

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NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000592-MR

GEORGE FETKO

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE DANIEL SPARKS, JUDGE  
ACTION NO. 01-CI-00450

TERESA TERRY

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

GUIDUGLI, JUDGE: George Fetko has appealed from the Johnson Circuit Court's March 5, 2005, order dismissing his claim as barred by the Kentucky Statute of Frauds. Because we have determined that the appeal was taken from a non-final, non-appealable order, we must dismiss the above-styled appeal.

This appeal involves the disputed ownership of East Kentucky Medical Clinic (hereinafter "the Clinic".) Fetko, a

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<sup>1</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.

pharmacist, claims to own 50% of the Clinic pursuant to an oral agreement, while Teresa Terry claims she is the sole owner. In early 2001, Fetko loaned Terry approximately \$20,000, which she used to set up the Clinic. Pursuant to the Articles of Incorporation, Fetko was named an honorary Vice President, but he was removed from that position in July 2001. Fetko then sought to sell his claimed 50% interest in the Clinic. At that point, Terry indicated that she was the sole owner of the Clinic, and that Fetko's loan to her was a personal one.

Fetko filed suit against Terry in 2001, alleging that she fraudulently induced him into entering into the business agreement. He also alleged claims for outrageous conduct and intentional infliction of emotional distress, and sought a declaration that they were equal owners as well as compensatory and punitive damages. In 2002, Fetko filed another suit against Terry, this time alleging that she was engaged in a plot to divest him of his claimed 50% ownership in the Clinic by filing a complaint with the Kentucky Board of Pharmacy. He again sought compensatory and punitive damages for claims of outrageous conduct and intentional infliction of emotional distress, and also included a claim for professional defamation of character. The circuit court eventually consolidated the cases on Terry's motions in 2004.

In August 2004, after the cases had been consolidated, Terry moved to dismiss case No. 01-CI-00450, asserting that Fetko had not submitted any evidence that he had a one-half interest in the Clinic, and that his claim was barred by the Statute of Frauds as there was no writing to evidence the oral agreement Fetko alleged they had entered into. In response, Fetko argued that the Statute of Frauds did not apply. The circuit court eventually dismissed action No. 01-CI-00450 in an order entered March 5, 2005, reasoning that "the disputed term of 50% ownership is one that is required by the Kentucky Statute of Frauds to be evidenced by a legally sufficient writing." The order does not contain any recitals of finality pursuant to CR 54.02. It is from this order that Fetko has taken the present appeal.

In reviewing this matter, it appeared to this Court that Fetko had appealed from a non-final, non-appealable order. Neither the motion to dismiss nor the order dismissing addressed the second case (action No. 02-CI-00148), which had been consolidated with action No. 01-CI-00450, and the order did not state that it was final or that there was no just reason for delay pursuant to CR 54.02. For this reason, Fetko was ordered to show cause within fifteen days why the appeal should not be dismissed. Fetko chose not to respond to this order, meaning that the appeal is subject to immediate dismissal.

CR 54.01 defines a final judgment as "a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." In turn, CR 54.02(1) provides:

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.

In the present matter, the order on appeal did not adjudicate all of the claims for relief, as it did not address the other suit that had been consolidated with the dismissed case.

Furthermore, the order did not contain the necessary recitals pursuant to CR 54.02(1) to make the interlocutory order final and appealable. Therefore, the March 5, 2005, order is not subject to review at this time.

For the foregoing reasons, the above-styled appeal is ordered dismissed as taken from a non-final, non-appealable order.

ALL CONCUR.

ENTERED: March 31, 2006

/s/ Daniel T. Guidugli  
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

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