

# Kentucky Court of Appeals Renders Significant Decision in Probate Case

July 14, 2017

On June 9, 2017, the Kentucky Court of Appeals in *Wolfe v. Young* rendered a significant decision in a probate case by reversing a district court decision and reinstating our client as executor of his father's estate. The decision was significant for probate law in Kentucky because it clearly distinguished the standard necessary to remove an executor of an estate from the lower standard that applies to the removal of an administrator of an estate.

In *Wolfe*, the decedent's will named his son as executor of the decedent's estate. Following the decedent's death, his will was admitted to probate in the district court and his son was appointed as executor of the estate.

Under the terms of the decedent's will, his son, the executor, was granted the option to purchase the decedent's lake cabin, including all its furnishings, for a purchase price equal to the PVA value as of the decedent's death. In order to enable the decedent's son to pay for the lake cabin, the will specifically authorized a partial distribution from the estate.

The decedent bequeathed all of his "tools" and any boat that he owned to his son, but he bequeathed remaining tangible personal property to all of his children – his son and his three daughters – to be divided among them as they agreed. The decedent's other assets, which consisted primarily of the decedent's primary residence and significant positions in the common stock of Duke Energy (\$518,345) and Spectra Energy Corp. (\$408,924), were to be divided among the decedent's children in equal shares.

The decedent's son, as executor, filed an inventory of the decedent's estate which reported the decedent's assets as having a total estimated value of \$1,276,269.

On June 5, 2014, the decedent's daughters sent a letter to their brother, the executor, in which they contended that the inventory failed to include certain items owned by their father at his death: a 2008 truck (claimed to have a value of \$12,000); a man's diamond ring (claimed to have a value of \$25,000); and various other items of tangible personal property. In the letter, the decedent's daughters also claimed that their brother's classification of a mower and lawn tractor as "tools" – specifically bequeathed to the executor under the will – was incorrect and could constitute a breach of his fiduciary duties. The decedent's daughters also contested the executor's decision to expend estate funds to maintain the decedent's real property.

In the June 5<sup>th</sup> letter, the decedent's daughters also requested that the stock in Duke Energy and Spectra Energy Corp. be distributed to them in kind. However, prior to receiving the letter from his sisters, the executor had given the order to sell the stock in Spectra Energy.

On June 16, 2014, the executor responded to his sisters' letter by providing explanations for the decisions and actions contested by his sisters. Nonetheless, the decedent's daughters filed a motion to remove their brother as executor under KRS 395.160 on June 28, 2014, claiming that he was "incapable to discharge the trust." The executor denied his sisters' allegations, and an evidentiary hearing was held in Boyle District Court on April 30, 2015.

At the evidentiary hearing, the executor explained that the decedent had given the 2008 truck and the men's diamond ring to the executor prior to the decedent's death, with the ring being given to the executor more than a decade prior to the decedent's death. The executor stated that the expenses related to the real estate were incurred to preserve the property while it remained in the estate and that he had interpreted the term "tools" to include the decedent's mower and lawn tractor. With respect to the sale of the stock, the executor testified that the estate lacked sufficient liquid assets to pay expenses, and that he received the letter requesting an in-kind distribution of the stock after he had ordered the sale of the Spectra stock. The executor also testified that the portion of the decedent's daughters' share of the Duke Energy stock was still held in the estate and available for an in-kind distribution. He had liquidated his share of the Duke Energy stock and taken a partial distribution to fund his purchase of the decedent's lake cabin.

After the evidentiary hearing, the district court removed the executor, holding that the nature of the disputes were "so severe" that the executor was "incapable of performing his duties." The court did not make findings of fact concerning the "disputes," nor did it rule on any of the allegations made by the decedent's daughters. The circuit court affirmed.

The Court of Appeals disagreed. First, the Court made an important distinction between the removal of an administrator and the removal of an executor, stating that Kentucky "case law suggests that the removal of an executor named by the testator requires a heightened standard and a much more convincing showing of impropriety than would the removal of a court-appointed administrator." In support of this position, the Court cited to *Kuechler v. Rubbathen*, 266 Ky. 390, 99 S.W.2d 193, 195 (1936), in which the former Court of Appeals stated that a "court may remove an administrator for a cause which would not justify the removal of an executor" because while "[a]n administrator of the estate of an intestate is appointed solely by the court, the executor is appointed or designated by the testator, and it is the duty of the court to permit the named executor to qualify unless he is disqualified under the [statute], or other good and substantial reasons to be clearly established."

Turning to the facts, the Court determined that "nothing in the nature" of the decedent's daughters' disputes with the executor demonstrates that he is incapable of performing his duties to the estate fairly and judiciously. The Court stated that the executor's interpretation of the term "tools" as it is used in the decedent's will is not an issue that should be resolved in a removal proceeding. With respect to the use of estate funds to pay for repairs to and maintenance of the decedent's real property, the Court stated that the executor had a duty to maintain and preserve the value of the real property, and the decision to expend estate funds to do so while the real property was still owned by the estate was the executor's. As for the executor's sale of the stock in Spectra Energy, the Court found that since the decedent's will did not include a specific bequest of the stock, the will authorized the executor to sell personal property and the executor did not receive the decedent's daughters' request for an in-kind distribution until after the sale of the stock, the sale of the stock in Spectra Energy was proper.

The Court held that prior rulings in the case were improper because they anticipated or presumed the executor's dishonesty and unfair dealings before any such bad intention had been clearly established. The Court determined that the complaints and allegations made by the decedent's daughters did not constitute evidence of the executor's unfitness to discharge the trust.

Accordingly, the Court reversed the order removing the executor.

The *Wolfe* decision is significant in that it further clarifies the high standard required for the removal of an executor of a decedent's estate in Kentucky. The decision also emphasizes that a mere disagreement regarding the executor's interpretation of a decedent's will or the executor's possession of property given to the executor by the decedent is not sufficient to warrant removal.