

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001966-DG

THE ESTATE OF LIDA UTTERBACK, DECEASED

APPELLANT

v.

ON DISCRETIONARY REVIEW
FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE
ACTION NO. 02-XX-00002

BETTY PERRY

APPELLEE

OPINION AND ORDER

- (1) GRANTING DISCRETIONARY REVIEW
- (2) VACATING AND REMANDING ON APPEAL

* * * * *

BEFORE: BUCKINGHAM, McANULTY, AND MILLER, JUDGES.

McANULTY, JUDGE. The matter is before this Court on a motion and amended motion for discretionary review to which appellee filed a response. Because the motions present a special reason for the favorable exercise of the Court's discretion, it is hereby ORDERED that the motions be GRANTED.

Further, since the relevant record has already been reviewed by the Court, and since the issue on appeal has clearly and sufficiently been delineated in the motions and the response, the Court is of the opinion that additional delay in this

proceeding for certification of the record, and for the filing of briefs, would serve no useful purpose. Therefore, this order is also dispositive of the appeal on its merits.

The action below (Case No. 01-P-00052) arose in the Rowan District Court. By order entered June 7, 2002, the district court granted appellant's motion for an accounting pertaining to a checking/savings account and to a certificate of deposit, holding that the accounts were estate property and should be divided pursuant to applicable law. The decision includes only partial CR¹ 54.02 language. Appellee filed a notice of appeal therefrom and appellant moved for dismissal of the appeal as interlocutory. The motion was denied by order entered July 25, 2002. Then, on September 5, 2002, in an order denying appellant's motion to reconsider, the Rowan Circuit Court explained the basis of its previous ruling to be that a dismissal of the appeal "until a final settlement of the estate would subject said property to distribution to other parties and subject the appellant to irreparable harm should she prevail on this appeal."

The issue before this Court is whether an appeal may be properly taken to a circuit court from an intermediate order of a district court. Appellant contends that KRS² 24A.120 provides that a district court has exclusive jurisdiction over probate matters and that, pursuant to KRS 23A.080, an appeal may be taken to a circuit court from "any final action of the District Court"

¹ Rule of Civil Procedure.

² Kentucky Revised Statutes.

(emphasis added). However, appellant argues, the decision entered by the Rowan District Court on June 7, 2002, is an intermediate order that is not appealable at this time.

In response, appellee contends that the accounts in question were jointly owned by appellee and her mother, with right of survivorship. Hence, she argues, they passed to her outside of probate and the probate court erroneously proceeded with the disposition of those funds. Appellee further claims that jurisdiction over a contested matter may be assumed by a circuit court even where an estate has yet to be finally disposed of in the district court. Appellee relies on Blakely v. Bevins, Ky., 922 S.W.2d 378 (1996), and Commonwealth v. Williams, Ky. App., 995 S.W.2d 400 (1999).

Having considered the parties' arguments and the appended record, the Court has determined that appellant's position is well taken. The order of the Rowan District Court from which appellee took an appeal did not dispose of all claims in the action pending before the district court and was not properly certified as immediately appealable by inclusion of the complete finality language set forth in CR 54.02. We agree with appellant that this decision is interlocutory at this time. Neither authority on which appellee relies supports her position. Blakely involves the concept of "irreparable harm" within the injunctive context and has no application to the appellate situation at issue herein. Williams pertains to the filing of an original action in a circuit court by the Commonwealth in order to seek review of an interlocutory order issued by a district

court. This decision actually works against appellee's position since it clearly provides that "the only circumstance under which an appeal may be taken from the district court is following a 'final' order. KRS 23A.080(1)." Id. at 402-03.

Therefore, the orders entered by the Rowan Circuit Court on July 25, 2002, and September 5, 2002, are VACATED and the matter is REMANDED to the circuit court for entry of an order dismissing Action No. 02-XX-00002 and remanding the matter to the Rowan District Court for all further proceedings required for resolution of Action No.01-P-00052.

ALL CONCUR.

ENTERED: December 20, 2002

/s/ William E. McAnulty, Jr.
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:
PAULA RICHARDSON HUGHES
OWINGSVILLE, KY

BRIEF FOR APPELLEE:
IRA S. KILBURN
SALT LICK, KY