

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000396-MR

JULIE ANN HARRIS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN K. MERSHON, JUDGE
ACTION NOS. 00-CI-003083 & 99-CI-007663

JANICE BAKER, INDIVIDUALLY, AND AS PARENT
AND CUSTODIAN OF NICHOLAS COLLINS, A MINOR
CHILD; AMERISOURCE; BANK ONE; FIRST USA
BANK; ROBER HABERSTOCK; FIFTH THIRD LEASING;
STOCK YARDS BANK; BANK OF LOUISVILLE; APS;
PIONEER BANK; TRUST ALLIANCE, INC.; FEDERAL
HOME HEALTH CARE; CITICORP VENDOR FINANCE
CO.; AND CHARLES W. DOBBINS, JR., SUCCESSOR
ADMINISTRATOR OF ESTATE OF JAMES C. COLLINS

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

COMBS, CHIEF JUDGE: Julie Ann Harris appeals from an order of
the Jefferson Circuit Court denying her motion for leave to
purchase personal property bequeathed to her by her late
husband, James C. Collins, from his insolvent estate. Because

we conclude that the order from which this appeal has been taken is not final or appealable, we dismiss the appeal.

James C. Collins died by suicide on September 30, 1999. His estate soon became embroiled in complex civil litigation involving multiple plaintiffs; eventually four separate actions were consolidated. It is widely believed that the estate is insolvent to a great degree.

In advance of a status conference scheduled for January 6, 2003, Randolph Noe, administrator of Collins's estate, prepared for the court and the parties of record a detailed summary of the estate's condition and a progress report toward settlement. The final paragraph of Noe's report provided as follows:

- (10) Collins's personalty. Mike Hinson, on behalf of Julie Collins, delivered to me a Rolex watch, diamond ring, and some other jewelry, as well as an inventory and appraisal of all tangible personalty (generally, household goods). According to this inventory, property belonging to the estate is valued at \$9,704 and that belonging to Julie, \$4,000. All items (except the jewelry which is held in my firm's safe deposit box) are held in storage by A. Arnold . . . We should consider an auction of this property, including the jewelry. A full appraisal of the jewelry would have cost \$800 (which I declined) but the appraiser suggested that it would bring no more than \$3,000, tops. He felt that an auction would be a good method of selling the jewelry, also.

During an informal court conference, Noe orally presented his recommendations and the auction proposal.

Following Noe's recital, Janice S. Baker, the decedent's former spouse (and the mother of his son, Nicholas Collins), who is a principal creditor of his estate, offered to purchase Collins's watch and ring for \$2,000.00. The parties, including Harris, who was represented by counsel at the conference, appeared unanimously to support Baker's proposal.

By order of January 8, 2003, the trial court memorialized the proceedings. The order noted Baker's offer to purchase the jewelry, the estate's favorable response, and the absence of any objection. The order provided that the remaining personalty would be sold at auction to be arranged as soon as possible.

On January 15, 2003, Harris filed a motion requesting that she rather than Baker be permitted to purchase the watch and ring. She offered to pay \$2,000.00 for the jewelry. In support of her motion, Harris filed a copy of Collins's will. She claimed to be entitled to the watch and ring pursuant to its provisions. Item II of Collins's will provides as follows:

- A. I give all of my clothing and other articles of personal use, my household furnishings and effects, and any automobiles I may own, together with all policies of insurance relating to these items, to my spouse, **Julie Ann Harris Collins**, if she survives me. If my spouse does not survive me, then I give all my tangible personal property to my son, **Nicholas Collins**.
- B. I may leave in my household safe or with my Will, a letter or memorandum which will be signed by me, requesting my Personal Representative to make further distribution of certain items of my tangible personal

property. I request that the person or persons entitled to my tangible personal property will honor said memorandum or letter.

The trial court conducted a hearing on Harris's motion on January 21, 2003, and entered an order denying the motion two days later. In handwritten text, it provided, in part, as follows: "At request of counsel, this is a final + appealable Order." This appeal followed.

Harris argues on appeal that Noe breached his obligation to dispose of the property at "the best price obtainable" pursuant to the requirements of KRS¹ 395.200. While she concedes that the estate's insolvency caused Collins's bequest to her to abate, she contends that his wish that she receive his watch and ring should be respected.

"A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding or a judgment made final under Rule 54.02." CR² 54.01. CR 54.02 provides as follows:

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 court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the

¹ Kentucky Revised Statutes.

² Kentucky Rules of Civil Procedure.

judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less 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 interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

While the court's order of January 23, 2003 contains finality language, it does not recite the determination that there is no just reason for delay as mandated by the rule. The omission of this requirement is fatal. Hale v. Deaton, 528 S.W.2d 719 (Ky. 1975). More importantly, Harris's appeal is based on an order that has resolved only an intermediate issue without disposing of all of the claims of all of the parties to the litigation. Therefore, we have no jurisdiction to review the court's interlocutory order. As the appeal cannot be maintained, we must dismiss it *sua sponte*.

This court ORDERS that this appeal be and it is hereby DISMISSED.

ALL CONCUR.

/s/ Sara W. Combs
CHIEF JUDGE, COURT OF APPEALS

ENTERED: April 22, 2005

BRIEF FOR APPELLANT:

Stanley W. Whetzel, Jr.
Louisville, Kentucky

BRIEF FOR APPELLEE JANICE
BANKER:

Robert G. Lohman, Jr.
Louisville, Kentucky