

RENDERED: OCTOBER 3, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002137-MR

KENTUCKY TRUST COMPANY, INC.

APPELLANT

v.

APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 01-CI-00168

JOSEPH EDWARD WILKINSON AND
KATHY MONDIE WILKINSON

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON AND STUMBO, JUDGES; GRAVES,¹ SENIOR JUDGE.

CLAYTON, JUDGE: Kentucky Trust Company (“KTC”) appeals a decision from a Casey Circuit Court order dismissing an action to have a subject conveyance declared an advancement pursuant to KRS 391.140.

¹ Senior Judge J. William Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

FACTUAL SUMMARY

KTC serves as Administrator of the estates of Marjorie L. Wilkinson and Luil E. Wilkinson (husband and wife). On June 26, 2006, in its second amended complaint, KTC sought an order from the Casey Circuit Court to set aside a deed of conveyance from Marjorie L. Wilkinson, individually and as attorney-in-fact for Luil Wilkinson, to their son, Joseph Edward Wilkinson because the grantor was subject to undue influence and fraud and lacked the mental capacity to execute the deed and the conveyance was made without consideration.

For the first time, in its amended complaint, KTC sought a declaratory judgment from the trial court that the deed of conveyance constituted an advancement against the grantee's share of the intestate estates of Luil and Marjorie Wilkinson. The trial court upheld the deed and ruled it did not have jurisdiction over the advancement issue pursuant to KRS 24A.120. This appeal followed.

DISCUSSION

KTC argues that the advancement issue should have been considered by the trial court because it is an adversarial proceeding within the meaning of KRS 24A.120, which reads, in pertinent part, as follows:

District Court shall have exclusive jurisdiction in:

. . . .

(2) Matters involving probate, except matters contested in an adversary proceeding. . . .

(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. . . .

We find the issue of advancement to be a non-adversarial matter involving probate, and as a result, jurisdiction resides exclusively in the district court. KRS 391.140 does not explicitly permit circuit court jurisdiction in such matters and therefore, in accordance with the language of KRS 24A.120, it is deemed to be non-adversarial.

KTC further contends that the trial court has jurisdiction pursuant to KRS 418.040, which reads:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

We believe that in regards to the advancement issue no actual controversy exists to make KRS 418.040 relevant on appeal. In a declaratory judgment action, a court will not decide speculative rights or duties which may or may not arise in the future, but only rights and duties about which there is a present actual controversy presented by adversarial parties. *Commonwealth ex rel. Watkins v. Winchester Water Works Co.*, 303 Ky. 420, 197 S.W.2d 771 (Ky. 1946).

As the trial court properly found, it did not have jurisdiction over the advancement issue. Any arguments made by KTC contingent on finding the Casey Circuit Court did have jurisdiction are moot. Finding no error, we affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Edward D. Hays
H. Vincent Pennington
Danville, Kentucky

BRIEF FOR APPELLEE:

Theodore H. Lavit
Lebanon, Kentucky