

RENDERED: JULY 31, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001603-MR

THOMAS A. BLAIR,
INDIVIDUALLY AND AS
EXECUTOR OF THE ESTATE
OF ROBERT T. PHILLIPS

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 02-CI-01094

ESTHER MATELLI; MARIANN
CHOLAKIS; AND HAZEL RUFFINO

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR
JUDGE.

¹ Senior Judge Daniel T. Guidugli 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.

GUIDUGLI, SENIOR JUDGE: Thomas Blair, individually and as the executor of the Estate of Robert T. Phillips, has appealed from the Warren Circuit Court's October 6, 2006, order approving a partial settlement and its August 1, 2007, order regarding the responsibility for inheritance taxes. We affirm.

This matter arose from a will contest initiated by relatives of Robert T. Phillips, who died testate on July 23, 2001. Blair was named as the executor of Phillips' last will and testament, which was admitted to probate on September 17, 2001. Pursuant to the terms of the will, Phillips forgave the indebtedness Blair owed to him and bequeathed Blair his personal and household effects, a house on Richland Drive, his interest in the Ponderosa Steak House in Bowling Green, and any residuary estate. The will also included monetary bequests of \$75,000 each to Phillips' sisters, Esther Matelli and Hazel Ruffino, and his niece, Mariann Cholakis, as well as lesser ones to other persons and organizations. Finally, the will provided that all inheritance taxes were to be paid out of his residuary estate and were not to be charged to any of the beneficiaries. Matelli, Ruffino, and Cholakis (plaintiffs or appellees) instituted the present will contest, alleging that Phillips lacked the necessary testamentary capacity, that Blair exerted undue influence over him, and that Blair committed gross negligence, fraud, and conversion.

Several years later, the parties entered into a Memorandum of Understanding, which was reached following a mediation. The agreement provided, in relevant part, as follows:

Plaintiffs, Esther Matelli, Mariann Cholakis and Hazel Ruffino and Defendant Tom Blair have reached a settlement of all issues following a June 9, 2006 mediation. Plaintiffs agree to accept payment of the sum of \$150,000 from the Estate of Robert T. Phillips. Each of the Plaintiffs shall pay the Commonwealth of Kentucky inheritance taxes, if any, on their respective distributions from said \$150,000 from the Estate of Robert T. Phillips. Defendant Blair agrees to pay said \$150,000 from the Estate of Robert T. Phillips, as Executor of the estate, in full and final settlement of all claims asserted or assertable against Defendant Blair, individually, and as Executor of the Estate of Robert T. Phillips, Blair's wife, Leigh, and Blair's children, as well as any an all claims asserted or assertable against the Estate of Robert T. Phillips. . . .

The mediated agreement provided that each beneficiary was to take 50 percent of the bequest from Phillips' prior will. The plaintiffs filed a motion for approval of the distribution of funds, attaching a letter from their attorney detailing the terms of the agreement. In addition to taking half of the prior bequest amount, the agreement provided that the beneficiaries were to split the plaintiffs' attorney's fees and costs, which equaled \$30,117.24. The letter included the following statement: "Please understand that under the terms of the settlement, the gross settlement will be paid to Bob's family, who will then 'gift' your share to you. This will allow you to avoid the payment of inheritance taxes." The circuit court approved the partial settlement in an order entered October 6, 2006, and ordered the estate to disburse \$145,000 to the plaintiffs.² The order was made final and appealable pursuant to Kentucky Rules of Civil Procedure (CR) 54.02.

² Mike and Iris Dotson objected to the Memorandum of Understanding; therefore, their \$5000 bequest was placed in escrow pending a determination as to what they were entitled to receive.

On November 14, 2006, more than thirty days later, Blair moved the circuit court to amend the October 6th order to allow for the escrow of funds to satisfy any potential tax liability. After reaching the mediated agreement, Blair discovered that an inheritance tax on the amount of the settlement would be imposed on him as the sole beneficiary under the will. The actual amount of tax in controversy is \$28,121. The circuit court denied the motion to amend and then granted the plaintiff's motion to compel payment of funds. However, the order granting was set aside on Blair's motion to reconsider on February 13, 2007. In that order, the circuit court stated that the tax treatment contemplated by the parties in the agreement constituted a mutual mistake, held that the mediated agreement was not binding, and ordered the parties to further mediate the case. On Blair's motion, that order was also set aside, and in an order entered May 11, 2007, the circuit court indicated that further review would be limited to whether the beneficiaries were entitled to the whole amount or a lesser one reduced by inheritance taxes, interest, and late fees.

On the issue of tax liability, the plaintiffs maintained that as the will was not set aside, all tax liability was to be borne by the residuary estate, not by the individual beneficiaries, pursuant to the terms of the will. On the other hand, Blair maintained that the circuit court must refer to the terms of the Memorandum of Understanding to resolve the issue, as the plaintiffs took under the agreement, not under the will. In the agreement, the plaintiffs were to pay inheritance taxes on the distributions. On August 1, 2007, the circuit court entered its ruling on the issue,

ordering Blair to pay \$145,000 to the plaintiffs and to pay all inheritance taxes associated with the Estate, reasoning as follows:

It is agreed, by the accountants in this case, that there is only one remaining beneficiary under the will of Robert T. Phillips and that is the defendant, Thomas A. Blair. It is this beneficiary, under this will, that has the Kentucky Inheritance Tax responsibility as reflected in the tax return filed with the Court. The plaintiffs, Matelli, Cholakas [sic] and Ruffino, are accepting money from a settlement with the defendant, Thomas A. Blair, and not under the terms of the will of Robert T. Phillips. The plaintiffs are merely parties in a lawsuit between themselves and Mr. Blair. In settlement of that lawsuit, Mr. Blair agreed to pay them \$150,000.00 from the estate of Robert T. Phillips. That is \$150,000.00, which he would have received under the terms of the will. However, he agreed to pay this amount to settle this lawsuit and for the settlement of the Phillips' Estate.

The circuit court went on to state that the plaintiffs did not take under the will and were therefore not subject to inheritance taxes. Blair initiated this appeal from both the October 6, 2006, order approving the partial settlement and from the August 1, 2007, order.

On appeal, Blair argues that the circuit court lacked jurisdiction to alter the terms of the Memorandum of Understanding after the order approving the settlement became final and that the appellees should be required to pay the inheritance taxes associated with their respective distributions. In their brief, the appellees argue that the appeal should be dismissed as untimely, that the circuit court acted within the scope of its jurisdiction and authority, and that it correctly concluded that they had no tax liability.

We shall first address the appellees' argument that the appeal should be dismissed as untimely. The parties do not dispute that the October 6, 2006, order approving the partial settlement was a final and appealable order. Neither party moved to alter, amend, or vacate the order pursuant to CR 59.05, and neither party filed a notice of appeal within thirty days pursuant to CR 73.02.

Accordingly, as the circuit court eventually determined, we may not review the propriety of the Memorandum of Understanding and whether any mutual mistake indeed took place. However, a court still has jurisdiction to enforce its orders, which is exactly what the circuit court did in this case. Therefore, our review is limited to the propriety of the circuit court's August 1, 2007, order, which was timely appealed.

Next, we turn to our review of the circuit court's August 1, 2007, order, which required Blair to pay the entirety of the inheritance taxes. In *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003), the Supreme Court of Kentucky set forth the applicable standard of review as follows:

“[s]ettlement agreements are a type of contract and therefore are governed by contract law[.]” . . .
Accordingly, because “the construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court,” we review de novo the lower courts' interpretation of the parties' oral settlement agreement. [Citations in footnotes omitted.]

Furthermore, a trial court's “interpretation of the written contract [is] subject to independent appellate determination.” *A & A Mechanical, Inc. v. Thermal*

Equipment Sales, Inc., 998 S.W.2d 505, 509 (Ky. App. 1999). With this standard in mind, we shall review the circuit court's decision.

In *Crouch v. Crouch*, 201 S.W.3d 463, 465 (Ky. 2006), the Supreme Court stated:

When interpreting contracts, “[i]n the absence of ambiguity a written instrument will be enforced strictly according to its terms.” *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 106 (Ky. 2003) (quoting *O’Bryan v. Massey-Ferguson, Inc.*, 413 S.W.2d 891, 893 (Ky. 1966)). Where ambiguity exists, “the court will gather, if possible, the intention of the parties from the contract as a whole, and in doing so will consider the subject matter of the contract, the situation of the parties and the conditions under which the contract was written, by evaluating extrinsic evidence as to the parties’ intentions.” *Id.*

We recognize that extrinsic evidence may be admitted to vary the terms of a written document only if that document contains an ambiguity. *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (Ky. 2000).

The language at issue in this case is the following sentence from the Memorandum of Understanding: “Each of the Plaintiffs shall pay the Commonwealth of Kentucky inheritance taxes, if any, on their respective distributions from said \$150,000 from the Estate of Robert T. Phillips.” We believe that this language contains an ambiguity, in that it does not specify under which person the inheritance tax is to be calculated. Accordingly, the circuit court was permitted to consider extrinsic evidence to determine the intent of the parties. We agree with the appellees that the mediated agreement did not encompass their

having to pay Blair's inheritance taxes on their distributions, but rather that they were attempting to bypass any inheritance tax liability Blair might incur as a beneficiary under the Will. Furthermore, the will demonstrated Phillips' intent that none of the beneficiaries be responsible for the payment of any taxes, but that such payments should be borne by the Estate itself. Therefore, the circuit court properly ordered Blair to pay all of the inheritance taxes associated with the Estate.

For the foregoing reasons, the Warren Circuit Court's August 1, 2007, order is affirmed.

CAPERTON, JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

William S. Haynes
Bowling Green, Kentucky

BRIEF FOR APPELLEES:

B. Alan Simpson
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