

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000954-MR

RAYMOND TODD ORLANDI

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 03-CI-009775

A RELIABLE TEMPORARY, LLC, BY
AND THROUGH ITS MEMBER, COURT
DONNELL; AND COURT DONNELL

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** *

BEFORE: KELLER, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: By Show Cause Order entered February 25, 2008, this Court ordered the parties to show good cause why the above-styled appeal should not be dismissed as being untimely under Kentucky Rules of Civil Procedure (CR) 73.02.

Having considered the responses thereto and being sufficiently advised, we dismiss.

The relevant procedural facts are as follows. Donnell filed a motion to enforce a settlement agreement against Orlandi in the Jefferson Circuit Court. By order

entered May 9, 2005, the court granted the motion but reserved for later determination the amount of attorney fees to be awarded Donnell's attorney. Subsequently, by order entered June 6, 2005, the court awarded \$3,734.56 in attorney fees.

Then, on November 29, 2005, Donnell filed an amended motion to enforce the May 9, 2005, order. And, by order entered March 9, 2006, the court granted the motion. Orlandi timely filed a CR 59 motion seeking to vacate the March 9, 2006, order. That motion was denied by order entered March 21, 2006. Orlandi subsequently filed a motion requesting the circuit court “to amend the Orders of May 6, 2005[,] and March 9, 2006[,] pursuant to CR 54.01, 59.05 and 62.01, Kentucky Rules of Civil Procedure, to recite that the orders are 'final and appealable, there being no just reason for delay.’”¹ By order entered April 4, 2006, the circuit court granted the motion and ordered the May 6, 2005, and March 9, 2006, orders amended “to read that they are final and appealable there being no just reason for delay.” Thereafter, Orlandi filed a notice of appeal on May 2, 2006. Therein, Orlandi stated:

Notice is hereby given that Raymond Todd Orlandi, Defendant in the above captioned action, hereby appeals to the Court of Appeals of Kentucky from the Orders entered May 9, 2005[,] and March 9, 2006, made final and appealable by the final Order entered April 4, 2006.

Thereafter, the Court of Appeals ordered the parties to show good cause why the above-styled appeal should not be dismissed as being untimely under CR 73.02. For the reasons hereinafter elucidated, we dismiss this appeal as untimely.

A final order or judgment is one that adjudicates all the rights of all the parties. CR 54.01; *Hook v. Hook*, 563 S.W.2d 716 (Ky. 1978). In actions involving

¹ Raymond Todd Orlandi identifies the May 9, 2005, order as the May 6, 2005, order. The order was actually rendered on May 6, 2005, and was entered upon the record on May 9, 2005.

multiple claims or multiple parties, CR 54.02 permits a court to make an otherwise interlocutory order that adjudicates one or more but less than all the claims final and appealable under limited circumstances. *Hook*, 563 S.W.2d 716. However, CR 54.02 is inapplicable to a truly final judgment that adjudicates all the rights of all the parties pursuant to CR 54.01. *Sec. Fed. Savs. & Loan Ass'n of Mayfield v. Nesler*, 697 S.W.2d 136 (Ky. 1985).

In his response to the show cause order, Orlandi alleged that “several issues . . . remain unresolved between the parties.” Orlandi argued that the May 9, 2005, order required him to “‘make a good faith effort’ to ask creditors to substitute him as the debtor of various debts” but left “good faith” undefined. However, such is not a claim within the meaning of CR 54.02 and, Orlandi's response failed to identify any such “claims” that remained unadjudicated.

Having reviewed the responses to the show cause order and the record as a whole, we conclude that the circuit court orders of June 6, 2005, and March 9, 2006, adjudicated all the rights of all the parties before the circuit court and, thus, were final and appealable orders under CR 54.01 upon entry. As such, the inclusion of CR 54.02 language in these orders by the April 4, 2006, order was of no effect, and Orlandi's notice of appeal filed on May 2, 2006, was untimely. *See Nesler*, 697 S.W.2d 136; *Electric Plant Bd. v. Stephens*, 273 S.W.2d 817 (Ky. 1954). It is well-established that the timely filing of a notice of appeal under CR 73.02 is “mandatory and jurisdictional.” *Burchell v. Burchell*, 684 S.W.2d 296 (Ky.App. 1984).

Now, therefore be it ORDERED that Appeal No. 2006-CA-000954-MR is

DISMISSED as being untimely.

ALL CONCUR.

ENTERED: June 13, 2008

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

BRIEFS FOR APPELLANT:

W. Craig Aulenbach
Louisville, Kentucky

BRIEF FOR APPELLEE:

Trevor L. Earl
Louisville, Kentucky