RENDERED: MAY 12, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000691-MR

ESTATE OF ETHA E. POWER — APPELLANT

APPEAL FROM BRACKEN CIRCUIT COURT
v. HONORABLE JOHN W. MCNEILL, III, JUDGE
ACTION NO. 04-CI-00101

JARROD NATHAN COOPER — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER AND McANULTY, JUDGES; POTTER, SENIOR JUDGE.[1]

BARBER, JUDGE: This appeal comes to us from the Bracken Circuit Court. At issue is the interpretation of a clause contained in a holographic will. The decedent, Etha E. Power, passed away September 26, 2002. She was survived by one living heir, her grandson, the Appellee, Jarrod Nathan Cooper (Cooper). Ms. Power was predeceased by her only son, Gerald Power, and a

[1]Senior Judge John W. Potter, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

grandson, Robin Power.[2] Gerald Power was Cooper's father and Robin Power was Cooper's full-brother.[3]

Ms. Power's holographic will was offered for probate in Bracken District Court shortly thereafter.[4] Leslie Newman (Newman) was appointed as executor of Ms. Power's estate. Cooper filed an Affidavit of Descent in the probate matter on October 1, 2003. In response, Newman on behalf of the Appellant, Estate of Etha E. Power (Estate), filed a Petition for Declaratory Judgment Interpreting Will in Bracken Circuit Court.

The Estate sought interpretation of only one clause contained in the will. It read as follows:

> All the rest of my money after my debts are paid, I bequeth (sic) one half to the Brooksville Christian Church. The rest I wish divided between Esther Tollner, Byna Staggs, Edythe Burke and Betty Newman.

In its Judgment Construing Last Will,[5] the court found that the clause was not applicable to the real property owned by Ms. Power at the time of her death. As such, Ms. Power died intestate with respect to her interest in real estate and that the same passed by intestacy to her sole heir at law, Cooper.

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[2] Gerald Power passed away in August 1981 and Robin Power passed away, without issue, on November 21, 1993.

[3] Gerald Power had two sons, Robin Power and Cooper, with Carol Cooper, but the couple never married.

[4] Case number 02-P-80.

[5] The judgment was entered February 28, 2005.

The Estate now appeals to our court. Following a review of the record, we affirm the Bracken Circuit Court.

The uncertainty or ambiguity at issue is apparent upon the face of the will. Such an ambiguity has been defined as being patent. Lillian Felts Hall's Administrator v. Compton, 281 S.W.2d 906, 909 (Ky. 1955). If a patent ambiguity alone exists, the intention of the testatrix must be determined only from the language used by her in the will, and extrinsic evidence is not admissible to change the construction or interpretation of such language. Id. The rule of construction of a will containing a patent ambiguity is that the court will look to the four corners of the instrument to determine the intent of the testatrix and will give due weight to every provision of the will and determine what the testatrix intended by the words used when given their commonly and generally accepted literal and grammatical meaning. Id. The question is not what did the testatrix intend, but what she actually did by the express terms of the Will, giving the language used its ordinary meaning. Georgetown College v. Alexander, 140 S.W.3d 6, 9-10 (Ky.App. 2003).

Every reasonable presumption will be indulged against partial intestacy, but the presumption cannot be applied to supply a disposition which was not made or intended. Pimpel v. Pimpel, 253 S.W.2d 613, 614 (Ky. 1952). In other words, the

presumption vanishes when the fact becomes apparent that some part of the estate was not disposed of. Id. No rule of construction can be used to write something into a will which the testator did not himself put in it. Robinson v. Von Spreckelsen, 155 S.W.2d 30, 32 (Ky. 1941). We now examine the holographic will.

Ms. Power requested that all of her debts and funeral expenses be paid first and included specific instructions on her funeral arrangements, including what to place on her monument. She also makes five specific bequests of personal property to various individuals. The section at issue follows the specific bequests. She ended by informing the reader where an extra copy of the will was located and appointed an executor.[6]

We believe that Ms. Power was fully aware of how to dispose of any property that she owned through her will. We are required to attribute the ordinary meaning to "money."[7] We decline to extend that definition to include her real property. She declined to say anything such as, "rest of my estate," "remainder of my estate," "rest, including my home," etc. There is no reference whatsoever to any property not denominated as "money." The presumption against intestacy does not give us a

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[6] Ms. Power also got two witnesses to sign her holographic will.

[7] Money is defined as "something generally accepted as a medium of exchange, a payment: as a) officially coined or stamped metal currency, b) money of account, or c)paper money." Merriam-Webster's Collegiate Dictionary 748-750 (10th ed. 2002).

license to rewrite a will whose language clearly results in partial intestacy. Based on the foregoing, we affirm the Bracken Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Edward J. Rudd Brooksville, Kentucky	Debra S. Rigg Maysville, Kentucky