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APRIL 16, 2008
(FILE NO. 2007-SC-0664-D)**

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000444-MR

ELLIS SANDERS AND SUE SANDERS

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 01-CI-01446

BOBBY SMITH, INDIVIDUALLY AND AS THE
ADMINISTRATOR OF THE ESTATE OF DEBBIE SMITH,
AND GLA COLLECTION, INC.

APPELLEES

OPINION AFFIRMING

** ** * ** * **

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: Ellis and Sue Sanders appeal from a judgment of the Pike Circuit Court in the matter of the settlement of the estate of their deceased daughter, Debbie Renee Smith.

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

We note as a preliminary matter that the appellants' brief fails to satisfy Kentucky Rules of Civil Procedure (CR) 76.12(4)(iv), which requires a statement of the case consisting of a chronological summary of facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the record, and CR 76.12(v), which requires that the argument contain ample supportive reference to the record.

Given the serious deficiencies of appellants' brief, we would be justified in ordering the brief stricken. *See Robbins v. Robbins*, 849 S.W.2d 571, 572 (Ky.App. 1993), *citing* CR 76.12(8)(a). Rather than imposing such a severe sanction, however, we elect instead to dispose of this appeal based solely upon the contents of the parties' briefs. *Id.*

Debbie Renee Smith died intestate on January 26, 2001. She was survived by her parents, Ellis and Sue Sanders, and by her husband, Bobby Smith, who was appointed the personal representative of her estate. Smith elected to take the \$7,500.00 spousal exemption under Kentucky Revised Statutes (KRS) 391.030(1)(c) and received personalty consisting of a truck, a bedroom suite and other household items.

Debbie also owned a residential lot and mobile home located in Pike County. On February 21, 2005, the Master Commissioner was directed to sell the realty, mobile home and the remaining personalty at public auction. Ellis and Sue purchased the entire property for \$26,000.00. They paid \$1,300 down on the day of the sale and executed a bond for the remainder of the purchase price.

The final judgment of the circuit court ordered Ellis and Sue to pay the Master Commissioner the remaining balance of \$24,700.00 plus interest of \$2,223.00. The Master Commissioner was then ordered to distribute various sums for administration fees, attorney's fees, master commissioner's fees, funeral expenses and a debt owed to a bank. These sums totaled \$17,079.15. Bobby was found to have caused \$4,000.00 in damages to the mobile home during his residency there. The net proceeds from the sale were ordered to be distributed as follows: one-half to Bobby (his dower share under KRS 392.020) minus \$2,000.00 for damages he had caused to the mobile home; and then a one quarter interest plus \$1,000.00 each to Ellis and Sue.

On appeal, Ellis and Sue argue that the judgment is palpably erroneous because it ignores their inherited interest under KRS 391.010, which provides that real estate belonging to an intestate decedent descends to his or her father and mother (assuming that the decedent had no children and after payment of the dower share). They argue that they should have been allotted a fifty percent credit against the purchase price of \$24,700.00, with the result that they should pay \$12,350.00 for the property, plus one-half of the debts and costs allotted to them. They argue that the judgment has divested them of their uncontested interest in Debbie's estate.

Under KRS 391.030(1), the personal property of an intestate decedent is distributed only after the "payment of funeral expenses, charges of administration, and debts[.]" Real property belonging to an intestate decedent descends directly to the heirs pursuant to KRS 391.010, with one important qualification:

if it shall appear that the personal estate is insufficient for the payment of all debts, the court may order the real property descended or devised to the heirs or devisees who may be parties to the action, or so much thereof as shall be necessary, to be sold for the payment of the residue of such debts.

KRS 395.515.

In other words, the debts of the estate must be satisfied before the intestate shares are distributed. The Pike Circuit Court did not err in ordering the debts of the estate to be paid prior to distributing the remainder of the estate to Bobby and the appellants.

We therefore affirm the Findings of Fact, Conclusions of Law, Judgment and Order of Distribution of the Pike Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Sidney Trivette
Pikeville, Kentucky

BRIEF FOR APPELLEE:

John J. Davis
Pikeville, Kentucky