

RENDERED: JANUARY 29, 2010; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001151-OA

EMIL PETER, III

PETITIONER

AN ORIGINAL ACTION ARISING FROM
JEFFERSON CIRCUIT COURT

v.

ACTION NO. 07-CI-005111

HON. SUSAN SCHULTZ-GIBSON,
JUDGE, JEFFERSON CIRCUIT
COURT

RESPONDENT

AND

EMIL PETER, IV

REAL PARTY IN INTEREST

OPINION AND ORDER
DENYING PETITION FOR WRIT OF PROHIBITION

** ** * * * * *

BEFORE: KELLER AND STUMBO, JUDGES; KNOPF,¹ SENIOR JUDGE.

¹ Senior Judge William L. Knopf 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.

KNOPF, SENIOR JUDGE: This is an original action brought under Kentucky Rules of Civil Procedure (CR) 76.36, in which Emil Peter III (Petitioner) seeks a writ of prohibition on the grounds that Hon. Susan Schultz Gibson, Judge, Jefferson Circuit Court, Division Twelve, is allegedly proceeding outside of her jurisdiction in an underlying civil action. Judge Gibson determined that the circuit court had jurisdiction over a complaint in which Emil Peter IV, the Real Party in Interest (RPI), sought an accounting from Petitioner as to funds originally held by Petitioner on RPI's behalf under Kentucky's version of the Uniform Transfers to Minors Act (UTMA) even though such claims generally must be brought in district court pursuant to KRS 385.192. The question before this Court is whether the circuit court acted outside of its jurisdiction by maintaining jurisdiction in the underlying accounting action. Having now considered the petition for a writ of prohibition, the response thereto, and being otherwise sufficiently advised, the Court ORDERS that the petition be DENIED for reasons set forth below.

In 1983, RPI's grandmother, Allyne M. Peter (Decedent), bequeathed to RPI, who was then a minor, any benefits due to her estate from the Falls City Industries, Inc., Pension Plan for Salaried Employees and Certain Others in a codicil to her will. The codicil provided that such benefits would be entrusted to Petitioner as RPI's custodian pursuant to UTMA to be used for RPI's education and general welfare. The initial amount of the bequest ultimately totaled \$86,409.46 once three separate disbursements were combined.

According to an affidavit filed by RPI in the underlying case, he only had a general understanding that money had been left to him in his grandmother's will. Petitioner provided him with little detail about where the money came from or how it was invested. However, RPI occasionally received dividends that were characterized as gifts. RPI turned eighteen on December 17, 1995, but Petitioner did not relinquish the funds that he held on RPI's behalf despite an obligation to do so under KRS 385.202(1). RPI also remained unaware of how much money Decedent had left him. RPI subsequently enrolled in college and financed his education by working as many as three jobs and by assuming student loans. When he asked Petitioner about the subject funds, Petitioner "steered [him] away from the subject" and provided "only spotty and incomplete information." RPI indicated that he did not pursue the matter further because he trusted Petitioner and had no reason to believe that there had been any impropriety or wrongdoing.

This continued until December 2006, when Petitioner advised RPI that he owed capital gains tax on the sale of stock in a company called Schering-Plough. RPI subsequently requested more detailed information on the subject funds. According to RPI, Petitioner refused to provide him with such, claiming that "there's too much information" and "that is impossible to get for you." Through a review of public information, RPI was able to learn that the amount of Decedent's initial bequest was \$86,409.46, an amount that "surprised" him. RPI subsequently retained counsel and filed suit against Petitioner. As of the date of the affidavit, Petitioner had distributed \$91,459.59 to RPI, but RPI believed it

likely that Petitioner had still not relinquished all funds to him. He subsequently initiated an action in Jefferson Circuit Court in which he sought a full accounting of the subject funds (*Emil Peter, IV v. Emil Peter, III*, No. 07-CI-005111).

Notably, this action was not brought under the provisions of UTMA.

On June 27, 2008, the circuit court conducted a hearing on a motion for order on an accounting that had been filed by RPI. During the hearing, counsel for Petitioner made an oral motion to dismiss the case due to a lack of subject-matter jurisdiction. In doing so, he relied upon *Privett v. Clendenin*, 52 S.W.3d 530 (Ky. 2001), in which the Supreme Court of Kentucky held that “district courts have exclusive subject-matter jurisdiction over claims brought under the UTMA, even accounting claims that in all probability will involve sums exceeding the district court's jurisdictional limitation of \$4,000 imposed by KRS 24A.120.” *Id.* at 532. On October 10, 2008, the circuit court granted Petitioner’s motion to dismiss.

RPI subsequently filed a motion to alter, amend, or vacate the court’s order of dismissal. RPI argued that he had filed his action in circuit court because KRS 385.192, which addresses requests for an accounting of monetary transfers made pursuant to UTMA, only applies to individuals who are still minors. KRS 385.192 provides, in relevant part, as follows:

- (1) A minor who has attained the age of fourteen (14) years, the minor’s guardian of the person or legal representative, an adult member of the minor’s family, a

transferor, or a transferor's legal representative may petition the court.²

(a) For an accounting by the custodian or the custodian's legal representative[.]

KRS 385.012(11) defines a minor as “an individual who has not attained the age of eighteen (18) years[.]” RPI contended that because he was no longer a minor, he could not make a cognizable claim for an accounting under KRS 385.192 or UTMA in general. Accordingly, he argued that under the circumstances he was entitled to file his action for an accounting in circuit court since such courts have general jurisdiction under Kentucky Law. Ky. Const. §109. Petitioner argued in response that the circuit court still had no subject-matter jurisdiction over RPI's claim pursuant to *Privett* – even in light of the fact that RPI likely could not bring a claim upon which relief could be granted in district court because he was no longer a minor.

On January 7, 2009, the circuit court issued an order setting aside its earlier order of dismissal. The court explained its decision as follows:

The Court is troubled by [Petitioner's] implication that, because [RPI] is no longer a minor, he may no longer have a forum in which to contest an alleged wrong, and that [Petitioner] will so argue that position should the case be addressed by the district court. This Court in fact believes that issue IS “this Court's problem,” if that problem is one of seeing that injustice does not occur. [RPI] may or may not prevail on his claims on the merits, but this Court will not participate in an attempt to deprive him of a forum in which to raise those claims.

² UTMA's definition section provides: “‘Court’ means District Court.” KRS 385.012(5).

While [RPI] states that this is not a case brought under the UTMA, and that he simply seeks an accounting based on the fact that the funds were held by [Petitioner] for years after [RPI] reached the age of majority, [RPI] in fact is seeking an accounting since January 18, 1983, the date [Petitioner], in his capacity as custodian for [RPI], received the funds bequeathed by Allyne M. Peter. This would seem to bring the case under the UTMA, regardless of how it is characterized by [RPI], at least as to the management of the funds prior to [RPI's] eighteenth birthday. However, whether or not [RPI], having reached the age of majority, would still be required to file his motion for accounting in the district court as to the funds held prior to his majority, is a question for another day, since this case is not limited to the period prior to [RPI's] 18th birthday. The District Court clearly has no authority to order an examination as to how the funds remaining after [RPI's] 18th birthday were subsequently used. Any claims resulting from mismanagement after [RPI's] 18th birthday would have to be filed in Circuit Court. After further consideration, the Court finds that in this case, the use of the funds prior to [RPI's] majority and the use of the funds after are inextricably intertwined. Since the District Court would not have jurisdiction over the entire matter, jurisdiction falls to the Circuit Court.

Petitioner subsequently filed the current petition for a writ of prohibition pursuant to CR 76.36. He again argues that the circuit court lacks subject-matter jurisdiction over RPI's accounting action because such action was required to be pursued in district court pursuant to UTMA. Therefore, a writ of prohibition directing the circuit court to cease proceeding outside of its jurisdiction is required. In response, RPI argues that the district court does not have exclusive jurisdiction over an accounting action brought by an adult eleven years after reaching the age of majority even if the funds that are the subject of the action

were originally held pursuant to UTMA. Instead, under these circumstances, the circuit court has subject-matter jurisdiction. RPI further claims that Petitioner effectively wishes to create a “procedural trap” by eliminating an adult’s ability to seek an accounting for money held on his behalf as a minor and wrongfully managed and concealed if such wrongdoing is not discovered by his eighteenth birthday.

A writ of prohibition is available in two situations:

1) when a “lower court is proceeding or is about to proceed outside its jurisdiction and there is no remedy through an application to an intermediate court; or 2) the lower court is about to act incorrectly, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise, and great injustice or irreparable injury will result.”

Ally Cat, LLC v. Chauvin, 274 S.W.3d 451, 456-57 (Ky. 2009), quoting *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004). Because the circuit court here is alleged to be acting outside of its jurisdiction, our review is *de novo* because the ultimate question is one of law. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). A writ of prohibition is an “extraordinary remedy and we have always been cautious and conservative both in entertaining petitions for and in granting such relief.” *Bender v. Eaton*, 343 S.W.2d 799, 800 (Ky. 1961).

The facts of this case are unusual – and unprecedented under our case law – because although the subject funds originally came into Petitioner’s possession (on RPI’s behalf under UTMA) when RPI was a minor, they apparently remained under Petitioner’s control – in violation of KRS 385.202 – for more than

a decade after RPI became an adult. KRS 385.202 plainly sets forth that “[t]he custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor’s estate upon . . . [t]he minor’s attainment of age eighteen (18) with respect to custodial property transferred under KRS 385.042 to 385.072[.]” KRS 385.202(1). Accordingly, the statute anticipates that the custodial relationship between a custodian and a minor will terminate – and the custodial property will be transferred – once the minor turns eighteen.

Unfortunately, UTMA provides no clear direction for a situation in which a custodian fails to relinquish those funds once the minor reaches the age of majority and an accounting is subsequently sought.

Petitioner claims that **all** accountings involving UTMA transfers must be brought in district court pursuant to KRS 385.192 - no matter what specific facts are in play – because that court has exclusive jurisdiction over claims brought under UTMA. He again relies upon *Privett v. Clendenin, supra*, in which the Supreme Court of Kentucky held that “district courts have exclusive subject-matter jurisdiction over claims brought under the UTMA, even accounting claims that in all probability will involve sums exceeding the district court's jurisdictional limitation of \$4,000 imposed by KRS 24A.120.” *Privett*, 52 S.W.3d at 532.

However, that case involved a situation in which a husband brought suit for an accounting based upon the contention that his ex-wife wrongfully withdrew money from the accounts of their children (both established pursuant to UTMA) *while the children were still minors*. Accordingly, the Supreme Court expressly relied upon

KRS 385.192 in holding that the circuit court lacked jurisdiction over the request for an accounting in that case because the statute clearly required the action to be pursued in district court. *Privett*, however, does not address the question of what court has jurisdiction over an accounting claim brought by an adult for UTMA funds that were allegedly wrongfully held until he was 29 years old. Thus, we believe its applicability here to be limited.

Ultimately, we believe that while UTMA certainly addresses a situation in which a minor or someone acting on his behalf seeks an accounting, it cannot be read as applying to a situation such as the one at hand. As noted above, KRS 385.192(1)(a) provides that “[a] minor who has attained the age of fourteen (14) years, the minor’s guardian of the person or legal representative, an adult member of the minor’s family, a transferor, or a transferor’s legal representative may petition the court . . . [f]or an accounting by the custodian or the custodian’s legal representative[.]” Thus, by its plain language, KRS 385.192 is applicable only when a minor, or someone acting on his behalf, is involved. This is not the scenario before us and, consequently, we do not believe that KRS 385.192 can apply. Kentucky Constitution § 113(6) expressly provides that “[t]he district court shall be a court of limited jurisdiction and shall exercise original jurisdiction as may be provided by the General Assembly.” We do not believe that the General Assembly authorized district courts to exercise their jurisdiction in cases such as the one at hand given the clear language of KRS 385.192.

We also note that this case is further complicated by the fact that Petitioner allegedly continued to hold on to the subject UTMA funds and to use them well after RPI reached the age of majority in violation of KRS 385.202. While KRS 385.192 certainly provides for an accounting by a district court while an UTMA transferee is a minor, Petitioner has provided us with no authority to support the position that the district court has jurisdiction to conduct an accounting for funds obtained, used, and intermingled with UTMA funds after that minor reaches the age of majority. We agree with the circuit court that the use of the subject funds prior to RPI's majority and the use of the funds afterward became inextricably intertwined and creates additional grounds for the inapplicability of KRS 385.192.

In light of these conclusions, we conclude that RPI correctly pursued an accounting in Jefferson Circuit Court. As a general rule, an accounting is an equitable remedy. *Conley v. Hall*, 395 S.W.2d 575, 578 (Ky. 1965). Since circuit courts have general subject-matter jurisdiction over suits in equity, *see* Ky. Const. §§ 109 & 112(5); KRS 23A.010; *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422, 432 (Ky. App. 2008), a request for an accounting was properly brought in circuit court given the circumstances.

In reaching our decision, we also note our concern that RPI would likely be deprived of a forum in which his claim could be heard were we to grant Petitioner's petition. RPI points out that Petitioner's argument below went beyond a claim that the district court had exclusive jurisdiction over the accounting claim.

Petitioner also insinuated that the district court itself ultimately lacked jurisdiction in this case because RPI was no longer a minor at the time the action was filed, thus effectively leaving RPI with no forum in which to assert his claim. Given the facts that have been alleged here, we believe that such a result would be highly unjust and would effectively create and even encourage the “procedural trap” complained of by RPI. It would effectively eliminate an adult’s ability to seek an accounting for money wrongfully held and managed on his behalf as a minor and for years beyond if such wrongdoing is not discovered by his eighteenth birthday. We simply cannot interpret our statutory and case law in a manner that would produce this type of result.

For the foregoing reasons, Petitioner Emil Peter, III’s petition for a writ of prohibition is DENIED.

ALL CONCUR.

ENTERED: January 29, 2010

/s/ Wm. L. Knopf
SENIOR JUDGE, COURT OF APPEALS

MOTION FOR PETITIONER:

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