

RENDERED: NOVEMBER 22, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000307-DG

RONALD MASON AND
SHIRLEY HAMMONDS MASON

APPELLANTS

ON DISCRETIONARY REVIEW FROM MADISON CIRCUIT COURT
v. HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NO. 15-XX-00008

BILLY STEGALL; HATTIE STEGALL; AND STATE
FARM FIRE AND CASUALTY COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Ronald Mason and Shirley Hammonds Mason appeal from an Order of the Madison Circuit Court dismissing their appeal from a Madison District Court Judgment. The Masons argue that the circuit court erred in failing to

conclude that they had standing to object to the final accounting in a conservatorship. For the reasons stated below, we AFFIRM the Order on appeal.

On March 15, 2010, and April 7, 2010, the Madison District Court granted Appellees Billy Stegall and Hattie Stegall limited guardianship and limited conservatorship over the affairs of Dr. Lawrence Bowling. Dr. Bowling died on January 13, 2013.

After his death, the Stegalls submitted a proposed final accounting of his conservatorship assets, which was approved by the Madison District Court on October 1, 2015. The Stegalls were ordered to transfer all conservatorship assets to Dr. Bowling's probate Estate, which was administered by Dr. Bowling's granddaughter, Jami Arnold ("Ms. Arnold"). Ronald Mason and Shirley Hammonds Mason participated in the proceedings on their claim of being the named beneficiaries of a will which was later found not to be Dr. Bowling's last will and testament.¹

After ruling that the Masons had standing to participate in the proceedings, the district court accepted the final conservatorship accounting over the Masons' objection. The Masons then appealed to the Madison Circuit Court, whereupon the Stegalls and their surety, Appellee State Farm Fire and Casualty Company, argued that the Masons lacked standing to object to the final conservatorship accounting and to pursue the appeal.

¹ Three separate legal proceedings arose from this matter: 1) a mental health guardianship case (09-H-002410), a Probate case (13-P-0051), and a Will Contest action (2015-CA-000207).

In considering the issue of standing, the Madison Circuit Court examined Kentucky Revised Statute (KRS) 209.990(8) to conclude that Dr. Bowling was not a victim as defined by KRS Chapter 209. The court determined that KRS 209.990(8) pre-supposed the criminal prosecution and conviction of a defendant or the failure of a convicted defendant to return a victim's property in accordance with a court-ordered payment schedule. As there was no conviction or court-ordered payment schedule at issue in this case, the court concluded that KRS 209.990(8) was not applicable and did not vest standing with the Masons.

The Madison Circuit Court went on to consider the applicability, if any, of KRS 387.710 as to the issue of standing. It found that this provision states that after a ward's death, only the personal representative of a decedent's probate estate has standing to represent the decedent's interests. The court determined that since the Masons are not the personal representative of Dr. Bowling's probate estate, they did not have standing to object to the settlement nor to prosecute an appeal arising therefrom. Based on the foregoing, the court dismissed the Masons' appeal to the Madison Circuit Court, and this appeal followed.

The Masons now argue that the Madison Circuit Court erred in concluding that they did not have standing to object to the final accounting and to bring an appeal. The Masons assert two arguments in support of this contention. The first relies on certain provisions of the guardianship statutes set out in KRS Chapter 387, while the second focuses on KRS 209.990 which identifies the

available penalties for those who have been found criminally liable for abusing or neglecting an adult.

As to the KRS Chapter 387 argument, the Masons assert that they are interested persons who may properly challenge the distribution of the conservatorship assets to the Estate. KRS 387.710, which addresses the duties of a conservator and the final report and account, states:

(1) Within sixty (60) days of appointment, the limited conservator or conservator shall file with the court a verified inventory of all the property of the ward which has come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured claims on any item, any claims against the estate of the ward, and any cause of action accruing to the ward. The limited conservator or conservator shall provide a copy thereof to the ward if he has sufficient mental capacity to understand it.

(2) (a) A limited conservator or conservator shall file with the court a verified report and financial account biennially within one hundred twenty (120) days after the anniversary date of his appointment. The report shall contain:

1. The present personal status of the ward whose estate is managed by the conservator;
2. The conservator's plan for preserving and maintaining the estate of which he has control or supervision;
3. The need for continuation or cessation of the conservatorship; and
4. The need for any alteration in the powers of the conservatorship.

(b) The biennial report shall specify the amount and type of real and personal property received by the conservator and remaining in his control or invested by him, the nature of such investment, and expenditures made during the preceding year. Upon request of the court, the conservator shall produce for examination any information or documentation which the court may consider relevant to the accounting of the financial and property transactions of the estate.

(c) If the ward has no real property and possesses personal property of two thousand five hundred dollars (\$2,500) or less for any year during the biennial report, the guardian, conservator, or limited conservator may file an informal biennial financial report attesting to the identity of the ward's financial account and its current balance. If the balance does not exceed two thousand five hundred dollars (\$2,500) for any year of the biennial report, the guardian, conservator, or limited conservator shall not be required to render to the court a detailed accounting of the expenditures from the fund, unless the court, on its own motion or that of any interested party or individual, deems it necessary to order the guardian, conservator, or limited conservator to provide a detailed biennial accounting, including the listing of all expenditures for that reporting period. For guardians filing an informal biennial financial report, the provisions of subsection (2)(a)2. of this section shall not apply.

(3) Upon the resignation, removal, or death of a limited conservator or conservator, or on the termination of the conservatorship, the limited conservator or conservator, or his personal representative, shall forthwith submit a final report and account to the court and to the former ward and to the successor limited conservator or conservator, or, if the ward is deceased, to his personal representative, and shall pay over the trust estate to the person entitled thereto. Upon approval of the report and account, the limited conservator or conservator shall be discharged and his surety, if any, released. (Emphasis added).

In examining this issue, the Madison Circuit Court determined that KRS Chapter 387 does not vest with the Masons the standing to challenge the conservators' final accounting. This conclusion is supported by KRS 387.710. The Masons are not personal representatives of Dr. Bowling's probate estate, and thus do not have standing. After Mr. Bowling died on January 13, 2013, the Stegalls – as conservators – had the statutory duty to file with the Madison District Court a final accounting and to transfer the conservatorship assets to Ms. Arnold as Administratrix of the probate estate. KRS 387.710 provides no mechanism for interested parties to intervene in the termination of the conservatorship, and the Madison Circuit Court properly so found.

As to the Masons' second argument, the Madison Circuit Court determined that KRS 209.990(8) does not vest with the Masons standing to object to the Stegalls' final accounting nor to pursue an appeal therefrom.² The Masons assert that Dr. Bowling was a victim as defined in KRS Chapter 209. KRS 209.990(8), however, pre-supposes the criminal prosecution and conviction of a defendant or the failure of a convicted defendant to return a victim's property in accordance with a court-ordered payment schedule. Because there is no such conviction, KRS 209.990(8) is not implicated and cannot form as basis for finding that the Masons have standing to object or appeal.

² KRS 209.990 addresses the penalties resulting from the abuse or neglect of adult victims.

Based on the foregoing, the Madison Circuit Court dismissed the Masons' appeal for lack of standing. Because the dismissal was supported by the record and the law, we find no error. We AFFIRM the Order of the Madison Circuit Court dismissing the Masons' appeal.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

John F. Lackey
Richmond, Kentucky

BRIEF FOR APPELLEES BILLY
SEGALL AND HATTIE SEGALL:

Dodd D. Dixon
Winchester, Kentucky

BRIEF FOR APPELLEE STATE
FARM FIRE AND CASUALTY
COMPANY:

Elizabeth A. Sprowl
Louisville, Kentucky