

RENDERED: FEBRUARY 13, 2009; 2:00 P.M.
NOT TO BE PUBLISHED

DISCRETIONARY REVIEW GRANTED BY SUPREME COURT:
OCTOBER 21, 2009
(FILE NO. 2009-SC-00155-DG)

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002312-MR

JANET HAMMONS AND
JILLISA HAMMONS

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
ACTION NO. 06-CI-04029

ROSA HAMMONS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT AND TAYLOR, JUDGES; GRAVES,¹ SENIOR JUDGE.

¹ Senior Judge J. William Graves 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.

LAMBERT, JUDGE: Janet and Jillisa Hammons appeal from a summary judgment, declaration of rights, and order quieting title in favor of Mrs. Rosa Hammons, the widow of their deceased father, Dr. James W. Hammons. After careful review, we affirm the judgment of the Fayette Circuit Court.

Dr. Hammons died testate on August 11, 2006. Dr. Hammons' will was probated and a judgment entered on October 27, 2007, which provided that Mrs. Hammons owns a life estate in all property owned by Dr. Hammons at his death and that Janet and Jillisa are contingent remaindermen in that property. The judgment further stated that, as a life tenant, Mrs. Hammons has the right to occupy and control the property exclusively. This appeal followed.

Janet and Jillisa argue that the court erred in finding that they only possess a contingent remainder in their father's property rather than a vested remainder. They contend that they should have rights to inspection of the property as well as to an accounting of the property. We disagree.

The will very clearly states that:

[a]ll of my estate . . . I give . . . to my wife, Rosa W. Hammons, for her lifetime. My said wife during her lifetime shall have the right to sell any property received by her under the terms of this item and invest and reinvest the proceeds thereof in other property, real or personal, *in her absolute discretion*. Any sale made by my said wife . . . shall be on such terms and conditions, including credit, as *she may deem appropriate*. . . . My said wife during her lifetime shall be entitled to all

income realized from this property under this item. . . .
On the death of my said wife, I give, devise and
bequeath, absolutely and in fee simple, all of the assets
devised and bequeathed under this item *then remaining*,
to my daughters, Janet P. Hammons and Jillisa S.
Hammons, to be divided equally between. In the event
either of my daughters should fail to survive me and my
said wife leaving no issue surviving her, then such
deceased daughter's part shall pass to her surviving
sibling. . . .

(Emphasis added). The will clearly grants Mrs. Hammons the right to receive any
and all income from the property for her lifetime as well as the right to make all
decisions regarding the property during her lifetime. Additionally, the will
provides that Janet and Jillisa possess an interest *contingent* on two things: first,
that some assets remain when Mrs. Hammons dies; and second, that one of them
survive Mrs. Hammons or predecease Mrs. Hammons with living issue. The
contingencies create a full range of possibilities depending on the circumstance:
neither could take the property; one could take it all; or each could take half.

A remainder is contingent where the condition of
survivorship is incorporated into the description of and
into the gift to the remaindermen, or where survivorship
is a condition precedent to the taking of the remainder.
In accordance with the rule that words of survivorship
generally relate to the period of distribution rather than to
the time of the grant or of the testator's death, a
remainder *limited to those who survive or are living at
the termination of the proceeding estate is, by the
decided weight of authority, contingent*, by reason of the
uncertainty as to the remaindermen, they being regarded
as incapable of ascertainment until the expiration of the
prior estate.

28 Am.Jur.2d §271 (1966) (emphasis added). The will is explicit in the requirement that Janet, Jillisa, or one of their heirs survive Mrs. Hammons in order to inherit the property remaining from Mrs. Hammons' life estate. Therefore, the interest is by definition contingent, and we find no error in that finding of the court below. As such, we also agree that Janet and Jillisa are not entitled to any right of inspection or an accounting of the property.

We accordingly affirm the summary judgment, declaration of rights, and order of the Fayette Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Reginald L. Thomas
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BRIEF FOR APPELLEE:

Thomas H. Burnett
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