

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000414-MR

JERRY DEAN CHARLES

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 01-CI-00064

THOMAS WAYNE CHARLES  
AND ROBERT CHARLES

APPELLEES

OPINION  
AFFIRMING

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BEFORE: HUDDLESTON, PAISLEY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Jerry Dean Charles appeals from the judgment of the Pike Circuit Court, which held that two conveyances from his father, Dave Charles, were void as the product of mistake.

Jerry argues on appeal that an out-of-court statement made by Dave prior to his death should not have been admitted into evidence under the adoptive admissions exception to the hearsay rule.<sup>1</sup> We disagree and affirm the judgment of the trial court.

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<sup>1</sup> Kentucky Rules of Evidence (KRE) 801A(b)(2).

Jerry filed this action against his brothers, Thomas Wayne Charles and Robert Charles, to eject them from two tracts of land in Pike County, Kentucky, formerly owned by their father, Dave. Jerry had obtained deeds to both properties from his mother and father prior to their deaths in 2000. The deeds were signed in the presence of a notary public, Pamela Sue Comer, who is also Jerry's employee. Comer testified that both Dave and Margaret Charles were alert and appeared to understand what they were signing. Margaret Charles' treating physician also testified that she had no sign of dementia and was mentally "very sharp". However, the evidence also showed that Jerry was abusive to his mother, and that Dave had only a third-grade education.

Prior to his death, Thomas and Robert confronted Dave about the deeds, in the presence of Jerry. When asked whether the deeds represented his intent regarding the distribution of the three properties, Dave replied that it was not, that he intended for Thomas to have "the home place", for Jerry to have the property "from the pump house back", and for Robert to have the property on Grassy Creek. Dave also wanted to see a lawyer the next day about the deeds. Jerry was present during the conversation, and said nothing in response to his father's statement that the deeds did not represent what he intended.

At trial, the above statement was admitted into evidence under KRE 801A(b)(2) as an adoptive admission by Jerry, who was present when the statement was made and did not deny its truth. Based on the evidence before it, the jury found that the two deeds from Dave and Margaret Charles to Jerry were void. This appeal followed.

Jerry argues on appeal that mere silence is not enough to constitute an adoptive admission, citing Perdue v. Commonwealth, Ky., 916 S.W.2d 148 (1995). However, that case provides little guidance, as it merely states that "mere presence when the statement is made is insufficient, and to be admissible the statement must satisfy the requirements of KRE 801A(b)(2)," and then includes a reference to Lawson's Kentucky Evidence Law Handbook.<sup>2</sup> Turning to that volume for guidance, we see that "[i]t is universally recognized that an adoptive admission may be grounded in the silence of a party." Id. at 390. The following quotation is found as an explanation of the rule:

When accusatory or incriminating statements are made in the presence and hearing and with the understanding of the accused person and concerning a matter within his knowledge, under such circumstances as would seem to call for his denial and none is made, those statements, and the fact that they were not contradicted, denied, or objected to, become competent evidence

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<sup>2</sup> ROBERT G. LAWSON, THE KENTUCKY EVIDENCE LAW HANDBOOK, § 8.20 (3d ed. 1993).

against the defendant. They derive their competency from the theory and upon the broad principle that the statements were impliedly ratified and adopted by the accused as his own and constituted a tacit admission on his part though an inaudible one. Silence is inferred assent. If innocent, a reaction and declaration may rationally be expected of him rather than a tame submission.

Griffith v. Commonwealth, 250 Ky. 506, 508-09, 63 S.W.2d 594, 596 (1933).

It is generally understood that a statement is not admissible under this rule unless it is first proven that the party heard and understood the statement and remained silent. Broadway Coal-Mining Co. v. Ortkies, 200 Ky. 8, 254 S.W. 434 (1923). It is clear from the record that Jerry was able to hear and understand Dave Charles at the time the statement was made, and said nothing in contradiction, which indicates a consciousness of the truth of the statement (that his father did not intend to give him all the property) and also serves as an indicator that he knew that he had improperly taken advantage of his parents in obtaining the deeds. The statement was admissible as an adoptive admission, and from it the jury was entitled to conclude that the deeds were the product of mistake on the grantor's part and undue influence on the part of Jerry.

For the foregoing reasons, the judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

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