

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-001693-DG

LORENZA FIGUEROA

APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE BRIAN C. EDWARDS, JUDGE  
ACTION NO. 10-XX-000012

CHRIS MEINHART AND PATRICIA SMITH,  
AS ADMINISTRATORS OF THE ESTATE  
OF SAUL FIGUEROA-BAUTISTA

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KELLER, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: Lorenza Figueroa appeals from an order of the Jefferson District Court appointing the Public Administrator to administer the estate of her nephew, Saul Figueroa-Bautista. She argues that the Public Administrator was appointed before 60 days had elapsed, making the appointment void under KRS

395.390(1). The Appellees argue there is no time limit requirement for the appointment of the Public Administrator. We find KRS 395.390(1) generally requires that the district court wait for 60 days after the death of a decedent before it appoints the Public Administrator as administrator of an estate; however, in this case, such requirement was unnecessary.

Mr. Figueroa-Bautista died in a motor vehicle accident on October 20, 2009. He was unmarried and he died intestate. His fiancée, and the mother of their three children, Ms. Manriquez-Hernandez, hired attorney Daniel Alvarez to represent the family and the estate. On October 27, 2009, Mr. Alvarez filed a petition to have the Public Administrator appointed to administer the estate of Mr. Figueroa-Bautista. On the same day, Ms. Manriquez-Hernandez fired Mr. Alvarez. The district court appointed the Public Administrator, Chris Meinhart, the next day.

Shortly after the appointment, Ms. Manriquez-Hernandez hired a new attorney to move the district court to substitute Lorenza Figueroa, Mr. Figueroa-Bautista's paternal aunt, as administratrix of the estate. At a November 4, 2009, hearing on the matter, the district court denied the motion. An appeal to the circuit court followed. On August 25, 2010, the circuit court issued an opinion affirming the district court's ruling and held there is no longer a waiting period before the Public Administrator can be appointed. This appeal followed.

This case revolves around KRS 395.390 which states:

- (1) The District Court of a county which has a public administrator and guardian shall, after the expiration of sixty (60) days from the death of the decedent, order the

public administrator and guardian to administer the estate of the decedent where the surviving spouse and heirs waive their right to be appointed, or if the surviving spouse does not nominate a suitable administrator, or in the event any of the persons designated in KRS 395.040 are unable, or found to be incapable of handling or managing the estate, or if from any other cause there is no personal representative. If there is no public administrator and guardian, the court shall order the sheriff to administer the estate.

(2) The District Court shall also confide to the public administrator and guardian the care and control of the persons and estates of all minors when it appears that a minor has no testamentary guardian and no one will apply for appointment, or serve, as guardian.

Also relevant is KRS 395.040 which states in part:

(1) The court shall grant administration to the relations of the deceased who apply for administration, preferring the surviving husband or wife, or if the surviving husband or wife does not nominate a suitable administrator, then such others as are next entitled to distribution, or one (1) or more of them whom the court judges will best manage the estate.

(2) If no person mentioned in subsection (1) applies for administration within sixty (60) days from the death of an intestate, the court may grant administration to a creditor, or to any other person, in its discretion.

Ms. Figueroa argues that according to KRS 395.390(1), 60 days must pass after the death of the decedent before a Public Administrator can be appointed to oversee an estate. The Appellees argue that there is no spouse or other distributee who can be the administrator of the estate and that the 60-day waiting period is not prohibitive, but only sets out the time at which it becomes mandatory to appoint a Public Administrator.

A plain reading of KRS 395.390(1) reveals that a district court can only appoint the Public Administrator once 60 days after the death of the decedent have elapsed. This was the same outcome in the case of *Underwood v. Underwood's Adm'r*, 111 Ky. 966, 65 S.W. 130 (1901). In *Underwood*, the Court, in interpreting a previous, but similar statute, found that the court could not put the estate in the hands of the Public Administrator before the time limit, then three months, had expired.

When we examine KRS 395.040, it too uses the 60-day time limit. If no one applies to be the administrator of an estate after 60 days, the district court has the discretion on proper motion to appoint any other person to the position. This would include the Public Administrator. Generally speaking, the district court should not have appointed the Public Administrator before the 60 days had expired.

This case, however, is more complex. Mr. Figueroa-Bautista died on October 20, 2009. The district court first appointed the Public Administrator on October 28, 2009. The district court then reaffirmed this appointment in an order on January 8, 2010, which is more than 60 days after Mr. Figueroa-Bautista's death. Furthermore, since Ms. Figueroa is not a spouse, heir, or distributee of Mr. Figueroa-Bautista's estate, she is not given preference in the appointment of an administrator. KRS 395.040(1). Since 60 days had elapsed since Mr. Figueroa-Bautista's death and Ms. Figueroa cannot be given preference at becoming the administratrix of the estate, it was up to the discretion of the district court to

determine who would administer the estate. KRS 395.390(1); KRS 395.040(2).

We cannot say that there was error in appointing the Public Administrator.

Furthermore, we find the appointment of the Public Administrator was not void, but voidable. The district court has exclusive jurisdiction over the appointment of fiduciaries in probate estates. *Beddow v. Beddow's Adm'r*, 267 S.W.2d 87, 89-90 (Ky. 1954). With this subject matter jurisdiction, any erroneous judgments are not void, but voidable. *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422, 430-431 (Ky. App. 2008). Voidable judgments are subject to waiver. *Id.* at 431. Here, Ms. Manriquez-Hernandez hired an attorney who petitioned for appointment of the Public Administrator. She therefore acquiesced to the appointment and waived any objection to it.

For the reasons set forth herein, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Guy J. Hibbs  
John T. Hester  
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BRIEF FOR APPELLEES:

Homer Parrent, III  
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