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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0282-MR

WILLIAM HOGG, EXECUTOR OF
THE ESTATE OF RUBY J. HOGG

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY D. BURRESS, JUDGE
ACTION NO. 24-CI-00845

THOMAS REED; ABIGAIL REED;
GRACE LAW GROUP, PSC; AND
L&N FEDERAL CREDIT UNION

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: ACREE, CALDWELL, AND CETRULO, JUDGES.

ACREE, JUDGE: William Hogg as executor of the Estate of Ruby Hogg appeals the Bullitt Circuit Court's dismissal of its complaint asserting a claim against Thomas and Abigail Reed to reform a deed based on mistake and against Grace Law Group, PSC, for negligence in preparing the deed. We affirm.

BACKGROUND

On March 15, 2023, the Estate executed a deed Grace Law prepared conveying real property to the Reeds. The Estate perceived a mistake in the deed's property description allegedly resulting in a conveyance of "[a]pproximately [t]hree and one-half (3 1/2) acres" instead of what it intended, "approximately one (1) acre." (Complaint (Record (R.) 2)).

On August 30, 2024, the Estate filed suit alleging two separate claims. The first was against the Reeds to compel reformation of the deed. The second was against Grace Law for negligence in preparing the deed.¹ The relief sought was the value of the real estate "incorrectly conveyed" or reformation of the deed.

On October 2, 2024, the Reeds filed a motion to dismiss the claim against them citing CR² 12 and a contract provision requiring disputes about the property, the transaction, or the conveyance to be mediated and, should mediation fail, requiring the dispute to be submitted to binding arbitration. The Reeds appended to their motion for the trial court's consideration certain matters outside the pleadings: (1) the residential sales contract including the arbitration agreement; (2) a July 27, 2023 letter from the Estate's first attorney (John W. Wooldridge) to

¹ L & N Federal Credit Union was also named in the suit because of its interest as the Reeds' lender and mortgagee.

² Kentucky Rules of Civil Procedure.

the Reeds and Grace Law advising them of the mistake; (3) a March 1, 2024 letter from the Estate's second attorney (Mark E. Edison) to the Reeds asking their willingness to pursue mediation in accordance with the contract provision; and (4) the procedures established by the Greater Louisville Association of Realtors ("GLAR") for initiating and conducting mediation and arbitration.

Grace Law did not file a motion to dismiss the claim asserted against it, nor did it file a written response to the Reeds' motion.

On October 14, 2024, the trial court conducted a hearing on the Reeds' motion. The Reeds and Grace Law were represented by separate counsel. The trial court confirmed service was made on counsel for the Estate, but neither the Estate's administrator nor its counsel filed a response or appeared at the hearing. The Reeds' counsel presented his clients' argument that the parties' contract requires the Estate's claim to be arbitrated. Initiation of the process of arbitrating was to be noticed to GLAR "within 365 days after the Party raising the claims knew, or should have known, of the existence of said claims."

The trial court noted the absence of opposition and asked for Grace Law's response which was as follows:

Grace Counsel: We would like the whole case dismissed as well.

Court: You would like it dismissed as well.
Well, I don't hear any objection to it.

I've reviewed the motion. I'll sign the order that's been tendered.

Reeds Counsel: Thank you.

Court: Anything else for today?

Grace Counsel: I think the tendered proposed order said, "all defendants, all claims." I just want to make sure we didn't need to tender a separate order.

Court: Case is dismissed with prejudice.

Grace Counsel: Okay.

Reeds Counsel: Thank you, Judge.

Court: That's what it says.

The judge signed the tendered order and the clerk entered that order on October 18, 2024. It reads in its entirety:

ORDER TO DISMISS PLAINTIFF'S CLAIMS

This matter is before the Court on the Motion to Dismiss filed by the Defendants, Thomas Reed and Abigail K. Reed.

The Court having reviewed the record and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that this case is dismissed with prejudice.

This is a final and appealable Order and there is no just reason for delay in its entry.

(Order to Dismiss Plaintiff's Claims (R. 80)).

The Estate filed a motion pursuant to CR 59.05 and CR 60.02 to vacate the order dismissing its claims. The trial court denied the motion. The Estate now appeals. For the reasons stated in the Standard of Review, we treat the dismissal as a summary judgment.

STANDARD OF REVIEW

The Reeds’ motion to dispense with the litigation cited CR 12, but they appended exhibits to that motion. When ruling on a motion to dismiss under these circumstances, “[i]t is within the discretion of the [trial] court whether or not this extraneous matter shall be considered, but if the court does not exclude it, the motion *shall be treated* as one for summary judgment under Rule 56.” *Whisler v. Allen*, 380 S.W.2d 70, 71 (Ky. 1964) (citation omitted) (emphasis added). The trial court did not exclude the exhibits. Therefore, the trial court was required to treat the motion “as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.” CR 12.03.

Here, “the trial court rendered a summary judgment pursuant to CR 12.03 and CR 56.” *Hoke v. Cullinan*, 914 S.W.2d 335, 337 (Ky. 1995). “Whether summary judgment is appropriate is a legal question involving no factual findings, so a trial court’s grant of summary judgment is reviewed *de novo*.” *Brown v. Griffin*, 505 S.W.3d 777, 781 (Ky. App. 2016) (citation omitted).

ANALYSIS

Before reaching the Estate’s argument, we address its failure to preserve the issues it wishes to raise and argue before this Court. We agree with Appellees that no issue was preserved because the Estate failed to respond to the motion to dismiss, thereby waiving all arguments. In *Wilder v. Noonchester*, we said the appellant “did not properly preserve her argument for our review because she failed to respond to the . . . motion to dismiss[.]” 113 S.W.3d 189, 190 (Ky. App. 2003). *Wilder* applies here.

Contrary to the Estate’s counsel’s belief, the CR 59.05 motion did not resurrect the issue for the sake of preserving an alleged pre-judgment error. “CR 59.05 accords the trial court broad discretion to alter or amend a judgment, so as to correct manifest errors, to address intervening changes in controlling law, to take into account newly discovered but previously unavailable evidence, or otherwise to prevent manifest injustice[.]” *Rumpel v. Rumpel*, 438 S.W.3d 354, 365 (Ky. 2014) (internal quotation marks and citations omitted). However, “*a party cannot invoke CR 59.05 ‘to raise arguments and to introduce evidence that should have been presented during the proceedings before the entry of judgment.’*” *Id.* at 365–66 (citations omitted).

The Estate’s motion to alter, amend, or vacate the judgment also cited CR 60.02, in addition to CR 59.05, but failed to identify any of the six bases for

relief contained in that rule or even cite any of its six subsections. Appellate courts “are not at liberty to review alleged errors when the issue was not presented to the trial court for decision.” *Henson v. Commonwealth*, 20 S.W.3d 466, 470 (Ky. 1999). The Estate presented no issue contemplated by CR 60.02 to the trial court.

“[A]ppellate courts need not consider unpreserved issues in the absence of a request for palpable error review unless there are ‘extreme circumstances amounting to a substantial miscarriage of justice[.]’” *Turner v. Turner*, 672 S.W.3d 43, 51 n.10 (Ky. App. 2023) (quoting *Shepherd v. Commonwealth*, 251 S.W.3d 309, 316 (Ky. 2008)). The Estate did not request palpable error review. Therefore, our review became a search for a substantial miscarriage of justice. Such miscarriages have been found in criminal cases where liberty interests are at stake. In this civil case, no laws were violated and no constitutional rights affected. We found no miscarriage of justice.

However, refraining from all substantive review for the failure of preservation remains the Court’s prerogative. In this case, with a short and tidy record, even our narrower review for a miscarriage of justice demonstrated there are no genuine issues of material fact and that both the Reeds and Grace Law are entitled to judgment as a matter of law.

The terms of the Estate’s contract with the Reeds clearly required the Estate to pursue relief by means of arbitration and to initiate that pursuit within one

year of discovering the claim. “[T]he source of the [trial] court’s jurisdiction to act in arbitration matters is wholly derived from the Uniform Arbitration Act.” *Artrip v. Samons Const., Inc.*, 54 S.W.3d 169, 172 (Ky. App. 2001). In this case, as in *Pavkovich v. Shenouda*, the Estate “did not seek application to compel arbitration while the [trial c]ourt still retained jurisdiction. Had [it] done so, the court would have had to comply with KRS^[3] 417.060(3) and (4). Instead, the court ordered all claims dismissed with prejudice” after the Reeds apprised the trial court of the Estate’s contractual obligation to arbitrate. 280 S.W.3d 584, 588 (Ky. App. 2009). For this reason, the Reeds were entitled to judgment as a matter of law.

Grace Law was also entitled to judgment as a matter of law because the negligence claim was barred by the statute of limitations. However, that claim is not governed by the Arbitration Act. Its dismissal implicates intersecting tenets of appellate review we cannot ignore.

First: “If an appellate court is aware of a reason to affirm the lower court’s decision, it *must* do so, even if on different grounds.” *Mark D. Dean, P.S.C. v. Commonwealth Bank & Tr. Co.*, 434 S.W.3d 489, 496 (Ky. 2014) (citation omitted) (emphasis added). Because the trial judge dismissed the claims pursuant to CR 12.03 and CR 56, he was not required under either rule to articulate his grounds which may or may not have been the applicable statute of limitations.

³ Kentucky Revised Statutes.

Applying this tenet alone would make our *de novo* review boundless. But there is a second tenet—the party-presentation principle.

“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, [courts] follow the principle of party presentation.”

Greenlaw v. United States, 554 U.S. 237, 243 (2008). “Ordinarily, this Court confines itself rather closely to deciding only those issues which the parties present . . . [and] take the view that counsel and the courts below have sufficiently identified the issues[.]” *Mitchell v. Hadl*, 816 S.W.2d 183, 185 (Ky. 1991).

Grace Law did include the statute of limitations as an affirmative defense in its answer. So, the argument has not been waived. But Grace Law’s counsel did not argue limitations as a ground for dismissal. Nor did he argue limitations in Grace Law’s brief to this Court. If we strictly applied only the party-presentation principle, we would have to reverse. Fortunately, this principle does not always require strict application. As the Supreme Court said, appellate courts:

are constrained by no rule of court or constitutional provision to observe this procedure [party presentation], and on rare occasions, the facts mandate a departure from the normal practice. When the facts reveal a fundamental basis for decision not presented by the parties, it is our duty to address the issue to avoid a misleading application of the law. This is such a case.

Mitchell, 816 S.W.2d at 185. Any hesitation we had about applying this exception was dispelled by a third tenet—the conservation of judicial resources.

Underpinning many of our rules is the policy of conserving judicial resources. *See, e.g., Daugherty v. Commonwealth*, 467 S.W.3d 222, 234 (Ky. 2015) (“needless-presentation-of-cumulative-evidence ‘considerations’” as KRE⁴ 403 terms them, “are designed to conserve judicial resources.”); *Gasaway v. Commonwealth*, 671 S.W.3d 298, 311 (Ky. 2023) (citing RAP⁵ 32(A)(4) and stating “this procedural rule preserves judicial resources”). If we strictly adhere to the party-presentation principle, we would be sending this case back to the trial court to do more work, burdening the limited resources of one of the litigation workhorses of the judiciary—a circuit court judge—unnecessarily so. Therefore, we conclude the exception to the party-presentation principle applies here.

Based on our *de novo* review of this single-volume record, “the facts reveal a fundamental basis for decision[.]” *Mitchell*, 816 S.W.2d at 185. That is, the material facts about which there is no genuine dispute reveal that Grace Law is entitled to judgment as a matter of law because the Estate failed to file suit within the limitations period for such actions.

The applicable statute of limitations says claims for legal negligence must “be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by

⁴ Kentucky Rules of Evidence.

⁵ Kentucky Rules of Appellate Procedure.

the party injured.” KRS 413.245. *See Wolfe v. Kimmel*, 681 S.W.3d 7, 25 (Ky. 2023). The Estate might have discovered that claim at closing but certainly discovered it not later than July 2023 when its attorney contacted Grace Law about the allegedly flawed property description. Thirteen months later, the Estate filed its negligence claim against Grace Law. That claim was barred by operation of the statute.

That leaves one detail unaddressed. As noted above, when a CR 12 dismissal motion converts to a CR 56 summary judgment motion, “all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.” CR 12.03. *See Martin v. Pack’s Inc.*, 358 S.W.3d 481, 485 (Ky. App. 2011) (“A trial court can grant a summary judgment only after . . . ample opportunity to complete pretrial discovery.” (citation omitted)). A mere seven weeks passed between the filing of the complaint and the entry of judgment.

There is no set duration to satisfy this requirement of ample discovery. Whether the respondent to a summary judgment motion has had “a sufficient opportunity to develop the facts” is necessarily case specific. *See Suter v. Mazyck*, 226 S.W.3d 837, 842 (Ky. App. 2007).

In this case, the undisputed facts that require affirming the judgment are not substantive facts, but facts needed to determine jurisdiction—not subject matter jurisdiction, but particular-case jurisdiction. *Louisville Historical League*,

Inc. v. Louisville/Jefferson Cnty. Metro Gov't, 709 S.W.3d 213, 221–22 (Ky. 2025) (“particular-case jurisdiction refers to the authority and power of the court to decide a *specific* case, rather than the class of cases over which the court has subject-matter jurisdiction.” (internal quotation marks and citation omitted)). That distinction affects what is “a sufficient opportunity to develop the facts[.]” *Suter*, 226 S.W.3d at 842.

Particular-case “jurisdiction often turns solely on proof of certain compliance with statutory requirements and so-called jurisdictional facts[.]” *Nordike v. Nordike*, 231 S.W.3d 733, 738 (Ky. 2007). This is preliminary factfinding that, by the nature of the few necessary facts, does not require the same sort of time as the fleshing out of a claim’s substantive facts.

What we are talking about here are “errors in the procedural invocation of a court’s [particular-case] jurisdiction[.]” *Commonwealth v. Steadman*, 411 S.W.3d 717, 723 (Ky. 2013). These are simple, preliminary, jurisdictional facts that, in many cases, nearly reveal themselves. When our Supreme Court “previously tried to explain” particular-case jurisdictional factfinding, it used the example “of the filing of a notice of appeal in a civil case on the thirty-second day after the trial court entered judgment. The Court of Appeals has the authority to decide civil appeals in general, but lacks the power to adjudicate a case filed too late.” *Louisville Historical League*, 709 S.W.3d at 222

(quoting *Milby v. Wright*, 952 S.W.2d 202, 205 (Ky. 1997)). We apply that reasoning here.

The trial court in this case has subject matter jurisdiction to adjudicate legal negligence claims “but lacks the power to adjudicate a case filed too late.” *Id.* In this particular case, no greater “opportunity to develop the facts” was necessary to determine whether the trial court had jurisdiction to adjudicate this case. *Suter*, 226 S.W.3d at 842. And we cannot ignore that the Estate made no effort to challenge the motion or the materials outside the pleadings, or to ask for more time to do so.

Therefore, we affirm the dismissal of the Estate’s claim against Grace Law.

CONCLUSION

For the foregoing reasons, we affirm the Bullitt Circuit Court’s order dismissing the Estate’s claims against the Reeds and Grace Law and the counterclaims against the Estate.

ALL CONCUR.

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