

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002262-MR

RANDY WRIGHT;
AND RICKY WRIGHT

APPELLANTS

v. APPEAL FROM CLINTON CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 07-CI-00254

DAVID CROSS; EXECUTOR
OF THE ESTATE OF LEXIE
TOMPKINS, DECEASED; AND
MICHAEL WRIGHT

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: VANMETER AND WINE, JUDGES; SHAKE,¹ SENIOR JUDGE.

VANMETER, JUDGE: Randy and Ricky Wright appeal from the Clinton Circuit Court judgment holding Michael Wright to be an heir of Roger Wright, and thus

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

entitled to inherit under the terms of the last will and testament of Lexie Tompkins, now deceased. For the following reasons, we affirm.

Lexie Tompkins died testate on October 30, 2004. David Cross was appointed Executor of her estate by the Clinton District Court. After several specific bequests, the remainder of Tompkins' estate was to be devised, *per stirpes*, to ten named nephews and nieces, unless any nephew or niece predeceased her, then any interest conveyed to that nephew or niece was to pass to her issue.

Roger Wright, a nephew named in Tompkins' last will and testament, predeceased Tompkins. Roger was survived by two biological sons, Randy and Ricky Wright, who each claimed a share of Tompkins' bequest to Roger. Michael Wright, who purported to be Roger's adopted son, also claimed a share of the bequest.

In the probate action regarding Tompkins' estate (No. 04-P-00062), Cross filed documents to recognize Michael as the adopted heir of Roger and beneficiary under Tompkins' will. Randy and Ricky Wright filed this underlying action seeking a declaratory judgment that Michael was not adopted under the laws of the Commonwealth of Kentucky, and therefore not included among Roger Wright's issue and not a beneficiary under Tompkins' will.

A hearing was held on September 4, 2009. Josiah Hutton, who was Michael's attorney-in-fact, testified that he had gone to Taipei, Taiwan and obtained two documents which proved Roger adopted Michael in Taiwan. The

documents were translated into English and certified as accurate translations by the Taipei Translation and Globalization Center.

Ming Adamson, Michael's mother, testified that she and Roger married while Roger was stationed with the Air Force in Taiwan. Ming testified during this time Roger adopted Michael and the three shared a household. Additionally, Roger's brother, Billy Wright, testified that Roger stated he adopted Michael while stationed in Taiwan and married to Ming, and that in a probate action for another relative, Billy recognized Michael as an heir of Roger. Following the hearing, the trial court held the evidence supported a finding that Michael was the adopted son of Roger, and therefore entitled to inherit under the terms of the last will and testament of Tompkins. This appeal followed.

Randy and Ricky first argue the trial court erred by allowing Michael to introduce the two Taiwanese documents regarding the adoption because they were not properly authenticated. We disagree.

Under KRE² 901, a proponent of evidence is required to meet a slight burden, which requires only a prima facie showing of authenticity. *Johnson v. Commonwealth*, 134 S.W.3d 563, 567 (Ky. 2004) (citing *United States v. Reilly*, 33 F.3d 1396, 1404 (3rd Cir. 1994) (interpreting FRE³ 901(a) which is worded identically to KRE 901(a)). The burden may be met by introducing circumstantial evidence "permitting an inference that the document is what it is represented to be." *Thrasher v. Durham*, 313 S.W.3d 545, 549 (Ky. 2010) (citing *Johnson*, 134

² Kentucky Rules of Evidence.

³ Federal Rules of Evidence.

S.W.3d at 567). Our review of a trial court’s ruling on authenticity of evidence is for an abuse of discretion. *Thrasher*, 313 S.W.3d at 549 (citing *Johnson*, 134 S.W.3d at 567).

KRE 901(a) states, “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” In addition, KRE 901(b)(4) provides that authentication or identification may be proven by a document’s “[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances.”

In this case, Hutton testified he obtained the foreign adoption records from the Taipei District Court in Taipei, Taiwan. Translation of the documents was approved and certified as correct English translations by the Taipei Translation and Globalization Center. The adoption registration was signed by Roger Wright, Michael’s mother, Ming, the Director General of the Household Registration Office and subsequently notarized by a member of the Notary Public Office in Taipei. Hutton further testified he was informed by Taipei officials that these documents constituted the record of Roger’s adoption of Michael.

Although the trial court’s ruling focused on whether the documents were self-authenticating under KRE 902(3), we find the unique and distinctive characteristics of the documents, as well as Hutton’s testimony regarding the process under which he obtained the documents sufficiently proves their authenticity under KRE 901. *McCloud v. Commonwealth*, 286 S.W.3d 780, 786

n.19 (Ky. 2009) (Appellate courts may sustain the trial court for any reason supported by the record.). Accordingly, we find the trial court’s ruling as to the authenticity of the documents to be within its discretion.

Next, Randy and Ricky argue the trial court erred by concluding that the evidence proved Roger adopted Michael. We disagree.

A trial court’s findings of fact are reviewed under a clearly erroneous standard. *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005) (citations omitted). Such findings are not clearly erroneous if supported by substantial evidence. *Id.* (citations omitted). Substantial evidence is evidence “that a reasonable mind would accept as adequate to support a conclusion.” *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (citation omitted).

Currently, Kentucky “recognize[s] a decree, judgment, or final order of adoption issued by a court or other governmental authority with appropriate jurisdiction in a foreign country when the child to be adopted has been approved for United States citizenship, or as otherwise provided by federal law.” KRS 199.585. However, Michael claims to have been adopted in 1967, before the enactment of KRS 199.585.⁴

In *Moore v. Smith*, 14 S.W.2d 1072 (Ky. 1929), the court held, “[i]f the adoption was legal in Colorado, it is legal [in Kentucky.]” *Id.* at 1075; *See Pyle v. Fischer*, 128 S.W.2d 726, 727 (Ky. 1939) (an adoption in one state will be recognized in another); *See also Edmands v. Tice*, 324 S.W.2d 491, 492 (Ky. 1958)

⁴ The trial court held KRS 199.585 does not have retroactive effect, and that ruling is not challenged on appeal.

(Kentucky adopted the rule that any rights acquired by adoption and recognized in one state will be given effect in another statute so long as those rights are not inconsistent with the laws and policies of such state.). Extending this rationale to the case at bar, if the evidence supports a finding that Roger's adoption of Michael was legal in Taiwan, the adoption will be recognized under Kentucky law so long as doing so would not be inconsistent with our laws and policies.

Here, Hutton testified that he obtained two documents from the Taipei District Court that he was told are the adoption records for Roger's adoption of Michael. The first document states that Roger agreed to adopt Michael, and that Michael's mother consented to the adoption. In addition, the document states that Roger agreed to assume the duty of caring, teaching, and nourishing Michael. The document was signed by Roger and Michael's mother, as well as the Director General of the Household Registration Office in Taipei, and was notarized. The second document identifies Roger as the adopted parent of Michael, and references the first document as the adoption registration. This second document, Hutton testified, exists for purposes of allowing Taipei officials to maintain records on individuals by the household in which they reside, because Taiwan did not issue documents similar to birth certificates.

In addition to the two documents and testimony of Hutton, Ming Adamson testified that Roger adopted Michael. Billy Wright testified that Roger referred to Michael as his adopted son, and as administrator of an estate of another relative, Billy recognized Michael as an heir of Roger. The Taiwanese adoption

documents, Hutton's testimony relating to the documents, and the circumstantial evidence provided by Ming and Billy, constitute substantial evidence to support the trial court's conclusion that Roger adopted Michael in Taiwan, and thus the adoption is recognized and given effect in Kentucky.

The judgment of the Clinton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE MICHAEL
WRIGHT:

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