

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000165-MR

LAURA MIFFLIN

APPELLANT

v.

APPEAL FROM LIVINGSTON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 00-CI-00127

CINDY MIFFLIN, AS EXECUTRIX OF THE
ESTATE OF CHARLES R. MIFFLIN;
CINDY MIFFLIN, INDIVIDUALLY;
AND DEBBIE ANN MIFFLIN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE AND WINE, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Laura Mifflin appeals from an order of the Livingston Circuit Court ordering her to reimburse the estate of her late husband, Charles R. Mifflin, the sum of \$92,370.26 for the maintenance of a herd of cattle during the administration of the estate. We affirm.

Charles R. Mifflin died on June 24, 1998. He was survived by his second wife, Laura Mifflin (the appellant), and by his two daughters from a previous marriage,

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Cindy Mifflin and Debbie Ann Mifflin (the appellees). Cindy serves as the executrix of the estate.

There is a provision in Charles's will wherein he left all the income from cattle sales to Laura. However, the will did not specifically state that the livestock itself would be left to Laura.

A dispute arose over the settlement of the estate, and Laura filed a civil complaint in the Livingston Circuit Court in September 2000. Various matters were litigated, and determinations were made by a special commissioner and by the court. This appeal represents the third case before this court involving issues concerning the settlement of the estate.²

There was some question as to whether the cattle belonged to Laura, Mifflin's estate, or Miffco, Inc., at Mifflin's death. The commissioner concluded that the cattle were assets of the estate. The commissioner stated in his report of September 19, 2001, as follows:

It is apparent from the above statement [in the will], that Mr. Mifflin considered the cattle, and sales therefrom, to be assets available to him to distribute as he saw fit. His wishes set forth in his will, spoke only to the proceeds from cattle sales going to his widow, Laura Sue Mifflin, the Petitioner herein.

Based on the evidence available for consideration, coupled with the above statement from Mr. Mifflin's will, and absent any proof that any cattle were purchased in the name of Miffco, Inc., it is the recommendation of this Special Commissioner to the Court, that the proceeds from the sale of cattle subsequent to Mr. Mifflin's date of death, are the property of his widow. The ownership of the approximately 168 head of cattle, and any calves calved subsequent to his death, are the property of the Charles R. Mifflin estate and not Miffco, Inc.

In its Final Order and Judgment of December 27, 2001, the trial court stated

² In one of the trial court's earlier orders, it said that "this litigation is embroiled in a quagmire of almost indecipherable property issues, accounting problems and conflicting figures impossible to reconcile."

Respondents' [Cindy and Debbie Ann] exceptions to the Commissioner's Recommendation No. 1 is DENIED. Respondents objected in that the decedent's will did not give ownership of the cattle to the widow, only the proceeds of the sale of the cattle. If the Respondents wish to maintain ownership of the cattle, but the proceeds go to the widow alone, such an arrangement would seem to work an injustice on the two (2) daughters in that they would own and therefore be responsible for the cost of upkeep of the cattle, but receive no proceeds from the sales thereof. The application of common sense dictates that the ownership of the cattle should vest in the widow if the widow is to receive all proceeds from the sale of the cattle. Likewise, it should be her sole responsibility to feed and maintain the cow herd. . . . Recommendation No. 1 is therefore ADOPTED as the Final Order and Judgment of this Court.

Eight months later, on August 26, 2002, Laura filed a motion requesting the court to order the sale of "all of the cattle owned by Charles R. Mifflin and the subsequent cattle that were produced from the cattle owned by Charles R. Mifflin. . . This would include all cattle on the farms owned by the Defendants." Cindy and Debbie Ann filed a response asserting that only the proceeds from the sale of cattle belonged to Laura, whereas unsold cattle belonged to the estate. A hearing was held, at which time Cindy and Debbie Ann agreed to sell the cattle. On November 13, 2002, the court entered an order directing the cattle to be sold.

On April 22, 2003, the commissioner conducted a hearing to determine the number of cattle and the expenses incurred by the estate in maintaining those cattle. The commissioner concluded in his September 14, 2003, order that the cost to maintain the cattle for the period between the date of Charles's death in June 1998 until the date the cattle were sold in November 2002 was \$92,379.26. The court adopted the commissioner's report in an order dated July 28, 2004. A final order was entered on October 16, 2006, and this appeal by Laura followed.

Laura states on appeal that “The error is adjudging that the cattle which should have been returned to the Appellant on December 27, 2001, the date that the court ruled[,] belonged to the Appellant.” She states that the effect of the court's order “in effect abolishes any recovery the Appellant would have had from the cattle that were bequeathed to her in the will of her late husband.” Noting that the commissioner/court has ordered her to reimburse the estate for maintaining the cattle for a 53-month period beginning at the death of Mr. Mifflin on June 24, 1998, and ending with the date of the sale of the cattle in October-November 2002, Laura asserts that the amount “should at the very least be deducted by one year when the Court found the Appellant to be the owner.” Laura also states that Cindy and Debbie should have to account for “money that is unaccounted for” and for “missing calf crops.”

Laura first contends that she owned the cattle and that she should not have to reimburse the estate for maintaining the cattle while the issue of ownership was being litigated. Shortly after Mr. Mifflin's death, a controversy ensued over the ownership of the cattle. In addition to Laura, the Mifflin estate, as well as Mifflin Co., which continued after Mr. Mifflin's death, claimed ownership of the cattle. Mr. Mifflin's will stated only that Laura would get the proceeds from the sale of the cattle.

That controversy was initially resolved by the commissioner's report on September 19, 2001, stating that the sale proceeds were Laura's but the cattle belonged to the estate. In its order denying the exceptions taken by Cindy and Debbie Ann, the trial court stated that “common sense dictates that the ownership of the cattle should vest in the widow if the widow is to receive all proceeds from the sale of the cattle.” Further, the court stated that “[l]ikewise, it should be her sole responsibility to feed and maintain the cow herd.” Nevertheless, despite stating that Laura rather than

the estate owned the cattle, the court adopted all parts of the commissioner's report, an apparent inconsistency with the aforementioned statement in the court's order.

The parties disagree with the effect of the court's order. Laura contends that the court plainly stated that she owned the cattle. Cindy and Debbie Ann, on the other hand, maintain that, since the court adopted the commissioner's report, the court held that the estate owned the cattle. While we agree with Laura that the trial court plainly held that she owned the cattle, the dispute on this issue is irrelevant since the court's determinations were conclusions of law and are, therefore, subject to our *de novo* review. See *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005).

We agree with the trial court that the cattle belonged to Laura. As the trial court stated in its December 2001 order, "common sense dictates that the ownership of the cattle should vest in the widow if the widow is to receive all proceeds from the sale of the cattle." The question, therefore, is who is responsible for paying the costs of maintaining the cattle until they were sold.

From the time of Charles's death in June 1998 until the court finally decided the issue in December 2001, the question of the cattle's ownership was undecided. During that period of time, the estate paid to have the cattle maintained. We agree with the trial court that since Laura owned the cattle, she should be required to reimburse the estate for its expenses in maintaining the cattle. From December 2001 when the court determined ownership until the cattle were sold, the cattle remained with the estate and the estate continued to pay to have the cattle maintained. While Laura complains that she at least should not have to pay for these additional expenses since it had been adjudicated that the cattle belonged to her, she made no effort to have the cattle sold until several months later.³ We do not see that it was incumbent on the

³ Laura does not point to any evidence in the record to support her assertion that Cindy and Debbie Ann thwarted her efforts to have the cattle sold after the court had adjudicated that she was the owner.

estate to sell Laura's cattle without her instruction to do so. In the meantime, the estate continued to incur additional expenses to care for the cattle. We agree with the court that Laura should also have to reimburse the estate for these additional expenses as well.

Laura also argues that the estate should have to account for money that is unaccounted for and for missing calf crops. The commissioner conducted a hearing relative to the number of head of cattle, and Laura presumably had the opportunity to depose or otherwise question Cindy and Debbie Ann under oath regarding these matters. Laura fails to show how she properly preserved any error in that regard for appellate review. See Kentucky Rules of Civil Procedure 76.12(4)(c)(v). She fails to point to any place in the record that indicates she asked the court to order such an accounting or to any order where the court denied such a request. Therefore, we decline to grant relief on this matter.

The order of the Livingston Circuit Court is affirmed.⁴

ALL CONCUR.

BRIEF FOR APPELLANT:

Willard B. Paxton
Princeton, Kentucky

BRIEF FOR APPELLEE:

Richard C. Roberts
Paducah, Kentucky

⁴ It is unclear whether Laura also contests the amount of the expenses. To the extent she does, we find the order not be clearly erroneous. The appellees presented invoices for maintaining the cattle that totaled \$165,499.26. The court awarded expenses of \$92,379.26. The award was supported by the evidence.