

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-002613-MR

ROCKLAND GEORGE

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE C. DAVID HAGERMAN, JUDGE  
ACTION NO. 04-CI-00495

ESTATE OF MARION DOUGLAS GEORGE,  
DECEASED; HON. MATTHEW J. WIXSOM,  
ADMINISTRATOR; AND ELOISE T. GEORGE

APPELLEES

OPINION  
REVERSING AND REMANDING

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BEFORE: ACREE AND TAYLOR, JUDGES; EMBERTON,<sup>1</sup> SENIOR JUDGE.

TAYLOR, JUDGE: Rockland George appeals from a November 1, 2005, order of the Boyd Circuit Court granting summary judgment in favor of the Estate of Marion Douglas George, Deceased, Hon. Matthew J. Wixsom, Administrator (Estate). We reverse and remand.

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Rockland George (Rockland) is the son of Marion Douglas George (Douglas). In 1993, a guardianship proceeding was initiated in the Boyd District Court (Action No. 93-H-00005). Rockland and Douglas's second wife, Eloise George, were appointed co-guardians of Douglas. Being dissatisfied with the inventory and accounting filed by his stepmother Eloise, Rockland filed exceptions to both. Following a hearing, the district court accepted the inventory and accounting provided by Eloise. The district court also dissolved the co-guardianship and appointed Rockland the conservator of certain real property and various items of personal property belonging to Douglas. Eloise remained Douglas's guardian.

On December 24, 1994, Douglas died testate. Pursuant to Douglas's will, his entire estate passed to Rockland. As Douglas's surviving spouse, Eloise renounced the will. Kentucky Revised Statutes (KRS) 392.080. In the probate proceeding (Action No. 95-P-00177), Rockland alleged that certain property claimed by the Estate was, in fact, owned by him personally. However, the district court determined that the issue of ownership of property claimed by the Estate had been previously litigated in the guardianship proceeding and could not be relitigated in the probate proceeding. The court further ordered that Eloise would receive her statutory one-third (1/3) share of the real property, including the farm. It appears that an appeal was taken to the circuit court and was subsequently affirmed.<sup>2</sup>

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<sup>2</sup> Since we were not furnished with the record of the probate or guardianship proceedings, some of these facts were taken from an Opinion of this Court rendered in Appeal Nos. 2003-CA-00078-MR and 2004-CA-000266-MR on May 13, 2005. Those appeals adjudicated the issue of whether Rockland George was barred from claiming ownership of certain real property that was titled of record to Marion Douglas George at the time of his death and subsequently passed under Douglas's will, but subject to the renunciation provisions of KRS 392.080.

In May 2004, the Estate filed a complaint in the Boyd Circuit Court seeking to sell the personal and real property of the Estate for purposes of settling same. KRS 395.510. Rockland answered and asserted ownership of certain items of personal property claimed by the Estate. The Estate subsequently filed a motion for summary judgment against Rockland. Therein, the Estate argued that the issue of ownership of personal property claimed by the Estate had been previously decided in the guardianship and probate proceedings in district court; thus, the doctrine of *res judicata* and/or collateral estoppel barred relitigation. On November 1, 2005, the circuit court granted summary judgment in favor of the Estate. The Court specifically concluded:

[A]ll issues in regards to Rockland George's alleged ownership of property belonging to the estate of Marion Douglas George has been previously litigated in various District Courts, Circuit Courts, Court of Appeals and the Supreme Court. The Defendant, Rockland George, wants to assert the issue of subject matter jurisdiction, but this Court finds that same has been litigated and raised in previous Courts and specifically finds that the ownership of property belonging to the estate of Marion Douglas George has been litigated to the extent that the previous Orders of other Courts have been entered stating that the Inventory accepted by the District Court in 1994 is the personal property that belongs to Marion Douglas George [now the Estate] . . . .

This appeal follows.

Rockland contends the circuit court erred by concluding that the issue of ownership of certain personal property claimed by the Estate was barred by the doctrine of *res judicata*. In particular, Rockland argues that the district court lacked subject matter jurisdiction in the probate proceeding to adjudicate ownership of personal property claimed by the Estate, thus barring application of *res judicata*. In support thereof,

Rockland cites this Court to KRS 24A.120, which defines the jurisdiction of the district court:

- (1) Civil cases in which the amount in controversy does not exceed four thousand dollars (\$4,000), exclusive of interest and costs, except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of District Court;
- (2) Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and
- (3) Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

According to Rockland, KRS 24A.120(2) clearly grants the district court jurisdiction over probate proceedings but specifically exempts therefrom all “matters contested in an adversary proceeding.” Rockland believes that adjudication of ownership of personal property claimed by the Estate constitutes an “adversary proceeding” over which the district court lacked jurisdiction. Instead, Rockland asserts that jurisdiction was properly vested in the circuit court incident to the action filed by the executor for final settlement of the Estate under KRS 395.510.

This case presents a rather novel legal issue. Moreover, it must be pointed out that the procedural history of this case is rather convoluted, and we are hampered by the fact that neither the record of the probate proceeding nor the record of the guardianship proceeding was included in the record on appeal. However, we are of the

opinion that summary judgment was improperly granted as a matter of law. See Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991) .

In this case, we are faced with the task of determining the proper boundary between the probate jurisdiction of the district court and the probate jurisdiction of the circuit court. KRS 24A.120(2) clearly vests the district court with jurisdiction over probate matters with the notable exception of “matters contested in an adversary proceeding.” The definition of the term “adversary proceeding” is somewhat circuitous and is found in KRS 24A.120(3):

Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

It has been recognized that “[t]he test of jurisdiction in the Circuit Court over probate matters would thus involve finding a statute that would authorize beginning suit in Circuit Court.” 1 Merritt, Kentucky Practice, § 756 (2d ed. 1984). Stated differently, the district court possesses jurisdiction over all probate actions except actions that by statute may be commenced in the circuit court.

In the case *sub judice*, the instant settlement action was commenced in circuit court by the Estate pursuant to KRS 395.510. Under this statute, a personal representative of an estate may file an action in circuit court seeking settlement of the estate. KRS 395.515 provides further elucidation of such settlement action filed in circuit court:

In such an action the petition must state the amount of the debts and the nature and value of the property, real and

personal, of the decedent, so far as known to the plaintiff; if it appears that there is a genuine issue concerning the right of any creditor, beneficiary or heir-at-law to receive payment or distribution, or if it appears that there is a genuine issue as to what constitutes a correct and lawful settlement of the estate, or a correct and lawful distribution of the assets, such issues may be adjudicated by the court; and, if it shall appear that the personal estate is insufficient for the payment of all debts, the court may order the real property descended or devised to the heirs or devisees who may be parties to the action, or so much thereof as shall be necessary, to be sold for the payment of the residue of such debts.

Under its specific language, the circuit court is statutorily empowered to adjudicate issues concerning: 1) the right of a creditor, beneficiary, or heir at law to receive payment or distribution; 2) the proper settlement of the estate; and 3) the proper distribution of assets of the estate. We believe implicit to the above delineated powers is necessarily the authority to initially adjudicate ownership of the assets claimed by the estate, including disputes concerning ownership of personal property. Accordingly, we conclude that the circuit court is vested specifically with jurisdiction to settle the estate under KRS 395.510 and incidentally with authority to determine ownership of personal property.<sup>3</sup>

As KRS 395.510 specifically authorizes the commencement of a settlement action in circuit court, such action is consequently considered an “adversary proceeding” under KRS 24A.120(2) over which the district court lacks jurisdiction. It therefore follows that the district court’s prior adjudication in the probate proceeding of ownership

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<sup>3</sup> Our ruling is distinguishable from the prior ruling of this Court in Appeal Nos. 2003-CA-00078-MR and 2004-CA-000266-MR insofar as that ruling pertained to real property which passed under the will, subject to the provisions of KRS 392.080. Real property does not pass to the estate upon death, nor is it an asset subject to probate. *Slone v. Casey*, 194 S.W.3d 336 (Ky.App. 2006). However, KRS 395.515 does permit the sale of real property, per court order, if personalty is not sufficient to pay debts of the estate.

of the disputed personal property is not entitled to the preclusive effect of *res judicata*. See Fischer v. Jeffries, 697 S.W.2d 159 (Ky.App. 1985). Thus, we hold that summary judgment was improperly entered and upon remand the circuit court shall adjudicate the issue of ownership of personal property claimed by the Estate.

For the foregoing reasons, the order of the Boyd Circuit Court is reversed and this cause remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

M. Kevin Lett  
Ashland, Kentucky

BRIEF FOR APPELLEE, ESTATE OF  
MARION DOUGLAS GEORGE:

Matthew J. Wixsom  
Ashland, Kentucky

BRIEF FOR APPELLEE, ELOISE T.  
GEORGE:

Jeffrey L. Preston  
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