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SIXTH DIVISION
December 31, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE ESTATE OF EARL MIGDAL, Deceased,)	Appeal from the
)	Circuit Court of
Defendant-Appellee,)	Cook County.
)	
v.)	No. 10 L 003200
)	
ALLAN MIGDAL,)	The Honorable
)	Mary Ellen Coghlan,
Plaintiff-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶1 **HELD:** The circuit court properly dismissed the claim against the estate where plaintiff failed to state sufficient facts establishing his rights to the challenged property.

¶2 Plaintiff, Allan Migdal, appeals from the circuit court's order granting a section 2-615 motion to dismiss his amended claim against defendant, the estate of Earl Migdal, deceased, for \$100,000. Plaintiff contends the circuit court erred in dismissing his claim against the estate where he stated sufficient facts to support the claim that he was entitled to money from a certificate of deposit (CD) as the beneficiary of the CD. Based on the following, we affirm.

¶3

FACTS

¶4 Earl Migdal died on April 30, 2010, leaving three children, Ronald Migdal, Rayna Migdal Joseph, and plaintiff, as his only living heirs. Earl's wife predeceased him. At the time of Earl's death, he owned property, real and personal, in excess of \$1.1 million. Earl left a last will and testament, executed on January 29, 2009, which was filed in probate court on June 8, 2010. Rayna was the named executor of Earl's will, and testamentary letters were issued to her. Plaintiff contested the validity of Earl's will, as well as revocable trust agreements created by Earl; however, those matters are not raised in this appeal.

¶5 On July 8, 2011, plaintiff filed a claim against the estate for \$112,000 plus interest. The stated nature of the claim was:

"That Allan Migdal ('Allan') was the beneficiary of a CD #4080017028.

That Allan was not originally aware of the existence of said CD.

That Earl Migdal ('Earl') borrowed money from Chicago Community Bank ('CCB') and used said CD as collateral.

That upon Earl's death monies was still owned [*sic*] to the CCB.

That Rayna Joseph Migdal ('Rayna') was named the Executor of the Estate of Earl, and has a duty to pay the debts of Earl's Estate.

That prior to the death of Earl[,] Rayna knew of the existence of the said CD, and the loan existing on said CD.

That after the death of Earl, Rayna attempted to get Allan to relinquish his rights on the loan by misrepresenting the nature of the CD and the Loan.

That Rayna took steps to actively cancel [*sic*] the existence of said CD to Allan in order to increase her share of the Estate.

That when Allan discovered the existence of said CD and the loan, Allan made numerous demands upon Rayna to pay off the loan.

That upon such demands, Rayna refused to pay the debt of Earl's Estate in order to increase her share of the Estate.

That the loan taken by Earl from CCB was a legitimate debt of Earl's Estate.

That as a result of Rayna's failure to pay off said loan, CCB foreclosed on said CD.

That the foreclosure resulted in damages to Allan in the amount of not less than \$112,000 plus interest."

On September 29, 2011, an agreed order was entered in which plaintiff withdrew his claim. The circuit court allowed plaintiff until October 20, 2011, to refile the claim.

¶6 On October 20, 2011, plaintiff filed an amended claim against the estate for \$100,000.

The stated nature of the claim was:

"That Allan Migdal ('Allan') was the beneficiary of a CD #4080017028.

That Allan was not originally aware of the existence of said CD.

That Earl Migdal ('Earl') borrowed money from Chicago Community Bank ('CCB') and used said CD as collateral.

That Allan was made aware of the CD from a letter sent from Martin & Karcazes, Ltd. on behalf of CCB.

That upon Earl's death monies was still owed to the CCB.

That Rayna Joseph Migdal ('Rayna') was named the Executory of the Estate of Earl, and has a duty to pay the debts of Earl's Estate.

That prior to the death of Earl[,] Rayna knew of the existence of the said CD, and the [loan] existing on said CD.

That after the death of Earl, Rayna attempted to get Allan to relinquish his rights o[n] the loan by misrepresenting the nature of the CD and the Loan.

That Rayna took steps to actively cancel [*sic*] the existence of said CD to Allan in order to increase her share of the Estate.

That the loan taken by Earl from CCB was a legitimate debt of Earl's Estate.

That as a result of Rayna's failure to pay off said loan, CCB foreclosed on said CD.

That the foreclosure resulted in damages to Allan in the amount of not less than \$100,000 plus interest."

¶7 On February 27, 2012, the estate filed a motion to dismiss plaintiff's amended claim pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). In the section 2-615 motion to dismiss, the estate asserted that Earl never added plaintiff's name to the disputed CD and the CD was never held jointly; rather, Earl maintained complete ownership of the CD during his lifetime. The estate admitted that plaintiff was the beneficiary of the CD; however, plaintiff was unaware of Earl's use of the CD as security for the loan with CCB and Rayna only became aware of Earl's decision to securitize the loan with the CD after Earl's death. According to the motion to dismiss, because Earl was the owner of the CD during his lifetime, he had the authority to pledge the entire CD as security for the loan with CCB, thereby creating a lien that survived his death. Moreover, in the motion to dismiss, the estate argued that plaintiff's beneficial interest in the CD would have passed to him outside of Earl's estate as a non-probate

asset. Finally, in the motion to dismiss, the estate maintained that it had a duty to preserve the assets of the estate and pay only those debts for which a claim was made. Because CCB elected to exercise its contractual right to use the CD pledged as collateral to set off Earl's debt and not to file a claim against the estate, Rayna, as the executor, was prohibited from paying off the CCB loan with estate assets.

¶8 On May 30, 2012, the circuit court granted the estate's motion to dismiss. Plaintiff filed a motion to reconsider the circuit court's May 30, 2012, order dismissing his claim against the estate. On August 8, 2013, the circuit court denied the motion to reconsider and entered orders related to the will contest and trust disputes. This appeal followed pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010) (a judgment or order entered in the administration of an estate which finally determines a right or status of a party is appealable without a special finding).

¶9 ANALYSIS

¶10 Plaintiff contends the circuit court erred in dismissing his first amended claim against the estate.

¶11 The purpose of a motion to reconsider is to alert the court of newly discovered evidence that had been unavailable at the time of the hearing, changes in the law, or errors in the court's application of the law. *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20. A trial court's ruling on a motion to reconsider generally is reviewed under the abuse of discretion standard. *Id.* However, as here, where a motion to reconsider only asks the trial court to reevaluate its application of the law to the case as it existed at the time the judgment was made, the standard of review is *de novo*. *Id.* Moreover, the circuit court's ruling on a section 2-615 motion to dismiss

is reviewed *de novo*. *Heastie v. Roberts*, 226 Ill. 2d 515, 530-31 (2007). We, therefore, review this case *de novo*.

¶12 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects that are apparent from the face of the complaint. *Id.* at 531. In reviewing the sufficiency of a complaint, a court must construe the allegations in a light most favorable to the non-movant, accepting as true all well-pleaded facts and all reasonable inferences drawn therefrom. *Id.* "A cause of action should not be dismissed under section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Id.*

¶13 A party with a claim against an estate must file a claim form with the representative, the court, or both. 755 ILCS 5/18-1(a) (West 2012). Section 18-2 of the Probate Act (Act) (755 ILCS 5/18-2 (West 2012)) provides: "Every claim filed must be in writing and state sufficient information to notify the representative of the nature of the claim or other relief sought." "Technical legal form is not required in presentation of a claim against an estate, and proceedings in probate court for the allowance of claims are not governed by the technical rules which apply to a formal suit at law." *Matter of Estate of Wagler*, 217 Ill. App. 3d 526, 529 (1991). The Act does not contemplate the use of dispositive motions that would be used against a standard civil complaint. *In re Estate of Krpan*, 2013 IL App (2d) 121424, ¶ 20. However, in *Wagler* and *Krpan*, where there were no objections raised to the improper 2-615 and 2-619 motions, the reviewing courts addressed whether the circuit courts properly entered judgments regarding the claims. *Matter of Estate of Wagler*, 217 Ill. App. 3d at 529-31; *In re Estate of Krpan*, 2013 IL App (2d) 121, 424, ¶ 21-25. Because plaintiff has not asserted that the estate's section 2-615 motion was procedurally improper, we will evaluate its merits.

¶14 Plaintiff argues that his claim against the estate was sufficient where he stated facts demonstrating that Rayna, as executor, willfully refused to effectuate the known wishes of Earl to have the CD pass to plaintiff, as its beneficiary. Instead, as pled in his claim, Rayna attempted to cause him to relinquish his rights to the CD and, despite plaintiff's repeated requests, refused to pay off the CCB loan in an effort to increase her share of the estate. Plaintiff contends that his claim sufficiently pled that plaintiff lost his interest in the CD as a result of Rayna's failure to satisfy her duty as executor to pay off the loan in contravention of Earl's known intent.

¶15 The estate responds that the CCB loan was not a debt of the estate. Rather, CCB elected not to file a claim against the estate, instead exercising its contractual right to set off Earl's debt against the CD that he had pledged as collateral during his lifetime. Moreover, it was Rayna's duty as executor to preserve the assets of the estate and only pay those debts for which a claim had been made. Since CCB did not file a claim, Rayna was obligated not to pay the debt.

¶16 Following our review of plaintiff's claim, we find it was properly dismissed by the circuit court. The basis of plaintiff's argument is that the estate prevented the fulfillment of Earl's wishes. Plaintiff's claim, however, does not establish as much. Rather, the claim demonstrates that, despite having named plaintiff as the beneficiary of the CD, the entirety of the CD was pledged as collateral for Earl's loan with CCB. Because Earl did not satisfy the loan prior to his death, the CD remained collateral. See *Interntational Bank v. Jones*, 119 Ill. 407, 410 (1887) (the general rule is that a bank has a right of set-off, as against a deposit, only when the individual who is both depositor and debtor stands in both these characters alike); *Pescetto v. Colonial Trust & Savings Bank*, 111 Ill. 2d 314, 317 (1986) (an agreement in which an individual pledges the entire interest of the deposit survives the individual's death). As a result, Earl expressly risked plaintiff's beneficial interest in the CD as opposed to taking steps to protect

it. Earl's actions, therefore, directly contravene plaintiff's assertion that Earl's known intent was for plaintiff to receive the contents of the CD.

¶17 The facts of this case are distinguishable from *In re Estate of Amschl v. Linenthal*, 104 Ill. App. 2d 40 (1968), a case cited by plaintiff for support. In *in re Estate of Amschl*, the court found that a son brought a sufficient claim against his father's executor for one half of the estate where he presented facts showing his parents had agreed upon a testamentary plan that each would leave all his property to the other, conditioned on survival, and failing survival, to their two children in equal parts so that the children would each receive half of the parents' total estate. 104 Ill. App. 2d at 42, 46. The claim further stated that each parent had executed wills bringing their plan into effect and the mother's will, in which she bequeathed all of her property to the father, had been in full force and effect at the time of her preceding death. *Id.* at 42. The claim additionally alleged that the executor was present when the agreement was made. *Id.* at 43. The son provided a bill of particulars stating that the agreement between his parents was made about 20 years prior and had been both oral and written. *Id.* The father's will, dated after the mother's death, however, left \$5,000 to his son, established a \$50,000 educational trust for his grandchildren, and left the remainder in a trust for his daughter. *Id.* at 42. The court concluded that the claim was sufficient to survive dismissal. *Id.* at 46.

¶18 In contrast, in the case before us, plaintiff's claim did not state the intent of Earl upon his death with regard to the CD. Moreover, the claim did not allege that Rayna was present when Earl named plaintiff as the beneficiary of the CD. Furthermore, Earl's supposed intent was not demonstrated by agreement, effectuated in a will, and carried out. Rather, during his lifetime, as was his right, Earl used the CD for his benefit by pledging it as collateral for his CCB loan. He

did nothing to alter the terms of the loan prior to his death; he did nothing to demonstrate his intent that the contents of the CD go to plaintiff after having entered into the CCB loan.

¶19 We further find that plaintiff failed to state a sufficient claim where there were no facts to establish that CCB filed a claim against the estate to satisfy the loan. The discharge of an executor's duty to an estate does not include the payment of debts for which no claim has been filed. *Farm Credit Bank of St. Louis v. Brown*, 217 Ill. App. 3d 730, 739 (1991). Instead, "it is the duty of an executor to preserve the assets of the estate and pay only those debts for which a claim has been made." *Id.* (citing *In re Estate of Duffield*, 258 Ill. App. 78, 86 (1930)); see *Estate of MacLeish*, 35 Ill. App. 3d 835, 842 (1976). Where no claim has been filed against the estate, as was the case here, not only is the executor not obligated to pay the estate's debt, but paying the debt would be a breach of the executor's duty to the estate. *Brown*, 217 Ill. App. 3d at 739 (citing *Fragd v. Deemar*, 175 Ill. App. 246 (1912)). As a result, there is no set of facts upon which plaintiff could have stated a claim regarding Rayna's failure to satisfy the estate's obligation to CCB for Earl's loan where no such obligation existed because CCB did not file a claim against the estate.

¶20 CONCLUSION

¶21 We conclude that plaintiff's claim against the estate was properly dismissed.

¶22 Affirmed.