

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2020-CA-0404-MR

ABBIE CHRISTINE BLEVINS; AND  
ABBIE CHRISTINE BLEVINS, AS  
SUCCESSOR TRUSTEE OF THE PHILLIP  
BLEVINS REVOCABLE LIVING TRUST

APPELLANTS

v. APPEAL FROM WAYNE CIRCUIT COURT  
HONORABLE VERNON MINIARD, JR., JUDGE  
ACTION NO. 19-CI-00114

ESTATE OF PHILLIP DAVID BLEVINS;  
MICHAEL BLEVINS AND PATSY BLEVINS,  
HIS WIFE; STEVEN BLEVINS AND DONNA  
BLEVINS, HIS WIFE; AND YASSMIN  
BLEVINS KING AND CODY KING,  
HER HUSBAND

APPELLEES

OPINION  
REVERSING AND REMANDING

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BEFORE: GOODWINE, TAYLOR, AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Abbie Christine Blevins in her individual and successor trustee capacities (Christine) appeals an order of the Wayne Circuit Court dismissing an action she asserted against the Estate of Phillip David Blevins (the Estate); Michael Blevins and Patsy Blevins, his wife (collectively Michael); Steven Blevins and Donna Blevins, his wife (collectively Steven); and Yassmin Blevins King and Cody King, her husband (collectively Yassmin), to ascertain the ownership of, and cancel deeds relating to, various properties alleged to have been wrongfully conveyed by a revocable trust. As set forth below, we reverse and remand.

The circuit court dismissed Christine's actions pursuant to Kentucky Rules of Civil Procedure (CR) 12.02(f). For purposes of a CR 12.02(f) motion, this Court, like the circuit court, must accept as true the plaintiff's factual allegations and draw all reasonable inferences in the plaintiff's favor. *Pike v. George*, 434 S.W.2d 626, 627 (Ky. 1968). With that in mind, we summarize Christine's relevant allegations in her complaint.

Christine states on August 4, 1997, she and her husband Phillip Blevins placed their marital real property in two revocable trusts, the Phillip Blevins Revocable Living Trust (PBRLT) and the Christine Blevins Revocable Living Trust (CBRLT). Marital real property was placed in each trust. Phillip and Christine were the trustees for their respective trusts, and the successor trustees for

each other's trusts. According to Christine, as settlors of each trust, they both had to sign off on the transfer or sale of properties within each trust, and when they conveyed properties from each of their trusts, both of them signed off on the conveyance.

Christine states that she and Phillip were divorced in the Wayne Circuit, Family Court Division, Kentucky, Civil Action Number 17-CI-00107, through the entry of a bifurcated decree entered February 27, 2018. Phillip subsequently died in February 2019, and the division of marital assets and debts remained pending in that action and a motion to revive the pending issues in the name of the Estate was also pending. Christine explained that the Estate is being probated in the Wayne District Court, Case No. 19-P-00028, and held all assets and debts related to Phillip David Blevins, with Steven and Michael named the Co-Executors of the Estate.

Christine alleged in her individual capacity, and her capacity as successor trustee of the PBRLT, that real property held by the PBRLT was wrongfully transferred when it came to three properties with an estimated value of \$670,395.00 as described in Paragraph 13 of her complaint:

g. Deed Book 260, Page 498, from The Phillip Blevins Revocable Trust and all Amendments thereto acting by

and through its Trustee Phillip Blevins, to Yassmin Blevins [King<sup>1</sup>], dated October 26, 2016.

h. Deed Book 371, Page 697, from The Phillip Blevins Revocable Trust and all Amendments thereto acting by and through its Trustee Phillip Blevins to Steven Blevins and Donna Blevins, dated November 18, 2016;

i. Deed Book 371, Page 36, from The Phillip Blevins Revocable Living Trust and all Amendments thereto acting by and through its Trustee, Phillip Blevins to Michael Blevins and his wife Patsy Blevins, dated March 29, 2017.

Christine alleged that Phillip unilaterally transferred these properties without Christine agreeing to and signing off on the transfers “through the sole action and signature of Phillip Blevins acting as Trustee of the PBRLT.” Christine explained that the transfers occurred when Phillip and she were separated and alleged that “[t]he apparent intent of Phillip Blevins in entering into the deed transfers to Yassmin Blevins, Steven Blevins, Donna Blevins, Michael Blevins and Patsy Blevins was to attempt to remove the ownership interests of these properties from Abbie Christine Blevins.”

Christine argued that because the trusts were revocable, property contained in the trusts and placed in them by Phillip and Christine as settlors was still marital in nature requiring equitable distribution, rather than a gift divesting

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<sup>1</sup> As the caption indicates, Yassmin subsequently married Cody King. Cody was apparently named a party in this proceeding due to any dower interest he might assert.

Phillip and Christine of ownership of the properties. She sought a ruling that these properties “were improperly and illegally transferred by Phillip Blevins without the consent, agreement or signature of Abbie Christine Blevins and such transfers are null and void.”

Without filing an answer, the appellees moved to dismiss Christine’s complaint pursuant to CR 12.02, arguing Christine – either in her individual capacity or as the successor trustee of the PBRLT – had failed to assert any claim warranting relief against them. In support, the appellees offered four legal theories. The first and second of their theories (*i.e.*, what the appellees contended was the circuit court’s lack of subject matter jurisdiction to consider Christine’s claims, and Christine’s lack of standing to assert them) were based upon the same premise: In the appellees’ view, Christine was attempting in her suit before the circuit court to circumvent the authority of the Wayne Family Court to resolve the allocation and distribution of marital property in her divorce proceedings in 17-CI-00107. Regarding their third theory, *res judicata*, they argued the family court had already effectively resolved Christine’s claims set forth in her complaint by refusing to allow her to join Yassmin, Steven, and Michael as parties in that separate proceeding. As to their fourth theory, they noted Christine was challenging whether her individual ownership interest in the properties had been effectively conveyed to the PBRLT; they argued Kentucky Revised Statutes (KRS)

413.010, the fifteen-year statute of limitations concerning actions to recover real estate, barred Christine's claims.

Responding, Christine noted the circuit court was vested with subject matter jurisdiction over trust matters and argued – as she continues to argue on appeal – that “the purpose of this action is in accord with the Trial Court’s authority to resolve any matter involving the [PBRLT’s] administration, including a request for instructions, an action to declare rights, and an action to settle the trustee’s accounts.” She also argued *res judicata* had no application under the circumstances, and, that KRS 413.010 did not apply. Upon consideration, the circuit court granted the appellees’ motion on the first, second, and fourth bases asserted in their motion. This appeal followed, and the parties now reiterate their arguments set forth above.

We review dismissals under CR 12.02(f) *de novo*. *Morgan & Pottinger, Attorneys, P.S.C. v. Botts*, 348 S.W.3d 599, 601 (Ky. 2011), *overruled on other grounds by Maggard v. Kinney*, 576 S.W.3d 559 (Ky. 2019). CR 12.02(f) is designed to test the sufficiency of a complaint. *Pike*, 434 S.W.2d at 627. It is proper to grant a CR 12.02(f) dismissal motion if:

it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim . . . . [T]he question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

*James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky.App. 2002) (internal quotation marks and citation omitted).

We begin our analysis with a guiding rule: “An affirmative defense to a claim may be taken advantage of by a motion to dismiss if . . . the defense is shown on the face of the complaint.” *Carr v. Texas Eastern Transmission Corp.*, 344 S.W.2d 619, 621 (Ky. 1961) (citation omitted). Keeping that in mind, we disagree with the circuit court’s determination that KRS 413.010, the fifteen-year statute of limitations concerning actions to recover real estate, was a viable basis for dismissing this matter.

To the extent that Christine was challenging the conveyance of marital properties to the PBRLT, nothing on the face of Christine’s complaint indicates when – if at all – the properties at issue in this matter were effectively conveyed to the PBRLT. Accordingly, it is impossible to ascertain whether the fifteen-year period set forth in that statute ran on that first transfer. In its order of dismissal, the circuit court held that “Abbie Christine Blevins, on August 8, 1997 executed a deed conveying her interest in and to certain tracts of real estate into The Phillip Blevins Revocable Living Trust as recorded in Deed Book 258 at Page 588 in the Wayne County Clerk’s Office. The Plaintiffs for a period exceeding fifteen years never challenged this conveyance, thus are now barred and estopped from pursuing their claims.”

Apparently, the circuit court assumed that properties initially conveyed to the PBRLT in 1997 were the source of the properties allegedly conveyed to Yassmin, Steven, and Michael in 2016 and 2017. However, no deeds relating to any of these conveyances were presented below and there is nothing in evidence to show when these properties were conveyed to the PBRLT.<sup>2</sup>

Additionally, and more importantly, Christine argued that she was not challenging the conveyance of the properties to the PBRLT, but the conveyance of the properties to the third parties in 2016 and 2017, in both her capacity as the successor trustee to the PBRLT and in her individual capacity. She argues that she had to sign off on these transfers as a settlor because she still had an interest in these properties.

The appellees dispute that Christine had any ongoing interest in the properties conveyed to the PBRLT. They argue that Christine and Phillip could freely convey the properties in their respective trusts to third parties without the other's consent. They also argue that when Phillip signed off on the first conveyance property in the CBRLT as a settlor/trustee, this was unnecessary.

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<sup>2</sup> The appellees have attached to their appellate brief a deed purporting to connect the properties conveyed to the PBRLT in 1997 to the properties conveyed to Yassmin, Steven, and Michael. Christine has objected to the use of exhibits that are not of record. We cannot consider evidence that was not available to the circuit court.

As the circuit court never made any ruling regarding whether – and the extent to which – Christine contributed the properties at issue to the PBRLT, or how the properties within PBRLT could properly be conveyed, it is unclear whether she could challenge these transfers out of the PBRLT. The conveyances to Yassmin, Steven, and Michael from the PBRLT were within the statute of limitations. Therefore, the circuit court erred by dismissing based on the statute of limitations without resolving what rights were possessed by Christine to the properties in the PBRLT or whether Christine was a necessary signatory to a conveyance from PBRLT.

The appellees also contend *res judicata* (i.e., their third argument set forth above) was a viable reason to dismiss Christine’s suit. We disagree. *Res judicata* requires, among other things, a final judgment rendered upon the merits. *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 464 (Ky. 1998). Here, the face of Christine’s complaint reflected that the dissolution proceedings relative to property division in 17-CR-00107 remained ongoing when the circuit court entered its order of dismissal in this matter. Moreover, nothing of record – much less the face of Christine’s complaint – indicates the family court made any declaration regarding the properties at issue in this matter in that separate proceeding. Indeed, if the family court declined to add the appellees as parties in that separate matter, it may be fairly inferred that the family court relinquished

jurisdiction to decide the issues Christine wished to resolve before the circuit court in this matter.

Lastly, the circuit court based its judgment on what it perceived to be Christine’s lack of standing with respect to the claims asserted in her complaint, and its lack of subject matter jurisdiction to resolve them. In support, it relied upon KRS 23A.100, which provides that family courts are the “primary forum” for cases involving the “dissolution of marriage” and “[e]quitable distribution of property in dissolution cases[.]” As noted, the circuit court reasoned Christine was asserting ownership of the properties based upon her purported marital interest, and was therefore attempting to circumvent the authority of the Wayne Family Court to resolve the allocation and distribution of marital property in her divorce proceedings in 17-CI-00107. Again, we disagree.

To be sure, resolving whether there had been an inappropriate conveyance of properties designated as marital assets of the marital estate would fall within the ambit of the family court’s jurisdiction.<sup>3</sup> However, the family

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<sup>3</sup> See KRS 23A.100(1)(e); KRS 403.190(2)(d); *Uninsured Employers’ Fund v. Bradley*, 244 S.W.3d 741 (Ky.App. 2007) (discussing the authority of family courts to resolve declaratory actions); see also *Ensor v. Ensor*, 431 S.W.3d 462, 469 (Ky.App. 2013) (discussing the family court’s authority to determine, for purposes of dividing assets in a dissolution action, whether a particular asset is or properly should be considered part of the marital estate, as opposed to the independently owned property of a trust); *Gripshover v. Gripshover*, 246 S.W.3d 460, 466 (Ky. 2008) (explaining fraudulent transfers of marital property to third parties in anticipation of divorce proceedings may be considered by the family court); see also *Harley v. Harley*, 255 Ky. 370, 74 S.W.2d 195 (1934) (as part of a divorce action, cancelling a deed from the husband to a son involving a conveyance used as a device to defraud wife from her marital share of property

court's function as the "primary forum" for this type of dispute has no bearing upon the Wayne Circuit Court's subject matter jurisdiction to similarly resolve it. "While the family court was vested with jurisdiction over domestic issues by Ky. Const., § 112(6) and KRS 23A.100, we do not believe that such jurisdiction was intended to be exclusive."<sup>4</sup> *Pursley v. Pursley*, 242 S.W.3d 346, 347 (Ky.App. 2007). Specifically,

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(cited with approval in *Gripshover*, 246 S.W.3d at 466)); *May v. May*, 33 Ky. L. Rptr. 193, 109 S.W. 352 (1908) (as part of a divorce action, cancelling a fraudulent conveyance of marital property to husband's brother (cited with approval in *Gripshover*, 246 S.W.3d at 466)). *See also* KRS 403.150(6) (emphasis added) (providing discretionary authority for joinder in dissolution actions: "[t]he court *may* join additional parties proper for the exercise of its authority to implement this chapter."); *Medical Vision Group, P.S.C. v. Philpot*, 261 S.W.3d 485, 491-92 (Ky. 2008) (affirming that the family court acted properly in joining corporations in a dissolution action pursuant to KRS 403.150(6) because the husband refused to follow court orders and the corporations were solely owned by the spouses, making joinder appropriate to allow enforcement of the provisions of the divorce decree).

<sup>4</sup> In *Wallace v. Wallace*, 224 S.W.3d 587, 591 (Ky.App. 2007) (emphasis added), a panel of this Court stated: "In those circuits where the Supreme Court has designated a family court division, matters set forth in KRS 23A.100, including child custody and visitation, are now *exclusively vested* in the family court." This "exclusively vested" language was a prominent basis of the appellees' motion to dismiss and the circuit court's order granting the appellees' motion. As indicated, one of the "matters set forth in KRS 23A.100" (at subsection (e)) is "[e]quitable distribution of property in dissolution cases." As their reasoning went, the circuit court lacked authority to resolve Christine's action because (1) determining whether something is "marital property" – the basis of Christine's asserted ownership interest – is part of an equitable distribution proceeding; and (2) according to *Wallace*, that matter is "exclusively vested in the family court." *Wallace*, 224 S.W.3d at 591.

But there are two problems with that reasoning. First, KRS 23A.100 does not, contrary to *Wallace*, state that the matters it sets forth are "exclusively vested in the family court." Second, while this expansive statement has not been incorporated in any subsequently published case, *Pursley* – rendered a few months after *Wallace* – held to the contrary as set forth above. Thus, to the extent that the "exclusively vested" language of *Wallace* could be considered anything more than *dicta*, it has been overruled *sub silentio*. "This jurisdiction has not favored the overruling of precedent by implication. In some instances, however, it becomes necessary

KRS 23A.100 specially provides that the “family court division of Circuit Court shall retain jurisdiction in the following cases. . . .” This language signals an extension of the circuit court’s jurisdiction to the family court division rather than a restriction thereof. We are buttressed in our interpretation by the fact that the General Assembly did not employ the term “exclusive jurisdiction” as to the grant of jurisdiction to the family court division in KRS 23A.100. Additionally, use of the term “primary forum” in KRS 23A.100 further indicates that the General Assembly did not intend for the statute to effect a jurisdictional limitation, but rather to emphasize the purposes underlying the creation of family courts as set out in KRS 23A.110.

*Id.* at 347 n.4.

The Wayne Family Court is a division of Wayne Circuit Court, which, as Christine correctly argues on appeal, likewise has jurisdiction to resolve the essential issues raised in her complaint. Trustees, such as herself, have standing to initiate actions regarding the trusts they administer – including, as here, actions to ascertain the requirements for and limitations applicable to conveying trust property. Individuals asserting an interest in property have standing to ask for a declaration of rights regarding that property. The Wayne Circuit Court, as a court of general jurisdiction, is authorized to resolve trust disputes and actions to declare rights. *See* KRS 386B.2-030; KRS 418.040. Absent a clear indication that the family court is endeavoring to resolve the *same* issues raised in Christine’s suit –

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and in that event the later decision and more recent precedent following it will prevail.” *Cary v. Pulaski County Fiscal Court*, 420 S.W.3d 500, 514 n.14 (Ky.App. 2013) (citation omitted).

which appears unlikely, considering that Yassmin, Steven, and Michael admit they are not parties in that separate proceeding<sup>5</sup> – Christine cannot be denied a forum in circuit court. In short, there are no issues of standing or subject matter jurisdiction preventing the circuit court from resolving Christine’s suit.

In conclusion, the Wayne Circuit Court’s bases for dismissing Christine’s suit were improper. Accordingly, we reverse and remand for further proceedings not inconsistent with this Opinion. As to the conduct of those proceedings, they should not be inconsistent with this Opinion; and more importantly, they should not conflict with the ongoing dissolution proceedings in family court. We encourage the judges from both courts to communicate with each other to allow the orderly disposition of all of the issues raised.

ALL CONCUR.

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<sup>5</sup> Any suit to determine in a binding manner whether certain property is either marital property or the property of third parties would necessarily require joinder of the third parties. *See Gripshover*, 246 S.W.3d at 466 (explaining, in the context of the property division phase of a marital dissolution action, “[w]e note that Darlene did not join in her action the Gripshover Family Limited Partnership # 1, the other partners in the partnership, the trustee of the George Gripshover Family Trust, or the beneficiaries of the trust, all of whom would be necessary parties to an action seeking to avoid either the partnership or the trust.”); *Ensor*, 431 S.W.3d at 468 (noting “Debbie failed to join the GRAT, its trustees, beneficiaries or contingent beneficiaries in this action, all of whom would clearly be necessary parties to any action seeking to avoid the trust.”))

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