

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000645-MR

WEEDIE F. TUGGLE

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE JEAN CHENAULT LOGUE, JUDGE  
ACTION NO. 13-CI-00308

BRIAN GORDAN, INDIVIDUALLY  
AND AS EXECUTOR OF THE  
ESTATE OF BETTY CAROLYN  
TUGGLE; GINGER GORDON;  
AND JAMIE GORDON OAKES

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER, JUDGES.

ACREE, CHIEF JUDGE: Weedie Tuggle appeals the Madison Circuit Court's grant of summary judgment in favor of the Appellees, Brian Gordon, individually and as executor of the Estate of Betty Carolyn Tuggle, Ginger Gordon, and Jamie

Gordon Oakes (the Estate), rejecting Weedie's claim to the share of the Estate allowed under KRS<sup>1</sup> 392.020.

The case presents two narrow issues. First, where a surviving spouse is not mentioned at all in his deceased spouse's will, must he still renounce the will to be permitted to share in her estate under KRS 392.020? We hold that he is so required. Second, did this surviving spouse effectively comply with that requirement? We answer this question in the negative. For these reasons, we affirm the summary judgment of the Madison Circuit Court.

#### FACTS AND PROCEDURE

Betty Tuggle made out her will in 1994 when she was married to Houston Hugh Oglethorpe. She later married Weedie but never changed her will to reflect that fact or to amend the testamentary disposition of her estate. There is no mention of Weedie in her will. On October 10, 2011, Betty died. Her will was probated on April 11, 2012, in Madison District Court.

Weedie filed a renunciation of Betty's will with the clerk of the Madison District Court, Probate Division, on July 13, 2012. He did not file the renunciation with the clerk of Madison County.

Weedie subsequently filed a complaint against the Estate in Madison Circuit Court to settle his wife's estate. The Estate answered the complaint and filed a motion for summary judgment arguing that Weedie failed to effectively renounce Betty's will because he did not file his renunciation in both the Madison

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<sup>1</sup> Kentucky Revised Statutes.

District Court and with the Madison County Court Clerk within six months after the admission of the will to probate.

The Madison Circuit Court granted the Estate's motion on April 2, 2014. Weedie now appeals.

### STANDARD OF REVIEW

Appellate review of a circuit court's decision to grant summary judgment is *de novo*. *Harstad v. Whiteman*, 338 S.W.3d 804, 809 (Ky. App. 2011). In conducting our review, we must ascertain "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 Rules of Civil Procedure (CR) 56.03.

### ANALYSIS

Weedie contends that the circuit court erred in granting summary judgment because Betty's will included no provision for Weedie. Therefore, Weedie contends he was not required to renounce the will, and he should be entitled to claim his statutory share, without renunciation, under the intestacy provisions of KRS 392.020 as if no will had been made. We disagree.

Simply stated, Weedie's "argument overlooks that KRS 392.020 relates to cases where the spouse dies intestate. When a will is involved, the statute does not apply." *Hedden v. Hedden*, 312 S.W.2d 891, 893 (Ky. 1958). Additionally, "[w]hen a husband or wife dies testate, the renunciation process

outlined in KRS 392.080(1) is the exclusive remedy by which a surviving spouse may make a claim to the statutory share.” *Henderson v. Thomas*, 129 S.W.3d 853, 856 (Ky. App. 2004) (citing *Harlow v. Harlow*, 551 S.W.2d 230, 232-33 (Ky. 1977)). Weedie’s statutory share is exactly the relief he seeks, yet he failed to effectively renounce Betty’s will. This principle applies even “when the will makes no provision for the surviving spouse.” *Henderson*, 129 S.W.3d at 856 (citations omitted). Accordingly, we reject Weedie’s argument.

It is undisputed that Weedie did not renounce Betty’s will in accordance with the directives provided for in KRS 392.080(1)(b). The statute prescribes, in relevant part, the following procedure to effectively renounce a spouse’s will:

To be effective, such relinquishment and certificate shall be filed *both* with the clerk of the court which admitted the will of the deceased spouse to probate and the county clerk of the county where the will of the deceased spouse was admitted to probate, within six (6) months after the admission of the will to probate.

KRS 392.080(1)(b)(emphasis added).

On July 13, 2012, Weedie properly filed his renunciation with the Madison District Court but he filed nothing with the Madison County Clerk. This is a specific statutory requirement under KRS 392.080(1)(b). We “may not interpret a statute at variance with its stated language.” *Commonwealth v. Allen*, 980 S.W.2d 278, 280 (Ky. 1998). Consequently, this failure renders Weedie’s renunciation ineffective, and he is not entitled to his statutory share.

## CONCLUSION

For these reasons, we affirm the Madison Circuit Court's April 2, 2014 order of summary judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rodney G. Davis  
Richmond, Kentucky

BRIEF FOR APPELLEES:

Jimmy Dale Williams  
Randy Martin O'Neal  
Richmond, Kentucky