

RENDERED: OCTOBER 2, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-000819-DG

FRED E. PETERS

APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT
v. HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 12-XX-00017

PHYLLIS PETERS BALLARD

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: JONES, J. LAMBERT, AND NICKELL, JUDGES.

NICKELL, JUDGE: This contentious personal property dispute has consumed judicial resources for over a decade and harmed familial relationships for substantially longer. Although the relational issues will likely persist, the legal wrangling associated with this particular sibling squabble has hopefully come to its

end. In 2004, Fred E. Peters filed suit in Fayette District Court seeking the return of a piece of antique furniture from his twin sister, Phyllis Peters Ballard. Each of the siblings contended the piece had been gifted to them by their father, Orin Peters, Sr., before his death in December 1998. The case languished for many years with short flurries of activity sprinkled about. Ultimately, the matter was called for a bench trial on April 26, 2012. During the trial, the district judge found any alleged statements made by the late Mr. Peters constituted inadmissible hearsay, but permitted avowal testimony regarding such statements for completeness of the record in the likely event of an appeal. At the conclusion of the trial, the district judge found neither party had proven ownership or a valid transfer of the furniture, and concluded the piece rightfully belonged to the estate of the late Mr. Peters. Fred appealed and the Fayette Circuit Court affirmed. Fred then timely filed a motion for discretionary review in this Court.

Without having the benefit of the entire record—or in fact even a complete copy of the circuit court’s order—and based on the assertions set forth by the parties, a panel of this Court granted discretionary review. Upon further consideration of the briefs and now having benefit of the record for review, we conclude discretionary review was improvidently granted in this matter.

Error correction is not the purpose of discretionary review. Special reasons must exist such as novel questions of law and the interpretation of statutes, matters of general public interest and the administration of justice, or clearly erroneous judgments resulting in manifest injustice. 7 KURT A PHILIPPS, JR.,

KENTUCKY PRACTICE, RULES OF CIVIL PROCEDURE ANNOTATED,
Rule 76.20, cmt. 1 (5th ed. West Group 1995).

Fred has failed to articulate special reasons for review. He does not argue the courts below utilized an incorrect standard, but merely misapplied the correct standard. Further, a substantial question exists as to whether the arguments he presents are properly preserved for review. Thus, we have determined discretionary review was improperly granted and the August 12, 2013, Order granting same is hereby vacated. The motion for review of the decision of the Fayette Circuit Court is denied and therefore this appeal must be and hereby is DISMISSED.

ALL CONCUR.

ENTERED: _____

Judge, Kentucky Court of Appeals

BRIEFS FOR APPELLANT:

Fred E. Peters
Rhey Mills
Lexington, Kentucky

BRIEF FOR APPELLEE:

Robert L. McClelland
Lexington, Kentucky