**17-118307-AS**

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**IN THE SUPREME COURT OF THE STATE OF KANSAS**

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**IN THE MATTER OF THE ESTATE OF LANNY LENTZ:**

**DIANN WYATT, Respondent / Appellant,**

**vs.**

**LANA KENNEDY (Respondent) and MARILYN LENTZ (Petitioner), Appellees.**

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**On Appeal from the District Court of Shawnee County**
**Honorable Frank Yeoman, District Judge**
**District Court Case No. 2013-PR-000148**

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# REQUESTED SUPPLEMENTAL BRIEF OF THE APPELLANT AS TO ANY IMPACT OF K.S.A. § 59-1202

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## Argument and Authorities

*Standard of Appellate Review*

"The interpretation of a statute is a question of law over which this [C]ourt has unlimited review." *Smith v. Graham*, 282 Kan. 651, 656-57, 147 P.3d 859 (2006).

> The fundamental rule of statutory construction is to ascertain the legislature's intent. The legislature is presumed to have expressed its intent through the language of the statutory scheme. Ordinary words are given their ordinary meanings. A statute should not be read to add language that is not found in it or to exclude language that is found in it. When a statute is plain and unambiguous, the court must give effect to the legislature's intent as expressed rather than determining what the law should or should not be.

*Id.* (quotation marks and citation omitted).

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### A. Summary

The Court has directed the parties to address any impact K.S.A. § 59-1202 may have on this matter, including whether Respondent/Appellant Diann Wyatt waived any objection to the valuation of the Estate based on that statute by failing to invoke it before the district court.

K.S.A. § 59-1202 has no impact on this matter. That Ms. Wyatt did not invoke it does not waive her objection that the district court's valuation of the Estate in its final settlement was not supported by substantial evidence. That statute merely creates a procedure by which, on a party's request, a probate court may appoint independent appraisers to conduct the initial inventory of an estate. Regardless of whether a party requests that, when

the executrix of the estate proffers a final settlement, but another party objects, the executrix must prove her proposed valuation by substantial evidence and the probate court's final valuation also must be supported by substantial evidence. Otherwise, it is reversible error.

Moreover, here, even taking the testimony of the executrix, Petitioner/Appellee Marilyn Lentz, as both legally sufficient evidence and as true, it still did not support the district court's final valuation of the Properties. The law of Kansas did not allow the district court to pluck values out of thin air, regardless of whether anyone invoked § 59-1202.

### B. When an heir contests the executrix's valuation of assets in the final settlement of an estate, the executrix has the burden to prove her valuation by substantial evidence, and the heir's lack of a request for the court to appoint independent appraisers to conduct the initial inventory of the estate under K.S.A. § 59-1202 has no impact on this.

#### 1. Procedure for the final settlement of an estate

In Kansas, a probate court finalizes and distributes an estate in which the decedent had a will through a process called "settlement."

Under K.S.A. § 59-2247, the executrix petitions the court for a final settlement of the estate and proposes the distribution of the estate's assets, including in her petition among other things: (1) an accounting of the estate; (2) the identities "of the heirs, devisees, and legatees;" (3) a description of the decedent's real estate at the time of death; and (4) "the nature and character of the respective claims of the heirs, devisees, and legatees …."

A hearing then is scheduled, with notice given to interested people under K.S.A. § 59-2208. *Id.* Any heir then can file objections to the

executrix's proposal. *In re Estate of West*, 169 Kan. 447, 453-54, 219 P.2d 418 (1950). The heir's objection need only "state facts sufficient to constitute a defense to the petition for final settlement." *Id.* at 453.

At the hearing, the court hears testimony from the executrix and any other witnesses, and then must "determine the heirs, devisees and legatees entitled to the estate and assign it to them by its decree, pursuant to the terms of the will," and in the decree must "name the heirs, devisees and legatees; describe the property; and state the proportion or part thereof to which each is entitled." K.S.A. § 59-2249(a).

**2. To support her proposed final settlement of an estate when an heir contests it, an executrix has the burden to prove the values in her accounting by substantial evidence, and the district court only may find values supported by substantial evidence.**

At the hearing, the executrix also "has the burden to prove [her] final accounting is correct." *In re Estate of Engels*, 10 Kan.App.2d 103, 110, 692 P.2d 400 (1984). Indeed, "it is well established that the burden of proving the correctness of the final accounting is upon the execut[rix]." *In re Estate of Mellott*, 1 Kan.App.2d 709, 713, 574 P.2d 960 (1977). *See also, e.g.*, *In re Estate of Hawk*, 171 Kan. 478, 483, 233 P.2d 1061 (1951) ("In making [her] final settlement in the probate court, the burden of proof is on the administrator of a decedent's estate to show the correctness of [her] final account" (citation omitted)); *In re Estate of Park*, 151 Kan. 447, Syl ¶1, 99 P.2d 849 (1940).

It is equally well-established that this burden extends to proving the alleged value of property in the estate that the executor proposes. *Id.* at 853 ("the burden of proof [is] on the administrator to prove his contention that

[property in the estate] is worth" a sum she advances). When "heirs fil[e] objections" to an executrix's account, "the execut[rix] [has] to establish the correctness of [her] account." *Hawk*, 171 Kan. at 483.

To meet this burden, the executrix must introduce "substantial evidence" to support the accounting, including the values she proposes. *Engels*, 10 Kan.App.2d at 110.

That was exactly the procedure in this case. Ms. Lentz, the executrix, petitioned the district court under § 59-2247 for a final settlement of the Estate (R. 1 at 223). Echoing her December 9, 2016 inventory and December 21, 2016 amended inventory (R. 1 at 237, 261), she proposed that the court find the value of 605 Lindenwood to be $55,000, 613 Lindenwood to be $30,000, 517 Polk to be $17,000, and 2723 Monroe to be $17,000 (R. 1 at 237).

Ms. Wyatt, an heir, objected (R. 1 at 244). Part of her objection was to the values Ms. Lentz proposed assigning to the Properties (R. 1 at 246). She objected that "the values of the real estate have been changed once again with no rhyme or reason as to why other than to make the necessary adjustments to attempt to reflect an equal division between the three heirs" (R. 1 at 246). She objected that 605 Lindenwood and 613 Lindenwood "were appraised and yet the amounts which the Executrix has assigned to these two parcels do not match the appraisal amounts" (R. 1 at 246).

Therefore, at the hearing over her petition for the final settlement, Ms. Lentz had "the burden to prove [her] final accounting is correct." *Engels*, 10 Kan.App.2d at 110; *Mellott*, 1 Kan.App.2d at 713; *Hawk*, 171 Kan. at 483; *Park*, 151 Kan. at Syl ¶1. "[T]he burden of proof [was] on [her] to prove [her]

contention that [the Properties were] worth" the amounts she proposed. *Id.* at 853. She "had to establish the correctness of [her] account." *Hawk*, 171 Kan. at 483.

In her appeal, Ms. Wyatt explains that Ms. Lentz did not meet this burden, because her testimony was insufficient (Brief of the Appellant in the Court of Appeals pp. 17-22). She also explains that the ultimate values the district court found were not even supported by Ms. Lentz's testimony, taken as true (*id.* at 22-26).

**3. The procedure for appointing independent appraisers to prepare the initial estate inventory under § 59-1202 does not lessen the executrix's burden on proposing a final settlement of the estate to prove the values in her accounting by substantial evidence.**

The Court now asks what impact K.S.A. § 59-1202 may have on this procedure. The answer is it has none.

Section 59-1202 is a short statute originating in 1939, which provides:

> No independent appraisement shall be made unless a party having an interest in the estate requests one. If so requested, the personal representative shall appoint not more than three appraisers who shall be approved by the court unless good cause is shown why they should not be approved. Within 30 days after their appointment, such appraisers shall state opposite each item contained in the inventory the value thereof and forthwith deliver such inventory and appraisement, certified by them under oath, to the personal representative, who shall file it with the district court. Such appraisers shall be paid such compensation as the court deems reasonable.

So, what this does is straightforward. If a party with an interest in the estate requests, the personal representative must appoint up to three

appraisers, with court approval. Those appraisers then appraise each item of value contained in the estate's inventory and file in the district court a certified sworn report of those values. Without this, no independent appraisement of the estate shall be made.

Notably, § 59-1202 does not mention a final settlement of the estate. The legislature put it in Article 12 of the Probate Code, titled "Inventory and Appraisement," which governs the initial inventory procedure on appointment of an executor or administrator and the ongoing inventory procedure during the life of an estate. They did not put it in Article 22, "Probate Procedure," which contains the statutes governing settlement of estates, K.S.A §§ 59-2246 through 59-2252.

Indeed, § 59-1202 complements the preceding statute, § 59-1201, which governs the *outset* of an executrix's tenure, not its final settlement. Section 59-1201 requires the executrix, within 30 days of her initial appointment, to "make an inventory stating opposite each item contained in the inventory the full and fair value as of the date of death of the decedent, verified by the personal representative's affidavit, of all real estate and tangible personal property owned by the decedent … and located in the state of Kansas …." Section 59-1202 simply provides that, *in this*, no independent appraisement shall be made unless a party requests one.

But nothing in § 59-1202 relieves an executrix of her burden to prove the correctness of her final accounting on petitioning for a final settlement when an heir contests it. Ms. Lentz could make whatever proposed valuation

she desired for the final settlement. But she still had to prove it. And the district court could not find values that the evidence did not support.

The only four decisions citing § 59-1202 all bear out that it applies during the life of an estate and does not impact the estate's final settlement.

*In re Estate of Ostrander* concerned the legality of a private sale of a decedent's personal property during an estate. 21 Kan.App.2d 972, 974, 910 P.2d 865 (1996). The Court of Appeals noted that "[u]nder K.S.A. 59-2242, personal property of an estate may be sold only on petition and order of the court" and "also provides that no private sale of personal property can be made for less than three-fourths of its valuation under K.S.A. 59-1201 or for no less than three-fourths of the appraised value determined under K.S.A. 59-1202." *Id.* It observed that "K.S.A. 59-1201 calls for the administrator to file an inventory listing the full and fair value of each item as of the date of death" and "K.S.A. 59-1202 deals with independent appraisals." *Id.* As there was no independent appraisal in *Ostrander*, the Court of Appeals noted that the inventory listed the value of a certain piece of property at $3,500 but it was sold for $1,400, which under § 59-1201 and 59-2242 "does not pass muster …." *Id.*

*State v. Johnson* was an attorney disciplinary case. 219 Kan. 160, 160, 546 P.2d 1320 (1976). The attorney was appointed the executor of an estate, and a party requested an appraisal under § 59-1202. *Id.* at 162-63. But he "fail[ed] to file an inventory and appraisal in the estate … within the time required by law (see K.S.A. 59-1201 and 59-1202) …." *Id.* at 163-64. This

Court held the attorney therefore "did neglect a legal matter entrusted to him" and censured him for this. *Id.*

In *In re Estate of Wurtz*, when two brothers purported to exercise an option to buy real estate from the estate of their mother per the mother's will, which required appraisal of the property, their two sisters brought an action in the probate court seeking the appointment of new appraisers under § 59-1202. 214 Kan. 434, 435-37, 520 P.2d 1308 (1974). The probate court then granted their request. *Id.* at 442.

Finally, in *In re Estate of Crawford*, a probate court directed an executor "to file an inventory and appraisal within a specified time." 154 Kan. 737, 121 P.2d 206, 206 (1942). The executor sought to appeal this order to the district court. *Id.* In holding this was not appealable, this Court noted that § 59-1202 was part of a statutory rubric governing the executor or administrator's duties at the outset of his appointment: "The probate code … provides for filing of inventory and appointment of appraisers in certain cases, within thirty days after appointment of the executor or administrator, 59-1201, 59-1202, and for filing of appraisement within sixty days after appointment of the appraisers, 59-1202." *Id.*

None of these decisions holds that § 59-1202 has anything to do with the final settlement of an estate. None holds that the failure to request independent appraisement under it relieves the executrix of an estate seeking a contested final settlement of her burden to prove her proposed valuation by substantial evidence or relieves the district court to base its findings of value on the evidence. None holds that if an heir does not request

independent appraisement, but the district court's findings of value are not supported by substantial evidence, the heir is barred from appealing.

By its plain language and its placement in the statutes, § 59-1202 only concerns the initial inventory of an estate, not the correctness of a proposed final settlement. Therefore, it has no impact on this case at all.

### C. Even taking Ms. Lentz's testimony as legally sufficient evidence and as true, it did not support the trial court's final valuation of the Properties.

Another illustration why § 59-1202 has no impact on this case is that even if Ms. Lentz's proposed valuations of the Estate through her testimony at the hearing were themselves sufficient evidence of value (and they are not – *see* Brief of the Appellant in the Court of Appeals pp. 17-22), the district court's ultimate findings of value did not even match those, either. Instead, the district court's final findings of value are taken from the ether. They are not supported by any of Ms. Lentz's statements. They are entirely arbitrary.

The Court of Appeals even agreed, holding that the findings only were supported by some phantom document Ms. Lentz purported to circulate after the hearing, which was not filed in the district court and which neither Ms. Wyatt nor her appellate counsel ever have seen (Opinion 9). But under K.S.A. § 59-1203, any new inventory had to be filed with the court.

For this, Ms. Wyatt points the Court to pages 23-26 of her Court of Appeals opening brief and pages 16-17 of her original supplemental brief in this Court. She especially points the Court to the chart on page 24 of her Court of Appeals brief, illustrating how the final findings of value were outside even Ms. Lentz's accountings and testimony.

## Conclusion

§ 59-1202 has no impact on this matter. This Court should reverse the Court of Appeals' and district court's judgments and should remand this case for a new hearing.

Respectfully submitted,

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## Certificate of Service

I certify that on May 1, 2020, I electronically filed a true and accurate Adobe PDF copy of the foregoing with the Clerk of the Court by using the electronic filing system, which will send notice of electronic filing to the following:

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