

RENDERED: MAY 20, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2010-CA-001218-MR

BONNIE FIELDS; HOMER FIELDS;  
AND PATRICIA SMITH

APPELLANTS

v. APPEAL FROM LESLIE CIRCUIT COURT  
HONORABLE OSCAR G. HOUSE, JUDGE  
ACTION NO. 07-CI-00088

HOMER HOSKINS, widower;  
MAXINE GIBSON and husband ARNOLD GIBSON;  
PATSY JOYCE MOORE and husband  
GARY W. MOORE; RONALD HOSKINS and wife  
BOBBIE HOSKINS; PEGGY SMITH and husband  
GLEN SMITH; DONALD HOSKINS and wife  
BEVERLY HOSKINS; JAMES HOSKINS and wife  
PATRICIA HOSKINS; ALENE PACE BOWLING, widow;  
ALENE PACE BOWLING AS TRUSTEE FOR  
KARA LYNN PACE, a minor, RYLEIGH PACE, a minor  
and TESSA PACE, a minor; NORMA GENE ROWLES  
and husband MIKE ROWLES; JANICE SMITH  
and husband ORVILLE SMITH; CAROLINE  
BRANDENBURG and husband LARRY  
BRANDENBURG; DOUGLAS PACE and wife  
ABBY PACE; BILLY PACE, single;  
EDDIE BOONE PACE, single;  
HEIRS of RUBLE HOSKINS, deceased,  
DANNY DEAN HOSKINS and spouse, if any;  
KENNETH HOSKINS and wife PAT HOSKINS;  
MARGERY ABEL and husband DANIEL G. ABEL;

ELAINE FARMER and spouse, if any;  
GEWANDINE COLLETT and spouse, if any;  
KATHLEEN ROBERTS and husband DONALD ROBERTS;  
UNKNOWN HEIRS of DAN PACE, a/k/a  
DANIEL BOONE PACE, a/k/a D.B. PACE, if any;  
and BLEDSOE COAL LEASING COMPANY

APPELLEES

OPINION  
AFFIRMING  
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BEFORE: NICKELL AND THOMPSON, JUDGES; ISAAC,<sup>1</sup> SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Bonnie Fields, Homer Fields, and Patricia Smith

(Appellants) appeal from a summary judgment granted in favor of Appellees on their claim to an interest in D.B. Pace's property. Appellants argue that summary judgment was inappropriate because there was sufficient evidence to create a genuine issue of material fact as to whether the mother of Homer and Patricia was the legitimate child of D.B. Pace. We affirm.

Homer Fields and Patricia Smith are the children of Rebecca Pace, whose given name was Robert Bruce Smith.<sup>2</sup> Bonnie Fields is the spouse of Homer Fields. Appellants claim that Rebecca was the legitimate daughter of D.B. Pace and Fannie Smith. D.B. Pace died in 1948. Rebecca died on May 10, 1996, and did not make any claims of heirship to D.B. Pace during her lifetime.

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<sup>1</sup> Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</sup> According to the affidavit of Patricia Smith, Rebecca is a female, whose family greatly desired a son and so she was given the name Robert Bruce at birth. She later took the name Rebecca Pace.

Appellants filed the present action in Leslie Circuit Court seeking a declaration that Rebecca was an heir at law of D.B. Pace and entitlement to a proportional share of his property. The trial court granted summary judgment in favor of the Appellees concluding that Appellants could not sustain their burden of proof because there was no evidence to show that Fannie Smith was married to D.B. Pace when Rebecca was born. This appeal followed.

Appellants argue that summary judgment was inappropriate because there was a genuine issue of material fact as to whether Rebecca was the legitimate heir of D.B. Pace.

In reviewing a grant of summary judgment, our inquiry focuses on “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996); Kentucky Rule(s) of Civil Procedure (CR) 56.03. “[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Steelvest v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

The material issue is whether Rebecca was born in wedlock to D.B. Pace, not merely whether she was his daughter. *See Turner v. Perry County Coal*

*Corp.*, 242 S.W.3d 658, 660 (Ky.App. 2007). In *Turner*, this Court held that when a man died intestate prior to April 26, 1977, any children born to him out of wedlock would only inherit from the mother because the decision striking down KRS 391.090(2)<sup>3</sup> was not applied retroactively. *Id.* While Appellants failed to produce a marriage license, parol evidence may be introduced to prove the existence of a valid marriage notwithstanding the absence of record evidence. *Pinkhasov v. Petocz*, 331 S.W.3d 285, 293 (Ky.App. 2011)(citing *Vest's Adm'r v. Vest*, 234 Ky. 587, 28 S.W.2d 782, 783 (1930)). When there is conflicting evidence as to whether a marriage existed, the issue must be resolved on the evidence. *Id.* at 294.

However, Appellants produced no evidence that D.B. Pace and Fannie Smith were ever actually married. As stated above, there was no license. There was a marriage bond, which by its own terms, only evidenced an intention to marry. The marriage certificate attached to the bond was left completely blank. Similarly, the note from Fannie Smith's parents giving her permission to marry does not demonstrate that the marriage actually occurred. There were no witnesses to the marriage. Ms. Pruda North testified that D.B. Pace and Fannie Smith stayed together and "they ought to [have] been married," but not that they actually married. Appellants also point to a birth certificate for Rebecca, which named D.B. Pace and Fannie Pace as her parents. However, this purported birth certificate was obtained by Appellants in 2005, nine years after Rebecca's death in

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<sup>3</sup> Kentucky Revised Statute(s) (KRS) 391.090(2) stated in relevant part that "[a] bastard shall inherit only from his mother and his mother's kindred."

1996. Furthermore, the certificate provides no evidence that D.B. Pace and Fannie Smith actually complied with the statutory requirements of a valid marriage. Simply holding themselves out as man and wife does not provide evidence of a valid marriage because Kentucky does not recognize common-law marriage. *Pinkhasov v. Petocz, supra*. Therefore, because no evidence of a valid marriage between D.B. Pace and Fannie Smith was presented, the trial court properly granted summary judgment.

Accordingly, the order of the Leslie Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

John T. Aubrey  
Manchester, Kentucky

BRIEF FOR APPELLEES:

Phillip Lewis  
Hyden, Kentucky