

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002478-MR

PARRISH LANGLEY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 76-CI-00944

ROBERT PRESTON LANGLEY,
CLAUDIA K. KAZEE LANGLEY HUSTON

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUIDUGLI, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Parrish Langley brings this appeal from a September 5, 2000, order of the Fayette Circuit Court. We affirm.

In 1976, Claudia Langley and Robert Langley's marriage was dissolved by decree of the Fayette Circuit Court. Claudia and Robert had one child, Parrish Langley, age eight. Parrish is now the appellant in the instant litigation.

As a part of the divorce proceedings, Robert and Claudia entered into a property settlement agreement. The agreement contained a paragraph 7, which provided as follows:

7. The party of the second part agrees to execute a Will leaving his net estate in trust for the benefit of first party, who shall be entitled to receive the income therefrom until her death. If her death occurs prior to the infant child [Parrish Langley] of the parties attaining the age of twenty-five (25) years, the trustee shall collect the income from said trust and shall pay any amounts necessary, to or on behalf of said child, for the reasonable expenses required for his maintenance and education. If said child has attained the age of twenty-five (25) years at the time of first party's death, the corpus of said trust shall be paid to the said child absolutely and in fee simple. In the event the party of the second part remarries, he shall execute a will leaving one-half (1/2) of his net estate in trust as aforesaid.

The settlement agreement was incorporated by reference into the 1976 dissolution decree.

In 1986, Claudia and Robert entered into another agreement. This agreement provided that Claudia had an "obligation to indemnify Robert against certain sums which may be payable by Robert, pursuant to" litigation in the United States District Court, for the Northern District of Georgia. In the 1986 agreement, Robert released Claudia from any liability to Robert stemming from the federal action. In consideration thereof, the 1986 agreement amended the 1976 property settlement agreement by completely deleting the above-referenced paragraph 7. This 1986 agreement was not placed of record in the 1976 divorce dissolution proceeding.

In May 2000, Parrish filed a motion to intervene in the 1976 dissolution action with the intention of obtaining a declaration of his rights under the agreement. His object was to prevent the 1986 agreement between Claudia and Robert from

nullifying paragraph 7. Presley is of the opinion that Claudia and Robert could not, without his consent, have nullified paragraph 7 of the 1976 settlement agreement. He therefore claims to be entitled to one-half of his father's net estate upon the latter's death.

On September 5, 2000, the circuit court entered an order denying Parrish's motion to intervene, thus precipitating this appeal.

Parrish contends the circuit court committed reversible error by denying his motion to intervene. Parrish believes that he should have been permitted to intervene under Ky. R. Civ. P. 24.01 or 24.02. We disagree.

In Watkins v. Whitis, Ky., 267 S.W.2d 728, 730 (1954) the Court held:

Assuming, without deciding, that there was sufficient evidence to find an agreement on the part of Lucy to leave appellees "everything she had" at her death, it is obvious that this action is premature because the event upon which the agreement was allegedly based has not occurred. . . .

As in Watkins, we likewise believe that Parrish's action does not accrue until the death of his father, Robert. We are bolstered in our opinion by the fact that it is entirely possible that Parrish's claim may never come to fruition as he may predecease Robert, or Robert may die without assets in his estate. Parrish's rights, if any, may be fully vindicated upon his father, Robert's, death. As such, we are of the opinion that the circuit court did not err in dismissing Parrish's action.

For the foregoing reasons, the order of the Fayette
Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Barbara Anderson
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BRIEF FOR APPELLEE, ROBERT
PRESTON LANGLEY:

Charles E. Shivel, Jr.
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