

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000206-MR

FRENCH IMPLEMENT COMPANY, INC.
AND SENTRY INSURANCE AGENCY, INC.

APPELLANTS

v. APPEAL FROM CARLISLE CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 06-CI-00017

JAMES ALAN WILSON, EXECUTOR
OF THE ESTATE OF ELIZABETH JEAN
WILSON, DECEASED, AND HAROLD
WILSON, INDIVIDUALLY, AND KEVIN
D. HAYDEN AND MICHAEL O. THARP

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON AND DIXON, JUDGES; GRAVES,¹ SENIOR JUDGE.

DIXON, JUDGE: Appellants, French Implement Company, Inc., and Sentry Insurance Company, Inc., appeal from an order of the Carlisle Circuit Court denying their request

¹ Senior Judge J. William Graves 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.

for a ruling on a prior summary judgment motion in this declaratory judgment action.

Finding no error, we affirm.

This case has a long and convoluted procedural history. It stems from an accident that occurred on January 28, 2005, in Carlisle County, Kentucky, wherein a motor vehicle operated by Elizabeth Wilson collided with a farm implement attached to a tractor that was being operated by Appellee, Kevin Hayden. Wilson died as a result of the accident.

Earlier on the day in question, Hayden had taken possession of the tractor from French Implement Company, Inc., located in Charleston, Missouri. Hayden executed a Customer Purchase Order that specifically provided that title to the tractor was to remain with French Implement until Hayden either (1) paid the balance due on the purchase price in cash; or (2) executed a loan agreement for the tractor's purchase or a lease agreement.

At the time Hayden took physical possession of the tractor, \$21,500 of the \$150,000 purchase price was charged to his accounts receivable at the store, leaving an unpaid balance of \$130,000. Hayden did not return to French Implement until January 31, 2006, to execute a loan agreement. Thus, it is undisputed that at the time of the accident, Hayden had neither paid the purchase price for the tractor nor executed the loan agreement.

Following the accident, James Wilson, executor of Elizabeth Wilson's estate, and Harold Wilson ("Wilsons" collectively) brought a wrongful death action in the Carlisle Circuit Court against Hayden and another individual, Michael Tharp.² The

² Tharp was with Hayden when he picked up the tractor and was driving an escort truck at the time of the collision.

complaint was later amended to add a claim for damages against French Implement.³ On March 8, 2006, the Wilsons filed the instant declaratory judgment action against all of the defendants in the wrongful death action, as well as French Implement's insurer, Sentry Insurance Agency, Inc. The declaratory judgment action alleged that title to the tractor had remained with French Implement, making Hayden an insured under the Sentry policy at the time of the accident.

In April 2006, the Wilsons filed a motion for summary judgment "on all claims" in the declaratory judgment action. French Implement and Sentry thereafter requested an extension of time to respond. Although the trial court granted an extension until June 8, 2006, to respond to the motion for summary judgment, the court nevertheless entered an order on May 22, 2006, granting summary judgment in favor of the Wilsons. The trial court specifically ruled that Sentry had a duty to defend and indemnify Hayden because "the transfer of title between Kevin D. Hayden and the French Implement Company, Inc., had not been consummated prior to the accident"

French Implement and Sentry thereafter filed a motion to set aside the trial court's order on the grounds that it had granted them until June 8, 2006, to respond to the summary judgment motion. In addition, French Implement and Sentry filed their response to the Wilson's summary judgment, as well as filed their own motion for summary judgment.

On June 23, 2006,⁴ the trial court entered a second order that reached a substantively similar conclusion to the first order granting summary judgment:

³ The wrongful death action was held in abeyance pending the outcome of the declaratory judgment action.

⁴ The order originally contained a signature date of May 22, 2006. The trial court entered a subsequent order on July 3, 2006, amending the previous order to reflect a signature date of June 23, 2006.

The Court specifically finds that equitable title to the 2005 John Deere 8420 tractor was conveyed by the Defendant, French Implement Company, Inc., to the Defendant, Kevin D. Hayden on the 28th day of January 2005. Legal title has remained with French Implement Company, Inc., and was not conveyed to the Defendant, Kevin D. Hayden, until after the 28th day of January, 2005, and therefore Sentry Insurance Company was providing liability coverage to French Implement Company, Inc., at the time of the death of Elizabeth Jean Wilson.

French Implement and Sentry thereafter filed a notice of appeal to this Court on August 4, 2006. However, on October 26, 2006, a panel of this Court dismissed the appeal, finding that French Implement and Sentry had not demonstrated good cause for their failure to timely file the notice of appeal. Specifically, the panel noted,

The notice of appeal designates a summary judgment entered by the Carlisle Circuit Court on June 23, 2006, which fully disposes of Appellees Wilsons' declaratory judgment complaint and an order entered on July 3, 2006, amending the signature date of the previous order. The record shows that the circuit clerk made a notation pursuant to CR 77.04(2) on July 3, 2006. Therefore the last day on which to timely file the notice of appeal was August 2, 2006. However, it was filed on August 4, 2006.

Appellants argue that they should be allowed to appeal pursuant to the exception provided under CR 73.02(1)(d) because they appeared in court on July 5, 2006 to argue their own motion for summary judgment, only to be advised by the trial court that the motion was moot because an order, which they had not yet received, had been entered on July 3, 2006. .

Pursuant to CR 73.02(1)(a), “[t]he notice of appeal shall be filed within 30 days after the date of notation of service of the judgment or order under Rule 77.04(2).” Further, pursuant to CR 73.02(2), “[t]he failure of a party to file timely a notice of appeal, cross-appeal, or motion for discretionary review shall result in a dismissal or denial.” Clearly, the time frame in which to file a notice of appeal must be strictly complied with. (Citations omitted).

Following the dismissal of their appeal, French Implement and Sentry filed a motion in the trial court⁵ for the entry of an order ruling on their motion for summary judgment. A hearing was held on December 18, 2006, and the trial court thereafter denied the motion by order dated December 27, 2006. Because the trial court's order thoroughly analyzes the issue on appeal, we incorporate the majority of it herein:

The Defendant, FRENCH, argues that it is entitled to a ruling on its motion for summary judgment. The ruling of the Court, it is asserted, did not specifically address the motion it made. It appears that FRENCH'S legal memorandum deals with various arguments such as the relationship of a farm tractor to the Motor Vehicle Act, the Missouri and Kentucky Versions of Article 2 of the Uniform Commercial Code, and retroactive dating of the contract. However, these appear to be simply different arguments relating to when title passed. In turn, the passage of title relates to FRENCH'S liability at the time of the accident, which again in turn, relates to the insurance carrier's responsibility.

The order of the Carlisle Circuit Court . . . resolved the issue before the Court. A judgment is defined by CR 54.01 as “. . . a written order of the Court adjudicating a claim or claims in an action or proceeding.” It goes on to define a final or appealable judgment as a “. . . final order adjudicating all the rights of all parties in an action” The rule also makes it clear that a “final judgment” and “final order” are the same. *West's Kentucky Practice*, Volume 7 at p. 261 is also illuminating when discussing the definition of a judgment. “The term has no technical significance under these Rules, but is simply descriptive. The primary significance of a judgment is its signal for an appeal, as opposed to interim or interlocutory orders which cannot be appealed.” This Court is further advised that the Court that entered the Order disposing of the Plaintiff's Summary Judgment stated that it rendered the Defendant's motion “moot.” It is further to be noted that the order of the Court of Appeals, dismissing FRENCH'S appeal, stated specifically on Page 2, “The notice of appeal designates a summary

⁵ Judge William Shadoan, who presided over the original summary judgment proceedings, retired and in November 2006, Judge Timothy Langford took the bench. However, as Judge Langford was the prosecutor in the related criminal action against Hayden, Special Judge Tim Stark was appointed to preside over the case.

judgment entered by the Carlisle Circuit Court on June 23, 2006, which fully disposes of Appellees Wilsons' declaratory judgment complaint and an order entered on July 3, 2006, amending the signature date of the previous order."

Perhaps it would have been the better practice for the Order to have specifically mentioned that the Defendant's motion for summary judgment was denied. However, the effect of the order is clear. All claims which were subject to this action were resolved. The Court of Appeals noted that in its opinion. CR 54.01 does not contain a technical definition of a final judgment or order, but only requires sufficient finality to allow the taking of an appeal. The fact that an appeal was taken, indicates that it had the effect of disposing of the controversy between the parties. The previous Order of the Carlisle Circuit Court . . . has the effect of denying the Defendant, French's motion for summary judgment. Therefore, no further rulings of this Court are required, the issue having been decided.

On appeal to this Court, Appellants, French Implement and Sentry, argue that the trial court's June 23, 2006, order of summary judgment was interlocutory because it did not adjudicate (1) French Implement's liability; (2) whether Hayden was an insured under Sentry's policy; or (3) whether coverage applied to Hayden under the facts of this case. As they did in the trial court, Appellants present various UCC and contract arguments to support their claim that legal title to the tractor passed to Hayden at the time he took physical possession. However, we agree with the trial court that "these appear to be simply different arguments relating to when title passed. In turn, the passage of title relates to FRENCH'S liability at the time of the accident, which again in turn, relates to the insurance carrier's responsibility."

CR 54.01 defines a final judgment as follows:

A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding. 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. Where the context requires, the term “judgment” as used in these rules shall be construed “final judgment” or “final order”.

Kentucky courts have recognized that “the finality of an order is determined by whether it grants or denies the ultimate relief sought in the action.” *State Farm Mutual Insurance Co. v. Caudill*, 136 S.W.3d 781, 783 (Ky. App. 2003). Furthermore, if the order adjudicates all the rights of the parties with nothing left for the court’s consideration, the order is final and appealable even in the absence of the CR 54.02 language, e.g. “final and appealable” or “no just cause for delay.” *Security Federal Savings and Loan Association of Mayfield v. Nesler*, 697 S.W.2d 136, 138 (Ky. 1985). Thus, an order that is final in character need not contain language of finality to be considered final and appealable. *Mollett v. Trustmark Insurance Co.*, 134 S.W.3d 621, 624 (Ky. App. 2003).

As observed by the trial court, as well as a prior panel of this Court, the June 23, 2006, order granting summary judgment in favor of the Wilsons’ resolved all issues in the declaratory judgment action. We find Appellants’ claim that the June 23, 2006, order was interlocutory disingenuous in light of the fact they appealed it, albeit unsuccessfully, to this Court. Clearly, at the time of the first appeal, Appellants believed the order was final.

We must agree with the Wilsons that Appellants’ request for a ruling on their motion for summary judgment and their instant appeal are nothing more than an attempted end-run around their failure to timely appeal the June 23, 2006, order. As such, because Appellants failed to perfect the prior appeal, they are barred from challenging that order in this appeal.

We affirm the trial court's order finding that the prior order of June 23, 2006, was final and adjudicated all rights of the parties in this declaratory judgment action. CR 54.01. As such, we do not reach the merits of Appellants' legal arguments concerning the passage of title of the tractor at issue or the liabilities and responsibilities of Appellants in the wrongful death action.

ALL CONCUR.

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