

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001144-MR

MARY POWELL

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NO. 14-CI-00018

JANE TAYLOR; CRAIG POWELL;
AND FORD EDWARD POWELL

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, J. LAMBERT AND STUMBO, JUDGES.

STUMBO, JUDGE: Mary Powell appeals from an Order Approving Final Settlement rendered by the Madison Circuit Court in an action seeking the settlement and distribution of an estate. She argues that the circuit court lacked jurisdiction to adjudicate the issues raised in the Complaint and improperly

approved a proposed final accounting of the estate. For the reasons stated below, we find no error and AFFIRM the Order on appeal.

The facts are not at issue. Ford T. Powell died testate on February 27, 2007, and his Last Will and Testament was probated by the Madison District Probate Court on April 18, 2007. Mr. Powell's daughter, and Appellant herein, Mary Powell, was appointed Executrix of the estate.

Sometime thereafter, and in proceedings not contained in the record before us, Mary was removed as Executrix due to misappropriation of estate funds. She was also charged with violation of Kentucky Revised Statute (KRS) 517.110 (Misapplication of Entrusted Property) to which she acknowledges having entered a guilty plea. Mary's sister, and Appellee herein, Jane Taylor, was appointed as Administratrix.

On January 13, 2014, Jane along with her brothers and heirs Ford Edward Powell and Craig L. Powell, filed the instant action against Mary in Madison Circuit Court. The Complaint sought "a correct and lawful settlement and distribution of the assets of the Ford T. Powell Estate" and an Order directing Mary to vacate a house contained in the estate so that it might be sold. Mary answered and counterclaimed, asserting that the Complaint was barred by the doctrines of laches, payment, *res judicata*, and waiver. She sought a dismissal of the Complaint, as well as a Judgment reimbursing her for personal expenditures made on behalf of the estate.

The matter proceeded in Madison Circuit Court, whereupon the Plaintiffs/Appellees successfully moved for an Order directing Mary to vacate the premises. Mary's motion to remove Jane as Administratrix was denied.

A hearing was conducted on April 30, 2014, where Jane testified that she had difficulty managing the estate because Mary kept changing the forwarding address of estate documents from Jane's address to her own. Mary testified that she spent her own funds on behalf of the estate, for which she was entitled compensation. Mary further disputed that she had improperly taken money from the estate, despite having pleaded guilty to misappropriation of estate funds. Thereafter, the court ordered Mary to stop interfering with mail being sent to the estate and denied Mary's Motion to remove Jane as Administratrix.

After additional proceedings, Jane filed a motion on July 13, 2015, seeking approval of the sale of the home, and Mary filed another motion to remove Jane as Administratrix. Mary's motion was denied and the matter was continued for several months.

In May of 2016, Jane filed a Proposed Final Accounting and Settlement, which was noticed for a final hearing on June 23, 2016. The hearing was conducted at the scheduled time, resulting in an Order Approving Final Settlement which forms the basis of this appeal. The Order noted that Jane and her counsel were present at the hearing, but neither Mary nor the other siblings were present despite notice. As there were no parties present to object to the final

accounting and settlement, the court approved it and discharged Jane as Administratrix. This appeal followed.

Mary, through counsel, now argues that “the issue is whether the filing of a complaint . . . creates a power in the circuit court to take over the probate case and . . . approve a proposed final accounting and close the probate case.” Mary thus 1) challenges the circuit court’s exercise of jurisdiction arising from a probate proceeding in Madison District Court, and 2) argues that the court’s approval of the proposed final accounting in lieu of a full-blown adversarial proceeding was improper.

On the question of jurisdiction, KRS 395.510 permits a claimant to bring an action in circuit court for the settlement of an estate. “A representative, legatee, distributee or creditor of a deceased person may bring an action in circuit court for the settlement of his estate provided that no such suit shall be brought by any of the parties named except the personal representative until the expiration of six months after the qualification of such representative.” KRS 395.510. The circuit court’s jurisdiction on this matter allows it to resolve settlement and distribution claims. “[I]f it appears that there is a genuine issue as to what constitutes a correct and lawful settlement of the estate, or a correct and lawful distribution of the assets, such issues may be adjudicated by the court[.]” KRS 395.515.

In the matter before us, the Plaintiffs/Appellees’ Complaint sought an adjudication of “a correct and lawful settlement and distribution of the assets of the

Ford T. Powell Estate, specifically crediting to the Defendant's share the amount of funds which she has misappropriated and borrowed from the Estate." This action falls squarely within the bounds of KRS 395.510 and KRS 395.515.

Accordingly, we conclude that the Madison Circuit Court properly exercised jurisdiction over the claim.

Mary goes on to argue that the court's approval of the proposed final accounting in lieu of a full-blown adversarial proceeding was improper. She maintains that because no trial was conducted and no motion made for a determination that she misappropriated funds, distributing the estate and closing the case were improper.

KRS 395.515 provides that settlement and distribution issues "may be adjudicated by the court[.]" The form and substance of that adjudication is not addressed by KRS Chapter 395. In the instant case, the final hearing was first scheduled on June 9, 2016, and then re-noticed for June 23, 2016. Mary, Craig and Edward received proper notice and failed to appear. In its discretion, and without any countervailing proof from Mary, the circuit court accepted the proposed final settlement. This determination was based on the record, including the testimony at prior hearings, the final accounting and Mary's stipulation that she had pleaded guilty to misappropriating estate funds. The final settlement included deductions from each beneficiary for loans previously made by the estate, with each beneficiary's share reduced in equal proportion for fees. We have no basis for concluding that the circuit court's Order Approving Final Settlement was

erroneous or otherwise ran afoul of KRS Chapter 395. The court properly exercised jurisdiction over the action pursuant to KRS 395.510, and the Order on appeal is in conformity with the statutory scheme and is otherwise supported by the record. We find no error.

For the foregoing reasons, we AFFIRM the Order Approving Final Settlement of the Madison Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul Croushore
Cincinnati, Ohio

BRIEF FOR APPELLEE JANE
TAYLOR:

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