

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000299-MR

DANNIE J. GREGOIRE, EXECUTOR FOR  
THE ESTATE OF ERNEST C. HEICK, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE F. KENNETH CONLIFFE, JUDGE  
ACTION NO. 02-CI-007133

ESTATE OF MARY F. SCHMUCKIE HEICK,  
DECEASED; AND ANTHONY W. SCHMUCKIE,  
EXECUTOR & INDIVIDUALLY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, JOHNSON AND MINTON, JUDGES.

JOHNSON, JUDGE: Dannie J. Gregoire, in his capacity as executor for the estate of Ernest C. Heick, Jr., has appealed from an order of the Jefferson Circuit Court entered on January 31, 2003, which denied his motion to alter, amend or vacate the circuit court's previous order dismissing his complaint for declaratory judgment with prejudice. Having concluded that

Gregoire would not be entitled to relief under any set of facts which might be proven in support of his claims, we affirm.

Ernest C. Heick, Jr. and Mary F. Schmuckie Heick were married on October 20, 1995. Prior to their marriage, Ernest and Mary entered into a prenuptial agreement on October 10, 1995. Among other things, the agreement provided that Ernest and Mary "acknowledge that by this [a]greement they each do release and surrender their marital and statutory interest in the [e]state of the other . . . ." Mary died on or around November 25, 1999, and Ernest died on or around March 9, 2001. At the time of their deaths, Ernest and Mary were residents of Jefferson County, Kentucky.

Shortly after Ernest's death, his will was admitted to probate in the Jefferson District Court on March 14, 2001, and Gregoire was appointed executor of Ernest's estate. In a letter dated August 7, 2001, which was sent via certified mail to Gregoire,<sup>1</sup> Anthony Schmuckie, in his capacity as executor of Mary's estate, presented two claims against Ernest's estate. Schmuckie claimed that at the time of Mary's death, Ernest was indebted to Mary in the amount of \$25,446.84, plus interest, as a result of a cash loan Mary had given Ernest in March 1997. In

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<sup>1</sup> See generally Kentucky Revised Statutes (KRS) 396.015 (providing the manner in which claims against a decedent's estate are to be presented).

addition, Schmuckie claimed that pursuant to KRS 404.040,<sup>2</sup> Ernest's estate was liable to Mary's estate in the amount of \$36,904.28, plus interest, as a result of Ernest's alleged failure to pay for Mary's nursing home charges and related expenses.

Gregoire failed to respond to Schmuckie's claims within the 60-day period provided by KRS 396.055(1). In late January 2002, Gregoire's counsel at the time filed a motion with the Jefferson District Court outside of the statutory period which requested leave to disallow Schmuckie's claims. According to the record, Gregoire's counsel argued that certain health problems had forced her to limit her time at work, and that her failure to respond within the 60-day deadline should be deemed to be "excusable neglect." Gregoire's motion for leave to disallow the claims was denied by the Jefferson District Court, as was his subsequent motion for reconsideration. Gregoire appealed the denial to the Jefferson Circuit Court.

In an order entered on May 16, 2002, the Jefferson Circuit Court affirmed the denial of Gregoire's motion for leave to disallow the claims, after determining that Gregoire had

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<sup>2</sup> KRS 404.040 provides in full as follows:

The husband shall not be liable for any debt or responsibility of the wife contracted or incurred before or after marriage, except to the amount or value of the property he received from or by her by virtue of the marriage; but he shall be liable for necessaries furnished to her after marriage.

"admittedly failed to follow statutory procedure in a timely manner" and that the district court had not abused its discretion by denying Gregoire's motion for leave or motion for reconsideration. Following the Jefferson Circuit Court's order affirming the district court, Gregoire did not seek discretionary review of the circuit court's order with this Court.

On September 23, 2002, Gregoire filed a complaint for declaratory judgment<sup>3</sup> in the Jefferson Circuit Court. In his complaint, Gregoire alleged that the issue of the validity of Schmuckie's claims against Ernest's estate was a "contested probate matter," which vested exclusive jurisdiction in the circuit court. In addition, Gregoire alleged that, for various reasons, both of the claims made by Schmuckie against Ernest's estate were without merit.<sup>4</sup> Gregoire asked that Schmuckie be permanently enjoined from making any claims against Ernest's estate.

On October 15, 2002, Schmuckie filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Kentucky Rules of Civil Procedure (CR)

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<sup>3</sup> See KRS 418.040.

<sup>4</sup> Gregoire claimed, inter alia: (1) that the prenuptial agreement between Ernest and Mary precluded Schmuckie from asserting any claims against Ernest's estate; (2) that the statute of frauds was a valid defense to Schmuckie's attempt to collect on the alleged loan from Mary to Ernest; and (3) that KRS 404.040 was an unconstitutional violation of the Equal Protection Clauses of the United States Constitution and the Kentucky Constitution.

12.02(f). On January 8, 2003, the circuit court granted Schmuckie's motion to dismiss, after determining that Gregoire's complaint was an impermissible attack on the matters previously decided by the district court and affirmed by the circuit court on appeal. On January 31, 2003, the circuit court denied Gregoire's motion to alter, amend or vacate. This appeal followed.

A complaint is properly dismissed pursuant to CR 12.02(f) for failure to state a claim upon which relief can be granted if it is clear that "the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim."<sup>5</sup> In the case at bar, we hold that Gregoire would not be entitled to relief under any set of facts which might be proven in support of his claims, and that his complaint was therefore properly dismissed.

Gregoire presents several arguments on appeal. He first claims that the circuit court erred by determining that his complaint for declaratory judgment was an impermissible attack on matters that had been previously decided by the district court and affirmed by the circuit court on appeal. We disagree.

KRS 396.055(1) provides in pertinent part as follows:

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<sup>5</sup> Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club, Ky., 551 S.W.2d 801, 803 (1977).

Failure of the personal representative to mail notice to a claimant of action on his claim for sixty (60) days after the time for original presentation of the claim has expired has the effect of a notice of allowance, except that upon petition of the personal representative and upon notice to the claimant, the court at any time before payment of such claim may for cause shown permit the personal representative to disallow such claim.

Thus, once Schmuckie presented his claims against Ernest's estate, Gregoire, as the personal representative of Ernest's estate, had 60 days to respond with notice of either the allowance or disallowance of Schmuckie's claims. It is undisputed that Gregoire failed to respond within the 60-day limitations period. Hence, Gregoire's failure to respond resulted in the allowance of Schmuckie's claims under KRS 396.055(1).

As we stated above, Gregoire's motion for leave to disallow Schmuckie's claims outside the statutory period was denied by the district court, and affirmed by the circuit court on appeal. Therefore, since Gregoire did not seek any further appellate relief from this Court, the allowance of Schmuckie's claims against Ernest's estate became final,<sup>6</sup> in much the same

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<sup>6</sup> See Martin v. Frasure, Ky., 352 S.W.2d 817, 819 (1962) (stating that "judgments entered in the Floyd Circuit Court in obedience to the mandates of this Court and the judgments therein from which no timely appeal has been taken or on which no timely attack has been made are final").

way that a default judgment has conclusive effect.<sup>7</sup> Accordingly, Gregoire was precluded from collaterally attacking that final judgment by raising the various defenses to Schmuckie's claims in a new action in circuit court.<sup>8</sup>

Gregoire attempts to avoid the preclusiveness of the prior adjudication by arguing that since KRS 24A.120(2)<sup>9</sup> vests the circuit court with exclusive jurisdiction over adversarial proceedings, the circuit court should have considered the merits of the various defenses to Schmuckie's claims, despite the finality of the prior decision rendered by the district court

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<sup>7</sup> See Davis v. Tuggle's Adm'r, 297 Ky. 376, 379, 178 S.W.2d 979, 981 (1944)(stating that "the rule as to the conclusiveness of judgments applies to a judgment by default or decree pro confesso").

<sup>8</sup> See City of Hickman v. First National Bank in City & State of New York, 307 Ky. 702, 705, 211 S.W.2d 801, 802 (1948)(stating that "[t]here was jurisdiction of the parties and the subject matter, so the judgment is conclusive and not subject to collateral attack, and the merits or proof upon which it was rendered may not be reviewed"). See also 47 Am.Jur.2d Judgments § 897 (2003)(noting that "[a] final judgment by a court of competent jurisdiction is generally not subject to collateral attack"). In the case sub judice, Gregoire does not argue that the district court was without jurisdiction to rule upon his motion for leave to disallow Schmuckie's claims outside the statutory period.

<sup>9</sup> KRS 24A.120 reads in pertinent part as follows:

District Court shall have exclusive jurisdiction in:

. . .

(2) Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and

(3) Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

and affirmed by the circuit court on appeal. Once again, we disagree.

Gregoire's interpretation of KRS 24A.120 and KRS 396.055 would have the effect of rendering the 60-day limitation period in KRS 396.055 meaningless.<sup>10</sup> If personal representatives who fail to comply with the 60-day limitations period were permitted to challenge allowed claims by simply filing original actions in circuit court, it would enable the personal representatives to circumvent the very purpose of the limitations period.

KRS 396.055(1) fosters the timely settlement of an estate by requiring the personal representative to respond diligently to any claims made against the estate. If a personal representative fails to act within the 60-day period, the claim is deemed to be allowed unless the personal representative can "show cause" why he should be permitted to challenge the claim outside the limitations period. Obviously, the purpose of the 60-day limitations period would be hindered if the personal representative were permitted to challenge claims outside the statutory period by simply filing an action in circuit court. Under Gregoire's interpretation of KRS 24A.120 and KRS 396.055, the personal representative would have no incentive to comply

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<sup>10</sup> See Keeton v. City of Ashland, Ky.App., 883 S.W.2d 894, 896 (1994)(stating that statutes should be construed so that no part is rendered meaningless or ineffectual).



with the limitations period. Accordingly, we reject Gregoire's argument that the circuit court should have considered the merits of his defenses to Schmuckie's claims, and/or that it erred by dismissing his complaint.

Gregoire's remaining arguments on appeal concern the merits of his defenses to Schmuckie's claims against Ernest's estate. However, these issues are rendered moot by the preceding discussion and will therefore not be considered on appeal.<sup>11</sup>

Based on the foregoing, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jonathon N. Amlung  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Stanley w. Whetzel, Jr.  
Louisville, Kentucky

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<sup>11</sup> See Murphy v. Commonwealth, Ky., 50 S.W.3d 173, 184 (2001)(stating that "[a]ppellant Murphy raises several issues regarding the trial court's denial of his motion for probation. As we are reversing Murphy's conviction [on other grounds], these issues are moot and require no further discussion").