

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

NO. 2011-CA-000993-MR

BETTY O'KULY

APPELLANT

v. APPEAL FROM BREATHITT CIRCUIT COURT  
HONORABLE FRANK FLETCHER, JUDGE  
ACTION NO. 10-CI-00155

SANDRA HENSON, ET AL.

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: MOORE, STUMBO, AND VANMETER, JUDGES.

MOORE, JUDGE: Betty O'Kuly challenges a \$3,000 equitable lien granted by the

Breathitt Circuit Court upon a parcel of property in favor of appellee, Sandra

Henson, through a May 16, 2011 order.<sup>1</sup> The parcel of property in question

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<sup>1</sup> The May 16, 2011 order itself was interlocutory because it adjudicated less than all of the claims, rights and liabilities of less than all the parties below, and did not recite that it was final and that there was no just reason for delay. *See* CR 54.02. However, the circuit court later incorporated this order into a June 10, 2011 order of sale that directed a disbursement of proceeds after payment of costs in this matter, and this latter order was final and appealable. *See*

appears in Deed Book 158, Page 364 in the Office of the Breathitt County Clerk, and O’Kuly refers to it as the “church property.”

According to the record, O’Kuly was a joint owner of the church property. Her co-owners, as described in the circuit court’s order, included the following: 1) the Estate of Leona Stamper; 2) the Estate of Maggie Johnson, as divided between Robert Johnson, Robert Ed Johnson, and Bertha Noble; 3) Michael A. Hamilton; 4) Eugene Riley; 5) Sandra Stamper Henson; and 6) Emline Stamper Montgomery. Notably, O’Kuly omitted any specific reference to her co-owners in either the caption or body of her Notice of Appeal in this matter. Also, it does not appear that O’Kuly attempted to join any of her co-owners as parties. Instead, as noted in the caption of this opinion, there is simply the phrase, “et al.” associated with Henson’s designation as an appellee.

Kentucky Rule of Civil Procedure (CR) 73.03(1) expressly prohibits specifying the names of parties as “et al.” in a notice of appeal. Furthermore, the use of “et al.” in the caption of a notice of appeal does not make those parties to the action not specifically named in the caption parties to the appeal. *Schulz v. Chadwell*, 548 S.W.2d 181, 184 (Ky. App. 1977).

Here, there were several other parties to this action at the circuit court level and, in light of the forgoing, we may only properly consider O’Kuly and Henson as parties to this appeal. O’Kuly’s co-owners were indispensable parties to

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*Security Fed. Sav. & Loan Ass’n v. Nesler*, 697 S.W.2d 136 (Ky. 1985). Thus, while O’Kuly designated the circuit court’s May 16, 2011 order as the subject of her appeal, the issue she presents in her appeal is nevertheless final and appealable and her notice of appeal in this regard substantially complies with CR 73.03(1). See *Ready v. Jamison*, 705 S.W.2d 479 (Ky. 1986).

this appeal because each had a right to pursue this appeal against Henson's equitable lien judgment and, if successful, would have been entitled to share the value of the church property otherwise encumbered by Henson's lien. *Braden v. Republic-Vanguard Life Ins. Co.*, 657 S.W.2d 241, 243 (Ky. 1983). O'Kuly's failure to join the other co-owners constitutes a jurisdictional defect and was fatal to her appeal. *See City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990). This appeal is therefore DISMISSED.

ALL CONCUR.

ENTERED: May 25, 2012

/s/ Joy A. Moore  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Betty O'Kuly  
Jackson, Kentucky

BRIEF FOR APPELLEE:

No brief filed.