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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000716-MR

MELVIN D. WOOD ESTATE, MARGARET E. WOOD,
ADMINISTRATOR

APPELLANT

v. APPEAL FROM HANCOCK CIRCUIT COURT
HONORABLE TIMOTHY R. COLEMAN, JUDGE
ACTION NO. 16-CI-00022

DONALD E. YOUNG; SANDRA S. YOUNG; AND
M.E. WOOD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, JONES AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Melvin D. Wood Estate, Margaret E. Wood,

Administrator (“Appellant”), appeals from an order of the Hancock Circuit Court

setting the amounts which Appellant and another tax lien holder were entitled to

recover after the judicial sale of a parcel of real property. Appellant argues that the

order was improperly entered by the clerk because it did not contain the judge’s

handwritten or electronic signature. For the reasons stated below, we find no error and AFFIRM the order on appeal.

Facts and Procedural History

On October 25, 2016, the Hancock Circuit Court ordered the judicial sale of a parcel of real property situated in Hancock County, Kentucky. The order reserved for later adjudication the disposition of tax liens and attorney fees. On December 27, 2016, the circuit court confirmed the Master Commissioner's sale of the parcel and ordered the proceeds held for later distribution. Finally, on November 14, 2017,¹ the court entered an order setting forth the amounts Appellant and another party were entitled to recover on their claims. Specifically, the court awarded "MD Wood"² [sic] the sum of \$1,083.56³ on Wood's claim for a tax lien payoff of \$8,149.28.

On January 23, 2018, Appellant's motion to set aside, alter, or amend the order was heard and denied. The following day, the circuit court entered an order of distribution. This appeal followed.⁴

¹ The order was executed on November 13, 2017, and entered by the clerk on November 14, 2017.

² The record does not reveal the date of M.D. Wood's death.

³ The award was based on: 1) a purchase of tax lien in the amount of \$110.85; 2) interest of \$67.71; 3) lien release fee of \$75.00; 4) attorney fee of five billable hours at \$150 each for a total of \$750; and 5) costs of \$80.00.

⁴ Appellant's first appeal was dismissed as untimely. Appellant prosecuted a second appeal after the January 24, 2018 order of distribution was entered. Appellees' motion to dismiss the second appeal was denied by way of order rendered by this court on November 16, 2018.

Arguments and Analysis

Appellant now argues that the November 14, 2017 order was improperly signed and entered, and that the Hancock Circuit Court erred in failing to so rule. Appellant directs our attention to Kentucky Supreme Court Amended Order 2015-02⁵ addressing administrative rules of the Kentucky Court of Justice Electronic Filing Pilot Project in support of its argument that a judge must affix to electronically filed documents either: 1) a handwritten signature pursuant to Kentucky Rules of Civil Procedure (CR) 58, or 2) an electronic signature. The amended order defines “electronic signature” as “the electronic symbol ‘/s/ typed name’ attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.” S.Ct. Amended Order 2015-02 Section 5(11). Appellant asserts that since the November 14, 2017 order contained neither a handwritten nor electronic signature, it was not a proper order under the civil rules and rules of the Kentucky Supreme Court and therefore could not be entered by the clerk. Appellant goes on to argue that the “eFiling” system did not generate a Notice of Electronic Filing nor a hyperlink as so required, did not contain the mandatory language that the order was electronically filed, and that the clerk erroneously marked “ENTERED” on the order. In sum, Appellant argues

⁵ https://kycourts.gov/courts/supreme/Rules_Procedures/201502.pdf

that what purports to be a properly-filed order is in fact not an order at all, and that the Hancock Circuit Court erred in failing to so rule.

Appellees acknowledge that the November 14, 2017 order on appeal was not electronically filed. As there is no controversy on this issue, the sole question for our consideration is whether Judge Coleman's signature, if any, comports with CR 58(1). That rule states,

Before a judgment or order may be entered in a trial court it shall be signed by the judge. The clerk, forthwith upon receipt of the signed judgment or order, shall note it in the civil docket as provided by CR 79.01. The notation shall constitute the entry of the judgment or order, which shall become effective at the time of such notation[.]

CR 58 does not define the word "signed," and until 2013 there was no published Kentucky case law addressing this issue. In that year, a panel of this Court determined that a handwritten signature, faxed from the trial judge to the clerk, was sufficient to allow the clerk to enter the judgment. *See McPherson v. Felker*, 393 S.W.3d 40, 42 (Ky. App. 2013). The Court also noted the common practice in many Kentucky circuit courts of employing a rubber stamp to recreate the judge's signature. The *McPherson* Court found stamped signatures to be sufficient to allow for the clerk's entry of the order, so long as the signature was made by someone acting on the court's authority and the order was otherwise "regular on its face." *Id.* Such signatures, said the Court, are presumed to be valid. *Id.* The Court also noted that stamped and faxed signatures were often necessitated by the

common practice of a judge sitting in more than one county and routinely holding a hearing in one county and entering an order in another. *Id.*

In the matter before us, the November 14, 2017 order concluded with a signature block setting out the printed name “Timothy R Coleman” [sic], with the notation “Digitally signed by Timothy R Coleman” [sic], “38th Judicial Circuit,” Judge Coleman’s email address, and the statement, “[R]eason: I have reviewed this document” along with the date and time. Underneath the signature line are found the notations “**TIMOTHY R. COLEMAN, JUDGE**” and “**HANCOCK CIRCUIT COURT.**” The question for our consideration is whether this language comports with CR 58(1), *McPherson*, and its progeny.

Conclusion

We conclude that the order on appeal was properly signed in compliance with CR 58(1), and that the clerk’s entry of the order was otherwise proper. As the word “signed” is not defined by the civil rule, and in light of *McPherson*, we interpret the signature requirement as general and inclusive rather than limiting and restrictive. The drafters of CR 58(1) could have required a particular type of signature, but they did not. The signature in question effectively represents the name and authority of the signatory, the court from which that authority derives, the reason for the signature, as well as its date and time. Appellant does not challenge the substantive ruling memorialized by the order, nor

assert that the order contains typographical errors or otherwise misrepresents Judge Coleman's ruling. Further, and *arguendo*, even if the signature was not valid, Judge Coleman's subsequent April 24, 2018 final judgment would cure the purported deficiency as it was signed by Judge Coleman's hand.

Having closely reviewed the record and the law, we find no error. For the foregoing reasons, we AFFIRM the judgment of the Hancock Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jack D. Wood
Louisville, Kentucky

BRIEF FOR APPELLEES DONALD
E. YOUNG AND SANDRA S.
YOUNG:

Michael A. Fiorella
Owensboro, Kentucky

NO BRIEF FOR APPELLEE M.E.
WOOD