

RENDERED: AUGUST 31, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000433-MR

ARICKA LYNN BRUCE, INDIVIDUALLY;
AND AS EXECUTRIX OF THE ESTATE OF
TERRY DALE CLUBB; AND SUSAN BRUCE CLUBB APPELLANTS

v. APPEAL FROM OLDHAM CIRCUIT COURT
 HONORABLE KAREN CONRAD, JUDGE
 ACTION NOS. 06-CI-00806 & 05-CI-00364

JACKIE AMOS, INDIVIDUALLY AND AS EXECUTRIX
OF THE ESTATE OF JOHN CLUBB;
PAT SIBLEY, INDIVIDUALLY AND AS EXECUTRIX
OF THE ESTATE OF JOHN CLUBB;
AND JOHN SIBLEY APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND JONES, JUDGES.

DIXON, JUDGE: Appellants, Aricka Lynn Bruce, individually and as Executrix
of the Estate of Terry Clubb, and Susan Bruce Clubb appeal from an order of the

Oldham Circuit Court assigning them the one-third share of inheritance taxes due on property transferred to them by Appellee, Jackie Amos, pursuant to a settlement agreement. Finding no error, we affirm.

Appellees are the heirs of the Estate of John Clubb, who died on July 31, 2002. Clubb left his estate, which included a 154-acre farm, equally to his three natural children: Amos, Sibley, and Terry Clubb.¹ In 2004, before the estate had been settled, Terry died. By will, Terry left his assets (including his 1/3 interest in the John Clubb Estate) to his wife and step-daughter, Appellants herein. Shortly thereafter, Appellees, in their capacities as co-executrixes of the John Clubb Estate and individually, filed a will contest action in the Oldham Circuit Court (04-CI-00720) against Terry's estate and Appellants. A jury found in favor of Appellants and a panel of this Court affirmed.

In October 2006, Appellants filed the instant action against Appellees pursuant to KRS 395.5102² to settle the John Clubb Estate. Therein, Appellants claimed that Appellees had intentionally delayed settling the estate for the purpose of preventing settlement of Terry's estate. In July 2007, Appellants amended their complaint to include claims of malicious prosecution and abuse of process, stemming from Appellees' filing of the will contest action against Terry's estate.

¹ Terry Clubb was actually John Clubb's grandson, but was adopted by Clubb and his wife.

² Kentucky Revised Statute.

In 2014, the trial court entered an order requiring the parties to mediate. As a result of that mediation, both Appellees entered into separate settlement agreements with Appellants. Only the July 7, 2014, settlement agreement between Amos and Appellants is at issue herein. As part of that agreement, Amos agreed to deed her one-third interest in the John Clubb farm to Appellants, and further to not seek repayment of the \$78,000 she had already paid in federal estate taxes. In exchange, Appellants signed a release of all claims against Amos.

Subsequently, however, a disagreement arose as to who was responsible for the unpaid Kentucky inheritance taxes on the property that Amos deeded to Appellants. On December 12, 2016, the trial court entered an order requiring Appellants to pay the inheritance taxes at issue:

The language at paragraph nine of the Amos agreement dated July 7, 2014 addresses taxes, but does so with regard to taxes already paid by Jackie Amos. The language states “9. *The Defendant agrees to waive any claims she may have for recompense from the Plaintiffs from her interest in the Estate of John Clubb, including any and all state and federal taxes, and any set off claims Defendant, Jackie Amos, may have against Plaintiffs*” While the paragraph refers to Ms. Amos’ agreement not to seek recompense from her interest in John’s estate, including state and federal taxes, the Court interprets this to mean the federal taxes paid by Ms. Amos (\$26,000 attributable to Terry) and state property taxes paid by the estate on the real estate each year from 2002 including 2016 taxes The Court does not interpret this paragraph to mean Ms. Amos agreed to pay an additional

one-third of the \$80,000 Kentucky State tax obligation, especially when she in effect has agreed to convey her entire interest in the land, worth some \$200,000

In addition, Plaintiffs at paragraph 2 state “*In consideration of that quit claim deed (of Amos) and premises contained therein, Plaintiffs agree to fully release all claims made or which could have been made as a result of (Amos’) decision to prosecute that lawsuit no. 04-CI-720, resolved in the Oldham Circuit Court, and any and all claims asserted in that lawsuit 06-CI-806 and any and all claims regarding 04-CI-720, including any judgment.*” This is a complete release. At paragraph 6 its states, “*Plaintiff will prepare quit claim deed and will pay any and all transfer fees and any and all fees whatsoever related to the conveyance contemplated herein.*” The Court interprets this not only to mean the cost to record the deed but the cost to obtain clear title which includes the clearing of the Kentucky inheritance tax lien filed by the Department of Revenue.

Finally the Court would point out that the issue of Kentucky Estate tax was addressed in the January 2014 mediation agreement of Sibley and Plaintiffs and it is clear that the Parties separately negotiated Ms. Sibley’s responsibility for her share of the Kentucky Estate Tax, as well as a portion of Plaintiff’s share.

Based upon the factors set out above as well as the fact that the [Sibley] agreement raised the issue and clarified responsibility for the Kentucky Estate Tax obligation, and such could easily have been done in the July 2014 agreement, this Court concludes the Plaintiffs took responsibility for the Kentucky Estate Tax not only on their one-third share but on Ms. Amos’ as well, as none was assigned to her. The tax bill is secured by a lien on the real estate, and the only logical conclusion is that Ms. Amos “bought her [peace]” with regard to any further obligation by disclaiming her interest in the real estate and other payments she agreed to make.

Following the denial of their motion to alter, amend or vacate, Appellants appealed to this Court as a matter of right.

In this Court, Appellants argue that the trial court erred in finding that Amos disclaimed her interest in the real property at issue herein. Appellants contend that pursuant to KRS 394.620(1), Amos was required to disclaim her interest in any benefit she received under the John Clubb will “not later than nine (9) months after the death of the decedent” Appellants assert that Amos’s 2014 transfer of the property per the settlement agreement could not have operated as a disclaimer since John Clubb died in 2002. As such, Appellants argue that regardless of whether Amos agreed to transfer her share of the real property to them, the settlement agreement is not a legal basis for her to avoid paying the inheritance taxes. We must disagree.

We are of the opinion that the issue of whether Amos disclaimed the property is nothing more than a red herring. Appellants are correct that under KRS 394.620(1), Amos was required to disclaim her interest no later than April 2003. There is no dispute that she did not do so. Notwithstanding, it is clear that, although the trial court’s order stated that Amos “‘bought her [peace]’ with regard to any further obligation by disclaiming her interest in the real estate . . . ,” the trial court was not referring to the statutory act of disclaiming property. Instead, we

believe that the trial court was merely stating that Amos renounced her right to the property or disowned the property.

Accordingly, the issue necessarily becomes whether Amos's transfer of the property to Appellants relieves her of any obligation to pay the inheritances taxes due on that property. We agree with the trial court that it does.

In Kentucky, an inheritance tax is levied on any transfer of real or personal property by reason of a person's death. KRS 140.010. Thus, the tax extends to property transferred "by will or by the laws regulating intestate succession, or by deed, grant, bargain, sale or gift made in contemplation of death or made or intended to take effect in possession or enjoyment at or after the death of the grantor or donor" *Id.* The inheritance tax, however, is not a tax on property "but one on the privilege or right of succession thereto" *Booth's Ex'r v. Commonwealth*, 130 Ky. 88, 113 S.W. 61, 64 (1908). *See also Martin v. Storrs*, 277 Ky. 199, 126 S.W.2d 445, 447 (1939) ("It is well settled that an inheritance tax is an excise tax upon the privilege of receiving property from a decedent by reason of his death."). Importantly, inheritance tax is "imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer." KRS 140.010.

Appellants cite to *Hale v. Moore*, 289 S.W.3d 567, 581 (Ky. App. 2008), for the proposition that “the share of each legatee which contributes or adds to the amount of the federal estate taxes and state inheritance taxes shall bear its proportionate part of those taxes, unless the will ‘indicates’ a contrary intent.” (quoting *University of Louisville v. Liberty Nat. Bank & Trust Co.*, 499 S.W.2d 288 (Ky. 1973)). Indeed, KRS 140.190(2) provides that “[t]he heir, devisee, or other donee shall be personally liable for the tax on real property, as well as the personal representative or trustee, and if the personal representative or trustee pays the tax he may, unless the tax is made an expense of administration by the will or other instrument, recover the tax from the heir, devisee, or other donee of the real property.” Notwithstanding, Appellants cite to no case law or statutory provision, and we find none, that bars an heir from negotiating or transferring that obligation to a third party.

It is indisputable that Amos’s ownership interest in the property vested on the day her father died in 2002 and did not cease until she transferred the property in 2014. But contrary to Appellants’ belief, Amos was able, and did, by the terms of the settlement agreement to negotiate her release from that obligation. We agree with the trial court that nothing within the settlement agreement indicates that Amos intended to transfer the real property but maintain the obligation to pay the inheritance taxes. As noted by the trial court, Appellants were aware that the

property was encumbered by a tax lien at the time they negotiated the settlement agreement. That Amos agreed to quitclaim her interest in the property indicates her intent to intent to transfer the property “as is.” As such, Appellants’ agreement to pay “any and all transfer fees and any and all other fees whatsoever related to the conveyance” must be interpreted as an obligation to not only record the deed but also to pay the cost to obtain clear title, which necessarily includes clearing the inheritance tax lien filed by the Kentucky Department of Revenue.

The settlement agreement could have easily been drafted to clarify the obligation for the inheritance taxes. Nonetheless, we must conclude that based upon the language contained therein, the trial court properly found that Appellants received not only the property from Amos but also the tax burden associated therewith.

The order of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Key Schoen
Louisville, Kentucky

BRIEF FOR APPELLEE:

Don Williams
Michael F. Tigue
James Theiss
LaGrange, Kentucky