

RENDERED: July 22, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-001811-MR

KAREN P. MARTIN

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE PHILLIP R. PATTON, JUDGE
ACTION NO. 04-CI-00192

RUPERT E. PEDIGO

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND KNOFF, JUDGES.

KNOFF, JUDGE: Karen P. Martin appeals from a judgment of the Barren Circuit Court denying her petition to remove Rupert Pedigo as executor of the estate of Ruth Inez Pedigo. She argues that his mismanagement of the estate and his conviction for an unrelated felony compelled his removal. Finding that the trial court did not abuse its discretion by imposing a lesser remedy, we affirm.

Ruth Inez Pedigo died testate on February 13, 2004. She had previously executed a will on November 7, 2000, which named her son, Rupert Pedigo, as the executor, and named her daughter, Karen Martin, as contingent executrix. On March 5, 2004, the Barren District Court appointed Rupert as executor pursuant to the will.

Thereafter, on March 11, 2004, Martin brought an action in Barren Circuit Court requesting that the court remove Rupert as executor. Martin argued that Rupert should be removed because he had mismanaged and wasted estate assets and also because he had been convicted of a felony involving a theft that was not related to his duties as executor. The matter came before the court for a bench trial, and subsequently the trial court issued findings of fact, conclusions of law, and a judgment. The court found that Rupert had sold approximately \$2,000.00 in estate assets for only a nominal amount. While the court found that Rupert had made these sales in good faith, believing that he was carrying out the will of the testatrix, the court concluded that he had breached his duty to sell these items for a reasonable amount. Consequently, the court held that Rupert's share under the will should be reduced by \$500.00. However, the court also found that neither Rupert's actions nor his felony conviction required that he be removed as executor.

On appeal, Martin does not take issue with the trial court's factual findings, and neither do we. The trial court's findings of fact are supported by substantial evidence and will not be disturbed.¹ Rather, Martin asserts that the trial court erred by refusing to remove Rupert as executor based on those facts. She argues that Rupert's mismanagement of the estate and his conviction for a theft-related felony warranted his removal.

The parties agree that KRS 395.160(1) allows a court to remove an executor for mismanagement and waste of estate assets.² The trial court found that, while Rupert's disposition of estate assets was not proper, he had acted in good faith. There was no showing of fraud, self-dealing, or a conflict of interest.³ Furthermore, we agree with the trial court that there is no authority which would require removal of an executor for conviction of a felony, particularly a felony that was not related to his conduct as executor. Based upon the court's factual findings, we conclude that the trial court did not abuse

¹ CR 52.01.

² Stafford's Executor's v. Spradlin, 193 S.W.2d 474, 475 (Ky. 1946).

³ See Morris v. Brien, 712 S.W.2d 347 (Ky. App. 1986); and Lee v. Porter, 598 S.W.2d 465 (Ky. App. 1980).

its discretion by imposing a remedy short of removing Rupert as executor.⁴

Accordingly, the judgment of the Barren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Corey Morgan
Morgan Law Office
Glasgow, Kentucky

BRIEF FOR APPELLEES:

Robert M. Alexander
John T. Alexander
Alexander Law Office
Glasgow, Kentucky

⁴ See Trevathan v. Grogan, 210 Ky. 694, 276 S.W. 556, 557 (1925).