

RENDERED: May 5, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

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

NO. 2004-CA-002585-MR

JOHNNY LITTLE and MARY LITTLE,  
his wife

APPELLANTS

APPEAL FROM KNOTT CIRCUIT COURT  
v. HONORABLE JAMES E. BONDURANT, SPECIAL JUDGE  
ACTION NO. 01-CI-00285

RUTH HALL; PATTY ANN DECOURSEY;  
FOREST DEAN HALL and MIONI HALL, his wife;  
ANDREA LYNN CARTER; RUBY SHEPERD<sup>1</sup>; RUTH STURGILL;  
JANIE SLONE; and JUDY HALL WOOSLEY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.<sup>2</sup>

EMBERTON, SENIOR JUDGE: The Appellants and the Appellees are involved in a controversy concerning the access to a mountainside family cemetery to which the appellants blocked access. After Appellees moved for and were granted a temporary injunction ordering the Appellants to clear the roadway,

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<sup>1</sup> The notice of appeal erroneously spells "Ruby Sheperd" as "Ruby Shepherd."

<sup>2</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Appellants filed a motion pursuant to CR 59 requesting that the court vacate its order granting the temporary injunction. Prior to the court taking any action on the motion, the appellees filed a motion to hold appellants in contempt for failure to comply with the injunction. This appeal is taken from the contempt order. Appellants contend that under CR 62.01 their motion pursuant to CR 59 stayed any motion to enforce the injunction.

A temporary injunction is not a final judgment on the merits.<sup>3</sup> CR 59 applies only to judgments and consequently CR 62.01 has no application.<sup>4</sup>

The Civil Rules do provide a means for a party to seek relief from a temporary injunction. CR 65.07(1) provides in part:

When a circuit court by interlocutory order has granted, denied, modified, or dissolved a temporary injunction, a party adversely affected may within 20 days after the entry thereof move the Court of Appeals for relief from such order.

The appellants having failed to avail themselves of this remedy could not alternatively seek relief under CR 59.

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<sup>3</sup> Brooks Erection Co. v. William R. Montgomery & Assoc., Inc., 576 S.W.2d 273 (Ky.App. 1979).

<sup>4</sup> Although the injunction in this case is temporary and clearly falls under the purview of CR 65.07(1), CR 62.01 does not stay even a final judgment in an action for an injunction during the period after its entry and until an appeal is taken.

The contempt order is affirmed.

All CONCUR.

BRIEF FOR APPELLANT:

James W. Craft, II  
Whitesburg, Kentucky

BRIEF FOR APPELLEE:

William Lewis Collins  
Whitesburg, Kentucky