RENDERED: AUGUST 3, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001932-MR

SAFE AUTO INSURANCE COMPANY — APPELLANT

v.

APPEAL FROM MAGOFFIN CIRCUIT COURT
HONORABLE KIMBERLY CHILDERS, JUDGE
ACTION NO. 03-CI-00220

RITA VANHOOSE — APPELLEE

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,[1] SENIOR JUDGE.

DIXON, JUDGE: Safe Auto Insurance Company appeals from orders of the Magoffin Circuit Court denying its motion for summary judgment and motion for reconsideration in this insurance action. We conclude that this Court does not have jurisdiction to hear this appeal because it is interlocutory in nature. Therefore, we must dismiss Safe Auto's appeal.

[1] Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS 21.580.

On June 25, 2002, Appellee, Rita Vanhoose, was operating her vehicle on Howard Drive, a public road in Magoffin County. Tanner Howard, a defendant below, was riding an off-road dirt bike and crossed over Howard Road, colliding with Vanhoose's vehicle. Howard was uninsured at the time of the accident. Vanhoose was insured under a policy of insurance with Safe Auto, which included coverage for uninsured motorists ("UM") benefits.

In July 2003, Vanhoose filed an action in the Magoffin Circuit Court against Howard, a minor, and his father Freddie Howard. Vanhoose also named Safe Auto as a party, seeking UM benefits. Safe Auto thereafter filed a motion for summary judgment on the grounds that the off-road dirt bike operated by Howard at the time of the accident was not an "uninsured vehicle" as defined by the terms of Safe Auto's policy. In 2005, the trial court denied Safe Auto's motion for summary judgment as well as a motion for reconsideration.

Safe Auto thereafter appealed to this Court. In an order entered July 26, 2006, a panel of this Court dismissed the appeal on the grounds that the trial court's orders were interlocutory. Safe Auto and Vanhoose then moved the trial court to amend its orders to reflect that they were "final and appealable." The trial court granted the motion. Safe Auto again appeals the trial court's denial of its motion for summary judgment and motion for reconsideration.

The well-established rule under CR 56.03 is that the denial of a motion for summary judgment is interlocutory and not appealable. *Ford Motor Credit Co. v. Hall*,

879 S.W.2d 487 (Ky.App. 1994); *Transportation Cabinet, Bureau of Highways, Com. of Ky. v. Leneave*, 751 S.W.2d 36, 37 (Ky.App. 1988); *Gumm v. Combs*, 302 S.W.2d 616 (Ky. 1957). There is an exception to this general rule that applies where: "(1) the facts are not in dispute, (2) the only basis of the ruling is a matter of law, (3) there is a denial of the motion, and (4) there is an entry of a final judgment with an appeal therefrom." *LeNeave, supra,* at 37. However, the exception does not apply herein because the trial court has never entered a final judgment. "A final or appealable judgment is 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."[2] CR 54.01. The mere recitation of finality language will not make an order appealable when it is interlocutory by its very nature. *Preferred Risk Mutual Insurance Co. v. Kentucky Farm Bureau Mutual Insurance Co.*, 872 S.W.2d 469 (Ky. 1994); *see also Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978).

A panel of this Court addressed this issue in *Roman Catholic Bishop of Louisville v. Burden*, 168 S.W.3d 414, 419 (Ky.App. 2004), wherein we noted,

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[2] CR 54.02 provides, in pertinent part:

> (1) 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.

> By its very nature, the denial of the motion for summary judgment is interlocutory. Furthermore, the inclusion of the CR 54.02 finality language is meaningless here because that rule is limited to actions involving multiple parties or multiple claims, *Hook v. Hook*, 563 S.W.2d 716 (Ky. 1978), which is not the case here. Even if we were to hold that CR 54.02 applied and could operate to make this 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 (Ky. 1975). In this case, there has been no conclusive determination of the rights of any party.

The trial court herein denied Safe Auto's motion for summary judgment without making any findings or conclusions. As a result, we cannot discern whether the denial was as a matter of law or on a determination that there was a genuine issue of material fact. And we certainly cannot conclude that the rights of either party herein have been conclusively established.

This Court has appellate jurisdiction only of final orders and judgments of circuit courts, subject to enumerated exceptions that are not relevant in this case. *See* KRS 22A.020(1) and *Webster County Soil Conservation Dist. v. Shelton,* 437 S.W.2d 934, 936 (Ky. 1969). Because we have determined that the orders denying Safe Auto's motion for summary judgment are interlocutory and non-appealable at this time, we must dismiss the appeal.

Accordingly, it is ORDERED that the above-styled appeal is DISMISSED.

ALL CONCUR.

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