

RENDERED: AUGUST 24, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000738-MR

COMMONWEALTH OF KENTUCKY
EX REL., RANDA PUTNAM

APPELLANT

APPEAL FROM LYON CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 12-CI-00092

JAMES E. POLSTON

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

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

DIXON, JUDGE: The Commonwealth of Kentucky, Ex Rel., Randa Putnam,
appeals from an order of the Lyon Circuit Court ordering the Division of Child

Support to pay \$5,000 to Appellee James E. Polston because the Commonwealth erroneously applied the surety bond posted by Appellee, on behalf of his son, to his son's child support arrearage. For the following reasons, we dismiss this appeal.

Appellee's son, Doug, was arrested on a charge of contempt of court for failure to pay child support. Appellee posted a \$5,000 cash bond, and at the next court date, the parties agreed the bond would be held while Doug made monthly payments toward his arrearage. Following Doug's death in November 2014, the circuit court ordered the cash bond to be applied to his child support arrearage. Appellee subsequently filed a motion to intervene and for return of the bond money. The court granted Appellee's motion and vacated its previous order applying the bond to Doug's child support arrearage. The court ordered the Commonwealth to remit the previously posted \$5,000 cash bond to Appellee. At some point after the order was entered, Appellee died.

In March 2017, Appellee's Estate filed a motion to revive the action and enforce the court's previous order against the Commonwealth. The trial court entered a supplemental order granting judgment in favor of "James E. Polston." The Commonwealth filed a notice of appeal naming "James E. Polston" as the appellee.

"KRS 395.278 and CR 25.01 require that when a litigant dies, any action pending with respect to him must be revived against that decedent's administration and the administrator must be substituted as the real party in interest before the action can proceed." *Snyder v. Snyder*, 769 S.W.2d 70, 72 (Ky. App.

1989). Here, although the Estate moved to revive the action, the court entered judgment solely in the name of the deceased Appellee. We conclude the court's judgment was void because it omitted the real party in interest, the Estate. *Id.* Furthermore, the notice of appeal failed to name an indispensable party, the Estate, as an appellee. CR 73.03(1) states "[t]he notice of appeal shall specify by name all appellants and all appellees[.]" It is well-settled that "[a] notice of appeal, when filed, transfers jurisdiction of the case from the circuit court to the appellate court." *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990). "[F]ailure to name an indispensable party in the notice of appeal is a jurisdictional defect that cannot be remedied." *Browning v. Preece*, 392 S.W.3d 388, 391 (Ky. 2013). We conclude the Commonwealth's failure to name the Estate as a party to this appeal is a fatal defect and requires dismissal.

For the foregoing reasons this appeal is ORDERED dismissed.

ALL CONCUR.

ENTERED: August 24, 2018



JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Lee F. Wilson
Eddyville, Kentucky

BRIEF FOR APPELLEE:

David M. Cross
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