

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 10, 2020 Session

KIMBERLY MEDDERS v. LANDON NEWBY, ET AL.

**Appeal from the Circuit Court for Davidson County
No. 16C3140 Kelvin D. Jones, Judge**

No. M2019-00793-COA-R3-CV

This is an uninsured motorist case. Appellant was in an automobile accident, and Appellee insurance company denied uninsured/underinsured motorist coverage. After bifurcating the issues of insurance coverage and liability, the trial court entered an order finding that Appellee's denial of Appellant's claim was proper. Because the order appealed is not final, we dismiss the appeal for lack of subject matter jurisdiction.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

KENNY ARMSTRONG, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Aldo J. Stolte, Nashville, Tennessee, for the appellant, Kimberly Medders.

Jaimee S. Johnson and Timothy R. Johnson, Hendersonville, Tennessee, for the appellee, UM Defendant Direct Insurance Company.¹

OPINION

On July 11, 2016, Kimberly Medders ("Appellant") was involved in a motor vehicle accident while driving a 2013 Volkswagen Jetta. The Volkswagen was titled in Samuel Tinnin's name. Mr. Tinnin and Ms. Medders were engaged at the time of the accident, and Mr. Tinnin gifted the 2013 Volkswagen to Ms. Medders prior to the accident. At fault was the other driver, Sarah Newby, who was driving a vehicle owned by Landon Newby. At the time of the accident, Ms. Medders was insured by Appellee Direct Insurance Company ("Direct") under a Non-Owner Policy. Appellant's policy defined a "Non-Owned Vehicle" as any "auto that is not owned by, registered to, or

¹ Defendants Landon and Sarah Newby did not participate in this appeal.

furnished or available for the regular use of you” Under this provision, Direct maintained that the vehicle was provided for Ms. Medders’ “regular use,” thus negating coverage under the policy.

On December 2, 2016, Ms. Medders filed a personal injury/negligence action against the Newbys and served notice of her complaint on Direct. Direct filed an answer on January 13, 2017 and amended its answer on January 26, 2017 and again on April 4, 2019. On April 20, 2018, after denial of its motion for summary judgment on the coverage issue, Direct filed a motion to bifurcate the issues of coverage and liability for trial. Ms. Medders opposed the motion, which was heard on May 18, 2018. By order of May 29, 2018, the trial court granted Direct’s motion for bifurcation.

On January 31, 2019, the trial court conducted a bench trial on the issue of coverage. By order of February 6, 2019, the trial court held that Direct was not “liable for coverage for . . . [Ms. Medders] for any bodily injury or property damage sustained as a result of [the accident].” Ms. Medders filed a motion to alter or amend the trial court’s judgment and also moved for entry of final judgment. By order of April 9, 2019, the trial court denied the motion to alter or amend. Ms. Medders appeals.

Before discussing Ms. Medders’ appellate issues, we must first determine whether we have jurisdiction to adjudicate the appeal. *See* Tenn. R. App. P. 13(b) (“The appellate court shall also consider whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review”). Our “subject matter jurisdiction is limited to final judgments except where otherwise provided by procedural rule or statute.” *Carr v. Valinezhad*, No. M2009-00634-COA-R3-CV, 2010 WL 1633467, at *2 (Tenn. Ct. App. April 22, 2010) (citing *Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990); *Aetna Cas. & Sur. Co. v. Miller*, 491 S.W.2d 85, 86 (Tenn. 1973)). Ms. Medders brings her appeal under Tennessee Rule of Appellate Procedure 3, which provides, in pertinent part:

(a) Availability of Appeal as of Right in Civil Actions. In civil actions every **final judgment** entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right. Except as otherwise permitted in [R]ule 9 [of the Tennessee Rules of Appellate Procedure] and in Rule 54.02 [of the] Tennessee Rules of Civil Procedure, if multiple parties or multiple claims for relief are involved in an action, any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

Tenn. R. App. P. 3(a) (emphasis added). A final judgment is one that fully adjudicates

the rights of the parties with respect to the claim pursued; a final judgment leaves nothing further for the court to resolve. Tenn. R. App. P. 3(a); *Shofner v. Shofner*, 181 S.W.3d 703, 712 (Tenn. Ct. App. 2004). Here, there are multiple parties, and Ms. Medders asserts several claims for relief. Specifically, Ms. Medders sued the Newbys for negligence arising out of the automobile accident, and Direct was joined in the lawsuit as Ms. Medders' uninsured/underinsured motorist carrier. At the time Ms. Medders filed her Rule 3 appeal to this Court, the only issue that had been adjudicated was whether Ms. Medders' uninsured/underinsured motorist coverage was triggered. The claim against the Newbys was still pending, and the trial court specifically reserved ruling on costs in its February 6, 2019 order. Because the trial court's February 6, 2019 order "adjudicate[d] fewer than all the claims or the rights and liabilities of fewer than all the parties," the order was not immediately appealable as a final order under Tennessee Rule of Appellate Procedure 3. Furthermore, Ms. Medders did not file a petition for interlocutory appeal under Tennessee Rule of Appellate Procedure 9 or for extraordinary appeal under Tennessee Rule of Appellate Procedure 10. As such, the only mechanism to confer subject matter jurisdiction to this Court is found in Tennessee Rule of Civil Procedure 54.02.

Tennessee Rule of Civil Procedure 54.02 provides:

(1) When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the [trial court] . . . may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties **only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment**. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer 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 subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

Tenn. R. Civ. P. 54.02 (emphasis added). This Court has explained that

Rule 54.02 "is an exception to Rule 3 that permits the trial court, without permission from the appellate court, to certify an order as final and appealable, even if parts of the overall litigation remain pending in the trial court." *Johnson v. Nunis*, 383 S.W.3d 122, 130 (Tenn. Ct. App. 2012). It allows "the trial court to convert an interlocutory ruling into an appealable order." *Mann v. Alpha Tau Omega Fraternity*, 380 S.W.3d 42, 49 (Tenn. 2012).

E Sols. for Buildings, LLC v. Knestrick Contractor, Inc., No. M2017-00732-COA-R3-CV, 2018 WL 1831116, at *3 (Tenn. Ct. App. Apr. 17, 2018), *perm. app. denied* (Aug. 9, 2018).

As discussed above, in its February 6, 2019 order, the trial court determined that Direct was not “liable for coverage for . . . [Ms. Medders] for any bodily injury or property damage sustained as a result of [the accident].” The trial court’s order also reserved court costs “until the conclusion of this matter.” Although the February 6, 2019 order is not final (as it only adjudicates the coverage issue), the trial court did not include Rule 54.02 language. As such, the February 6, 2019 order does not confer jurisdiction on this Court.

Turning to the April 9, 2019 order, therein the trial court denied Ms. Medders’ motion to alter or amend but granted her motion for entry of final judgment, to-wit: “[Appellant’s] motion to amend is hereby denied and [Appellant’s] motion for entry of final judgment is hereby granted. . . .” Although the April 9, 2019 order purports to grant Appellant’s motion for finality, it does not include the required Rule 54.02 language. Rather, the order states only, “It is further ORDERED, ADJUDGED AND DECREED that the Court’s judgment from the trial on January 31, 2019 as to all claims against Unnamed Defendant is final.”

As set out in context above, for an order to be made final by operation of Tennessee Rule of Civil Procedure 54.02, the trial court is required to make an “express determination that there is no just reason for delay,” and “an express direction for the entry of judgment.” As explained by the Tennessee Supreme Court:

Such certification by the trial judge creates a final judgment appealable as of right under Rule 3 [of the Tennessee Rules of Appellate Procedure]. In the absence of such direction and determination by the trial judge, the order is interlocutory and can be revised at any time before the entry of judgment adjudicating all the claims and rights and liabilities of all parties. *Stidham v. Fickle Heirs*, 643 S.W.2d 324, 325 (Tenn. 1982).

Fox v. Fox, 657 S.W.2d 747, 749 (Tenn. 1983). As such, Tennessee Courts have strictly construed the substantive requirements under Rule 54.02. See *Harris v. Chern*, 33 S.W.3d 741, 744 (Tenn. 2000) (“Rule 54.02 requires that a judgment disposing of fewer than all of the claims or fewer than all of the parties is final only when the trial court makes ‘an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.’ Tenn. R. Civ. P. 54.02.”); *In re Estate of Rogers*, No. M2015-01439-COA-R3-CV, 2016 WL 6087662, at *4-6 (Tenn. Ct. App. Oct. 17, 2016) (finding that the trial court failed to make a specific finding that there was

“no just reason for delay” of entry of a final judgment); *Heritage Operating, LP v. Henry Cty. Propane Gas, Inc.*, No. W2011-01162-COA-R3-CV, 2012 WL 2989120, at *3 (Tenn. Ct. App. July 23, 2012) (“The courts of this State have continued to adhere to the clear requirements of Rule 54.02 that a trial court may direct the entry of a final order as to fewer than all of the claims or parties only if it expressly directs that the order be made final under the rule and makes an express finding that there is no just reason for delay.”); *Shofner*, 181 S.W.3d at 713 (stating that “finality arises only when the trial court has expressly directed the entry of a final judgment because no just reason for delaying the entry of a final judgment exists”).

As discussed above, neither the February 6, 2019 nor the April 9, 2019 order contains the required Rule 54.02 language. Specifically, neither order expressly states that there is no just reason for delay of entry of a final order. In the absence of this language, neither order is final so as to confer subject matter jurisdiction over the appeal to this Court. Tenn. R. App. P. 3(a).

For the foregoing reasons, we dismiss the appeal for lack of subject matter jurisdiction. We remand the case to the trial court for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed against Appellant, Kimberly Medders, for all of which execution may issue if necessary.

KENNY ARMSTRONG, JUDGE