

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-001329-MR

MUTUAL SERVICE CASUALTY
INSURANCE COMPANY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 02-CI-00623

JO ANN HINES; RON PENNINGTON
AND MELISSA PENNINGTON,
ADMINISTRATRIX OF THE ESTATE
OF WILLIAM R. BREWER

APPELLEES

OPINION AND ORDER
DISMISSING

** ** *

BEFORE: ☐ FORMTEXT ☐ CLAYTON, MOORE, AND TAYLOR ☐,
JUDGES.

TAYLOR, JUDGE: Mutual Service Casualty Insurance Company (MSI) brings
this appeal from a June 2, 2005, summary judgment of the Fayette Circuit Court

determining that MSI owed liability insurance coverage for William Brewer. We dismiss.

On August 19, 2001, Brewer, then thirteen years of age and unlicensed to operate a motor vehicle, stole a truck belonging to his stepfather, Ronald Pennington. While driving the truck, Brewer was involved in an accident causing Jo Ann Himes to sustain severe injuries. The vehicle was insured under a motor vehicle insurance policy with MSI issued to Pennington.

Himes filed a complaint alleging negligence against Brewer in his operation of the vehicle, and alleging negligence and negligent entrustment against Pennington. Himes sought recovery under Pennington's motor vehicle insurance policy issued by MSI. Himes further claimed MSI acted in bad faith by denying coverage. MSI apparently denied coverage based upon an entitlement clause in the insurance policy. Under this entitlement clause, coverage was excluded for any person who operated a vehicle without a reasonable belief that he was entitled to do so.

The trial court granted summary judgment to Pennington dismissing Himes' claim of negligent entrustment in an August 1, 2002, order. Brewer was later killed in a separate unrelated automobile accident, and Himes amended her complaint to substitute Brewer's mother, Melissa Pennington, as administratrix of Brewer's Estate.

Himes filed a motion for summary judgment seeking adjudication that the motor vehicle insurance policy issued by MSI provided coverage for Brewer.

In the June 2, 2005, summary judgment, the trial court granted Himes' motion. In concluding that Brewer should be afforded coverage, the trial court reasoned that Brewer was a family member of Pennington, and thus, a covered person as defined under MSI's policy of insurance.¹

MSI filed a timely notice of appeal to the Court of Appeals and now brings this appeal from the June 2, 2005, summary judgment. By order entered June 4, 2008, this Court ordered the parties to show cause why the appeal should not be dismissed as having been taken from a non-final and interlocutory order (June 2, 2005, summary judgment). MSI responded and argued that the "legal issue" on appeal "is the final determining factor on existence of insurance coverage." MSI urged this Court not to dismiss the appeal. However, MSI failed to address the pivotal issue of whether the June 2, 2005, summary judgment is interlocutory and, thus, non-appealable. For the reasons hereinafter delineated, we conclude that the June 2, 2005, summary judgment is interlocutory.

A final and appealable judgment is one that adjudicates all the rights of all the parties or is made final under Kentucky Rules of Civil Procedure (CR) 54.02. CR 54.01. In an action involving multiples claims and/or multiple parties, CR 54.02 permits the trial court to make an otherwise interlocutory order final and appealable in certain circumstances. However, courts recognize that "[w]here an order is by its very nature interlocutory, even the inclusion of the recitals provided

¹ Subsequently, it appears that Jo Ann Himes settled her injury claims against William R. Brewer's Estate and Ron Pennington. The bad faith claim against Mutual Service Casualty Insurance Company remains unadjudicated or settled.

for in CR 54.02 will not make it appealable.” *Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978)(citing *Hale v. Deaton*, 528 S.W.2d 719 (Ky. 1975)). An otherwise interlocutory order may be made appealable under CR 54.02 only if there has been a final adjudication of one or more of the claims in litigation. *Hale*, 528 S.W.2d 719 (Ky. 1975). In determining finality, a court must determine whether the order grants or denies the ultimate relief requested or whether additional steps must be taken to adjudicate their claims. *Parsley v. Gray*, 322 S.W.2d 123 (Ky. 1959).

The case *sub judice* involved multiple claims and multiple parties. In the June 2, 2005, summary judgment from which MSI appeals, the circuit court ruled the MSI policy of insurance extended coverage to Brewer. In so doing, the trial court decided a mere legal issue presented in the case. It is uncontroverted that further proceedings will be necessary to determine whether MSI acted in bad faith, and upon resolution of the bad faith claim an appeal may be pursued to this Court.² This sort of piecemeal litigation is disfavored. *Pankey v. Pound*, 428 S.W.2d 777 (Ky. 1968). Consequently, we are of the opinion that the June 2, 2005, summary judgment does not constitute a final and appealable decision. As the June 2, 2005, summary judgment is inherently interlocutory from which no appeal can be pursued and being otherwise sufficiently advised;

² We note that an apparent settlement of Jo Ann Himes’ claims against Ronald Pennington and Melissa Pennington, Administratrix of the Estate of William R. Brewer leave only a single claim remaining against a single party; however, this would not change the fact that the June 2, 2005, summary judgment does not appear be a final adjudication of the remaining bad faith claim against MSI. *See Parsley v. Gray*, 322 S.W.2d 123 (Ky. 1959).

Now, therefore, be it ORDERED that Appeal No. 2005-CA-001329-

MR is DISMISSED as being taken from an interlocutory order.

ALL CONCUR.

ENTERED: July 11, 2008

//Jeff S. Taylor
JUDGE, COURT OF APPEALS

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