

RENDERED: FEBRUARY 26, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2009-CA-000693-MR

JIMMY E. ADAMS

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE JAMES C. BRANTLEY, JUDGE  
ACTION NO. 09-CI-00047

MABEL RIDDLE

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: COMBS, CHIEF JUDGE; CLAYTON AND STUMBO, JUDGES.

CLAYTON, JUDGE: Jimmy E. Adams appeals from an order of the Hopkins Circuit Court granting summary judgment to Mabel Riddle and requiring Adams to reimburse Riddle \$6,195.00 for the funeral and burial expenses of his wife, Essie Adams. Riddle is Essie's sister. For the following reasons, we affirm.

Jimmy and Essie were in the process of dissolving their marriage when Essie became ill. For a variety of reasons, the decree of dissolution was

never entered. Kentucky Revised Statutes (KRS) 404.040 provides that a husband is liable for necessities furnished to his wife after the parties are married. Further, Kentucky case law has established that a wife's necessities include funeral expenses. *Palmer v. Turner*, 241 Ky. 322, 43 S.W.2d 1017, 1019 (Ky. 1931). Thus, based on KRS 404.040 and case law, Mabel, who is Essie's sister, argues that Jimmy is the responsible party for the funeral debt and must repay her. As such, on January 12, 2009, she filed a complaint against Jimmy asking the court to order him to reimburse her for the cost of the funeral debt. Mabel then filed a motion for summary judgment, which the court heard on March 16, 2009. At the end of the hearing, the court granted the motion for summary judgment and ordered Jimmy to reimburse Mabel for the debt.

During the hearing, Jimmy argued that KRS 404.040 is a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution, and hence, unconstitutional. The trial court did not rule upon this issue in its summary judgment order. Additionally, in order for us to address this issue, however, it would have been necessary for Jimmy to have notified the Kentucky Attorney General's Office prior to entry of any judgment. A review of the record reveals no such notice was provided before the entry of the summary judgment.

According to KRS 418.075:

(1) In any proceeding which involves the validity of a statute, the Attorney General of the state shall, before judgment is entered, be served with a copy of the petition, and shall be entitled to be heard, and if the ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the petition and be entitled to be heard.

And Kentucky Rules of Civil Procedure (CR) 24.03 mandates that “[w]hen the constitutionality of an act of the General Assembly affecting the public interest is drawn into question in any action, the movant shall serve a copy of the pleading, motion or other paper first raising the challenge upon the Attorney General.” Because Jimmy did not give notice to the Attorney General of the constitutional challenge at the inception of the action, the appeal does not meet the statutory requisites of KRS 418.075 and CR 24.03, and as such, the issue is not preserved for our review.

The Kentucky Supreme Court has explained the rationale for the notification statute: “[T]he intent of the Legislature in its enactment of KRS 418.075 is clear that no judgment shall be entered which decides the constitutionality of a statute until the Attorney General is given notice and an opportunity to be heard.” *Maney v. Mary Chiles Hosp.*, 785 S.W.2d 480, 482 (Ky. 1990). In fact, we have noted that it is “the right of the people, by the chief law officer, to be heard on matters affecting the validity of duly enacted statutes.” *Id.* at 481. Moreover, the notice requirement is mandatory and should be strictly enforced. *Homestead Nursing Home v. Parker*, 86 S.W.3d 424, 425 n. 1 (Ky. App. 1999).

To summarize, the trial court made no ruling regarding the constitutionality of KRS 404.040 and no notice was provided to the Attorney General's Office at the trial court level before the entry of the summary judgment. The plain meaning of the statute dictates that "before judgment is entered," the attorney general must be notified. The fact that Jimmy notified the attorney general's office at the time of the appeal is not relevant and does not preserve the issue. In sum, Jimmy's argument is a constitutional one, which requires prior notice to the Attorney General under KRS 418.075 and CR 24.03. Prior notice was not given. Accordingly, we must decline to address the constitutional question.

For the foregoing reasons, we affirm the judgment of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jarrold H. Jackson  
Princeton, Kentucky

BRIEF FOR APPELLEE:

Julia T. Crenshaw  
Hopkinsville, Kentucky