RENDERED: OCTOBER 4, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000706-MR

TERRI C. MURPHY APPELLANT

v.

APPEAL FROM MERCER CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 10-CI-00329

FRANK RANSDELL, AS SUCCESSOR TRUSTEE OF THE JAMES G. RANSDELL AND/OR TRUDY G. RANSDELL REVOCABLE LIVING TRUST DATED SEPTEMBER 20, 1993; CLYDE RANSDELL; CLYDE RANSDELL, AS EXECUTOR OF THE JAMES GARNETT RANSDELL ESTATE; DAVID RANSDELL; JANE GARRIOTT; RUTH BUNTON; UNKNOWN HEIRS, DEVISEES AND DESCENDENTS OF DANNY RANSDELL; RANDY RANSDELL; PAM BUCHANAN; BARBARA TATUM; MARY ANN FEGLEY; STACY LYNN REISTER; TODD RANSDELL; AND CHRISTY LEE CHEAK APPELLEES

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: LAMBERT, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Terri C. Murphy (Terri) appeals from a declaratory judgment entered by the Mercer Circuit Court in favor of appellees and other persons. Because Terri failed to name indispensable parties in her notice of appeal, we dismiss.

Facts and Procedural History

The James G. Ransdell and/or Trudy G. Ransdell Revocable Living Trust was established on September 20, 1993, by James G. Ransdell and Trudy G. Ransdell (trustors).[1] The trust was revocable and subject to amendment during the joint lifetimes of the trustors. However, the trust became irrevocable and not subject to amendment or modification upon the death of either trustor. The trust agreement further provided that upon the deaths of both trustors, the initial beneficiary of the trust was Danny Ransdell, the only child of the trustors. The agreement also provided for asset distribution in the event that Danny did not survive his parents or was still suffering from chemical dependency at the time of his last remaining parent's death.

Danny died on December 27, 1994, predeceasing both his mother and father, James and Trudy. At the time of his death, Danny was in the process of divorcing Terri, his estranged wife, but no decree of dissolution had been entered.

[1] The trust agreement also designated James G. Ransdell and Trudy G. Ransdell as co-trustees.

Danny had no children and, therefore, no "living issue" who were entitled to distribution of the trust assets. Consequently, pursuant to Section 4.04 of the trust agreement, the estate was required to be "distributed to his heirs at law, as determined by [Kentucky's] laws of intestate succession[,]" upon the death of the last trustor. Following Danny's death, his estate and his parents became involved in protracted probate litigation with Terri.

James G. Ransdell died as the last remaining trustor on October 2, 2009, whereupon the trust was terminated and distribution of the trust assets was required pursuant to its terms. Frank Ransdell, the successor trustee, subsequently filed a petition for declaratory judgment in the Mercer Circuit Court seeking direction as to the proper distribution of the assets. In response to this petition, Terri asserted that she stood as the sole beneficiary of the trust and was entitled to the assets in their entirety.

On March 17, 2011, the circuit court entered an order determining that Danny's heirs-at-law were determined at the time of his death pursuant to Kentucky Revised Statutes (KRS) 391.010, the intestate descent and distribution statute with respect to "real estate or inheritance". Because Danny had no children, his parents were his surviving heirs at law under KRS 391.010 and the terms of the trust agreement. Thus, upon termination of the trust, the heirs of James G. Ransdell were entitled to one-half of the trust corpus, and the heirs of Trudy G. Ransdell were entitled to the remaining half. The court ordered distribution in this manner and further determined that Terri "has no claim of any kind, not only

because she is not an heir of Danny Ransdell, but also because she released the Ransdell family and their estates as part of her litigation settlement in 2002." This appeal follows.

Analysis

Although the parties have thoroughly briefed the substantive issues in this case, we are compelled to focus upon a jurisdictional matter that has gone unaddressed. Kentucky Rules of Civil Procedure (CR) 73.03 requires an appellant to set forth all parties by name in the notice of appeal. CR 73.03(1). This is because "[a] notice of appeal, when filed, transfers jurisdiction of the case from the circuit court to the appellate court. It places the named parties in the jurisdiction of the appellate court." *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990). Where persons are not named as parties to an appeal, then, this Court has no jurisdiction over them. *Watkins v. Fannin*, 278 S.W.3d 637 (Ky. App. 2009).

On appeal, an appellant "is required to name each party that is 'necessary' to adequate and proper appellate review and disposition." *Id.* Our Supreme Court has recognized that "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." *Kesler v. Shehan*, 934 S.W.2d 254, 257 (Ky. 1996). Such persons are regarded as indispensable to an appeal because, in their absence, their interests would be divested by an adverse judgment and the Court would be prevented from granting complete relief among those already parties. *West v.*

Goldstein, 830 S.W.2d 379 (Ky. 1992); *Milligan v. Schenley Distillers, Inc.*, 584 S.W.2d 751, 753 (Ky. App. 1979*) superseded on other grounds* by statute.

In the case at bar, the notice of appeal omitted two indispensable parties to the proceedings. Both the caption and the body of Terri's notice of appeal fail to name Jack Garriott – Trudy's brother – and Geri-Bare Manning – Trudy's niece – as appellees even though the two claimed to be (and were determined to be) heirs-at-law/distributees under the trust and were named parties and active participants in the proceedings below. It is apparent that these individuals are necessary and indispensable parties to this appeal since their interests as heirs-at-law/distributees under the trust would be divested by an adverse determination on appeal and they would be necessary parties to any further proceedings in the circuit court. Moreover, any relief offered to Terri in their absence would be incomplete. A decision of this Court rendered in the absence of an indispensable party is necessarily inadequate because it prevents the Court from granting complete relief among those already parties. *Watkins*, 278 S.W.3d at 637; *see also Liquor Outlet, LLC v. Alcoholic Beverage Control Bd.*, 141 S.W.3d 378, 387 (Ky. App. 2004).

Because of this, it is well-established that the failure to name an indispensable party in the notice of appeal must result in dismissal of the appeal. *Rice v. Steele*, 295 S.W.3d 453 (Ky. App. 2009); *Slone v. Casey*, 194 S.W.3d 336 (Ky. App. 2006). Stated differently, the failure to name an indispensable party in the notice of appeal deprives the appellate court of jurisdiction and is a

"jurisdictional defect that cannot be remedied." *Stallings*, 795 S.W.2d at 957; *see also Nelson County Bd. of Educ. v. Forte*, 337 S.W.3d 617 (Ky. 2011). Consequently, because Terri failed to name Jack Garriott and Geri-Bare Manning as parties in her notice of appeal, we are without jurisdiction to proceed further and are compelled to dismiss this appeal.[2]

Conclusion

For reasons set forth herein it is ORDERED that Appeal No. 2011-CA-000706-MR is DISMISSED for failure to name indispensable parties.

ALL CONCUR.

ENTERED: October 4, 2013

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Bradley S. Guthrie
Harrodsburg, Kentucky

BRIEF FOR APPELLEES:

Melanie D. Clark
Danville, Kentucky

David Patrick
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[2] That this issue was not identified by the parties is irrelevant to our decision since " 'jurisdiction may not be waived, and it cannot be conferred by consent of the parties. This [C]ourt must determine for itself whether it has jurisdiction.' " *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005) (*quoting Hubbard v. Hubbard*, 303 Ky. 411, 197 S.W.2d 923 (1946)). We are further cognizant that appellees' brief purports to include the indispensible parties – but we emphasize again that there exists no authority in Kentucky that permits the parties to cure a jurisdictional defect by consent or agreement.