

RENDERED: MARCH 10, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002424-MR
AND
NO. 2005-CA-000406-MR
AND
NO. 2005-CA-000571-MR

LAURA ELIZABETH CECIL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 03-CI-002086

WALGREEN COMPANY

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL NOS. 2004-CA-002424-MR
AND 2005-CA-000406-MR

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Laura Elizabeth Cecil brings these appeals from three orders of the Jefferson Circuit Court dismissing her claims against Walgreen Company (Walgreen). We dismiss Appeal Nos. 2004-CA-002424-MR and 2005-CA-000406-MR as being taken from interlocutory orders.

The underlying facts of this case are rather disturbing. In 2000, Robert Smith Jr. engaged in an illicit sexual relationship with Laura, then age 14. It appears that Robert had taken photographs of Laura while she was engaged in sundry sexual acts. These photographs were processed at a Walgreen's store. Robert Smith Jr. was criminally prosecuted and is currently serving a ten-year sentence of imprisonment in Eddyville, Kentucky.

Laura subsequently filed a complaint against Walgreen, Robert Smith Jr., and Robert Smith Sr.¹ Therein, various causes of action were asserted against Walgreen, Robert Smith Jr. and Robert Smith Sr. Robert Smith Sr. also filed a counterclaim against Laura's parents, Delmer Lee Cecil and Laura W. Cecil.

On November 3, 2004, the circuit court entered summary judgment dismissing Laura's claim alleging that Walgreen breached its duty under Kentucky Revised Statutes (KRS) 620.030 to report suspected child abuse. Five days thereafter, on November 8, 2004, the circuit court entered an "Order of Clarification." The court stated that "Walgreen Company is not dismissed from this action." The court noted that a claim still existed against Walgreen under the Protection of Children

¹ The complaint was originally filed by Laura Elizabeth Cecil's parents, Delmer Lee Cecil and Laura W. Cecil, as Laura had not yet attained the age of majority. Upon Laura reaching the age of majority, the court entered an order stating that "Laura Elizabeth Cecil shall prosecute this action in her own name"

Against Sexual Exploitation Act of 1977 (the sexual exploitation act). 18 U.S.C. §§ 2251-2253. Nevertheless, Laura filed a notice of appeal from the November 3, 2004, summary judgment on (Appeal No. 2004-CA-002424-MR).

On January 21, 2005, the circuit court entered another summary judgment dismissing Laura's claim alleging that Walgreen violated the sexual exploitation act. Laura filed a notice of appeal from this summary judgment (Appeal No. 2005-CA-000406-MR).

The circuit court then entered another order on February 8, 2005, which stated:

Motion having been made and the Court being sufficiently advised and having found that there is no just reason for delay, the Motion for Summary Judgment granted herein to Defendant, Walgreen Co., is hereby declared a final judgment.

IT IS THEREFORE ORDERED AND ADJUDGED that the claim of the Plaintiff, Laura Elizabeth Cecil, against Defendant, Walgreen Co., is hereby dismissed, with prejudice, at Plaintiff's cost.

There being no just cause for delay, this Judgment is final and appealable.

Laura then filed a notice of appeal from the February 8, 2005, order (Appeal No. 2005-CA-000571-MR).

This action involves multiple claims asserted against multiple parties. The November 3, 2004, summary judgment and the January 21, 2005, summary judgment merely dismissed one

party-defendant, Walgreen. The record reflects that Laura's claims against Robert Smith Jr. and Robert Smith Sr. have not yet been fully adjudicated.

Ky. R. Civ. P. (CR) 54.02 provides, in relevant, part:

(1) 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.

Under this rule, a judgment that adjudicates less than all the rights of all the parties is clearly interlocutory unless it includes both recitations - (1) there is no just cause for delay and (2) the decision is final. It is well-recognized that strict compliance with the rule is required. Peters v. Board of Educ., 378 S.W.2d 638 (Ky. 1964). A court's failure to include both recitations in a judgment renders it interlocutory and

nonappealable. Turner Constr. Co. v. Smith Bros. Inc., 295 S.W.2d 569 (Ky. 1956).

The record discloses the November 3, 2004, summary judgment and the January 21, 2005, summary judgment did not contain the recitations as required under CR 54.02. Clearly, both recitations are required to transform an interlocutory order into a final and appealable order under CR 54.02. Vance v. King, 322 S.W.2d 485 (Ky. 1959).

Hence, the November 3, 2004, summary judgment and the January 21, 2005, summary judgments were not final and appealable. Rather, these summary judgments were effectively made final and appealable by the February 8, 2005, order that included complete CR 54.02 language. Laura properly appealed the February 8, 2005, order in Appeal No. 2005-CA-000571-MR, which remains pending in this Court and is otherwise not affected by this order. After hearing oral argument, an opinion in Appeal No. 2005-CA-000571-MR will be rendered.

The appeals from the November 3, 2004, summary judgment (Appeal No. 2004-CA-002424-MR) and the January 21, 2005, summary judgment (Appeal No. 2005-CA-000406-MR) are now properly before the Court for consideration. Thus, we conclude these summary judgments were interlocutory and nonappealable.

NOW THEREFORE be it ORDERED that Appeal Nos. 2004-CA-002424-MR and 2005-CA-000406-MR are DISMISSED.

ALL CONCUR.

ENTERED: March, 10, 2006

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

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