

RENDERED: AUGUST 23, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001141-MR

LOUISVILLE-JEFFERSON COUNTY
METRO GOVERNMENT AND
RONALD L. BISHOP, FORMER DIRECTOR
FOR LOUISVILLE-JEFFERSON COUNTY
METRO CORRECTIONS

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 98-CI-002519

KELVIN BROOKS, SR.; DONNA MARTIN;
AND T. CLAY

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: Louisville-Jefferson County Metro Government and Ronald
L. Bishop, former Director of Louisville-Jefferson County Metro Corrections
(hereinafter collectively referred to as “Metro Government”) appeal from an Order

of the Jefferson Circuit Court awarding additional attorney fees to Thomas E. Clay. Metro Government contends that because the motion of Donna Martin, for additional attorney fees, was filed more than 10 days after the Supplemental Judgment was rendered, the Jefferson Circuit Court lost jurisdiction to amend the Supplemental Judgment. For the reasons stated below, we conclude that additional attorney fees may be awarded more than 10 days after the Judgment, and accordingly affirm the Order on appeal.

In 1998, Kelvin Brooks and Donna Martin filed an action in Jefferson Circuit Court against Metro Government alleging violation of the Kentucky Civil Rights Act. After the jury returned a Judgment in favor of Metro Government, Brooks and Martin successfully prosecuted an appeal to this Court. A panel of this Court vacated and remanded the Judgment in 2005, resulting in a second trial. At the conclusion of the second trial, the jury returned a verdict in favor of Brooks and Martin. Brooks and Martin then moved to amend the Judgment to include attorney fees. Upon considering the motion, the Jefferson Circuit Court amended the Judgment to include \$242,901 in attorney fees.

Metro Government appealed from the Amended Judgment, and Brooks and Martin cross-appealed. On June 12, 2009, a panel of this Court rendered an Opinion reversing Martin's award of lost wages, but in all other respects affirming. The matter was remanded to the Jefferson Circuit Court, which rendered an Order and Supplemental Judgment on July 15, 2011, bringing the Judgment into conformity with the Court of Appeals' Opinion. Metro Government then tendered

a check to Brooks and Martin in the amount of \$949,910, representing full satisfaction of the Supplemental Judgment including attorney fees.¹ Brooks and Martin refused to accept the payment as full satisfaction, claiming entitlement to post-judgment interest. Thereafter, the circuit court awarded post-judgment interest at the rate of 12%.

On August 3, 2011, Martin filed a motion to modify the amount of attorney fees set out in the 2011 Order and Supplemental Judgment. The attorney fees represented work performed by Plaintiffs' counsel Thomas E. Clay preparing for the second appeal in this action which resulted in the June 12, 2009 Opinion reversing Martin's award of lost wages. Metro Government responded by arguing that the circuit court lost jurisdiction to amend the Supplemental Judgment because the motion to modify the attorney fees was filed more than 10 days after the Supplemental Judgment. During the pendency of the motion, Metro Government filed a Notice of Appeal with this Court. As a basis for the appeal, Metro Government argued that the circuit court erred in awarding 12% interest. A panel of this Court affirmed the Supplemental Judgment by way of an Opinion rendered on February 12, 2013.

Thereafter, on June 4, 2012, the Jefferson Circuit Court rendered an Order sustaining Martin's renewed motion for additional attorney fees in the amount of \$29,750. The Order contained a handwritten notation that "hearing [was] conducted [on] Oct. 25, 2011." This appeal followed.

¹ It was later determined that the check was \$50,000 in excess of the Supplemental Judgment. The circuit court then applied the \$50,000 to accrued interest.

In this fourth appeal, Metro Government argues that the Jefferson Circuit Court erred in sustaining Martin's motion for additional attorney fees in the amount of \$29,750 representing work performed by Plaintiffs' counsel in preparation for the second appeal. In support of this claim of error, Metro Government notes that the final Order and Supplemental Judgment was rendered on July 15, 2011, and that by operation of the Kentucky Rules of Civil Procedure (CR) 59.05, all motions to amend the Judgment must be made within 10 days of the Judgment. Metro Government argues that the Jefferson Circuit Court lost jurisdiction over the instant action before Martin moved for an award of additional attorney fees. It directs our attention to the lapse of some 11 months between the entry of the final Order and Supplemental Judgment on July 15, 2011, and the June 4, 2012 award of additional attorney fees, which it contends is wholly unsupported by the Civil Rules and the relevant case law. Metro Government contends that the final Order and Supplemental Judgment is a "final Judgment" for purposes of starting the 10-day clock, that it was final and appealable, and that it left nothing for later adjudication. It maintains that there must be a point at which the parties to a legal action can definitively believe that the matter has been concluded and that no further judgments or orders may be rendered. In the instant case, it argues that the entry of the final Order and Supplemental Judgment was the final act of the circuit court's jurisdiction in this action, and that the award of attorney fees some 11 months later was improper and must be reversed. In response, attorney Clay contends that this Court previously rejected this argument in the 2009 Opinion, that

he is entitled to attorney fees by operation of KRS 344.450, and that the case law relied upon by Metro Government is distinguishable.

As the parties are well aware, a final judgment is a final order adjudicating all of the rights of the parties to an action. CR 54.01. “A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment.” CR 59.05. This rule mirrors CR 50.02, which limits to 10 days after the judgment the time during which a party may move for a new trial, and CR 59.04 which similarly limits to 10 days the window for *sua sponte* new trial orders. These rules derive from the broader common law recognition that a court loses jurisdiction after the final judgment. *Mullins v. Hess*, 131 S.W.3d 769, 774 (Ky. App. 2004).

However, there are limited exceptions to this rule which allow the trial court to award costs and fees more than 10 days after the Judgment. The Kentucky Supreme Court has ruled, for example, that the civil rule depriving the trial court of jurisdiction to amend its final judgment more than 10 days after the judgment did not deprive it of jurisdiction to render a supplemental judgment awarding costs. *Brett v. Isaac*, 2009 WL 2707092 (Ky. 2009).² “CR 52.02 is not to be read to deprive a trial court of all jurisdiction.” *Id.* at 2. Some three years later, a panel of the Court of Appeals applied *Brett* to conclude that “awarding attorneys’ fees and costs . . . more than 10 days after the entry of the judgment is permissible, and the trial judge did have jurisdiction to enter the order awarding costs and attorneys’

² Unpublished cases are cited pursuant to CR 76.28(4).

fees in the instant case.” *Nationwide Ins. Co. v. Madison*, 2012 WL 6213794 (Ky. App. 2012). While *Madison* centered on the application of CR 37.03 (failure to make admissions), it supports the proposition that a trial court has limited jurisdiction to render an award of attorney fees more than 10 days after the judgment. Conversely, a panel of this Court has also determined that a trial court did not abuse its discretion in denying an award of attorney fees after the judgment. *Scott v. Campbell County Bd. of Ed.*, 618 S.W.2d 589 (Ky. App. 1981).

An award of attorney fees lies within the sound discretion of the circuit court, and will not be disturbed on appeal absent an abuse of that discretion. *Ford v. Beasley*, 148 S.W.3d 808 (Ky. App. 2004). We cannot conclude that the Jefferson Circuit Court abused its discretion under the facts before us. Martin’s motion for additional attorney fees was made on August 3, 2011, or some 18 days after the July 15, 2011 Order and Supplemental Judgment was rendered. During the pendency of the motion, Metro Government prosecuted another appeal, and the award of additional fees was made after the resolution of that appeal. *Brett* and *Madison* support Martin’s contention that the trial court retains the authority to award costs and fees more than 10 days after it otherwise loses jurisdiction to amend the Judgment, order a new trial, etc. Though a panel of this Court affirmed the trial court’s denial of attorney fees in *Scott*, that case is distinguishable as the motion for additional attorney fees therein was not made for some 30 months after the Judgment. Martin’s motion for additional attorney fees was tendered about 18 days after the Judgment, and the matter was effectively held in abeyance by the

subsequent appeal. When the appellate process was concluded, Martin renewed the motion and the trial court awarded attorney fees in conformity with attorney Clay's exhibit of the hours expended prosecuting the second appeal. In sum, we find no basis for concluding that the Jefferson Circuit Court abused its discretion in awarding attorney fees for the work performed on the second appeal, and accordingly find no error.

For the foregoing reasons, we affirm the Order of the Jefferson Circuit Court awarding additional attorney fees to Thomas E. Clay.

ALL CONCUR.

BRIEF FOR APPELLANTS:

David A. Sexton
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Louisville, Kentucky

BRIEF FOR APPELLEES:

Thomas E. Clay
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