

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-002078-ME

C.L.N.

APPELLANT

v.

APPEAL FROM WOODFORD CIRCUIT COURT  
HONORABLE ROBERT G. JOHNSON, JUDGE  
ACTION NO. 06-CI-00031

T.R.R.

APPELLEE

OPINION AND ORDER  
DISMISSING

\* \* \* \* \*

BEFORE: STUMBO AND VANMETER, JUDGES; PAISLEY, SENIOR JUDGE.<sup>1</sup>

PAISLEY, SENIOR JUDGE: Appellee brought this action in the Woodford Circuit Court alleging that she had suffered personal injury as a result of sexual abuse perpetrated on her by appellant. The trial court granted appellee's motion for summary judgment, holding that under the doctrine of offensive collateral estoppel, appellant was precluded from re-litigating certain issues that were resolved by his guilty plea to Sexual Abuse 3d,

<sup>1</sup> 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 KRS 21.580.

which arose from the same conduct that gave rise to the civil case that is now before us. The trial court's opinion and order, dated Sept. 1, 2006, did not contain the finality language found in CR 54.02(1). By subsequent order dated Sept. 13, 2006, the trial court designated what it referred to as its “summary judgment on the issue of liability on all counts” as a final and appealable order. Although the parties did not raise the issue of finality, this Court ordered appellant to show cause why the appeal should not be dismissed as interlocutory. On July 2, 2007, appellant filed the required response.

It is well settled that “attempted compliance with CR 54.02(1) will not necessarily make an otherwise interlocutory judgment final and appealable.” *Francis v. Crouse Corp.*, 98 S.W.3d 62, 65 (Ky. App. 2002). The trial court's opinion and order specifically reserves for the jury the issues of emotional and punitive damages and “the factual issues concerning causal connection between the conduct complained of and the emotional distress suffered,” along within the issue of the severity of any emotional distress and “any issue concerning damages.”

“CR 54.01 defines a final and appealable order as one which adjudicates the rights of all of the parties. CR 54.02 applies only where there are multiple claims and the court grants a final judgment upon one or more but less than all of the claims at issue.” *Security Federal Sav. & Loan Ass'n of Mayfield v. Nesler*, 697 S.W.2d 136, 138 (Ky. 1985). Analyzed under either section of CR 54 the trial court's order is interlocutory. We cannot agree with appellant that the trial court's order had the “practical effect of determining the damages phase of the proceeding.” The trial court's order specifies

several issues that must be resolved in order to adjudicate all the rights of the parties in this case.

Accordingly, the Court ORDERS this appeal be DISMISSED as interlocutory.

ALL CONCUR.

ENTERED: August 10, 2007

/s/ Lewis G. Paisley  
SENIOR JUDGE, COURT OF APPEALS

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BRIEF FOR APPELLEE:

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