

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001911-MR

MARTHA ELLEN CASEY,
MICHAEL SEAN MATZKE

APPELLANTS

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 00-CI-00351

ROBERT STEVEN NUNN, EXECUTOR
OF THE ESTATE OF MICHAEL VERNON MORSE;
RUTH LAMB;
BOBBIE JO FOX;
FREDERICK MORSE;
BEVERLY HAYES;
JULIA MYERS;
ANDREA DAVIS;
MILDRED KING;
TONY MORSE;
SUSAN OVERBECK;
PATRICIA FELOCK;
MARGUERITE PEDEN;
ELIZABETH GRAY;
GARY C. MORSE

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUIDUGLI, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Martha Ellen Casey and Michael Sean Matzke bring this appeal from a August 15, 2001 judgment of the Christian Circuit Court. We affirm.

In March of 2000, Robert Steven Nunn, the executor of the estate of Michael Vernon Morse, filed a petition for declaratory judgment in the Christian Circuit Court. Kentucky Revised Statutes (KRS) 418.040. Morse died testate. Morse's residuary beneficiary was his mother, one Dorothy M. Morse, who predeceased him. Appellants are Morse's biological children. They were adopted by their stepfather with Morse's consent in 1974. Morse voluntarily terminated his parental rights at that time.

In his will, Morse, however, specifically recognized appellants as his children. Morse created a \$100,000.00 trust, naming appellants as beneficiaries. The circuit court entered partial summary judgment on February 6, 2001. Therein, the circuit court concluded that appellants were not entitled to take under the residue clause, as the adoption severed appellants' legal right to inherit from Morse. Final judgment was entered on August 15, 2001. This appeal follows.

Appellant asserts that the circuit court erred by entering partial summary judgment. Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Ky. R. Civ. P. (CR) 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

Appellants specifically contend that extrinsic evidence should have been admitted to prove Morse's intent with respect to the residue of his estate in the event his mother failed to survive him. Appellants argue that:

In this case, a proper reading of [Morse's] will in light of the anti-lapse statute [Kentucky Revised Statutes 394.400] and the extrinsic evidence of record leads to the unmistakable conclusion that Ellen and Sean are the appropriate beneficiaries of [Morse's] residuary estate. In the will, [Morse] expressly defines "my children" to include Sean and Ellen. Likewise, the extrinsic evidence indicates that [Morse] looked upon Ellen and Sean as his "children" for all purposes. Accordingly, there is little question but the term "issue" of [Morse's] mother as used in the anti-lapse statute must include Ellen and Sean.

KRS 394.400, the anti-lapse statute, states as follows:

If a devisee or legatee dies before the testator, or is dead at the making of the will, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof is made or required by the will.

Because Morse otherwise viewed appellants as his children in his will, appellants believe that the state of Kentucky should likewise view them as the issue of Morse's mother under KRS 394.400. We disagree. It is well established in Kentucky that adoption severs the biological children's rights of inheritance. See Pyles v. Russell, Ky., 36 S.W.3d 365 (2000). Under Kentucky law, appellants are not considered the issue of Morse or of his mother. We reject appellants' argument that they are entitled to the residue of the estate by operation of KRS

394.400. As such, we are of the opinion that the circuit court properly entered partial summary judgment.

For the foregoing reasons, the judgment of the Christian Circuit Court is affirmed.

GUIDUGLI, JUDGE, CONCURS.

TACKETT, JUDGE, DISSENTS.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEES:

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