declined Dave's offer to purchase the bulldozer.

It would appear to this panel that the failure to make a cross-claim against Dave is fatal to Jordan's cause of action. Jordan had no direct claim against Adkins under these facts.

The judgment of the Johnson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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