

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000941-MR

MILTON RITCHIE

APPELLANT

v. APPEAL FROM BOURBON CIRCUIT COURT  
HONORABLE PAUL F ISAACS, JUDGE  
ACTION NO. 03-CI-00346

MARY JANE PHELPS, JUDGE,  
BOURBON DISTRICT COURT; AND  
KEVIN RITCHIE AND KEITH RITCHIE

APPELLEES

OPINION AND ORDER  
DISMISSING APPEAL

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BEFORE: TACKETT AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.<sup>1</sup>

TACKETT, JUDGE: Milton M. Ritchie appeals from the denial of his petition for a writ of prohibition against the Bourbon District Court, Hon. Mary Jane Phelps, in a probate matter before that court. Ritchie sought extraordinary relief from the

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

circuit court, arguing that the District Court was acting outside of its jurisdiction in ordering an accounting of the assets of the estate of Ora M. Ritchie, his grandfather. Since an action has commenced in circuit court requesting the same relief, and our decision will have no impact on either party, we hold this matter to be moot.

Milton Ritchie became executor of his grandfather's estate after he filed a petition for probate of the will and for the appointment of an executor in June 2003. In September, 2003, Milton filed an inventory of the estate assets, totaling \$124,461.46. In October, Kevin and Keith Ritchie, also grandsons of Ora Ritchie and named in the will as equal beneficiaries, filed a motion for an accounting of the estate's assets, alleging that they believed that Milton had not listed all the assets and that Milton had given himself thousands of dollars while their grandfather was alive. The district court, over Milton's objection, granted the motion. Milton then filed a petition in the circuit court for a writ of prohibition, requesting extraordinary relief from the court's action and alleging that the district court had no jurisdiction to order the relief requested by the other heirs. The circuit court denied that petition, holding that the district court had exclusive jurisdiction over probate matters until an adversary proceeding was initiated. This appeal followed.

We note at the outset that since this appeal was filed, Kevin and Keith Ritchie have now initiated an adversary proceeding in the Bourbon Circuit Court, alleging that Milton violated his fiduciary duties. Though the outcome of the present action will have no impact on the ultimate resolution of the underlying dispute, the Attorney General, writing on behalf of Judge Phelps, urges us to review this matter as one capable of repetition yet evading review. We disagree.

A writ of prohibition may be granted upon a showing that the lower court is proceeding or is about to proceed outside of its jurisdiction and that there is no remedy through application to an intermediate court. Kentucky Farm Bureau Ins. Co. v. Wright, 136 S.W.3d 455 (Ky. 2004), citing Bender v. Eaton, 343 S.W.2d 799 (Ky. 1961). Milton Ritchie argues that the district court acted outside of its jurisdiction by ordering the accounting, basing his argument on the amount in controversy limits on the jurisdiction of the district court, which KRS 24A.120(1)(a) sets at four thousand dollars. Because Kevin and Keith Ritchie "are accusing the Appellant of intentional and/or tortuous [sic] actions resulting in damages of at least \$47,000,"<sup>2</sup> then the district court has no jurisdiction over the matter, which must instead be litigated in circuit court. Exactly what an "adversary proceeding" may be is somewhat

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<sup>2</sup> Appellant's Brief at 5.

nebulous. "The concept of 'adversary proceeding' is a puzzle to courts as well as practitioners." Mullins v. First American Bank, 781 S.W.2d 527, 529 (Ky. App. 1989). In the Mullins case, this Court stated that "the district court's jurisdiction over probate matters continues until such time as a suit is filed in circuit court under a statute authorizing such filing." Id. The Attorney General argues that the power to order an accounting must be inherent in the district court as part of its jurisdiction over probate matters. But because the request for an accounting is inextricably intertwined with the allegation of breach of fiduciary duties both as executor of the estate and as attorney-in-fact while the testator was alive, we do not believe that this case is an appropriate one to make such a statement.

Since the heirs have filed an action in circuit court requesting the same relief as requested of the district court, there is no justiciable controversy here. Our holding would not affect the substantial rights of either party, as the district court lost jurisdiction once the adversary proceeding began. We therefore dismiss this appeal as moot.

The appeal is dismissed.

ALL CONCUR.

ENTERED: August 5, 2005

/s/ Julia K. Tackett  
JUDGE, COURT OF APPEALS

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