

RENDERED: AUGUST 26, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2010-CA-000791-MR

CHARLES G. DUKES

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE BRIAN WIGGINS, JUDGE  
ACTION NO. 06-CI-00462

JOHN KEATING; WARREN KEATING;  
KYLE KEATING, ADMIN. OF THE  
ESTATE OF ALAN KEATING; JOYCE  
ANN DUKES; KAREN RUTH GRISNAK;  
MELISSA KAY STRANGE; DUSTIN  
ALMON AND VONDA KAY  
CONWAY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CAPERTON AND CLAYTON, JUDGES.

ACREE, JUDGE: The appellant, Charles G. Dukes, *pro se*, appeals from the  
Muhlenburg Circuit Court's findings of fact, conclusions, and order distributing

and settling the estate of his father, Charles W. Dukes. Following a careful review of the record, we affirm.

### ***Facts and Procedure***

On December 7, 2004, Charles W. Dukes executed his Last Will and Testament, which set forth provisions for the distribution of his real and personal property upon his death. Following Charles W. Dukes' death on February 1, 2005, the Muhlenburg District Court entered an order probating Charles W. Dukes' Last Will and Testament (Dukes' Will), and appointed Rachel Maries Dukes, Charles W. Dukes' wife, as executrix of his estate (the Estate).

On February 24, 2005, Joyce Ann Dukes, Charles W. Dukes' spouse from a previous marriage, filed a claim against the Estate asserting that, pursuant to the separation agreement<sup>1</sup> between her and Charles W. Dukes dated June 22, 1995, she was entitled to \$1,200.00 per month for a period of ten years after Charles W. Dukes' death. Thus, the gross amount of Joyce's claim equaled \$144,000.00.

As executrix, Rachel filed an inventory and appraisal of the Estate valuing it at approximately \$502,633.83. Rachel further moved the court to set aside her spousal exemption pursuant to Kentucky Revised Statute (KRS) 391.030, in the amount of \$15,000, which the court granted. Rachel continued to serve as executrix until her death on July 11, 2005. On July 26, 2005, the Muhlenburg District Court appointed appellant as the Estate's Administrator *De Bonis Non*.

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<sup>1</sup> The separation agreement between Joyce Ann Dukes and Charles W. Dukes was specifically incorporated into the decree of dissolution of marriage entered by the Muhlenberg Circuit Court.

On July 25, 2005, one day prior to his appointment, appellant, acting in his individual capacity, along with his sisters, Melissa Strange and Karen Grisnek<sup>2</sup> (collectively Joyce Dukes' Children), and Joyce Dukes filed a proof of claim alleging to be creditors of the Estate in an amount equal to one-half of the net estate. Additionally, disputes arose between the Joyce Dukes' Children, the Estate of Rachel Dukes, and the children of Rachel Dukes, namely Alan Keating, John Keating, and Warren Keating.

On September 6, 2006, appellant filed a verified complaint in Muhlenberg Circuit Court requesting that the court consider and declare the rights of all the parties in and to the Estate. A bench trial occurred on January 5, 2010. Following the bench trial, the Muhlenberg Circuit Court entered findings of facts, conclusions of law, and an order distributing and settling the Estate. The circuit court concluded that the Estate consisted of the following assets:

- Promissory note satisfied by the mortgagor - \$253,574.87
- Hilliard Lyons Portfolio consisting of Yum Brand Stock - \$78,251.33
- House, contents, and lot located at 235 West Depot Street - \$56,402.50
- House, contents, and lot located at 510 Orchard Street - \$53,000.00
- Gold and Silver Coins - \$44,870.45
- Guns (9) - \$3,000.00
- Ford Mustang automobile - \$11,025.00
- Pontiac Bonneville automobile - \$9,475.00
- Chevrolet S-10 pickup - \$2,500.00

The circuit court concluded that, after deducting Rachel's \$15,000 spousal exemption, the Estate's gross value equaled \$497,099.15.

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<sup>2</sup> As a point of clarification, Charles G. Dukes, Melissa Strange, and Karen Grisnek are siblings and the children of Joyce Dukes and Charles W. Dukes.

Next, in order to determine the Estate's net value, the circuit court deducted the following claims, costs, and expenses from the Estate's gross value:

- Costs and expenses of administration - \$13,969.03<sup>3</sup>
- Joyce Dukes' maintenance claim - \$132,000.00<sup>4</sup>

The circuit court determined that the Estate's total expenses equaled \$145,969.03.

Thus, the Estate's net value totaled \$351,130.12.

Then, the circuit court examined Dukes' Will to determine how to properly distribute the Estate. The circuit court concluded that Dukes' Will left to Rachel the residence and lot located at 235 West Depot Street in Greenville, Kentucky; all funds in their checking and savings accounts; two automobiles, namely a Pontiac Bonneville and a Ford Mustang; the monthly payment on the mortgage promissory note; and twenty-five percent of the mortgage promissory note's final balloon payment. To Joyce Dukes' Children, Dukes' Will left the contents of a safe deposit box, which contained gold and silver coins; nine guns; all household and personal items located at 235 W. Depot Street in Greenville, Kentucky; the Hilliard Lyons portfolio, which contained the Yum Brand Stock; seventy-five percent of the mortgage promissory note's final balloon payment; and the rest, residue, and remainder of his estate. Finally, Dukes' Will left Dustin Almon a Chevrolet S-10

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<sup>3</sup> The circuit court obtained this amount from the "Final Unagreed Settlement" submitted by appellant as an exhibit during the bench trial on January 5, 2010. This amount is the sum of line items for "Debt-Hospital \$912.00" and "Taxes & Misc Expenses \$13,057.03."

<sup>4</sup> The circuit court explained that, prior to the appellant's filing of the verified complaint in Muhlenburg Circuit Court, Joyce Dukes had received ten monthly installments from the Estate in the amount of \$1,200.00 each (for a total of \$12,000.00). Subsequently, appellant, as administrator of the Estate, settled Joyce Dukes' maintenance claim for \$120,000.00. Thus, Joyce's total maintenance claim equaled \$132,000.00.

pick-up truck, and Vonda Kay Conway the house, lot, and contents located at 510 Orchard Street in Central City, Kentucky.

The circuit court next calculated that, pursuant to Dukes' Will and the assets in the Estate, Joyce Dukes' Children were to receive assets totaling \$307,705<sup>5</sup> (62% of the gross value of the Estate), Rachel was to receive assets totaling \$133,893.72<sup>6</sup> (27% of the gross value of the Estate), Dustin Almon was to receive the Chevrolet S-10 valued at \$2,500.00 (less than 1% of the gross value of the Estate) and Vonda Kay Conway was to receive the house and lot located at 510 Orchard Street in Central City Kentucky, valued at \$53,000.00 (11% of the Estate).

The circuit court then recognized that the Estate did not contain sufficient assets to satisfy all of the bequests contained in Dukes' Will. Consequently, the circuit court prorated each beneficiary's share by their percentage of the net estate. The circuit court concluded that the Joyce Dukes' Children were due \$217,350.27, Rachel was owed \$94,576.93, Dustin Almon was due \$1,765.91, and Vonda Conway was owed \$37,437.01.

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<sup>5</sup> The Joyce Dukes' Children received \$44,870.45 in gold and silver coins, \$3,000 in guns, \$6,402.50 in insurance proceeds representing the value of the personal property located at 235 W. Depot Street, \$63,251.33 from the sale of the Yum Brand stocks contained in the Hilliard Lyons portfolio, and \$190,181.15 representing 75% of the final balloon payment of the mortgage promissory note, for a total amount of \$307,705.43.

<sup>6</sup> Rachel received \$50,000 in insurance proceeds representing the value of the house and lot located at 235 W. Depot Street, the Bonneville Pontiac and Ford Mustang valued collectively at \$20,500.00, and \$63,393.72 representing 25% of the final balloon payment of the mortgage promissory note, for a total amount of \$133,893.72.

Finally, the circuit court examined the actions previously taken by appellant as administrator of the Estate, and concluded that appellant had distributed all of the Estate's assets to the various beneficiaries, but had not distributed any assets to Rachel. Therefore, on April 20, 2010, the circuit court entered an Amended Judgment and Order requiring appellant to transfer the assets or corresponding prorated dollar amount due to Rachel pursuant to Dukes' Will, as set forth above. Appellant filed a timely notice of appeal from that Judgment and Order.

### *Discussion*

At the outset, we note that appellant's brief falls woefully short of the mandate contained in Kentucky Rules of Civil Procedure (CR) 76.12<sup>7</sup> for presenting arguments to this Court. Specifically, CR 76.12(4)(c)(v) requires that all appellants' briefs include:

An "ARGUMENT" conforming to the statement of Points and Authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

Appellant's brief does not include citations to the record or statements identifying how he preserved the issues he now raises on appeal. Furthermore, appellant cites

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<sup>7</sup> Without listing every deficiency in the parties' briefs, we believe it is important to point out that both appellant and appellee failed to follow the directives set forth in CR 76.12(c) that each party: (1) include on the brief cover a statement that the record on appeal has been properly returned to the trial court's clerk or that the party filing the brief did not obtain the record (76.12(6)(c)); and (2) that each party provide a summary of the facts with ample references to the specific page numbers of the record (76.12(4)(c)(iv)).

little authority and no explanation how the authority that is cited is pertinent to the issue(s) raised. This Court has previously addressed this issue.

Our courts have established that an alleged error may be deemed waived where an appellant fails to cite any authority in support of the issues or arguments advanced on appeal. [W]ithout any argument or citation of authorities, [a reviewing c]ourt has little or no indication of why the assignment represents an error. It is not our function as an appellate court to research and construct a party's legal arguments, and we decline to do so here.

*Hadley v. Citizens Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005) (citations and quotation marks omitted).

Additionally, an appellant may not seek review by this Court and yet fail to follow procedural rules propounded by the Court. *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010).<sup>8</sup> Procedural rules “do not exist for the mere sake of form and style. They are lights and buoys to mark the channels of safe passage and assure an expeditious voyage to the right destination. Their importance simply cannot be disdained or denigrated.” *Louisville and Jefferson County Metropolitan Sewer Dist. v. Bischoff*, 248 S.W.3d 533, 536 (Ky. 2007) (quoting *Brown v. Commonwealth*, 551 S.W.2d 557, 559 (Ky. 1977)).

“Our options when an appellate advocate fails to abide by the rules are: (1) to ignore the deficiency and proceed with review; (2) strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief

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<sup>8</sup> In *Hallis v. Hallis*, 328 S.W.3d 694, 695-98 (Ky. App. 2010), we explained in detail the purpose behind and the significance of the rules set forth in CR 76.12, and the resulting impact on our review when an appellate advocate fails to abide by the rules.

for manifest injustice only.” *Hallis*, 694 S.W.3d at 696 (citing *Elwell v. Stone*, 799 S.W.2d 46, 47 (Ky. App. 1990)).

As noted, the appellant in the case *sub judice* is not at liberty to disregard the rules of this Court simply because he is not possessed of a legal education. However, because appellant is acting *pro se*, we will not strike his brief pursuant to CR 76.12(8)(a). Instead, we will confine ourselves to a review for manifest injustice. *Hallis*, 694 S.W.3d at 696. Manifest injustice exists only if the error “so seriously affected the fairness, integrity, or public reputation of the proceeding as to be ‘shocking or jurisprudentially intolerable,’” *Commonwealth v. Jones*, 283 S.W.3d 665, 668 (Ky. 2009) (citing *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006)), or if the error is “so fundamental as to threaten a defendant’s entitlement to due process of law.” *Martin*, 207 S.W.3d at 3.

Appellant raises eighteen issues in his brief.<sup>9</sup> The bulk of appellant’s arguments contend that the circuit court erred in calculating the decedent’s gross estate because the circuit court failed to use the numbers and values provided by the appellant, as set forth in his “Final Unagreed Settlement.” Prior to issuing its decision, the circuit court conducted a bench trial. During the bench trial, appellant testified on direct and cross examination regarding the value of the Estate’s assets and the Estate’s costs and expenses, and admitted multiple documents into evidence. Following the bench trial, the circuit court conducted an exhaustive analysis, setting forth precise findings regarding the value of each asset

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<sup>9</sup> To the extent that any arguments set forth in his brief are not discussed herein, it is because they are either unworthy of mention or wholly without merit.



in the Estate, the amount of the Estate's expenses and costs, and the distribution of the Estate assets, as set forth above. In doing so, the circuit court relied on all the testimony and documents submitted during the bench trial and, in many instances, the circuit court used the amounts appellant provided. Simply claiming that the circuit court should have relied exclusively on appellant's Final Unagreed Settlement in calculating the Estate's net and gross values, without citing any legal authority in support, does not justify a finding of manifest injustice. In fact, it would have been improper for the circuit court to rely solely on appellant's figures and calculations without considering all the evidence submitted during trial.

Accordingly, we find no basis for concluding that manifest injustice has resulted from any alleged error regarding the value and distribution of the Estate, and are not persuaded by appellant's arguments on this issue.

We have reviewed appellant's remaining claims of error and similarly see no manifest injustice. Indeed, even if such errors existed, they were not so prejudicial as to bear upon Dukes' substantial rights, nor were they so "shocking or jurisprudentially intolerable" as to rise to the level of manifest injustice warranting reversal.

### ***Conclusion***

Appellant has not established that the circuit court's findings of fact, conclusions of law, and order result in manifest injustice. The Muhlenberg Circuit Court's Amended Judgment and Order dated April 20, 2010, is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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