

RENDERED: AUGUST 19, 2011; 10:00 A.M.

NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001264-MR

JANET R. FLEMING

APPELLANT

v. APPEAL FROM TRIGG CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 06-CI-00216

MARGARET RENEE TONEY,
INDIVIDUALLY AND AS
EXECUTRIX OF THE ESTATE OF
LEON B. FLEMING; WILLIAM C.
ABBOTT; AND SHARON A. ABBOTT

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: DIXON, MOORE, AND THOMPSON, JUDGES.

MOORE, JUDGE: Janet Fleming appeals the order of the Trigg Circuit Court granting partial summary judgment in favor of Margaret Renee Toney (Renee), and its subsequent order denying her motion to alter, amend, or vacate the

judgment, with regard to the issue of ownership of a joint bank account. Because we find that the orders appealed from were interlocutory, we dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

Leon and Janet Fleming were married and shared equal ownership in their business, Lee Rents. In 1999, Leon and Janet separated, and Janet filed for divorce. A decree was never entered, but Leon and Janet remained separated until Leon's death on August 24, 2006.

Following the separation, and prior to his death, Leon made several estate planning decisions without Janet's knowledge. In particular, Leon held an individual account containing \$51,418.59 (the "Integra account"), to which he added Margaret Renee Toney (Renee), a non-relative, as a joint owner with rights of survivorship. Within the month prior to his death, Leon then transferred \$432,347.13 into the Integra account from his Vanguard IRA,¹ along with \$156,552.13 from various other sources.² In total, the balance of the Integra account amounted to \$635,110.24 on the date of Leon's death. Leon also executed a document purporting to transfer his ownership interest in Lee Rents to his daughter, Sharon Abbott, and her husband, William Abbott. He subsequently executed a will containing a provision transferring his share of Lee Rents to Sharon and William.³

¹ This account was held by Leon individually, although Janet was named the beneficiary at the time he withdrew the funds.

² Although Janet does not address the issue on appeal, we note that Leon made bequests of \$300,000 to charity, in addition to all remaining cash or cash equivalents, in his will.

³ Leon's daughter and son-in-law have operated Lee Rents since shortly after Leon's retirement.

When Leon died on August 24, 2006, all of the assets he owned jointly with Janet, valued at \$2,067,190.04, passed to Janet. Janet renounced Leon's will and elected to receive her dower interest in Leon's estate. Thereafter, Janet filed an action in Trigg Circuit Court seeking to bring the funds that Leon had placed into the Integra account he shared with Renee back into Leon's estate.⁴ Janet alleged that Leon's various transfers into the Integra account constituted a fraud on her dower interest, or, alternatively, that Leon had either intended a different use for those funds when placing them in the Integra account, or that he had placed the funds in that account by mistake. Additionally, Janet sought to recover a dower interest in the Lee Rents stock that Leon had previously transferred to Sharon and William, which is valued at \$288,049.00.

Janet and Renee each filed cross-motions for partial summary judgment with respect to the funds in the joint account, and the Trigg Circuit Court granted Renee's motion. In doing so, the court found that Janet had not produced clear and convincing evidence that Leon had had a different intention with respect to the funds in the Integra account, or that he had mistakenly deposited the funds into that account. The court also relied upon *Harris v. Rock*, 799 S.W.2d 10 (Ky. 1990), and *Hannah v. Hannah*, 824 S.W.2d 866 (Ky. 1992), in finding that, because Janet was otherwise provided for by her receipt of the jointly held assets

⁴ On appeal, Janet raises only her rights to the \$432,347.13 from the Vanguard IRA. We note however that Leon's transfer of the entire \$635,110.24 is relevant with respect to the issue of whether Leon intended to defeat Janet's dower interest as will be analyzed *infra*.

and not destitute, the transfer of the funds into the Integra account did not constitute a fraud on her dower.

Janet subsequently filed a motion to alter, amend, or vacate the judgment arguing that each of the trial court's bases for granting summary judgment in favor of Renee was legally insufficient.

Nevertheless, the court denied Janet's motion. As it related to the issue of whether Janet had been left destitute, the trial court added that the fact that Janet was not destitute was merely one factor in considering whether there was fraud on the dower. The court further rejected Janet's argument that the will executed after the creation of the joint account constituted evidence of a different intent "at the time the account was created," pursuant to KRS⁵ 391.315.

Renee moved the trial court to make its order granting Renee partial summary judgment final and appealable. The trial court granted Renee's motion, and this appeal followed. However, all issues regarding the ownership of the Lee Rents stock remain pending before the trial court.

ANALYSIS

On appeal, Janet asserts that the trial court erred in granting summary judgment in favor of Renee because, as she argues, an issue of fact exists with respect to whether Leon defrauded her dower interest and as to whether he intended a different use for the funds or mistakenly deposited them into the Integra account. We are unable to review the merits of this appeal in the absence of a final

⁵ Kentucky Revised Statute.

adjudication from the trial court regarding the Lee Rents stock, but further explanation is warranted on this point.

Generally speaking, Kentucky's statutory scheme was designed to prevent a decedent from disinheriting his surviving spouse. *Hannah*, 824 S.W.2d at 868. To this effect, KRS 392.020 entitles the surviving spouse of a decedent who dies intestate to one-half (1/2) of the surplus of all real and personal property which the decedent owned in fee at the time of death. In similar fashion, if a decedent dies testate, KRS 392.080 entitles the surviving spouse to renounce the decedent's will and receive one-half (1/2) of the surplus of the decedent's personal property and one-third (1/3) of the surplus of the decedent's real property. These are essentially the contours of a spouse's "dower interest" rights under Kentucky law at issue in this action.

This statutory dower interest applies only to assets in which the decedent was "seized of an estate in fee simple at the time of death." KRS 392.020. Therefore, joint assets are generally not considered for purposes of determining statutory dower rights, as the joint owner's interest swells at the death of the other and the decedent is not "seized" of the property upon his death. *See* KRS 381.050; KRS 391.315; *see also* 34 C.J.S. Executors and Administrators §166 (2011). Likewise, a spouse does not ordinarily have a dower claim to funds placed into a joint account with a third party. KRS 391.315. Rather, "[s]ums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties to the account as against the estate of the decedent unless

there is clear and convincing written evidence of a different intention at the time the account is created.” KRS 391.315 (1)(a).

As a caveat, however, the Kentucky Supreme Court has delineated a “limitation, necessarily implied in law, that the survivor of parties to a joint account cannot become the owner of the funds in the account upon death of the other party if the party who deposited the funds was not legally entitled to dispose of them in such a manner.” *Harris*, 799 S.W.2d at 12. Consequently, a spouse has no legal right to place assets into a joint account, or otherwise dispose of assets, with the intent to defeat his widow’s dower claim. *Id.* And, any funds found to have been deposited for such a purpose will be subject to a surviving spouse’s claim of fraud on the dower. *Id.* at 11.

On the other hand, a decedent will be deemed to have intended the natural consequences of his actions. *Anderson v. Anderson*, 583 S.W.2d 504, 505 (Ky. App. 1979). As such, a decedent’s intent to defraud his spouse’s dower interest depends upon the “condition of the parties and all the surrounding facts and circumstances.” *Benge v. Barnett*, 309 Ky. 354, 217 S.W.2d 782, 783 (1949). Or, stated differently, intent to defraud a spouse’s dower interest depends upon an examination of the entirety of a decedent’s estate. *See generally Anderson*, 583 S.W.2d at 505; *see also Payne v. Tatem*, 236 Ky. 306, 33 S.W.2d 2, 3 (1930).

In considering the question of whether the circumstances surrounding the entirety of a decedent’s estate reflect a decedent’s intent to defraud his spouse’s dower interest, our courts “look primarily at the amount of the inter vivos transfer

of personal property in proportion to the decedent's estate." Elizabeth S. Muyskens, Note, *Married in Kentucky: A Surviving Spouse's Dower Right in Personalty*, 96 Ky. L.J. 99, 112 (2007-2008) (citing *Patterson v. Patterson*, 24 S.W. 880 (Ky. 1894); *Payne*, 33 S.W.2d 2). And, our courts will presume fraudulent intent where a spouse has made an inter vivos transfer of the bulk of his estate; *i.e.*, generally more than half, without the spouse's knowledge. *Benge*, 309 Ky. 354, 217 S.W.2d at 783; *see also Harris*, 799 S.W.2d at 12.

Here, to determine whether Leon intended to defraud Janet of her dower interest all of the "surrounding facts and circumstances" of his estate must be evaluated. *Benge*, 309 Ky. 354, 217 S.W.2d at 783. Furthermore, if Leon's inter vivos transfers reflect a transfer of more than half of his estate, the presumption would apply. *Id*; *see also Harris*, 799 S.W.2d at 12. The burden would then shift to Renee to prove an absence of fraud. *Benge*, 309 Ky. 354, 217 S.W.2d at 783. Consequently, 1) we must take into consideration that the record before us does not evidence that the full value of Leon's estate has been finalized by the lower court, and 2) the trial court's determination of who owns the Lee Rents stock also necessarily becomes dispositive. The trial court not having noted in its order the value of Leon's estate, we are left with the conclusion that it did not consider the proportionate value of the inter vivos transfer to the estate when determining that there was not fraud on the dower.⁶ Furthermore, the exact value

⁶ We do note that the amended inventory from the probate court, which was filed in the circuit court record, indicates that the Leon's probate estate was valued at \$712,256.48.

of Leon's estate cannot be ascertained absent the trial court's determination with respect to the Lee Rents stock. Even assuming that the inventory correctly values Leon's estate at \$712,256.48,⁷ transfer of the Lee Rents stock and the funds in the Integra account may ultimately amount to more than half of Leon's estate (635K + 288K = 923K). Thus, the presumption of fraudulent intent may apply, which then Renee must rebut to prevail.

Without this Court's knowing the full value of Leon's estate or the disposition with respect to the Lee Rents stock, we cannot determine whether Leon's transfer of funds into the joint account amounted to a transfer of the bulk of his estate prior to his death. Consequently, we cannot determine whether the trial court appropriately granted summary judgment in favor of Renee. Therefore, the trial court failed to "conclusively determine the rights of the parties." *Hale v. Deaton*, 528 S.W.2d 719, 722 (Ky. 1975). A judgment that does not adjudicate all of the rights of the parties is interlocutory. *Id.* As a rule, we do not address interlocutory orders on appeal because they are not final. KRS 22A.020(1). Accordingly, it is ordered that this appeal is DISMISSED.

DIXON, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

ENTERED: August 19, 2011

/s/ Joy A. Moore
JUDGE, COURT OF APPEALS

⁷ *See id.*

BRIEF FOR APPELLANT:

Glen S. Bagby

Daniel N. Thomas

J. Robert Lyons, Jr.

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Lee T. White

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BRIEF FOR APPELLEE

MARGARET TONEY:

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