

RENDERED: NOVEMBER 22, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001771-MR

STEVE GREGORY

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 13-CI-00246

BLUEGRASS WIRELESS, LLC;
CENTRAL KENTUCKY TAX
ACQUISITION, LLC;
COMMONWEALTH CD FUND, LLC;
COMMONWEALTH OF
KENTUCKY DEPARTMENT OF
REVENUE; GARRISON
INVESTMENTS, LLC; CASEY HARDGROVE;
THE ESTATE OF HAROLD HARDGROVE;
BRANDON HARDGROVE; JAMOS FUND I, LP;
KENTUCKY TAX COMPANY, LLC;
KATHY OWENS; CUMBERLAND
VALLEY NATIONAL BANK AND
TRUST CO.; COMMUNITY
BANCSHARES; PULASKI COUNTY,
KENTUCKY; SHARED SITES, LLC,
SHARED TOWERS, LLC, SHARED
TOWERS V, LLC; SOUTHERN TAX
SERVICES, LC; CHRISTOPHER
ALLEN ST. JOHN; AND
MARANDA JANE ST. JOHN

APPELLEES

OPINION
AFFIRMING

** **

BEFORE: COMBS, MAZE AND NICKELL, JUDGES.

COMBS, JUDGE: Steve Gregory appeals an order of the Pulaski Circuit Court entered on April 1, 2016, that dismissed his complaint intervening in a foreclosure action filed by Cumberland Valley National Bank and Trust Company. The action filed by the bank sought to enforce its mortgage against real property that had been owned by Harold Hardgrove (subject to the mortgage) at the time of his death. Through his intervening complaint, Gregory sought to satisfy a claim arising from a separate lawsuit by means of accessing the real property in the foreclosure action. Gregory contends that the circuit court erred by concluding that he had failed to state a claim for which relief can be granted under the provisions of CR¹ 12.02. After reviewing the record and the applicable law, we affirm.

Although the legal issue before us is quite narrow, the history of the underlying actions is complicated. In March 2009, Gregory filed a personal injury action against Harold Hardgrove alleging that he had fallen at Lake Cumberland Speedway in Burnside, Kentucky -- property owned by Hardgrove. Several months later, in August 2009, Hardgrove died intestate. He was survived by his

¹ Kentucky Rules of Civil Procedure.

children, Brandon Hardgrove and Casey Hardgrove, his only heirs. Brandon Hardgrove was appointed as administrator of the estate. The pending personal injury action was revived against Hardgrove's estate, and Gregory filed a notice of claim in the probate action. On December 5, 2013, Gregory won a judgment against Hardgrove's estate. He filed a judgment lien against the property of the estate in February 2014. It is important to note this chronology; *i.e.*, that Hardgrove died years before Gregory won his judgment. Thus, Hardgrove never became a creditor of Gregory.

On April 7, 2014, Gregory was granted leave to intervene in the bank's foreclosure action (filed more than a year earlier) in an effort to enforce his judgment lien against the subject real property. The circuit court eventually dismissed Gregory's complaint, concluding that the real property had immediately passed to the heirs upon Hardgrove's death in 2009 *subject only to the liens and encumbrances then existing*. Gregory's subsequent motion to alter, amend, or vacate was denied. This appeal followed.

On appeal, Gregory contends that the circuit court erred by dismissing his intervening complaint. He asserts that the provisions of KRS² 395.510 and 395.515 entitle him to enforce his claim against the real property that had descended to Hardgrove's heirs upon his death. We disagree.

² Kentucky Revised Statutes.

KRS 395.510, entitled, “Persons who may bring actions for settlement of estates, parties,” provides as follows:

- (1) A representative, legatee, distributee or *creditor of a deceased person may bring an action in circuit court for the settlement of his estate* provided that no such suit shall be brought by any of the parties named except the personal representative until the expiration of six months after the qualification of such representative.
- (2) The representatives of the decedent, and all persons having a lien upon or an interest in the property left by the decedent, or any part thereof, and the creditors of the decedent, so far as known to the plaintiff, must be parties to the action as plaintiffs or defendants.

(Emphasis added).

The provisions of KRS 395.515 outline the contents of the petition and describe the purposes for which the decedent’s real property can be ordered sold. It provides as follows:

In such an action the petition must state the amount of the debts and the nature and value of the property, real and personal, of the decedent, so far as known to the plaintiff; if it appears that there is a genuine issue concerning the right of any creditor, beneficiary or heir-at-law to receive payment or distribution, or if it appears that there is a genuine issue as to what constitutes a correct and lawful settlement of the estate, or a correct and lawful distribution of the assets, such issues may be adjudicated by the court; and, *if it shall appear that the personal estate is insufficient for the payment of all debts, the court may order the real property descended or devised to the heirs or devisees who may be parties to the action, or so much thereof as shall be necessary, to be sold for the payment of the residue of such debts.*

(Emphasis added).

The trial court did not err by concluding that these provisions are inapplicable. The provisions of KRS 395.515 authorize the settlement of a decedent's debts -- even through the sale of real property that descended to his heirs. However, Hardgrove was never indebted to Gregory. Where a party dies during the pendency of a civil action and the action is revived, the action proceeds as if originally brought against the party against whom it was revived. *Ratterman v. Apperson*, 141 Ky. 821, 133 S.W.1005 (1911). "It is no longer an action against the deceased person." *Id.* at 1006. The deceased person is "out of the case as fully as if he had never been named in it." *Id.* And the court lacks jurisdiction to enter a judgment affecting parties not before it. *Id.*

Hardgrove's estate became indebted to Gregory after Gregory won a judgment against it in 2013; he filed a judgment lien against the property of the estate in February 2014. However, the real property at issue was not the property of Hardgrove's estate in 2014. Instead, the real property had descended **immediately** to Hardgrove's heirs upon his death in 2009. *Wood v. Wingfield*, 816 S.W.2d 899 (Ky. 1991). Under the circumstances, the provisions of KRS 395.510 and KRS 395.515 do not provide Gregory with a remedy against the real property. Consequently, the trial court did not err by dismissing his intervening complaint.

The judgment of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lance W. Turner
Monticello, Kentucky

BRIEF FOR APPELLEES:

SHARED SITES, LLC, SHARED
TOWERS, LLC, AND SHARED
TOWERS V, LLC:

Lisa H. Emmons
Paducah, Kentucky

BRANDON HARDGROVE; CASEY
HARDGROVE; and THE ESTATE OF
HAROLD HARDGROVE:

John F. Kelley, Jr.
London, Kentucky