

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000912-MR

JACK BROYLES

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 05-CI-00521

MILDRED CULBERTSON;
ROMEY GENE DAUGHERTY;
AND KENTUCKY TRUST COMPANY

APPELLEES

OPINION AND ORDER
DISMISSING

** ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Jack Broyles (hereinafter “Jack”) appeals from the trial court’s findings that he violated his fiduciary duties by transferring property into his name by means of a power of attorney for his mother, Mildred Culbertson (hereinafter “Mildred”), and he appeals from the finding that Mildred’s brother, Gene Daugherty, is entitled to the “Persimmon Knob Tract” of the property.

Kentucky Trust Company (hereinafter “Kentucky Trust”) asserts that it is an indispensable party to this appeal and moves this Court to dismiss the appeal for failure to name it as a party in the Notice of Appeal. After careful review, we find that Kentucky Trust is an indispensable party and accordingly dismiss this appeal.

This case originated as an action by Mildred in the Boyle Circuit Court to recover real property and personal assets owned by her but transferred and divested from her and placed in the name of Jack by means of a power of attorney. Prior to any determinations having been made by the Boyle Circuit Court on the original complaint, Jack filed a petition for determination of disability for Mildred with the Boyle District Court. On December 16, 2005, a jury found Mildred partially disabled, and on January 17, 2006, the Boyle District Court appointed Kentucky Trust as her Limited Conservator. That same day, the court ordered that none of Mildred’s assets, income, or accounts was to be dispersed or transferred without the approval of Kentucky Trust, and Kentucky Trust was further given possession of several of Mildred’s specific assets. In another order entered March 9, 2006, the Boyle Circuit Court substituted Kentucky Trust for Mildred as Plaintiff in the instant case under CR 25.02.

“The statutory requirement, that the names of all parties must be set out in the statement of appeal, is not an unreasonable or burdensome one.” *See Com., Dept. of Hwys. v. Scott*, 435 S.W.2d 767 (Ky. 1968). Whoever is a party to the record in the lower court and would be a “necessary party” to any further proceedings after the reversal of the judgment, must be a “party to the appeal” or

the appeal will be dismissed. *See Land v. Salem Bank*, 130 S.W.2d 818 (Ky. 1939). For purposes of appeal, a person is a necessary party if the person would be a necessary party for further proceedings in the circuit court if the judgment were reversed. *See Id.*; *see also Hammond v. Department for Human Resources*, 652 S.W.2d 91 (Ky.App. 1983). Given that Kentucky Trust replaced Mildred as the Plaintiff below and is now in possession of the majority of her assets, it is readily apparent that it is a necessary and indispensable party.

“The notice of appeal *shall specify* by name all appellants and *all appellees*. . . .” CR 73.03 (emphasis added). A notice of appeal, when filed, transfers jurisdiction of the case from the circuit court to the appellate court and places the named parties in the jurisdiction of the appellate court. *Manly v. Manly*, 669 S.W.2d 537, 539 (Ky. 1984). Kentucky Trust is neither named in the caption of the Notice of Appeal nor in the body of the Notice of Appeal. Therefore, we do not have jurisdiction over it. Additionally, since it is an indispensable party to the action, the only remedy for Broyles’ failure to name them in the Notice of Appeal is dismissal. *See Yocom v. Franklin County Fiscal Court*, 545 S.W.2d 296 (Ky.App. 1976).

This appeal is ordered, and is hereby, dismissed.

ALL CONCUR.

/s/ James H. Lambert
JUDGE, COURT OF APPEALS

ENTERED: October 10, 2008

BRIEF FOR APPELLANT:

Kirk A. Correll
Stanford, Kentucky

BRIEF FOR APPELLEE:

H. Vincent Pennington, III
Danville, Kentucky