2013 IL App (1st) 110725-U

FIFTH DIVISION
June 21, 2013

Nos. 1-11-0725 and 1-11-0750, Consolidated

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF RICHARD V. HENRY, JR., Deceased	)	
	)	
(Miroslaw Zawierucha and Peter Holland Wemple,	)	Appeal from
	)	the Circuit Court
Petitioners-Appellants,	)	of Cook County
	)	
v.	)	No. 09 P 01779
	)	
J.P. Morgan Chase Bank, N.A., as Executor of the Estate of Richard V. Henry, Jr., March 6, 2013, Deceased, and as Trustee of the Trust Agreement of Richard V. Henry, Jr., dated August 8, 2008,	)	Honorable
	)	Mary Ellen Coghlan,
	)	Judge Presiding
	)	
Respondent-Appellee).	)	

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Epstein concurred in the judgment.

O R D E R

HELD: Trial court's dismissal of will and trust contests affirmed where pleadings were deficient.

¶ 1 This is the fifth appeal from guardianship and probate proceedings concerning Richard V. Henry, Jr. Guardianship began in 2006 when the circuit court of Cook County determined that Henry, an elderly, retired Chicago attorney, had become disabled by severe dementia. Henry died about three years later, at the age of 94, leaving a $5 million estate.

Miroslaw Zawierucha, who is Henry's former live-in caretaker, and Peter Holland Wemple, who is Henry's nephew-in-law, seek review of the court's dismissal of their petitions contesting a "pour over" will and trust agreement executed by Henry's guardian in 2008 pursuant to court order.

¶ 2 The following circumstances have culminated in this fifth appeal. In 1999, Henry was a widower with no surviving children when he executed a will and trust agreement making specific bequests to his extended family and leaving the bulk of his multimillion dollar estate to medical and educational institutions. The record suggests that during her lifetime, Henry's wife Ann and Henry had agreed to leave most of their assets to these institutions. The family members named in Henry's 1999 will included his own niece, Karen Kemp Gunst, her children, and the descendants of Henry's late wife, one of whom was her nephew, Wemple. Henry gave Wemple real estate in Waverly, Illinois, cash, and other assets, and designated Wemple as the executor of the estate.

¶ 3 On February 7, 2004, at the age of 89, Henry purportedly executed a new will which substantially reduced his bequests to the institutions to a total of $200,000, substantially increased the bequest to Wemple, and left Henry's home in Flossmor, Illinois and other considerable assets to Zawierucha. Zawierucha had been Henry's long-term caretaker and he moved into Henry's Flossmor residence in late 2003 to begin providing full-time assistance. There were other large asset transfers from Henry to Zawierucha in 2004, 2005, and 2006, including about $700,000 from a brokerage account that had been bequeathed to Gunst and a home in Ponte Vedra Beach, Florida. The 2004 will and two different quit claim deeds for the

Florida property were prepared by Chicago attorney Donald B. Leventhal.

¶ 4 The guardianship proceedings were initiated in March 2006 after bank personnel became alarmed by Henry's condition and interaction with Zawierucha while trying to transfer large amounts of cash to Zawierucha. One of the bank staff testified that she received a confusing telephone call from Henry on March 1, 2006, and that when she followed up on her concerns by calling back twice, Henry did not seem to understand what he was talking about and repeatedly asked Zawierucha what to do. The manager of the bank branch office in Hazel Crest, Illinois, testified that Zawierucha brought Henry into the bank in his wheelchair on March 3, 2006, and that Zawierucha said that he wanted to withdraw $800,000 from Henry's account. When the manager asked Henry whether he wanted to withdraw the money, Henry replied "Whatever Mick wants." Zawierucha goes by the nickname "Mick." The manager then spoke with Henry outside of Zawierucha's presence and observed that Henry was disoriented, asked where he was and what was happening, and stated that he did not need $800,000. The bank manager telephoned the police. The Hazel Crest police officer who responded to the call testified that Zawierucha first claimed to be Henry's son, but then said he was "like a son" to Henry. Also, Henry could not identify the current year or name the president of the United States and said he did not want the money withdrawn from his account. The bank's anti-fraud personnel froze Henry's accounts. The guardianship proceedings also introduced the opinion of Henry's personal physician that a mental status exam she administered in August 2005 indicated Henry was suffering from dementia. A forensic psychiatrist and a forensic neuropsychologist who examined Henry in March 2006 confirmed that Henry was suffering from debilitating and

progressive dementia and that the severity of his cognitive decline indicated he had been suffering for at least several years and was incapable of making informed and independent financial decisions from at least as early as July 2005. The forensic neuropsychologist further testified that brain images taken in 1998 showed that Henry was already suffering from diffuse cortical atrophy. This doctor's extensive experience with geriatric patients and dementia led him to state on both cross-examination and redirect that Henry was unable to make financial decisions at any point in 2004 and was not capable of distributing his assets in February 2004 when he purportedly executed the will that advantaged Wemple and Zawierucha.

¶ 5 In light of these circumstances, in April 2006, Henry was moved to an assisted living facility in Chicago and a court order of protection required Zawierucha to leave Henry's Flossmor home and cease all contact. Circuit Court Judge James Riley ruled on April 11, 2006, that Henry was a disabled adult and placed him under the guardianship of the Probate Court of Cook County. Judge Riley found that since December 31, 2003, Henry had lacked decisional capacity to manage his personal, financial, and legal affairs, and had "lacked the capacity to execute legal documents" during this time period; Zawierucha had been in a fiduciary relationship with his impaired client; the asset transfers which personally benefitted the fiduciary were presumptively fraudulent; Zawierucha failed to overcome the presumption; and thus, he was liable to Henry's estate for compensatory and punitive damages. Judge Riley appointed Henry's niece Gunst, who was residing in Napa, California, as the plenary guardian of his person and appointed JPMorgan Chase Bank, N.A., the respondent in the instant case, as the plenary guardian of Henry's estate ("Chase" or "the estate").

¶ 6 Chase then instituted citation proceedings to recover assets from (1) Zawierucha, (2) a Canadian corporation purportedly formed by Henry and Zawierucha which used funds from Henry's brokerage and bank accounts to purchase a farm in Ontario, and (3) Zawierucha's sister, who had briefly joined her brother as a live-in caretaker and then borrowed about a third of a million dollars from him to buy a house in Canada. Zawierucha chose not to testify at the bench trial in 2007 because he was defending criminal charges about his conduct. Wemple states that he wanted to testify, but Chase asked that he be barred and Judge Riley granted the request. After the proceedings, Judge Riley granted Chase's amended citation to recover assets; he ordered the return of $1.2 million, the transfer of title to the house in Florida, and payment of $250,000 in punitive damages; and the citation respondents appealed. The case came before us as *In re Estate of Henry*, No. 1-07-2309 (2009) (unpublished order under Supreme Court Rule 23). In *Henry I*, we affirmed the money judgment against Zawierucha and his corporation, but we reversed the judgment against the sister insofar as it was predicated on a finding that she was in a fiduciary relationship with Henry and we remanded the case for clarification as to whether there was an independent basis for judgment against her. After the remand, we affirmed the judgment entered against Zawierucha's sister in an appeal now known as *Henry III*: *In re Estate of Henry*, No. 1-09-2588 (2010) (unpublished order under Supreme Court Rule 23).

¶ 7 Meanwhile, Chase had petitioned and received authorization from the circuit court in 2008 to execute a codicil, a will, and a trust agreement on Henry's behalf which conformed with the distributive portions of his 1999 estate planning documents. Chase had persuasively argued to Judge Riley that Henry was no longer capable of expressing his wishes about the disposition

of his estate and that his 1999 will was a true expression of his testamentary intent; however, Chase should replace Wemple as executor because the nephew-in-law would have a conflict of interest administering a will which reduced the bequests he would have received under the 2004 will. Regarding his own authority, Judge Riley noted in his written order that the Probate Act gives Illinois trial judges "a significant amount of discretion and latitude in dealing with the estate and business affairs of [wards of the court]." He quoted a portion of the statute indicating the court "may authorize the guardian to exercise any and all powers over the estate and business affairs of the ward that the ward could exercise if present and not under disability." 735 ILCS 5/11a-18[a-5] (West 2008). With regard to Zawierucha, Judge Riley concluded, "it would be reasonable for a testator to remove from his Last Will and Testament a person now known to have betrayed *** [the testator's] confidence and wrongly *** [taken] his money." Also, "The 2004 Last Will and Testament is not a valid expression of Richard Henry's testamentary wishes; it is nothing more *** [than] an example of *** [Zawierucha's] overreaching and undue influence, [and it is a product of] a breach of his fiduciary relationship with Mr. Henry." Judge Riley based his decision on the arguments of counsel and the existing evidence; he did not hear any witness testimony as to Henry's testamentary intent. Judge Riley also specified that "all interested persons *** [will] still have available in a decedent's estate the opportunity to file a will contest." Wemple informs us that he and Zawierucha were the only beneficiaries of the 2004 will that were notified of Chase's petition to create a new estate plan for Henry in 2008. We construe this as an indication that Judge Riley did not consider legatee testimony relevant to whether Chase should use its expertise to engage in estate planning. Wemple and Zawierucha

appealed as legatees under the 2004 will, arguing in part that every beneficiary of the 2004 document should be allowed to conduct discovery, put on evidence, and cross-examine witnesses specifically about Henry's testamentary intent in 2004; but in *Henry II*, we dismissed their appeal on procedural grounds, finding that they lacked standing to challenge Henry's will while he was still alive because a legatee does not have vested rights until the death of the testator. *In re Estate of Henry*, 396 Ill. App. 3d 88, 919 N.E.2d 33 (2009). Echoing Judge Riley's holding, we stated:

> "[A]ppellants' proper recourse, if they believe the will and trust created through the trial court's *** order are invalid, would be to file a will contest and a trust contest pursuant to section 8-1 of the Probate Act after Henry's death. The Probate Act provides that within six months after a will has been admitted to probate 'any interested person' may file a petition to contest the validity of that will. 755 ILCS 5/8-1(a) (West 2008) ***; see *In re Estate of Roeseler*, 287 Ill. App. 3d 1003, 1013, 679 N.E.2d 393, 401 (1997) (any legatee under a prior will has standing to file a will contest if that person would receive any benefit were the present will to be set aside) ***.
>
> *** Thus, once Henry's will has been admitted to probate, appellants will have full opportunity for adjudication of their present claims regarding the validity of the will and the trust put into place [in 2008] ***." *Henry II*, 396 Ill. App. 3d at 99, 919 N.E.2d at 42-43.

¶ 8 After Henry's death on February 27, 2009, Chase petitioned to admit the 2008 will to

probate and Wemple cross-petitioned to admit the 2004 will to probate and have himself appointed as executor. Zawierucha filed a motion opposing admission of the 2008 will. Circuit Court Judge James W. Kennedy considered the various written and oral arguments and then admitted the 2008 will into probate on May 29, 2009. Zawierucha did not appeal ruling, however, Wemple did, arguing that the 2008 will was invalid because Judge Riley had exceeded the authority granted to him under the Probate Act or because a will executed by a guardian did not conform to the signature and attestation requirements of the Probate Act. In *Henry IV*, we rejected Wemple's arguments regarding the statute's proper interpretation. *In re Estate of Henry*, No. 1-09-1795 (2010) (unpublished order under Supreme Court Rule 23).

¶ 9 Within six months of the admission of the 2008 estate planning documents to probate, Wemple and Zawierucha filed separate contests pursuant to section 8-1 of the Probate Act. 755 ILCS 5/8-1 (West 2008). In the petitions now at issue, the two men alleged that Henry did have "testamentary capacity" in 2004, that the 2004 will accurately reflected his intentions at the time, and that the 2008 estate planning documents were created when Henry was no longer capable of expressing his testamentary wishes. Both men claimed the need for an evidentiary hearing regarding Henry's intentions in 2004 and Zawierucha's petition suggested that a pertinent witness at such a hearing would be the attorney who drafted the will for Henry's signature. We will detail the allegations as relevant below.

¶ 10 Chase filed motions to dismiss the petitions, arguing as it had in *Henry IV* (*In re Estate of Henry*, No. 1-09-1795 (2010) (unpublished order under Supreme Court Rule 23)) that the guardianship judge, Judge Riley, had statutory authority which he properly exercised in 2008

when he granted Chase's petition to execute a new will and trust agreement during Henry's disability. Chase also argued that it would be inappropriate for a probate court judge to revisit or second guess Judge Riley's order, in light of the principle that one circuit court judge may not review or disregard the decision of another circuit court judge – all circuit court judges have coordinate or equal authority – without diminishing the public's respect for and confidence in our judicial system. See *People ex rel. Phillips Petroleum Co. v. Gitchoff*, 65 Ill. 2d 249, 257, 357 N.E.2d 534, 538 (1976) (stating that when a Madison County circuit court judge consolidated claims pending in Madison and Macon counties, it was inappropriate for a Macon County circuit court judge to refuse to abide by the order); *Board of Trustees of Community College District No. 508 v. Rosewell*, 262 Ill. App. 3d 938, 957, 635 N.E.2d 413, 429 (1992) (indicating that all circuit court judges have equal authority and power, but may not ignore orders entered by their peers sitting in other divisions or counties). In the alternative, Chase argued Wemple and Zawierucha's will contests should be dismissed as factually deficient because they indicated the 2008 will "is not" Henry's, but did not set out one of the "statutory grounds" for invalidating a will, such as lack of capacity or undue influence, fraud, forgery, compulsion, or other improper conduct. Circuit Court Judge Mary Ellen Coghlan stayed Chase's motion to dismiss until after this appellate court ruled in *Henry IV* and then she granted the dismissal of both will contests. *In re Estate of Henry*, No. 1-09-1795 (2010) (unpublished order under Supreme Court Rule 23). Judge Coghlan's single-page order is handwritten and does not specify her reasoning, but indicates she considered written briefs and oral arguments and was fully advised of the premises.

¶ 11 On appeal from Judge Coghlan's order, Wemple contends the dismissal of his will

contest goes against our statement in *Henry II* that the appropriate time for Wemple and Zawierucha to challenge the 2008 will was after Henry's death, when Wemple and Zawierucha's rights, if any, under the 2004 will would have vested. *Henry II*, 396 Ill. App. 3d at 99, 919 N.E.2d at 42-43. Wemple emphasizes that the guardianship court never heard evidence of Henry's testamentary intent in 2004. He contends that Chase's rationale for dismissing his will contest would prevent anyone from ever presenting evidence about Henry's testamentary intent and renders the 2008 will unassailable in the probate court. Similarly, Zawierucha argues that Chase's dismissal arguments and Judge Coghlan's ruling "have put appellant in a virtual box." Zawierucha contends he could not appeal "the writing of the new will because he lacked 'standing' while the ward was alive, and then could not prosecute a *** [will or trust] contest after the ward's death because the new will and trust had already been written." Wemple makes the additional arguments that his pleading was factually sufficient, the Probate Act does not list any "statutory grounds" for contesting a will, and Illinois case law indicates that a petitioner may stand on "*any ground* which, if established by proof, would invalidate the instrument as a will." (Emphasis added.) *Shelby Loan & Trust Co. v. Milligan*, 372 Ill. 397, 403 24 N.E.2d 157, 160 (1939). In response, Chase mainly reiterates its contentions that Judge Riley acted within his statutory authority in 2008, that Judge Riley exercised his discretion and was not required to hold an evidentiary hearing to determine Henry's testamentary wishes, and that the will contests amount to a collateral attack on Judge Riley's decision. Chase also contends, as it contended in the circuit court proceedings, that the pleadings are conclusory.

¶ 12 However, Chase also argues that we do not need to reach the merits of this appeal

because the record tendered by the appellants is incomplete, in that it lacks a transcript, bystander's report, or agreed statement of facts of the proceedings before Judge Coghlan when she dismissed the petitions. It is well settled that the appellant bears the burden of presenting a sufficiently complete record to support his or her claim of error, and in the absence of such a record, it may be presumed that the trial court's order was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958. 959 (1984). Wemple denies any incompleteness in the record, claiming that no argument was presented before the probate court on Chase's motions to dismiss. This assertion is contradicted by the text of Judge Coghlan's dismissal order, which indicates she ruled "having reviewed the Motion to Dismiss, the Petitions to Contest the Will + Trust and the Responses and Replies thereto *and having heard arguments of counsel*" (emphasis added). Regardless, the record is sufficiently complete for us to proceed with our review.

¶ 13 Chase's contention that Wemple and Zawierucha alleged conclusions rather than facts was based on section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2010); *DeHart v. DeHart*, 2013 IL 114137, ¶18, 986 N.E.2d 85,92 (reviewing sufficiency of allegations contesting decedent's will). Illinois requires its plaintiffs or petitioners to "assert a legally recognized cause of action and *** plead facts which bring the particular case within that cause of action." *Teter v. Clemens*, 112 Ill. 2d 252, 256, 492 N.E.2d 1340, 1342 (1986); 735 ILCS 5/2-601 (West 2010) (civil practice statute indicating petitioners must provide "substantial allegations of fact"). For instance, instead of alleging the subjective, legal conclusion that the defendant acted "negligently" (*McLean v. Rockford Country Club*, 352 Ill. App. 3d 229, 816

N.E.2d 403 (2004)), a plaintiff would have to "set out facts which establish [a negligent act, including,] the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately resulting from that breach." *Teter*, 112 Ill. 2d at 256, 492 N.E.2d at 1342. See also *Wait v. First Midwest Bank/Danville*, 142 Ill. App. 3d 703, 491 N.E.2d 795 (1986) (an allegation that a contract was "entered into" or "accepted" is a conclusion of law insufficient to support a breach of contract claim); *Martin-Trigona v. Bloomington Federal Savings & Loan Ass'n*, 101 Ill. App. 3d 943, 428 N.E.2d 1028 (1981) (merely alleging that a contract exists without setting out supporting facts demonstrating offer, acceptance, and consideration is conclusory and insufficient). A complaint that does not plead sufficient facts to establish a cause of action may be dismissed on motion. *Hall v. Eaton*, 259 Ill. App. 3d 319, 322, 631 N.E.2d 805, 807 (1994) (reviewing dismissal of suit to construe one clause in father's will). When ruling on a section 2-615 argument, a trial court accepts as true all well-pled facts as well as any reasonable inferences that may arise from them. *DeHart*, 2013 IL 114137, ¶18, 986 N.E.2d at 92. Our review of an order granting dismissal pursuant to section 2-615 is *de novo*. *DeHart*, 2013 IL 114137, ¶18, 986 N.E.2d at 92. We may sustain a judgment upon any ground that is disclosed by the record, regardless of whether the ground was relied upon by the trial judge. *Hall*, 259 Ill. App. 3d at 321, 631 N.E.2d at 807. We review the judgment that was entered, not the judge's reasoning. *Hall*, 259 Ill. App. 3d 319 at 322, 631 N.E.2d at 807.

¶ 14 Our *de novo* review leads us to find that Wemple and Zawierucha's petitions were properly dismissed under section 2-615 for a failure to state a claim upon which relief can be granted. Wemple filed a three-count petition. Counts I and II of Wemple's pleading concerned

the will and were a reiteration of the statutory arguments then pending in this appellate court and ultimately rejected by us in *Henry IV*. *In re Estate of Henry*, No. 1-09-1795 (2010) (unpublished order under Supreme Court Rule 23). Wemple now concedes that *Henry IV* disposes of Counts I and II of his petition and he limits his appellate arguments to the viability of Count III. In Count III, Wemple recast Count I, but directed his allegations at the trust:

> "29. Decedent had testamentary capacity at the time he executed the 2004 Will.
>
> 30. The 2004 Will contains Decedent's most recent expression regarding the disposition of his Estate prior to his adjudication as a disabled person.
>
> 31. Section 11a-1(a-5) of the Illinois Probate Act requires that the Court ascertain a ward's wishes regarding the disposition of his Estate and the Court in the guardianship proceeding failed to do so by refusing to hold an evidentiary hearing, by failing to give notice to all interested persons, and by failing to consider the 2004 Will as the last valid expression of Decedent's testamentary wishes.
>
> 32. [For these reasons,] [t]he purported trust executed by *** [Chase in 2008] violates the Illinois Probate Act, and is contrary to the public policy of the State of Illinois."

Count I of Zawierucha's petition was his will contest:

> "7. The August 8, 2008 Will is not RICHARD'S."
>
> 8. RICHARD had testamentary capacity at the time of the making of the

February 7, 2004 Will, which will was superceded by the August 8, 2008 Will. That February 7, 2004 Will reflects RICHARD's true intentions as of that date, when he indeed had testamentary capacity. The February 7, 2004 Will is good in substance as it reflects RICHARD's testamentary intentions at that time. RICHARD discussed that Will with his personal attorney of many years, DONALD LEVENTHAL, who became the scrivenor [(*sic*)] of this Will. After its signing, RICHARD kept that Will in place until the time of his death, never having personally revoked that Will. The February 7, 2004 Will is proper in form, and would be admitted to probate absent the August 8, 2008 Will.

9. RICHARD did not have testamentary [capacity] on August 8, 2008 when that Will was signed by RICHARD'S guardian. *** Further, RICHARD's Guardian who signed the August 8, 2008 [will] never discussed the terms of that Will with RICHARD, never discussed with RICHARD the revocation of his 2004 Will, never discussed with RICHARD the disinheriting of Petitioner Mick, nor of his nephew-in-law, PETER, and the Guardian has no personal knowledge to claim that the Chase Will is a proper reflection of RICHARD's intentions at any time after the making of the February 7, 2004 Will.

10. The February 7, 2004 Last Will of Richard Henry is the last and proper reflection of RICHARD's testamentary intentions during the time when RICHARD had testamentary capacity."

Count II of Zawierucha's petition contained essentially the same allegations, but were directed at

the trust.

¶ 15 Thus, both men alleged that Henry "had testamentary capacity" in 2004, and it was, therefore, unnecessary for the guardianship court to replace the 2004 will in 2008. Neither petitioner, however, set out any specific facts supporting this legal conclusion. Neither petitioner adhered to the principle that a complaint must be detailed enough to enable a defendant to answer or otherwise plead with some certainty as to the allegations to which he is responding. *Lykowski v. Bergman*, 299 Ill. App. 3d 157, 700 N.E.2d 1064 (1998) (allegations that the defendant was "a liar" and "guilty of unethical and improper conduct" when faxing a certain letter "to the newspapers" were properly dismissed as conclusory).

¶ 16 Testamentary capacity consists of " 'the ability to know and understand the natural objects of one's bounty [and] the nature and extent of one's property' and to form a plan to dispose of the property." *In re Estate of Jones*, 159 Ill. App. 3d 357, 382, 512 N.E.2d 1050, 1053 (1987) (quoting *Mannin v. Mack*, 119 Ill. App. 3d 788, 804, 457 N.E.2d 447, 456 (1983). Testamentary capacity must exist for a reasonable time before, during, and after execution of the will. *In re Estate of Wrigley*, 104 Ill. App. 3d 1008, 1017, 433 N.E.2d 995, 1004 (1982). Such evidence is competent if it tends to show the testator's mental condition at the time of execution. *Wrigley*, 104 Ill. App. 3d at 1017, 433 N.E.2d at 1004.

¶ 17 If a will and trust are contested together, as is the case here, the standard to contest both is the standard for execution of a will. *Kelley v. First State Bank of Princeton*, 81 Ill. App. 3d 402, 421, 401 N.E.2d 247, 261 (1980).

¶ 18 Plainly, Wemple did not allege any factual basis for his personal conclusion that

Henry "had testamentary capacity" during the crucial time period in 2004 and Zawierucha's allegations were only slightly better. Zawierucha alleged that Henry had a conversation about the 2004 will with an attorney, but Zawierucha failed to specify when this conversation occurred and we can infer only that it took place between 1999 and 2004. Furthermore, Zawierucha did not allege what was said, where this purported conversation took place, and who was present. What Zawierucha did allege was not enough to objectively indicate that Henry was of sound mind and had sufficient mental capacity to direct the drafting of a will. Also, Zawierucha's vague description of Henry's purported discussion with a man who "became the scrivenor [(*sic*)] of this Will" does not convey any facts about this document's execution and, thus, does not indicate that Henry either continued to have or again had mental capacity when the 2004 will was signed.

¶ 19 In short, neither Wemple nor Zawierucha actually alleged that Henry had testamentary capacity in 2004 and thus executed a legitimate will. Their allegations are so minimal and conclusory that it would be impossible for Chase to formulate a definitive answer or affirmative defense.

¶ 20 Wemple and Zawierucha point out that in *Henry II*, we indicated they would have standing after Henry's death to challenge Judge Riley's statutory authority to authorize Chase to execute the 2008 estate planning documents. *Henry II*, 396 Ill. App. 3d 88, 919 N.E.2d 33. We did, in fact, assure Wemple and Zawierucha that they would have a full opportunity to adjudicate their statutory arguments. We did not assure them, however, that they could precede to an evidentiary hearing on the basis of factually deficient, conclusory petitions.

¶ 21 We find that neither petition contained sufficient facts to make out a will or trust

contest and that dismissal of the claims pursuant to section 2-615 was proper. We affirm the circuit court's ruling on that basis.

¶ 22 Affirmed.