

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-001778-MR

STEVE CHARLES

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE STEVEN D. COMBS, JUDGE  
ACTION NO. 09-CI-00592

MARY LOZIER

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: ACREE, CHIEF JUDGE; MOORE AND THOMPSON, JUDGES.

ACREE, CHIEF JUDGE: The appellant asks us to determine if a judgment lien on real property filed after the death of the judgment debtor is void or is valid and therefore enforceable against the highest bidder in a judicial sale. Because an indispensable party was not named in the appeal, however, we lack jurisdiction to consider it.

## **I. Facts and procedure**

Mary Lozier succeeded in a child support action against Ralph Caldwell, Sr., in 1997. Caldwell owned the real property which is now the focus of this dispute. Caldwell died intestate in April 1998, and Lozier filed a notice of judgment lien as to the property shortly after he died.

Lozier later acquired a two-fifths interest in the property which had passed to Caldwell's heirs; she filed a petition for judicial sale in May of 2009,<sup>1</sup> claiming the property was indivisible and requesting additional compensation on the basis of her judgment lien. The respondents named in Lozier's petition included five of Caldwell's heirs, each of whom had received an interest in the property upon his death: Renea Haddix, Tammy Spencer, Ralph Caldwell II, Raquel Jett, and Kristal Caldwell.

The circuit court entered an order of sale on August 4 which recognized Lozier's lien. The Master Commissioner filed the notice of sale a week later; the notice did not mention the lien.

On September 2, the Master Commissioner filed her Report of Sale identifying Appellant Steve Charles as the high bidder of \$49,000. The caption of this order identified as petitioners, "Renea Haddix, *et al*[" It contains no mention of Charles' five-sevenths interest, but rather certifies that the document was served on the previously-identified five respondents.

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<sup>1</sup> All events occurred in 2009 unless otherwise noted.

On September 9, Charles filed a motion to set aside that portion of the August 4 order of sale recognizing Lozier's lien; this marked the first time Charles' name appears in the caption of the case. However, he filed no motion to substitute himself as a party, an action required by Kentucky Rules of Civil Procedure (CR) 25.03. The circuit court never made mention of this procedural misstep, and Charles was identified as the only respondent in the captions of all motions and orders which followed.

The sale was confirmed in an order dated October 1 which included provision for payment of Lozier's tax lien. The Master Commissioner was instructed to distribute the proceeds. Neither Charles nor Lozier was happy with this order and each filed a timely motion to amend it.

Although the circuit court did not immediately rule on either motion to amend, on December 11 it did grant the motion Lozier filed on November 13 to distribute her portion of the sale proceeds in the amount of \$17,374.62, an amount Charles believed was significantly more than she was entitled. Charles renewed his motion to amend the order confirming the Master Commissioner's sale and supplied the circuit court a proposed order reducing Lozier's distribution. More than a year later, the circuit judge signed the tendered order, and it was entered into the record on June 24, 2011.

Lozier timely filed a motion to amend the new order. The circuit court was persuaded, and in its order dated August 31, 2011, determined that Charles'

proposed order of June 24, 2011, had been signed by mistake. It reinstated the October 1, 2009 order.

Charles appealed. He argues he is not responsible for payment of the judgment lien because it was void, having been sought after Caldwell's death. Charles further claims that the circuit court erroneously permitted Lozier to file two motions to amend the judgments at issue. On this basis, he believes, the amended order of June 24, 2011, could not be amended further.

## **II. Discussion**

We note that Charles and Lozier have proceeded as though Charles purchased the interests of Caldwell's remaining five heirs just prior to the judicial sale, but there is no evidence of that transaction in the record. Such evidence would need to have been presented to the circuit court to justify entering an order pursuant to CR 25.03 substituting Charles as the defendant below. CR 25.03 provides, in pertinent part as follows: "in case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." Before the successor-in-interest may be substituted, then, he must file a motion requesting as much. In this case, Charles failed to file any such motion upon acquiring his five-sevenths interest in the real property, choosing instead to simply change the caption without permission of the circuit court. The caption recognized by the circuit clerk has never changed and Caldwell's heirs remain the only defendants.

Charles was never a party to the circuit court action. Absent the circuit court's permission to proceed in his own name, Charles was required to participate in the action in the names of his predecessors-in-interest. CR 25.03; *Nicholson v. Thomas*, 277 Ky. 760, 127 S.W.2d 155, 157 (1939) (“original party . . . lost his interest in the subject matter by a transfer of title, yet his transferee . . . is given the right to continue the prosecution of the case in the name of the first plaintiff without having himself substituted”; interpreting predecessor rule). His Notice of Appeal, likewise, should have identified his predecessors as appellants. Instead, Charles identified only himself.

Charles, never having been a party to the action below, lacked the authority to bring an appeal in his own name; his predecessors-in-interest against whom the judgment was entered were therefore indispensable parties to this appeal; Charles' “failure to name an indispensable party in the notice of appeal is a jurisdictional defect that cannot be remedied.” *Nelson County Bd. of Educ. v. Forte*, 337 S.W.3d 617, 626 (Ky. 2011) (citation and quotations omitted); *see also* CR 73.03(1). Although the failure to name a party whose participation is unnecessary at the appellate level presents no jurisdictional problem, the “failure to specify a party whose absence prevents the appellate court from granting relief . . .” is fatal. *Id.* at 624.

The proper appellant is the party most indispensable to an appeal; without his participation, relief cannot be granted at all. In this case, the only people authorized to participate in the action before the circuit court or to appeal an

unfavorable outcome were Renea Haddix, Tammy Spencer, Ralph Caldwell II, Raquel Jett, and Kristal Caldwell, Charles' predecessors-in-interest. They were not named in the Notice of Appeal and that deprived this Court of jurisdiction.

### **III. Conclusion**

The appeal from the Pike Circuit Court's order of October 1, 2009, is dismissed for want of jurisdiction. *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990) (citation omitted).

ALL CONCUR.

ENTERED: January 4, 2013

c// Glenn E. Acree  
CHIEF JUDGE, COURT OF  
APPEALS

BRIEFS FOR APPELLANT:

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