

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

NO. 2015-CA-000999-MR

RONALD MASON AND  
SHIRLEY HAMMONDS MASON

APPELLANTS

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE WILLIAM CLOUSE, JR., JUDGE  
ACTION NO. 13-CI-00263

BILLY STEGALL AND  
HATTIE STEGALL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, JOHNSON AND TAYLOR, JUDGES.

JOHNSON, JUDGE: Ronald and Shirley Mason (“Masons”) appeal from an Order of the Madison Circuit Court granting Summary Judgment to Billy and Hattie Stegall (“Stegalls”). After reviewing the record and the applicable legal authorities, we AFFIRM the decision of the Madison Circuit Court.

## BACKGROUND

This matter came before the Madison Circuit Court on a complaint filed pursuant to Kentucky Revised Statute (KRS) 394.240 by Berea College (“Berea”), contesting the probate of the will of Dr. Lawrence Bowling (“Dr. Bowling”). Dr. Bowling died on January 13, 2013, leaving behind an estate valued at approximately \$1,500,000.

In October 2008, Dr. Bowling executed a will which bequeathed \$100,000 to each of his nephews, Edward Steagall (a difference in spelling is noted) and Billy Stegall, \$101,000 to Ronald Mason, and named Berea as the residuary beneficiary of all remaining property of his estate.

In December 2009, Dr. Bowling’s granddaughter, Jami Arnold, visited Dr. Bowling and determined that he was no longer able to care for himself. She notified the Stegalls that he was in need of assistance. On February 25, 2010, the Madison District Court entered a Disability Judgment that determined that Dr. Bowling was partially incompetent and appointed the Stegalls as Limited Co-Guardians and Limited Co-Conservators for Dr. Bowling. The Masons also sought the appointment but were denied. The Stegalls then moved Dr. Bowling to their home in Ohio. While living with the Stegalls, Dr. Bowling, with the advice of Dodd Dixon, an attorney, executed a notarized, holographic will, revoking all previous wills and codicils and stated his intention to die intestate. This was accomplished on April 16, 2012. Dr. Bowling continued to live with the Stegalls until his death in 2013. After his death, the Madison District Court was petitioned

to probate the estate. It denied probate of the will dated October 10, 2008, and accepted for probate the notarized, holographic will executed April 16, 2012. The estate was thus administered as an intestate estate.

Subsequently, on April 24, 2013, the Masons, Stegalls, Edward Steagell, Jami Arnold, as Administratrix of the Estate of Dr. Bowling, and Berea all filed an original action in the Madison Circuit Court challenging the district court's decision. After discovery, a trial date was set for May 26, 2015, on all claims except the crossclaims between the Masons and the Stegalls. The court then ordered all parties to mediation. The mediation resulted in all parties, except the Masons, settling all of their claims. The settlement is not part of the record, but it appears that it was premised on the October 2008 will. On June 9, 2015, the court entered two separate Orders, one approving the settlement and dismissing all claims and the second order granting summary judgment to the Stegalls on all claims against the Masons. On June 26, 2015, the Masons filed this appeal.

### **STANDARD OF REVIEW**

The standard of review on appeal when a trial court grants a motion for summary judgment is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v Kraft*, 916 S.W.2 779, 781 (Ky. App. 1996).

Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, “an appellate court need not defer

to the trial court's decision and will review the issue *de novo*." *Lewis v B & R Corp.* 56 S.W.3d 432, 436 (Ky. App. 2001).

### ANALYSIS

The prehearing statement of the Masons lists only four issues for review. The Masons assert claims under KRS 209.010, KRS 209.990, and KRS 446.070, seeking to plead a private cause of action pursuant to those statutes. KRS Chapter 209 sets forth procedures whereby the General Assembly established a system of protective services designed to address the needs of adults who are deemed unable to manage their own affairs or who need protection from abuse, neglect, or exploitation. KRS 209.090. Under the scheme set out in KRS Chapter 209, any suspected concerns are to be reported to the Cabinet for Health and Family Services, ("Cabinet"). It is the Cabinet which is to investigate the claims and if it determines there is a problem, the statute allows the Cabinet to take remedial action and to pursue criminal action. The Masons suggest that KRS 209.010(1)(a), when read in conjunction with KRS 446.070 gives them the basis for a private cause of action. KRS 446.070 states:

A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.

Based upon the Masons arguments, if we find that KRS 209.010 does not provide them a cause of action, they will be entitled to no relief under KRS 446.070.

In analyzing KRS 209.010 within the statutory scheme of KRS Chapter 209, it is clear that the only party authorized to take action under KRS 209.010 is the Cabinet. Since the plain terms of KRS 209.010 gives authority only to the Cabinet, the Masons may not use it as a basis for a private cause of action.

To provide that any person who becomes aware of such cases shall report them to a representative of the cabinet, thereby causing the protective services of the state to be brought to bear in an effort to protect the health and welfare of these adults in need of protective services and to prevent abuse, neglect, or exploitation[.]

KRS 209.010(1)(b).

The Masons then suggest that KRS 209.990(8) will provide them a basis for relief. However, KRS 209.990(8) relates to a defendant sentenced by the court for either a felony or misdemeanor conviction of KRS Chapter 209. Since no one has been charged by the Cabinet or found guilty of any criminal violation in this case, KRS 209.990 does not apply. Based upon our reading of these statutes, the Circuit Court was correct in its application of them and was therefore correct in granting summary judgment against the Masons on these issues.

The next issue raised by the Masons concerns their claim for compensatory and punitive damages for tortious interference with inheritance by the Stegalls. Kentucky law has not overtly recognized such a claim; thus, we do not disagree with the dismissal of the claim under summary judgment by the circuit court. *Hays v. Hays*, 2014-CA-001191-MR, 2015 WL 9413357 (Ky. App. Dec. 23, 2015). In addition, the will probated by the district court left the Masons

nothing and the circuit court's Order dismissing the will contest was not appealed. Thus, by law the Masons are neither heirs nor devisees of Dr. Bowling and cannot bring an action based upon a tortious interference with inheritance. In that Kentucky does not recognize the tort of intentional interference with an inheritance, and we decline to do so at this time, we find nothing in this case to find differently from the circuit court granting summary judgment.

The Masons have raised an issue of defamation in their appeal brief. However, their prehearing statement did not list this issue on appeal. Thus, this specific claim cannot now be raised pursuant to Kentucky Rules of Civil Procedure (CR) 76.03(8). *Wright v. House of Imports, Inc.*, 381 S.W.3d 209, 212 (Ky. 2012).

The last issue raised by the Masons concerns their inability to depose Dodd Dixon, the attorney that Dr. Bowling and the Stegalls consulted prior to Dr. Bowling executing his last will. The deposition of Mr. Dixon, the Stegalls attorney at that time, was only requested late in the proceedings while this matter had been in litigation for two years prior to any motion seeking his deposition. The issue was first addressed by the court on March 23, 2015. The court granted the Masons' motion of May 1, 2015, but they chose not to schedule Mr. Dixon's deposition until later. On June 9, 2015, the circuit court entered two orders, one accepting the settlement terms and the second granting summary judgment to the Stegalls.

Broad discretion in controlling the discovery process is granted to the trial court. *Armstrong v. Biggs*, 302 S.W.2d 565, 568-69 (Ky. 1957). In order for us to find that the circuit court abused its discretion in discovery, we would need to find that the court's decision was arbitrary, unreasonable, unfair or unsupported by some sound legal principle. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). The record does not support that the circuit court abused its discretion in cutting off discovery, particularly where the Masons had ample opportunity to depose Mr. Dixon during the two years of litigation before the summary judgment was granted.

### CONCLUSION

Based upon the foregoing, we do not find that the Madison Circuit Court abused its discretion in granting Summary Judgment to the Stegalls, and AFFIRM the Madison Circuit Court Order on all issues.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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