RENDERED: July 30, 2004, 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001612-MR

GILBERT and NELLAN HAHN,
GENE HAHN, JERILYN and MIKE CARRIER,
JESSE COLLINS, THELMA COULTER,
JANE and FRANK CUNNINGHAM,
GENEVA and HAROLD DAVIS,
DOROTHY GRAY, BURTON HAHN,
CHARLES LEE and INEZ HAHN,
MARSHA HAHN,
JESS and ROXIE HARDIN,
MARGIE HOLT,
CHARLES and IRENE HUPP,
BOBBY and ADA INGRAM,
LORETTA and LARRY MADDOX,
JUNE and BILL METZWIELER,
BETTY and JAMES PREWITT,
LOUISE TERRELL, HALLIE THOMAS,
CATHERINE WILSON, and
CAROL JANE ZEIGLER — APPELLANTS

v.

APPEAL FROM NELSON CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 00-CI-00535

WILLIAM and MARY HAHN,
JOE and ELIZABETH HAHN,
NANCY RUTH and RULDOLPH REDMON,
AND
FREIDA CAROL and HAROLD PRATHER — APPELLEES

OPINION AND ORDER
DISMISSING APPEAL

** ** ** ** **

BEFORE: BUCKINGHAM, JOHNSON, AND KNOPF, JUDGES.

BUCKINGHAM, JUDGE: The appellants are all nieces and nephews and/or grandnieces and grandnephews of William Hahn, who died on August 4, 1999, and their spouses. The appellees are four other nieces and nephews of Hahn and their spouses. Because we lack jurisdiction, we must dismiss this appeal.

When William Hahn died on August 4, 1999, he left a will dated March 19, 1958. In paragraph three of the will, Hahn devised his farm near Chaplin, Kentucky, to the appellees at his death, with a life estate reserved to his wife. However, on November 5, 1991, Hahn and his wife sold the farm to one of the appellees, Joe Hahn, and his wife, Elizabeth, for $75,000. William Hahn's wife died on January 25, 1999, and he died later the same year.

After Hahn's death, the appellees filed a civil complaint against the appellants in the Nelson Circuit Court, alleging that the sale of the farm during Hahn's life did not constitute an ademption[1] and, therefore, that they were entitled

[1] Ademption is defined in Black's Law Dictionary (7th ed. 1999) as "[t]he destruction or extinction of a legacy or bequest by reason of a bequeathed asset's ceasing to be part of the estate at the time of the testator's death; a beneficiary's forfeiture of a legacy or bequest that is no longer operative."

to recover $75,000 from his estate in lieu of the farm.[2] The appellants answered the complaint, and the court entered an order directing the parties to participate in mediation in an attempt to settle the matter.

In addition to whether or not an ademption had occurred, two other issues arose. First, the parties disputed whether, in the event an ademption had not occurred, the farm should be valued at $75,000 based on the sale price or whether it should be valued as of the date of Hahn's death. Second, the parties disputed whether, assuming there was not an ademption, the appellees were obligated to trace the amount of proceeds from the sale of the farm in order to recover under their complaint. The parties then submitted these two issues for ruling to the court.

On February 19, 2003, the court entered an order addressing the value that should be assigned to the farm. The court described the issue as "what valuation should be assigned to the farm if it is ultimately determined that the sale did not

[2] Kentucky Revised Statutes (KRS) 394.360(1) provides that:

> The conversion of money or property or the proceeds of property, devised to one (1) of the testator's heirs, into other property or thing, with or without the assent of the testator, shall not be an ademption of the legacy or devise unless the testator so intended; but the devisee shall have and receive the value of such devise, unless a contrary intention on the part of the testator appears from the will, or by parol or other evidence.

operate as an ademption." The court found that the farm should be valued at $75,000, its sale price in 1991. At the end of the order, the court noted that it was interlocutory in nature.

On April 14, 2003, the court entered an order holding that the appellees were "under no obligation to trace the amount stemming from the sale of the decedent's farm in order to make the recovery sought in their Complaint should they prevail on their claim to entitlement of the proceeds from the sale of the farm." The court further noted that the remaining issue was "whether the bequest of the farm [set] forth in William Hahn's will was adeemed when the farm was sold in 1991." As with the first order, the court likewise noted that this order was interlocutory in nature.

The appellants herein then submitted a motion to alter, amend, or vacate the February 19, 2003, order determining the value of the farm at $75,000 "for nonademption purposes." The court denied the motion and stated in the last sentence that "[t]his is a final and appealable Order and there is no just reason for delay." The order was entered on June 27 2003. This appeal followed.

The appellants argue on appeal that, assuming there was not an ademption, then the appellees are limited to recovering the amount of proceeds which they can trace. Therefore, they urge this court to reverse the order of the

trial court holding that the appellees were under no obligation to trace the proceeds from the sale of the farm. The appellees argue in response that the court did not err in ruling that tracing was unnecessary.

"A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." CR[3] 54.01. CR 54.02 provides in part as follows:

> When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final.

CR 54.02(1). "Before the processes of CR 54.02 may be invoked for the purpose of making an otherwise interlocutory judgment final and appealable, there must be a final adjudication upon one or more of the claims in litigation." Hale v. Deaton, Ky., 528 S.W.2d 719, 722 (1975).

The first two orders in this case were interlocutory in nature, and the court so stated. Furthermore, the last order, although it contained finality language, was likewise not

[3] Kentucky Rules of Civil Procedure.

a final order or judgment and was not appealable. Therefore, we lack jurisdiction to consider the appeal.[4]

Because the trial court did not make a conclusive determination of the entire claim, the order was not a final and appealable order within the meaning of either CR 54.01 or CR 54.02. See City of Covington v. Peare, Ky. App., 769 S.W.2d 761, 764 (1989). "This is true even though the trial court has recited that the judgment is a final one and there is no just reason for delay as provided for in CR 54.02." Id. As we noted in Revenue Cabinet v. Barbour, Ky. App., 836 S.W.2d 418 (1992), "[w]here an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable." Id. at 422. Further, as we noted in Bellarmine College v. Hornung, Ky. App., 662 S.W.2d 847 (1983), "[s]ound judicial administration requires the avoidance of piecemeal dispositions of cases, and appellate courts must not be indiscriminately thrust into the processes of single-party or single-claim trials until they are final. Id. at 848.

The orders entered in this case resolved two of the issues that might ultimately have come before the court. However, the resolution of the two issues did not resolve in any

[4] Neither party raised the issue of jurisdiction in its brief. However, "[T]his court on its own motion will raise the issue of want of jurisdiction if the order appealed from lacks finality." Huff v. Wood-Mosaic Corp., Ky., 454 S.W.2d 705, 706 (1970).

manner the appellees' claim. Before the claim may be resolved, it must be determined whether or not there was an ademption. As the court noted in its orders, its rulings assumed that there would not be a finding that an ademption had occurred. However, no determination in that regard had been made when this appeal was filed. In short, the orders entered by the court were interlocutory in nature, and this court is without jurisdiction to consider the appeal.

Therefore, it is hereby ORDERED that this appeal be DISMISSED.[5]

ALL CONCUR.

ENTERED: __July 30, 2004__ __/s/_ David C. Buckingham_
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANTS:

Christina L. Bradford
Bardstown, Kentucky

BRIEF FOR APPELLEES:

John Douglas Hubbard
Bardstown, Kentucky

[5] An order to show cause as to why this appeal should not be dismissed was entered by this court in this case. The appellants responded, but the appellees did not. The arguments of the appellants did not persuade us that the appeal should not be dismissed.