

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-001197-MR

HEADLEY BLUFF LAND CO., INCORPORATED

APPELLANT

v. APPEAL FROM TRIGG CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 02-CI-00138

THE CITY OF CADIZ, KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * ** * **

BEFORE: NICKELL AND TAYLOR, JUDGES; PAISLEY,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Headley Bluff Land Co., Incorporated (Headley Bluff) brings this appeal from an April 21, 2004, order of the Trigg Circuit Court determining that two city ordinances were voidable. We dismiss as interlocutory.

Headley Bluff filed a declaration of rights action in the Trigg Circuit Court seeking an adjudication that two annexation ordinances (Ordinance 96-26 and Ordinance 96-37) enacted in 1996 and 1997 by the City of Cadiz, Kentucky (Cadiz) were void. In

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

support thereof, Headley Bluff argued that Cadiz failed to comply with various statutory annexation procedures. Headley Bluff specifically sought recovery of taxes paid since enactment of the annexation ordinances.

In an October 21, 2002, order, the circuit court denied Headley Bluff's motion for partial summary judgment. In that order, the court concluded that Cadiz "did not follow the procedures set out" in Kentucky Revised Statutes (KRS) 81A.420 and KRS 81A.425 in enacting the annexation ordinances. The court, however, found there existed material issues of fact upon whether Cadiz complied with KRS 81A.412.

Thereafter, in a March 13, 2003, order, the court granted partial summary judgment to Headley Bluff. Therein, the court concluded that Cadiz did not comply with the procedures set forth in KRS 81A.412. The court determined that the annexation ordinances were "voidable." To declare the ordinances void, the court stated that Headley Bluff must demonstrate that the substantial rights of "affected property owners" were materially prejudiced under KRS 81A.425. In that order, the court specifically concluded:

1. As a matter of law, Petitioner is entitled to partial summary judgment with respect to the issues of failure to publish the annexation ordinances and failure to provide notice of the intent to annex, failure to obtain written consents to annex. It is the Judgment of this court that the annexation ordinances in question are voidable by the Court. Partial summary judgment is granted on that issue.

2. IT IS FURTHER ORDERED that the issue for this court to determine at this time is whether or not voiding the ordinances in question will materially prejudice the substantial property rights of the property owners in question.

At this time, the court does not have sufficient information to make that determination. In that regard, this case shall be left open either for the matter to be set for a hearing on that issue or for the parties to conduct discovery and submit that issue to the Court for consideration.

3. It is still further ORDERED that other issues involving claims for monetary damages are reserved until a determination regarding whether the annexation ordinances will be voidable is made.

Subsequently, in an April 21, 2004, order, the circuit court reiterated that the annexation ordinances were merely voidable and not void *ab initio*. Importantly, the court again stated that it would only declare the annexation ordinances void if there existed material prejudice to the substantial rights of the affected property owners. To aid in such determination, the court ordered that all affected property owners be made parties to the action and warned that failure to do so would result in dismissal under Ky. R. Civ. P. (CR) 19.01. The court included the following CR 54.02 language, “[t]his is a final and appealable Order, there being no just reason for delay.” This appeal follows.

In its brief, Headley Bluff frames the issues on appeal as:

- I.A. The Court erred in holding that Ordinance 96-26 and Ordinance 96-37 are voidable, and not void.
- I.B. The Court erred in holding that all property owners must be made parties.

For the reasons hereinafter stated, we do not reach the merits of the above issues, but rather dismiss this appeal as being taken from an interlocutory order.

Pursuant to CR 54.01, a final and appealable judgment adjudicates all the rights of all the parties, or is made final under CR 54.02. In an action involving multiple

claims or multiple parties, CR 54.02 permits a trial court to make an otherwise interlocutory order final and appealable under certain circumstances. However, it is axiomatic that “[w]here an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable.” *Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978). To invoke CR 54.02 in an action involving multiple claims, there must have been a final adjudication that conclusively determined the rights of the parties as to at least one claim:

Before the processes of CR 54.02 may be invoked for the purpose of making an otherwise interlocutory judgment final and appealable, there must be a final adjudication upon one or more of the claims in litigation. The judgment must conclusively determine the rights of the parties in regard to that particular phase of the proceeding.

Hale v. Deaton, 528 S.W.2d 719, 722 (Ky. 1975).

In the April 21, 2004, order, the circuit court merely determined that the annexation ordinances were enacted in violation of certain statutes, thus rendering the ordinances voidable. It is from this legal ruling that Headley Bluff sought appellate review. The circuit court, however, has yet to determine whether the ordinances are in fact void. To declare the annexation ordinances void, the court stated that the substantial rights of the affected property owners must be materially prejudiced and ordered these property owners to be joined as parties to the action. As such, it is evident that there has not been a final adjudication that conclusively determined the rights of the parties as to the claim that the ordinances were invalid as violative of certain statutes. Rather, Headley Bluff is seeking appellate review from a ruling upon a legal issue presented

within the claim. Thus, we hold that the April 21, 2004, order was innately interlocutory and the inclusion of CR 54.02 recitals could not transform it. *See Hook*, 563 S.W.2d 716.

Now, therefore be it ORDERED, that Appeal No. 2005-CA-001197-MR is DISMISSED as interlocutory.

ALL CONCUR.

ENTERED: May 11, 2007

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

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