

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000939-MR

JO ANN STONE, INDIVIDUALLY AND JO ANN STONE,
INDIVIDUALLY, AND AS BENEFICIARY OF THE TD
AMERITRADE ACCOUNT #XXX-XXX460

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO M. SCORSONE, JUDGE
ACTION NO. 16-CI-02154

DORIS ALLEN STONE; MICHAEL ALLEN STONE; MARY
ELLEN STONE; CATHERINE A. STONE; TD AMERITRADE,
INC.; TD AMERITRADE SERVICE COMPANY, INC.; AND
VANGUARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: MAZE, NICKELL AND L. THOMPSON JUDGES.

THOMPSON, L., JUDGE: Jo Ann Stone, Individually, and Jo Ann Stone,

Individually, and as Beneficiary of the TD Ameritrade Account #XXX-XXX460,

appeal from an order of the Fayette Circuit Court granting a motion for summary

judgment in favor of the Defendants and Appellees herein Doris Allen Stone, Michael Allen Stone, Mary Ellen Stone, Catherine A. Stone, TD Ameritrade, Inc., TD Ameritrade Service Company, Inc., and Vanguard. The Appellant asserts that the Fayette Circuit Court erred in concluding that two trust accounts must be distributed to the children of decedent Stanley Stone rather than to Appellant, and that this wrongful distribution deprives Appellant of her statutory rights of dower and curtesy pursuant to Kentucky Revised Statute (KRS) 392.020. For the reasons stated below, we find no error and AFFIRM the order on appeal.

The facts are not in controversy. Stanley and Jeanette Stone were married in approximately 1951, and were the biological parents of Appellees Doris, Michael, Mary Ellen and Catherine, hereinafter “the Stone Children”. On March 16, 1994, Stanley executed the Stanley S. Stone and Jeanette R. Stone Family Trust, with the corpus of the Trust allegedly contained in trust accounts at TD Ameritrade (“Stanley S [sic] Stone Family Trust” account) and Vanguard (“Stanley S. Stone Trust” account). The Trust designated the Stone Children as beneficiaries. Jeanette Stone died on June 18, 1995, and her estate passed to Stanley. About one year later, Stanley married Appellant Jo Ann Stone.¹ Stanley and Appellant were married until his death on January 5, 2016.

¹ The notice of appeal and the parties refer to the Appellant as “Jo Ann Stone.” The order on appeal addresses her as “Joann Stone”.

Stanley's Last Will and Testament was probated in Fayette County on January 25, 2016, Case #16-P-00048. The Last Will and Testament at Article III made specific bequests including the directive that the Trust "shall be distributed equally to the children."

On March 16, 2016, counsel for the Stone Children informed Appellant that the Stone Children were entitled to take control of the TD Ameritrade and Vanguard accounts. The following month, Appellant's counsel contacted TD Ameritrade and notified it that the account was subject to the Estate of Stanley Stone and should not be distributed to the Stone Children. TD Ameritrade responded that the account would be resolved subject to the trust documents and were not part of Stanley's Estate. Mary Ellen Stone closed the TD Ameritrade account.

Thereafter, Appellant filed the instant action in Fayette Circuit Court against the Stone Children, TD Ameritrade and Vanguard demanding distribution of the TD Ameritrade and Vanguard accounts to her rather than to the Stone Children. In support of the claim, Appellant asserted that no Trust Agreement has been produced titled the "Stanley S. Stone Family Trust" or otherwise matching the names of the TD Ameritrade and Vanguard trust accounts. As such, she argued that the TD Ameritrade and Vanguard assets should be distributed to the Estate of Stanley Stone rather than the Stone Children. Appellant also raised claims of

breach of contract, unjust enrichment and conversion. The complaint and amended complaint further alleged that Appellant was being defrauded of dower and curtesy rights pursuant to KRS 392.020.

The matter proceeded in Fayette Circuit Court, whereupon the Stone Children tendered a motion for summary judgment on all claims. In support of the motion, they argued that the Trust documents demonstrated that Stanley created the Trust in 1994, that the assets of TD Ameritrade and Vanguard were assets of the Trust, that the Stone Children were beneficiaries of the Trust, and that Appellant tendered no proof to the contrary. TD Ameritrade and Vanguard subsequently joined the motion as to the claims against them.

After considering the motion, the Fayette Circuit Court rendered an Order on May 5, 2017, granting summary judgment as to all parties on all claims. On May 10, 2017, the court rendered “Additional Findings Supporting Order Granting Defendants [sic] Motion for Summary Judgment.” The court found that the evidence supported the conclusion that Stanley created a Trust, that the TD Ameritrade and Vanguard accounts were assets of the Trust, and that the Stone Children were the beneficiaries under the terms of the Trust. It also determined that Appellant could not establish the elements of her claims for conversion and unjust enrichment because she had no legal claim to the Trust assets. For the same

reasons, the court concluded that the claims against TD Ameritrade and Vanguard must be dismissed. This appeal followed.

Appellant now raises three primary arguments in support of her claim that the Fayette Circuit Court committed reversible error in its entry of summary judgment in favor of the Appellees. She argues that 1) the court erred in finding that Appellant's claim for fraud on her dower and curtesy right is expressly authorized by KRS 392.020 and the supportive case law; 2) the court erred in finding that there were no genuine issues of material fact regarding Appellant's claim that the TD Ameritrade and Vanguard accounts should be distributed in accordance with the Trust; and that 3) the court improperly failed to find that Appellant's unjust enrichment claim and conversion claims are valid under Kentucky law. Appellant asserts that the only Trust Agreement that has been produced in this matter is known as the "Stanley S. and Jeannette R. Stone Family Trust," and she acknowledges that pursuant to that Trust, the Stone Children are to receive any and all assets owned by the Trust after the death of Stanley and Jeannette. She notes, however, that the TD Ameritrade Trust account is titled "Stanley S Stone Family Trust," and the Vanguard account is called the "Stanley S. Stone Trust". Further, Appellant states that Stanley amended a trust agreement called the "Stanley S Stone Family (1) Living Trust," and that there are no accounts bearing this name. The focus of her argument is that the Stone Children

have a duty to establish the existence of trust documents matching the exact names of the TD Ameritrade and Vanguard accounts, which they have failed to do. As such, she argues that both accounts are part of the Estate of Stanley S. Stone, that those assets should be distributed pursuant to Stanley's Will, and that the Fayette Circuit Court erred in failing to so rule.

In disposing of these arguments, the Fayette Circuit Court focused its analysis on the central issue of whether the TD Ameritrade and Vanguard accounts constituted the corpus of the Stanley S. and Jeannette R. Stone Family Trust. In answering this question in the affirmative, the court relied on overwhelming evidence in the record going back to 1994 that the Trust assets were held by TD Ameritrade and Vanguard, that the Trust was created during Stanley's first marriage and for the benefit of the Stone Children, that Appellant was aware of the Trust during Stanley's life, and that Appellant produced no evidence of any other Trust. Appellant's argument centers entirely on the slight discrepancy between the name of the Trust and the names of the TD Ameritrade and Vanguard accounts which contained the Trust assets. We find persuasive the Appellees' argument that this fact alone, in light of the overwhelming evidence that this was the only Trust Stanley created, cannot defeat the Appellees' motion for summary judgment. After considering the entirety of the record, the Fayette Circuit Court determined that the TD Ameritrade and Vanguard trust accounts contained the assets of the Trust

Agreement at issue. This conclusion is supported by the record and the law, and we find no error. This conclusion is bolstered by Appellant's acknowledgement that the Trust language distributes the trust assets to the Stone Children.

Having determined that the TD Ameritrade and Vanguard accounts constituted the corpus of the Trust, it follows that Appellant's ancillary arguments must also fail. Appellant asserts that she was fraudulently deprived of her dower and curtesy interests expressly granted by KRS 392.020 and the supportive case law.

KRS 392.020 provides that,

[a]fter the death of the husband or wife intestate, the survivor shall have an estate in fee of one-half (1/2) of the surplus real estate of which the other spouse or anyone for the use of the other spouse, was seized of an estate in fee simple at the time of death, and shall have an estate for his or her life in one-third (1/3) of any real estate of which the other spouse or anyone for the use of the other spouse, was seized of an estate in fee simple during the coverture but not at the time of death, unless the survivor's right to such interest has been barred, forfeited or relinquished. The survivor shall also have an absolute estate in one-half (1/2) of the surplus personalty left by the decedent. Unless the context otherwise requires, any reference in the statutes of this state to "dower" or "curtesy" shall be deemed to refer to the surviving spouse's interest created by this section.

Under KRS 392.020, a husband has no legal right to dispose of more than one-half of his property with intent to defeat a dower claim by his widow, and

therefore a husband cannot be permitted to circumvent the law and intentionally defeat a dower claim by means of a deposit into a joint account with someone other than his wife. *Harris v. Rock*, 799 S.W.2d 10 (Ky. 1990). It is noteworthy that *Harris* and the related case law bar the disposition of property *with the intent to defeat a dower claim by the surviving spouse*. In the matter before us, it is uncontested that Stanley and Jeannette created the Trust during their marriage, which was about one year before Jeannette's death and two years prior to Stanley's remarriage to the Appellant. Thus, it is an impossibility that Stanley created the Trust with the intent to defeat Appellant's future dower claim when he was not then married to Appellant.

Appellant also argues that her claims of unjust enrichment and conversion as against the Stone Children, TD Ameritrade and Vanguard were improperly disposed of via summary judgment. She asserts that the Stone Children fraudulently and maliciously took control of the TD Ameritrade and Vanguard accounts, and that the Fayette Circuit Court erred in failing to so rule. Having determined that these accounts contained assets held by the Trust, however, Appellant's claims on these issues must fail as a matter of law. That is to say, because Appellant had no legal interest in the TD Ameritrade and Vanguard Trust accounts, it necessarily follows that she cannot prove the elements of unjust

enrichment and conversion. *See generally Collins v. Kentucky Lottery Corporation*, 399 S.W.3d 449, 455 (Ky. App. 2012). We find no error.

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rules of Civil Procedure (CR) 56.03. “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Id.* “Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact.” *Id.* Finally, “[t]he standard of review on appeal of a 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.2d 779, 781 (Ky. App. 1996).

When viewing the record in a light most favorable to Appellant and resolving all doubts in her favor, we conclude that the Appellees were entitled to

summary judgment as a matter of law. We discern no error. For the foregoing reasons, we AFFIRM the order of the Fayette Circuit Court granting summary judgment in favor of the Appellees.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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Lexington, Kentucky

BRIEF FOR APPELLEES DORIS
ALLEN STONE, MICHAEL ALLEN
STONE, MARY ELLEN STONE,
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J. Ross Steintorf
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BRIEF FOR APPELLEES TD
AMERITRADE, INC. AND TD
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NO BRIEF FOR VANGUARD