RENDERED: May 1, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-000833-MR

ELMO NEWTON, Executor of the Estate of HAROLD R. TURPIN; CHARLOTTE ANN RIGGINS; JEWELL NEWTON; ANTHONY NEWTON; DAVID NEWTON; REBECCA SHEEKS; and TERESA NEWTON — APPELLANTS

v.

APPEAL FROM MADISON CIRCUIT COURT
HONORABLE WILLIAM T. JENNINGS, JUDGE
ACTION NO. 94-CI-000672

SHIRLEY TURPIN; and BILLY RAY TURPIN — APPELLEES

OPINION
REVERSING and REMANDING

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BEFORE: DYCHE, EMBERTON and GUIDUGLI, Judges.

EMBERTON, JUDGE. This case involves the interpretation of the Last Will and Testament of Harold Turpin. The trial court granted summary judgment holding that Item VII of the will is a residuary clause and that ademption by satisfaction does not apply to general bequests.

Harold Turpin died on November 6, 1993, and the appellant, Elmo Newton, was appointed executor of Harold's estate. The will provided for numerous monetary bequests including $20,000 to the appellee, Shirley Turpin, and $10,000 to Shirley Turpin in trust for Billy Ray Turpin. Additionally, Item VII of the will provides:

> I give, devise and bequeath to Charlotte Ann Riggins, absolutely and in fee simple, my house, furniture, insurance and all the rest, residue and remainder of my property real or personal, and of every kind and description that remains after payment of the above debts, expenses and bequests.

A dispute arose when Elmo Newton refused to pay the bequests to Shirley and Billy Ray. The district court held that the bequests to appellees were general bequests, and therefore, $30,000 received by Shirley from Harold prior to his death was not an ademption by satisfaction. It further held that the bequests to Shirley and to Billy Ray were to be paid from the residuary of the estate and that Item VII of the will containing the bequest to Charlotte was a residuary clause. The circuit court affirmed and this appeal followed. We reverse and remand with instructions.

Approximately four months prior to his death, Harold cashed a certificate of deposit held jointly in the names of Harold R. Turpin and Charlotte Riggins. Elmo Newton then purchased a new certificate of deposit in the sum of $30,000 in the joint names of Harold R. Turpin and Shirley Turpin. The

appellees deny having received any money from Harold prior to his death.

The $20,000 bequest to Shirley and the $10,000 bequest in trust to Billy Ray are general bequests. A bequest of money is specific if a fund or source is designated as the exclusive property from which the bequest is to be paid. A demonstrative bequest is one which designates a primary fund or source but it is not the exclusive source for satisfaction of the bequest. Norton-Children's Hospital v. First Kentucky Trust Co., Ky. App., 557 S.W.2d 895 (1977). A general bequest makes no designation of any fund or source and may be satisfied from the general assets of the estate. Howe v. Howe's Ex'x, 287 Ky. 756, 155 S.W.2d 196 (1941). There being no identified source or fund from which the bequests are to be satisfied, the sums bequeathed to Shirley and to Billy Ray are clearly general bequests.

The trial court held that ademption by satisfaction does not apply to general bequests, and therefore, negated appellants' argument that the alleged inter vivos transfer of $30,000 by Harold to Shirley satisfied the bequests. KRS 394.360, the non-ademption statute, provides that if the property to be bequeathed is converted into money or property an ademption does not occur unless the testator so intended. By definition, an ademption does not occur if the bequest is a general one because it is payable from any of the general assets of the estate; we agree that KRS 394.370, therefore, applies only to

specific bequests. Pridemore's Executor v. Bailey, Ky., 300 S.W.2d 559 (1957).

The statute applicable to the present case is KRS 394.370, which provides that:

> A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person contained in a previous will, if it would be so deemed in case the devisee or legatee were the child of the testator; and whether he is a child or not, it shall be so deemed in all cases in which it appears from parol or other evidence to have been so intended. (Emphasis ours).

The purpose of the statute is to prevent a legatee from receiving double the amount the testator intended by taking under the will after having received an inter vivos payment from the testator. Louisville Trust Co. v. Southern Baptist Theological Seminary, 148 Ky. 711, 147 S.W. 431 (1912).

Although a general bequest, by technical definition, can never be adeemed by the testator's disposal of specific property prior to his death, if the testator intended to satisfy a general bequest by the advancement of money or other property inter vivos, the amounts paid or transferred are deducted from that bequeathed by the will to the recipient.

It was error for the trial court to hold as a matter of law that there could be no satisfaction of a general bequest. If Shirley received $30,000 from Harold, there is an issue of fact created as to whether Harold intended that payment to be in satisfaction of the bequests in the will. We find that summary

judgment was inappropriate. Steelvest, Inc. v. Scansteel Service Center, Ky. 807 S.W.2d 476 (1991).

Finally, we find it was error for the trial court to construe the entirety of Item VII of the will as a residuary clause. Under such construction, Charlotte is only a residuary legatee and is not entitled to receive the house, furniture, or insurance until all the debts and preceding legatees under the will have been paid. Howe, supra, at 764. Although, as noted by the trial court, the specific bequest could have been accomplished in a separate sentence from the residuary clause, it was not required to be done. It is evident to us, from looking at the four corners of the will, that Harold intended to make a specific bequest of the house, furniture, and insurance to Charlotte and a residuary bequest to the same legatee. Clarke v. Kirk, Ky., 795 S.W.2d 936 (1990).

This case is reversed and remanded for a determination as to whether Harold intended to satisfy the bequest to Shirley under the will by the transfer of money to him during his lifetime. If so, he cannot take that portion pursuant to the will. The bequest of the house, furniture, and insurance is a specific bequest to Charlotte and shall not be used to satisfy the bequests to the general legatees.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR APPELLANTS:

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