

FILED
OCT 22 2014
CLERK
SUPREME COURT

COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2013-SC-653

BRIDGETT WRIGHT (NOW ROONEY)

APPELLANT

-vs-

OR SOLUTIONS, INC., et al

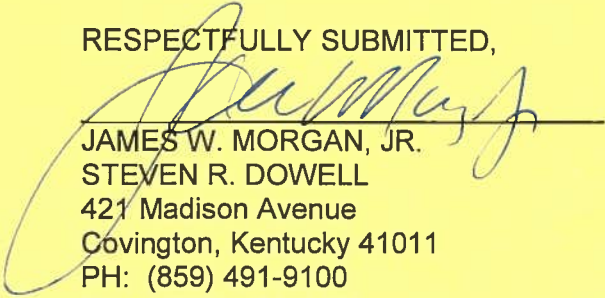
APPELLEES

ON DISCRETIONARY REVIEW FROM THE KENTUCKY COURT OF APPEALS
CASE NO. 2012-CA-001956

ON APPEAL FROM THE KENTON CIRCUIT COURT, FOURTH DIVISION
CASE NO. 09-CI-03566

APPELLANT'S REPLY BRIEF

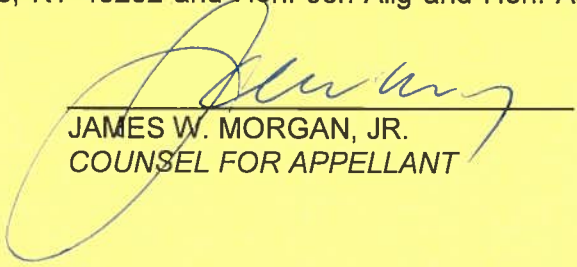
RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served on the 21st day of October, 2014 by federal express to Hon. Susan Stokley Clary, Clerk, Supreme Court of Kentucky, 700 Capital Ave., Room 235, Frankfort, KY 40601-3415; and by U.S. First-Class mail to: Hon. Sam Givens, Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Hon. Patricia Summe, Judge, Kenton Circuit Court, 236 Madison Avenue, Covington, KY 41011; Hon. Richard S. Cleary, Hon. Kathleen B. Wright and Hon. Griffin Terry Sumner, FROST, BROWN, TODD, LLC, 400 West Market Street, Suite 3200, Louisville, KY 40202 and Hon. Jon Alig and Hon. Ashley Bellamy, 414 Licking Pike, Wilder, KY 41076.



JAMES W. MORGAN, JR.
COUNSEL FOR APPELLANT

APPELLANT'S REPLY ARGUMENT

Appellant's detailed recitation of all underlying facts of this case in her brief was not gratuitous, nor unnecessary as Appellees urge this Court to believe. Rather, given the peculiar nature of the underlying claims, the convoluted procedural history of this case and Appellees' continued, erroneous insistence that Appellants sought and obtained an *ex parte* order from the trial court adding the Cr. 54 finality language, it is important for this Court to understand all of the underlying facts of this case so that all issues are in proper perspective.

As to the origin of the *nunc pro tunc* order, it bears repeating:

It is again important for this Court to note, Appellants did not seek the *nunc pro tunc* order at issue in this appeal. Rather, as Appellant stated in her brief,

Before dismissing the corporate parties, the trial court had originally scheduled the matter for trial on January 15, 2013. TR at 84-85. After the trial court dismissed all corporate parties, counsel for Wright and counsel for Swigart, the only remaining defendant, participated in pretrial discussions with the trial court relative to the trial date and the impact the dismissals had upon it. During the discussions, the trial court indicated that it had been and was its intention to conserve time and effort by permitting an appeal of the corporate dismissals to be finalized before it proceeded to trial against the only remaining Defendant, Swigart. Counsel for the corporate defendants/appellees were not involved in this pretrial conference because at that point, they had been dismissed from the lawsuit.

On December 20, 2012, the trial court entered its *sua sponte, nunc pro tunc* order that included the necessary finality language....In this Order, the trial court explained, "...the court clearly envisioned that the appeal of the summary judgment and order overruling the Plaintiffs Motion to Alter, Amend or Vacate the summary judgment would proceed to a conclusion before trial on the claims against the individual, Russell A. Swigart."

Brief for Appellant, pg. 6. While counsel for Appellant may well have drafted the *nunc pro tunc* order, he was instructed to do so at the trial court's *sua sponte* request. This is not a new, nor unauthorized practice of trial courts across the Commonwealth.

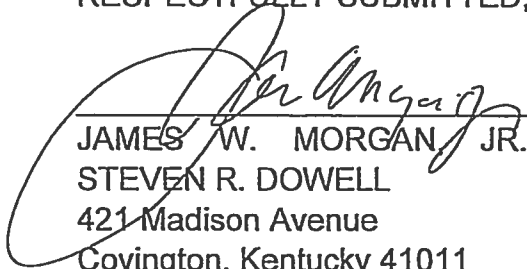
The only other issue raised by Appellees in their brief meriting reply is their new-found, erroneous assertion that once Appellant's initial notice of appeal was filed, the trial court lost jurisdiction to modify its August 31, 2012 order. Once this argument is examined in detail, the only logical conclusion is that it actually presupposes the validity of the initial Notice of Appeal, a conclusion Appellant accepts.

Consider this, if the trial court actually lost jurisdiction upon the filing of Appellant's first notice of appeal, as Appellees argue, then that notice of appeal had to be effective and proper, because Appellant agrees that an effective and proper Notice of Appeal would abrogate the trial court's continuing jurisdiction. On the other hand, if the initial notice of appeal was in fact, interlocutory and ineffective, as Appellees also argue, then under existing Kentucky law the trial court enjoyed jurisdiction to properly record and correct its intended actions by entering the order at issue in this appeal. Either the initial Notice of Appeal was appropriate divesting the trial court of jurisdiction to modify its previous order (and should not have been dismissed), or it was not, wherein the trial court retained its authority to correct its record via a *nunc pro tunc* order. Appellees cannot have it both ways.

Either way, however, the inescapable result in this appeal is that the trial court had the authority to correct its own record by taking the action that it did under existing Kentucky law rendering Appellants' appeal to the Kentucky Court of Appeals timely and proper. Therefore, the dismissal of Appellant's appeal was error, because the properly entered, nunc pro tunc order related forward.

Wherefore, for all of the forgoing reasons, Wright respectfully requests this Court to REVERSE the decision of the Court of Appeals permitting her to proceed with her appeal on the propriety of the trial court's summary judgment dismissing the claims of all corporate parties.

RESPECTFULLY SUBMITTED,



A handwritten signature in black ink, appearing to read "J. Morgan, Jr.", is written over a horizontal line. The signature is fluid and cursive.

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