

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001809-MR

TERRY L. WETHERBY, INDIVIDUALLY,  
AND TERRY L. WETHERBY, AS  
MOTHER AND NEXT FRIEND OF  
JOY MARIE CERNAC

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS J. KNOFF, JUDGE  
ACTION NO. 97-CI-05790

RICHARD L. MASTERS, EXECUTOR  
OF THE ESTATE OF SHERMAN  
WETHERBY, DECEASED, AND  
HENRY G. WETHERBY

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: HUDDLESTON, McANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Terry L. Wetherby, individually (Terry), and Terry L. Wetherby as mother and next friend of Joy Marie Cernac (Joy) bring this appeal from a June 22, 1998, order of the Jefferson Circuit Court. We affirm.

The facts are these: One Sherman H. Wetherby died testate on December 15, 1996. He was survived by one son, co-appellee Henry G. Wetherby (Henry); one daughter, co-appellant Terry L. Wetherby (Terry); and one granddaughter, co-appellant

Joy Marie Cernac (Joy). Sherman's Will was admitted to probate by the Jefferson District Court on January 17, 1997. Henry, Terry, and Joy were primary beneficiaries under the Will. Co-appellee Richard L. Masters (Executor) was nominated by the Will and qualified as executor of the estate.

A dispute arose between Terry, Joy, Henry, and Executor as to the Will's proper interpretation. Consequently, Executor filed a "Complaint for Declaration of Rights" in the Jefferson Circuit Court. Terry, Joy, and Henry brought motions for partial summary judgment upon the issue of whether the tax assessed value or fair market value should be used to value certain real property specifically included in the residuary estate. On June 10, 1998, the circuit court entered partial summary judgment concluding the tax assessed value should be utilized. The court later made the partial summary judgment final, pursuant to Ky. R. Civ. P. (CR) 54.02, by order dated June 22, 1998. This appeal followed.

Terry and Joy contend that the circuit court committed reversible error by entering partial summary judgment. Summary judgment is proper when there exists no material issue of fact and movant is entitled to judgment as a matter of law. CR 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). It is well established that interpretation of a written instrument is a matter of law for the court and that our review proceeds de novo. See Morganfield National Bank v. Damien Elder & Sons, Ky., 836 S.W.2d 893 (1992).

The current dispute centers upon the residuary estate's proper valuation. Under the Will, Henry was to have one-half of

the residuary estate, and Terry and Joy were to each have one-fourth. The residuary estate specifically included certain real property located at 105 and 107 North Kratz Lane, Louisville, Kentucky.

Under the following provision of the Will, Terry and Joy assert that Sherman expressed his intent to equally divide his estate:

The distribution scheme which I outline above is an attempt upon my part to equalize the distribution of my estate between my son, Henry G. Wetherby, and my daughter and granddaughter.

To effectuate such intent, Terry and Joy claim the fair market value should be utilized as to the real property; otherwise, Henry would receive a greater proportion of the residuary estate's value. We disagree.

The Will specifically and unequivocally provided that the real property's tax assessed value be utilized:

All the rest and remainder of my estate (including all real or personal or mixed property and any of the above gifts that may lapse) wherever situated and whatever nature, **(including the property tax assessed value of my real estate located at 105 and 107 North Kratz Lane,** along with the fair market value of the contents of the home and garage bequeathed in paragraphs 3A(3) and 3A(4)) is hereafter referred to as my "residuary estate". (Emphasis added.)

From this language, it is clear that Sherman intended the property tax assessed value be utilized as to the real estate. Indeed, Sherman intentionally draws a distinction between valuation of the real property and of personal property, the latter valued according to its fair market value. In sum, we are

of the opinion that the Will is unambiguous and should be enforced according to its plain terms. As such, we are of the opinion the court did not err by entering partial summary judgment.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEE RICHARD L.  
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ESTATE OF SHERMAN WETHERBY,  
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BRIEF FOR APPELLEE HENRY G.  
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