

RENDERED: MAY 13, 2005; 10:00 A.M.  
NOT TO BE PUBLISHED

## Commonwealth Of Kentucky

### Court of Appeals

NO. 2003-CA-000778-MR  
AND  
NO. 2004-CA-000266-MR

ROCKLAND GEORGE AND  
BERNIE GEORGE

APPELLANTS

v. APPEALS FROM BOYD CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 97-CI-00055

ELOISE T. GEORGE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: McANULTY AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

EMBERTON, SENIOR JUDGE: Rockland George and Bernie George, husband and wife, allege that they own certain real property included in the estate of Rockland's deceased father, Marion Douglas George, (Douglas), by virtue of an inter vivos gift or,

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

alternatively, by adverse possession.<sup>2</sup> The circuit court held in a prior proceeding that the ownership of the farm remained in Douglas, and that Douglas's surviving widow, Eloise George, was entitled to a one-third interest in the property by virtue of her renunciation of Douglas's will.<sup>3</sup>

In 1993, a guardianship proceeding was initiated in the Boyd District Court and Rockland was appointed as Douglas's limited guardian for the purpose of authorizing medical treatment and signing papers necessary for Douglas's placement. Eloise was appointed co-guardian for the purpose of handling Douglas's finances. In May 1994, a dispute arose between Rockland and Eloise concerning an inventory of Douglas's estate and an annual accounting filed by Eloise. Following a hearing, an order was entered by the court accepting both. The district court specifically found that:

[T]he Respondent [Douglas] owns two (2) tracts of land located on Ellington Run, Boyd County, Kentucky, which is [sic] in the name of Douglas George only. These two (2) tracts include an 86 acre and 26 acre tract for a total of 106 [sic] acres which constitutes the farm.

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<sup>2</sup> Rockland and Bernie filed two separate appeals that have been consolidated. The first appeal is from the circuit court order denying their claim of ownership of the farm and the second from an order finding that the parties hold the property as tenants in common.

<sup>3</sup> Kentucky Revised Statutes 392.020.

The co-guardianship was dissolved and Rockland was appointed as conservator over certain real and personal property owned by Douglas, including the farm.

Douglas died in December 1994, and pursuant to his will, his entire estate was left to Rockland. The same inventory accepted in the guardianship proceeding was accepted by the district court in the probate action. Pursuant to KRS 393.080 Eloise, as the surviving spouse, renounced the will. Rockland then moved to set aside her renunciation alleging that it was invalid because Eloise had not complied with the statutory requirements and requested that he be permitted to produce evidence concerning personal property owned by Douglas at the time of his death. The district court denied the motion, finding that the Eloise complied with all statutory requirements to renounce the will and that the issue of Douglas's property interests was decided in the guardianship proceeding and could not be re-litigated. The circuit court affirmed and this court denied discretionary review.

In January 1997, Eloise filed the present action seeking her divisible share of the farm and any amount earned as result of the use of the property by Rockland and Bernie. Rockland and Bernie defended asserting that the property was acquired by them prior to Douglas's death and was, therefore, improperly included in the estate. The circuit court entered a

declaratory judgment holding that the issue of ownership of the farm is precluded by the doctrine of res judicata by reason of both the guardian and probate proceedings and that Eloise by renunciation, owns a one-third interest in the farm. Rockland and Bernie contend that res judicata is not applicable to the issue of ownership of the farm because a district court has no jurisdiction to resolve disputes concerning ownership of real property.

The parties have gone through numerous court battles over the property; this court, however, is at a disadvantage in affording meaningful review because we have access to neither the guardianship proceeding nor the probate record.<sup>4</sup> Although the parties and the lower court record suggest there was a lengthy hearing concerning the contents of the inventory, including ownership of the farm, we have no ability to review such a record since it is not included in the record on appeal. Our review is therefore limited to the record submitted.

The doctrine of res judicata will preclude a subsequent action where a former judgment has been rendered by a court of competent jurisdiction between the same parties upon

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<sup>4</sup> For instance, the Order and Judgment entered following Rockland's motion to set aside the renunciation makes no finding regarding the ownership of the farm. Although a point not raised by the parties, the court held that the inventory filed in the guardianship proceeding barred relitigation of the issue of ownership regarding personal property. Apparently, the issue of ownership of the farm was not raised in the probate proceeding but again we have no access to the probate record to confirm this assumption.

the same matter directly involved in the prior action. A judgment rendered by a court that lacked subject matter jurisdiction will not preclude a subsequent action involving the same matter.<sup>5</sup>

Two statutes expressly confer jurisdiction on the district courts in matters involving guardianships and probate. KRS 387.520 states in pertinent part:

- (1) The District Courts shall have exclusive jurisdiction over all proceedings involving a determination of partial disability or disability, the modification of orders, the appointment and removal of guardians and conservators, and the management and settlement of their accounts.

KRS 24A.120 was enacted to confer exclusive authority in the district courts in the following probate proceedings:

- (2) Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and
- (3) Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

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<sup>5</sup> Napier v. Jones By and Through Reynolds, 925 S.W.2d 193 (Ky.App. 1996).

Thus, in both guardianship and in probate proceedings the district court has exclusive jurisdiction to oversee the management and settlement of accounts and estates.

Pursuant to KRS 387.710, the district court had jurisdiction to and did approve the inventory that included the farm now in dispute. Rockland and Bernie argue that the inventory filed in the guardianship proceeding can have no res judicata effect and cite 31 Am.Jur.2d *Executors and Administrators* § 492 that recites as follows:

It has long been the law that an inventory is not conclusive as to the assets of the estate or as to the rights with respect to the property listed therein; nor does it work an estoppel on the question of title or value. The court cannot change ownership of property by simply approving an inventory.<sup>6</sup>

We agree with the general proposition cited. An inventory filed in a guardianship proceeding is filed for the purpose of identifying the property in the possession of the fiduciary and its value so that the court can effectively oversee the management of the account. And there is no language in the statutes applicable to such proceedings that expressly confers jurisdiction on the district court to hear cases involving disputes regarding title to property.

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<sup>6</sup> 31 Am.Jur.2d *Executors and Administrators* § 492(citations omitted).

The probate statute provides that an adversary action shall be filed in circuit court. And KRS 411.120 expressly confers jurisdiction on the circuit court in actions to quiet title. The plain language of the statute, therefore, precludes a district court from hearing an action to quiet title.

Based on our discussion of general legal principles we agree with Rockland and Bernie that the inventory filed has no res judicata effect in a subsequent proceeding to quiet title. However, we agree with the circuit court that any action asserting title to property included in the probate estate is precluded but for reasons other than that the issue has been previously litigated.

Owners of real property are not required to defend their title until someone sets up or asserts title against the property by filing an action in a court of competent jurisdiction and title remains in the record title owner until a judgment is rendered establishing title in another.<sup>7</sup> During Douglas's lifetime, Rockland did not file a quiet title action and at the time of Douglas's death, title remained in Douglas's sole name. Upon Douglas's death, the property was, therefore, properly included in the estate. KRS 392.080 provides that when a husband or wife dies testate, the survivor can elect to renounce the will and receive one-third of any real-estate the

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<sup>7</sup> Williams v. Thomas, 149 S.W.2d 525 (Ky. 1941).

decedent was seized of at the time of death. Since Douglas was the legal owner of the property, upon his death Eloise's right to renounce the will and claim her one-third interest vested at that time and can not be defeated by Rockland's claim to the property which was asserted in a counterclaim three years after Douglas's death.

The order of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

M. Kevin Lett  
GRAY, WOODS, & COPPER  
Ashland, Kentucky

BRIEF FOR APPELLEE:

Jeffrey L. Preston  
Catlettsburg, Kentucky