

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000958-MR

ROBERT C. FIELDS

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 03-CI-00167

SHIRLEY L. FIELDS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Robert C. Fields brings this *pro se* appeal from an April 13, 2005, summary judgment of the Boyd Circuit Court dismissing his claim for recovery of personal property as time-barred. We affirm.

The current dispute centers around ownership of family household furniture. Appellant asserts ownership of the household furniture and claims the furniture was loaned to his

¹ 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 Kentucky Revised Statutes (KRS) 21.580.

brother, Phil E. Fields in 1983.² Phil died testate on September 18, 2000, and left his entire estate to his widow, Shirley L. Fields, appellee herein, and his two step-children. Appellee claimed the household furniture under the spousal exemption of Kentucky Revised Statutes (KRS) 391.030.³

On August 12, 2002, appellant filed a motion in the Boyd District Court in the Estate of Phil E. Fields seeking to recover the household furniture. On January 21, 2003, the district court entered an order dismissing appellant's claim as being time-barred. The district court held that a claim against the estate was required to be filed within six months after appointment of the personal representative. The personal representative was appointed December 5, 2000, and June 5, 2001, was the final date to file such a claim. Appellant's August 12, 2002, motion was clearly outside the statute of limitations, and the district court dismissed the action. Appellant did not appeal the dismissal.

² Appellant alleges the furniture belonged to his and Phil E. Field's brother, John Bert Fields, who died testate on May 18, 1983. Appellant also alleges that he and John's other heirs agreed to let Phil use the furniture as long as Phil lived in the "old home place" that he had purchased from John's heirs.

³ The will of Phil E. Fields was prepared by appellant. The order probating will and appointing executor was entered by the Boyd District Court on December 5, 2000. The original petition to probate the will and appoint executor was filed by appellant, Robert C. Fields, as attorney. Shirley Fields obtained private counsel in December 2001, and asserted her claim to the furniture at that time in the probate proceeding.

On February 18, 2003, appellant filed the instant declaratory judgment action in the Boyd Circuit Court against appellee seeking to recover the household furniture. On April 13, 2005, the circuit court entered summary judgment dismissing the action as time-barred. This appeal follows.

Appellant contends the circuit court committed error by entering summary judgment dismissing the action as time-barred. Summary judgment is proper where there exist no material issues of fact and movant is entitled to judgment as a matter of law. Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991). Resolution of this appeal primarily focuses upon issues of law.

Specifically, appellant contends the circuit court erred by concluding that KRS 391.035 was inapplicable to his claim against the property. KRS 391.035 states, in part, as follows:

- (1) If real or personal property passes by the laws of intestate succession, or under a will to a beneficiary not named in the will, proceedings may be had in the District Court to determine the persons entitled to the property.
- (2) (a) If an estate is in process of administration, the executor, administrator, or any person claiming an interest in the property may file a motion in the District Court where administration is in process. If there is no pending administration

or administration has been dispensed with, any person claiming an interest in the property may file a motion in the District Court of the county in which the decedent last resided or, if the decedent was not a Kentucky resident, in the District Court of the county in which the property, or the greater part thereof, is located;

- (b) The motion shall set forth all of the facts known to the movant relating to the matter, including the names, ages, and addresses of all persons who are or may be entitled to share in the property and their relationship to the decedent or to the class of beneficiaries entitled to share. The motion shall also describe the property under consideration and an estimate of its value.

Under its plain language, KRS 391.035(1) clearly limits its application to property that passes either by intestate succession or by will to a beneficiary **not named** in the will. In this case, Phil's property passed to beneficiaries named in Phil's will, which were appellee and Phil's step-children. Accordingly, we do not believe that KRS 391.035 was applicable.

Appellant next argues the circuit court committed error by concluding that his claim was time-barred under KRS 413.125.⁴ KRS 413.125 states as follows:

⁴ The circuit court did not reference KRS 413.125 in its order granting appellee's motion for summary judgment; rather, the court stated the claim was time-barred because it was not brought before September 18, 2002, two years after Phil's death.

An action for the taking, detaining or injuring of personal property, including an action for specific recovery shall be commenced within two (2) years from the time the cause of action accrued.

Thereunder, an action for the taking of personal property must be commenced within two years after the cause of action accrued.

Appellant asserts that his cause of action under KRS 413.125 accrued when he received a letter dated December 1, 2001, from appellee's attorney. Appellant argues that he had until December 1, 2003, to file his lawsuit. We disagree.

Appellant alleges in the complaint and in his brief filed with this Court that the basis for Phil's use of the household furnishings arises from an agreement reached between Phil and his siblings in 1983, after the death of their brother John Bert Fields. This agreement is described in paragraph 8 of the complaint as follows:

In addition to the real property the surviving heirs made an agreement with the decedent to permit him to have the use of the household furniture and furnishings so long as he lived in the old family homeplace [sic] which he purchased from the surviving heirs of John Bert Fields.

Assuming that the terms of the alleged contractual relationship between Phil and the heirs of John Bert Fields are accurate as set forth in the complaint, then it is undisputed that the contract would have terminated by its own terms upon the death of Phil on September 18, 2000, as he would have no longer been

living in the old family home place. Additionally, it is undisputed that appellee was not a party to this contractual agreement between Phil, appellant, and other heirs of John Bert Fields and thus, was not bound by any terms of said agreement.

Accordingly, upon the death of Phil and the termination of the agreement, appellee assumed sole possession of all household furniture described in the agreement adverse to the ownership interest of appellant and any other heirs of John Bert Fields. Appellant and the remaining heirs had actual knowledge of appellee's possession of the household goods and that possession was assumed without protest or objection by appellant. Therefore, any cause of action to recover the property from appellee would have accrued upon the date that the agreement terminated, that being upon the death of Phil on September 18, 2000.

Appellant's argument that the time for asserting a cause of action against appellee accrued when her attorney wrote the letter to appellant dated December 1, 2001, claiming the household furniture under the spousal exemption is totally without merit. Again, assuming that a contractual agreement was the basis for Phil's use and possession of the household furniture, the fact that appellee claimed the household furniture under the spousal exemption of Phil's estate is totally immaterial to the actual date for a cause of action

against appellee. Appellant, who is also an attorney who represented Phil's estate in the probate proceeding, knew that the agreement with John Bert Field's heirs had terminated upon Phil's death and that appellee retained possession of the household furniture. Even upon receipt of the letter in December 2001, appellant had over nine months to bring an action against appellee to recover the property that would have been timely pursuant to KRS 413.125. Failure to file the complaint by September 18, 2002, was therefore fatal to any claim for the household goods against appellee.

Appellant also argues that the authority set forth in Codell Construction Co. v. Commonwealth, 566 S.W.2d 161 (Ky.App. 1977) supports his position that the claim accrued on December 1, 2001. Appellant's reliance upon this legal authority is completely misplaced. In Codell, the Court addressed the statute of limitation found in KRS 44.310 that pertained to a construction contract entered into with the Commonwealth of Kentucky. This statute has no relationship whatsoever to KRS 413.125, nor is the language of the statutes similar as argued by appellant. In fact, KRS 44.310 was repealed and reenacted in 1978 (effective January 1, 1979) as KRS 45A.260. This statute is specifically limited to construction contracts executed and administered by the transportation cabinet and provides that claims will be commenced in the Franklin Circuit Court within

one year from the time that the Commonwealth has determined final pay quantities and issues a final pay estimate to the contracting party or when the Commonwealth issues a final adverse decision, whichever occurs later. There is absolutely no similarity or relationship between the statute of limitations found in KRS 45A.260 and in KRS 413.125.

Accordingly, we conclude that appellant's action was time-barred under KRS 413.125. In sum, we hold the circuit court properly entered summary judgment dismissing appellant's action as time-barred.

We view appellant's remaining contentions to be moot or without merit.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Robert C. Fields, *Pro Se*
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Pamela H. Potter
Ashland, Kentucky