

RENDERED: JANUARY 20, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2015-CA-001118-MR

JOSEPH E. PIKE;  
MARY F. PIKE;  
RONALD E. PIKE;  
JILL PIKE; THE ESTATE OF  
JOHN BERNARD PIKE, BY AND  
THROUGH WILLIAM JONATHAN  
PIKE, EXECUTOR; PIKE FARMS,  
LLC; LAND & TIMBER REALTY,  
LLC; FARM CREDIT MID-AMERICA;  
AND RHODES LOGGING

APPELLANTS

v.

APPEAL FROM MEADE CIRCUIT COURT  
HONORABLE BRUCE T. BUTLER, JUDGE  
ACTION NO. 14-CI-00273

THE ESTATE OF MONA LOU PIKE,  
BY AND THROUGH MATTHEW  
D. PIKE, EXECUTOR;  
DAVID H. PIKE; MONICA A.  
LYTLE; ANDREA L. PIKE-GOFF;  
AND LESLIE RICHARD PIKE

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KRAMER, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

KRAMER, CHIEF JUDGE: This is a contractual dispute over the ownership of proceeds from the sale of standing timber. The Meade Circuit Court entered judgment in favor of the above-captioned appellees, holding that the proceeds must be divided equally between the seven heirs of the estate of W.E. Pike. Finding no error, we affirm.

As indicated, this dispute arose from part of an attempt at settling an estate in Meade County, Kentucky. W.E. Pike owned two tracts of farmland, referred to as the “Home Place” (approximately 223 acres) and the “Smith Place” (approximately 286 acres). Through his last will and testament, he conveyed a joint life estate in the Smith Place and Home Place to his son and his son’s wife, Henry Pike and Mona Lou Pike; and further directed that upon the passing of Henry and Mona Lou, the properties would go to their bodily heirs. Henry and Mona Lou were subsequently divorced in 1976. A court order was entered directing Henry to quitclaim his life estate interest in the Home Place to Mona Lou, and directing Mona Lou to quitclaim her life estate interest in the Smith Place to Henry. However, Henry and Mona Lou never executed the quitclaim deeds. Subsequently, Henry passed away.

The seven bodily heirs of Henry and Mona Lou are (or were) Leslie Pike, Joseph Edwin Pike, Ronald Pike, John Pike, David Pike, Monica Lytle, and Andrea Pike-Goff. On February 1, 2013, Leslie circulated an email to the other bodily heirs stating in relevant part:

RE: A proposal to settle the estate of W.E. Pike

Mom retains and holds a life estate in the two farms. The farms were to be divided according to the divorce, however according to the courthouse this never took place.

I propose that we sell the timber to responsible timber management standards, as used during the previous harvest, and give that money to Mom to sustain her. She currently receives \$7500 a year (net) from the rental of the home place. The timber proceeds would be placed in an account in Mom's name for her benefit at a bank of her choice. Upon her passing, any money remaining in the account would be divided equally to the seven children or their estates.

To divide the farms, I suggest we use an average of PVA Values provided by Edwin dated July 11, 2012 and Pierce and Associate property appraisal dated 9-6-2012 [ . . ]

Leslie's email went on to provide estimates of the values of the two tracts and a formula for determining the price any heir could pay to buy out the other heirs and purchase either tract (*i.e.*, the estimated value of the tract, minus the value of the buying heir's inheritance). Leslie's email then stated in relevant part:

Using this scenario, the people who end up owning the farms would get all the buildings, etc. that are currently on the farms. If it is necessary for the farms to be surveyed to complete this transaction, the cost of the survey would be paid by the purchaser.

If Ronnie does not want the home place, I, Les Pike, will purchase it using the method shown above. If Edwin and John do not want the Smith Place, I, Les Pike, will purchase it using the method shown above. Whoever ends up owning the farms would be responsible for overseeing the timber harvesting to ensure it was done to standards.

I have consulted legal counsel and have been assured that this proposal [ . . . ] will fulfill the wishes set forth in W.E. Pike's will. This offer is valid for 14 days from today, with transfer to be concluded in 30 days or less. The farms will be quitclaim deeded to the purchaser. Any miscellaneous fees or expenses associated with this action, other than the survey cost, will be paid equally among the seven heirs. Using this method of dispersal, everyone can continue on with their lives and plans without wondering what is going to happen. If you agree to accept this proposal as a complete and final resolution to the will of W.E. Pike, please indicate by your signature. Any expenses or fees associated with this action will be paid equally among the seven heirs.

In a letter from their attorney dated February 21, 2013, Ronald, John, and Joseph Edwin Pike made a counteroffer. In particular, Edwin and John offered to purchase the Smith Place; Ronald offered to purchase the Home Place; they otherwise agreed to the terms of Leslie's proposal; but their attorney additionally specified:

1. Before Edwin and John can commit to purchase the Smith Farm they must first secure financing for the purchase. I have been informed that an attempt to secure financing is in progress. Also, this acceptance is contingent on Ronnie Pike securing financing for the purchase of the Home Place. Ronnie is in the process of securing financing.

2. If financing is secured Edwin and John require that a valid deed be prepared conveying the Smith Farm to them in fee simple.
3. Simultaneous to being presented with a valid deed<sup>[1]</sup> to the Smith Farm Edwin, John and Ronnie<sup>[2]</sup> require that a written timber contract be presented for signature by all parties to the subject proposal. They also require that the timber contract specify that Mona Lou Pike is to receive the proceeds of the timber harvest from the Smith Farm and the Home Place farm, but that once this harvest is complete the proceeds of any further harvesting of either farm go to the owners of the respective farms.

The other heirs accepted this counteroffer. Deeds were then executed to effectuate the overall agreement (hereinafter, the “Pike Agreement”). As an aside, the manner in which the parties effectuated the Pike Agreement differed somewhat from what was apparently contemplated, but the parties do not take issue with it. The purchaser of the Smith Place was ultimately appellant Pike Farms, LLC—an entity organized by John Pike, Joseph Edwin Pike, and Mary Pike (Joseph Edwin’s wife); and the purchasers of the Home Place were Ronald and his wife, Jill Pike. Additionally, there is nothing of record demonstrating a

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<sup>1</sup> The phrase “valid deed,” as it appeared in the second and third conditions of the February 21, 2013 letter, was a reference to the necessity of a general warranty deed as opposed to the quitclaim deed offered in Leslie’s proposal. As borne out in the mortgage documentation of record, a general warranty deed was required by appellant, Farm Credit Mid-America, before it would agree to provide Ronald, Jill, and Pike Farms with financing for the purchases of both the Smith Place and Home Place.

<sup>2</sup> Only Joseph Edwin and John Pike sought to purchase the Smith Place. The collective reference in this third condition to Edwin, John, *and* Ronald, which appears to indicate all three of them wished to purchase the Smith Farm, is a typo. That much is apparent from the preceding two conditions set forth in the letter, both of which specified that Ronald only wished to purchase the Home Place.

“written timber contract” was ever signed by all of the parties to the Pike Agreement, as discussed in the third condition of the counteroffer.

We now turn to what is in dispute, and the reason the appellees filed this declaratory action in Meade Circuit Court. Mona Lou passed away on May 8, 2014. Due to her passing, Pike Farms, Ronald, and Jill asserted that all of the proceeds from the timber sale belonged only to them—proceeds which, as Pike Farms, Ronald, and Jill acknowledged during a subsequent temporary restraining order hearing, they began receiving shortly after Mona Lou’s passing. In support, they argued their general warranty deeds to the Home Place and Smith Place did not exclude the timber. They also argued the purpose of the Pike Agreement—the source of the appellees’ right to any part of the timber sale proceeds—had been effectively frustrated by Mona Lou’s death and consequently gave the appellees no entitlement to any timber sales proceeds.

Regarding this latter point, Pike Farms, Ronald, and Jill reasoned that the Pike Agreement provided the timber sale funds would be deposited into an account for Mona Lou’s use in order to “sustain her;” Mona Lou’s seven children and their estates had an interest in the timber proceeds limited to “any money remaining in the account;” no timber proceeds were ever deposited into any account prior to Mona Lou’s death; no timber proceeds needed to be deposited into any account thereafter because, being deceased, Mona Lou no longer needed to be sustained; thus, the Pike Agreement merely entitled the seven children and their estates to seven equal shares of an empty, non-existent account.

The appellees, on the other hand, argued that for purposes of interpreting the parties' rights to the timber sales proceeds under the Pike Agreement, it made no difference whether timber rights were mentioned in the deeds to the Smith Place or Home Place, or whether Mona Lou died before any timber sales proceeds were received. The Pike Agreement, as they interpreted it, provided that the timber harvest was never part of the conveyances to Pike Farms, Ronald, and Jill. The appellees also pointed to the phrase, "I propose that *we* sell the timber to responsible timber management standards" (emphasis added), as indicating all of the parties to the Pike Agreement regarded the timber that would be harvested as collectively owned, and that the intention was for the timber sale proceeds to be equally shared.

The appellees further argued Mona Lou's death did not absolve Pike Farms, Ronald, and Jill of sharing the timber sales proceeds equally. They reasoned the Pike Agreement did not state that the *only* purpose of depositing the timber sale funds into an account was to sustain Mona Lou; and that to interpret the Pike Agreement in such a way would add a condition precedent that is otherwise absent from the contract. They pointed out that the Pike Agreement contemplated Mona Lou would be given the *entirety* of the timber sales proceeds, not simply what she required to sustain her, and that any amount in *excess* of what she needed to sustain her (*i.e.*, "any money remaining in the account" following her death) would "be divided equally to the seven children or their estates."

Through motions for summary judgment, the parties eventually submitted this matter and their competing interpretations of the Pike Agreement for a decision from the circuit court. Upon review, the circuit court entered summary judgment in favor of the appellees, agreeing with the appellees' interpretation. The circuit court concluded the entirety of the timber sales proceeds were, pursuant to the Pike Agreement, required to be divided equally among the seven children or their estates. This appeal followed.

Summary judgment serves to terminate litigation where “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rule of Civil Procedure (CR) 56.03. Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Summary judgment “is proper where the movant shows that the adverse party could not prevail under any circumstances.” *Id.* (citing *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985)).

On appeal, we must consider whether the circuit court correctly determined that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky. App. 1996). Because summary judgment involves only questions of law and



not the resolution of disputed material facts, an appellate court does not defer to the circuit court's decision. *Goldsmith v. Allied Building Components, Inc.*, 833 S.W.2d 378 (Ky. 1992). Our review is *de novo*. Likewise, the issues in this case involve the interpretation and meaning of terms in a contract. The interpretation of a contract or statute is a question of law for the courts and is subject to *de novo* review. *Cumberland Valley Contrs., Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007).

On appeal, the parties offer the same arguments as they did below regarding the interpretation of the Pike Agreement. We agree with the result the circuit court reached in this matter, namely, that the parties were contractually obligated to divide the timber sales proceeds equally between the seven children or their estates. But, our reasoning differs to an extent.

The principle of “equitable conversion” is a fiction applied by courts to effectuate the intent of contracting parties, testators, and trusts. It rests upon the principle that equity regards things which are directed to be done as having actually been performed where nothing has intervened which ought to prevent such performance. It may be defined as a constructive alteration in the nature of property whereby, in equity, real estate may be considered converted into personalty, or vice versa, and the property becomes transmissible in its converted form. *See Tatman v. Cook’s Adm’x*, 302 Ky. 529, 195 S.W.2d 72, 74 (1946).

Thus, where real property is subject to a will or trust, and the executor or trustee is given a power of sale, coupled with a nondiscretionary directive to

sell, this principle applies. *See generally* 27A Am. Jur. 2d Equitable Conversion § 6. The law will regard the real property as already sold, and thus converted into personal property—even if a sale has yet to take place, and even if money has yet to change hands—in order to effectuate the intent of the will or trust instrument.

*See* 27A Am. Jur. 2d Equitable Conversion § 1, explaining in pertinent part:

The doctrine of equitable conversion is anticipatory, that is, it gets a jump on reality by imagining the conversion in advance; the seller is obliged in equity to convey the realty at issue in exchange for the price, so he or she will be treated as if he or she already had. In other words, land, though not actually sold, may be treated as money, or money, though not actually paid out in the purchase of land, may be treated as land.

(Footnotes omitted.)

One example of how this principle has been applied in Kentucky is found in *Willett v. Willett*, 197 Ky. 663, 247 S.W. 739, 741 (1923) (explaining where a will devised the testator's real property to a church for a fund to be used for the church, equitable conversion applied and the interest of the church was not in the real property, which had yet to be sold, but in personal property (the prospective sale proceeds)).

Another, perhaps more relevant example is found in *Cheatham v. Head*, 203 Ky. 489, 262 S.W. 622 (1924). There, the Court explained that while standing timber is ordinarily classed as real estate, and ordinarily passes under a conveyance of the land upon which it stands, standing timber is constructively separated from the real estate and becomes personal property if it is sold pursuant

to a contract that calls for its immediate severance. Thus, a subsequent purchaser of the land with notice of the sale would not take title to the standing trees, even if, at the time of the purchase, the trees had yet to be harvested and the deed did not otherwise exclude the timber. *Id.* at 623.

With this in mind, we now turn to the operative legal documents in this matter.

We begin by noting the Pike Agreement directed the creation of a trust.<sup>3</sup> The *res* of the trust was as indicated in Leslie’s email, “the timber” to be harvested. The purchasers of the Home Place (Ronald and Jill) and the Smith Place (Pike Farms) accepted the roles of trustees and were “responsible for overseeing the timber harvesting to ensure it was done to standards.” The beneficiaries of the proceeds were Mona Lou, for her use during her lifetime, and “[u]pon her passing, any money remaining in the account would be divided equally to the seven children or their estates.”

While the Pike Agreement broadly states “the timber” from the Home Place and Smith Place would be harvested, there is also no dispute among the parties regarding the amount and value of the timber in question. On January 15, 2014, Pike Farms, Ronald, and Jill contracted to sell Rhodes Logging, LLC, a total of 2,347 trees from the two tracts (described in the contract as 1,407 trees on Redman Road and 940 trees on Apple Jack Road, which the appellants designated

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<sup>3</sup> Generally speaking, to create a trust “there must be an agreement to receive and hold the title, and to dispose of it, in accordance with the purposes of the creator of the trust as embodied in the agreement.” *Johnson v. Wikstrom*, 242 Ky. 636, 47 S.W.2d 61, 62 (1932).

with orange paint marked at eye level) for a “guaranteed minimum” price of \$190,000.

There is also no dispute between the parties that Pike Farms, Ronald, and Jill contracted with Rhodes to satisfy their obligation, as set forth in the Pike Agreement, “to sell the timber to responsible timber management standards” and to “give that money to [Mona Lou] to sustain her.” The logging contract they entered into with Rhodes required Rhodes to pay *all* of the proceeds from the timber sale directly to Mona Lou.

Lastly, considering its imperative direction to sell the standing timber from the Home Place and Smith Place, the Pike Agreement called for what is legally considered the “immediate severance” of the standing timber. *See Cheatham*, 262 S.W. at 624 (explaining “immediate severance” is “a relative term and contemplates a severance as soon as can be reasonably be done under the circumstances, which include the amount of timber, its accessibility, labor conditions, etc.”). Pike Farms, Ronald, and Jill acknowledge they understood at all relevant times that the timber was intended to be sold and removed from the Smith Place and Home Place as soon as could be done under the circumstances, and that time was otherwise of the essence.

Indeed, they devote much of their brief offering excuses for their delay in effectuating the sale of the timber and receiving the proceeds from it. They explain that circumstances beyond their control forced them to wait until January 15, 2014, to enter into a contract to sell the timber. They assert that, due to

the size of the two tracts and quantity of trees, it was reasonable for them to provide Rhodes a contractual term of two years from that date to harvest the timber. They further explain that weather conditions, along with prior contractual obligations, ultimately forced Rhodes to delay harvesting any of the timber until after May 8, 2014. *See id.* at 624 (finding a stipulated period of two years in which to cut and remove timber was not, under the circumstances and conditions, unreasonable, and that the sale of the timber was in contemplation of immediate severance from the soil).

Under the circumstances, it makes no difference that Pike Farms, Ronald, and Jill own the land under the standing timber. They did not purchase the standing timber itself because, at the time of their purchase, they had notice that the standing timber had been constructively severed from the real estate. Indeed, pursuant to the Pike Agreement, Pike Farms, Ronald, and Jill not only had notice that the standing timber was to be immediately sold; as purchasers of the land, they voluntarily assumed the non-discretionary obligation to sell the timber and apply all of the proceeds to the purpose specified in the Pike Agreement.

It also makes no difference that Mona Lou passed away before any of the timber sales proceeds were deposited into an account for her benefit.

Principles of equitable conversion applied, and the law viewed the sum total of the timber sales proceeds—even though they had yet to be received as of the date of Mona Lou's passing—as already having been received by Mona Lou as of the date the Pike Agreement was effectuated.

Notwithstanding the above, we further agree with the circuit court's conclusion that the Pike Agreement did not state the *only* purpose of depositing the timber sale funds into an account was to sustain Mona Lou; along with its conclusion that interpreting the Pike Agreement in such a way would add a condition precedent that is otherwise absent from the contract. As indicated above, the Pike Agreement contemplated Mona Lou would be given the *entirety* of the timber sales proceeds, not simply what she required to sustain her. Because we presume Mona Lou received the entirety of those proceeds prior to her passing, all that remains is to divide the *excess* of what she needed to "sustain her" (*i.e.*, "any money remaining in the account" following her death) "equally to the seven children or their estates."

For these reasons, we AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Jerry M. Coleman  
Elizabethtown, Kentucky

BRIEF FOR APPELLEES:

Kenton R. Smith  
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