

RENDERED: AUGUST 9, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001129-MR

JUANITA EPPERSON JENKINS

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE JEREMY MATTOX, JUDGE
ACTION NO. 18-CI-00345

HON. VANESSA DICKSON

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * **

BEFORE: COMBS, GOODWINE, AND TAYLOR, JUDGES.

GOODWINE, JUDGE: Juanita Epperson Jenkins (“Jenkins”) appeals from an order of the Scott Circuit Court denying her petition for writ of prohibition against Judge Vanessa Dickson. Jenkins failed to name the co-executrices of the decedent’s estate as the real parties in interest in the circuit court action and in the notice of appeal herein. This procedural flaw is fatal to Jenkins’ appeal.

CR¹ 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).

CR 19.01(a) specifies that a person is an indispensable party if “in his absence complete relief cannot be accorded among those already parties.” An original action in circuit court seeking a writ of prohibition ordering a district judge to grant or deny interlocutory relief in a pending action is different than other proceedings. The district judge is a party in name only. She has no interest in the outcome of the litigation and no connection to it other than an obligation to abide by the circuit court’s decision. The district judge is a nominal party. *Sweasy v. King’s Daughters Memorial Hosp.*, 771 S.W.2d 812 (Ky. 1989).

[I]n 1985, we amended the Civil Rules, CR 76.36(2) and (8), to provide that the “real party in interest” as well as the “party [judge] against whom relief is sought” can “file a response” to a petition seeking prohibition or mandamus against a trial judge. We define “real party in interest” in this Rule as “any party in the circuit court action from which the original action arises who may be adversely affected by the relief sought pursuant to this Rule.” The real party in interest in the trial court is the person who will be adversely affected if the Petition is

¹ Kentucky Rules of Civil Procedure.

granted; he may respond and defend even though the trial judge does not. *It is this party and not the trial judge who has an interest in perfecting the appeal when the writ of prohibition or mandamus is granted.*

Id. at 817 (emphasis added).

The underlying action in district court is a probate matter. Mary Zelphia Epperson (“Epperson”) died testate. Her last will and testament named co-executrices and required them to sell real property located at 538 Walnut Street in Georgetown, Kentucky, which is where Jenkins resided with Epperson prior to her death.

A hearing was held in district court to probate Epperson’s will and to appoint the co-executrices. Jenkins did not attend the hearing and did not contest the will nor the appointment of the co-executrices. They sent letters to Jenkins to vacate so they could prepare the property for sale. Jenkins did not vacate nor respond to the letters.

The co-executrices filed a motion for an order requiring Jenkins to vacate. Jenkins received the motion and notice of the hearing by mail. No summons was served. She did not attend the hearing and Judge Dickson granted the motion, noting on the docket sheet “unopposed.” R. at 7. The order was entered on June 25, 2018, requiring Jenkins to “vacate the property on or before 5:00 p.m. on June 25, 2018.” R. at 8.

Rather than vacate, Jenkins filed a writ of prohibition in Scott Circuit Court, naming only Judge Dickson as the respondent. The Scott Circuit Court denied the writ on the merits without addressing the procedural flaw of failing to name the co-executrices as indispensable parties. Had the writ been granted, they would have had an interest in perfecting an appeal.

Naming either the Estate of Mary Zelphia Epperson or the co-executrices in the notice of appeal would have been sufficient to confer appellate jurisdiction over the co-executrices, provide fair notice of the appeal, and to identify the proper party to the appeal. *Flick v. Estate of Wittich*, 396 S.W.3d 816 (Ky. 2013). Jenkins did not name either the estate or the co-executrices, which were necessary and indispensable parties to the appeal, and failure to name them in the notice of appeal requires dismissal of the appeal. CR 19.02; *Browning*, 392 S.W.3d at 392.

For the foregoing reasons, the Court ORDERS that this appeal be DISMISSED.

ALL CONCUR.

ENTERED: August 9, 2019

/s/ Pamela R. Goodwine
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Terry M. Cannon
Covington, Kentucky

BRIEF FOR APPELLEE:

No brief filed.