

NOTICE

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2014 IL App (4th) 130362-U

NO. 4-13-0362

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 7, 2014

Carla Bender

4th District Appellate

Court, IL

In re: the Estate of IRMA M. CHAPPELL,)	Appeal from
Deceased,)	Circuit Court of
TONI L. GORRELL,)	Macon County
Petitioner-Appellant,)	No. 10P133
v.)	
MILO CHAPPELL,)	Honorable
Respondent-Appellee.)	James R. Coryell,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision not to remove respondent as executor and appoint petitioner as successive executrix was not against the manifest weight of the evidence.

¶ 2 On May 12, 2010, respondent, Milo Chappell, was appointed executor of the estate of Irma M. Chappell, as provided by a first codicil to decedent's will. Decedent named petitioner, Toni L. Gorrell, as the successor executrix. On October 26, 2010, petitioner filed a petition to remove respondent as executor and appoint petitioner as executrix of decedent's estate. Following hearings on March 10, 2011, and May 23, 2012, the trial court denied petitioner's petition.

¶ 3 On appeal, petitioner argues the trial court erred in failing to remove respondent as executor of the estate. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The decedent, Irma M. Chappell, executed a last will and testament on July 8, 1986, and a first codicil to the will on November 7, 2000. In her will, decedent devised to her children, petitioner and respondent, each an undivided one-half life estate interest in farm real estate located in Macon County, Illinois, and the remainder to their children. The will further specified that in the event of the death of petitioner or respondent leaving no child or children surviving, "the share said deceased child would have taken shall go to my surviving child for and during the term of his or her natural life and upon the death of that child the remainder to the children of that child."

¶ 6 In a paragraph titled "LASTLY," the will appointed petitioner and respondent as executors of decedent's estate, but in the November 7, 2000, first codicil to her will, decedent revoked the paragraph in her will titled "LASTLY," and stated the following:

"LASTLY: I nominate and appoint my son, Milo G. Chappell, Executor of this my Last Will and Testament *** and appoint Toni L. Gorrell, as Successor Executor of this Will. *** I further give to my Executor, or Successor Executor as the case may be, the power to sell any and all of the assets of this estate at public or private sale, upon such terms and conditions as my Executor deems best and all without any order of court.

SECOND: In all other respects, I republish

and confirm the provisions of my Last Will and Testament dated July 8, 1986."

¶ 7 Decedent died on January 29, 2010. On May 12, 2010, respondent filed a petition for probate of will and for letters testamentary and also on May 12, 2010, the trial court entered an order admitting the will to probate and issuing letters of office to respondent as independent executor.

¶ 8 In a letter dated May 17, 2010, T.G. Bolen, counsel for respondent as the executor, advised "THE HEIRS OF IRMA M. CHAPPELL, DECEASED" of the following:

"[Respondent] advises me that basically the only asset available is the 80[-]acre farm. I have also received a letter, a copy of which is enclosed, showing that there is a balance of approximately \$17,000 due on a credit card in the name of Irma M. Chappell. Obviously there are expenses of operating the farm for this coming crop year as well as the expenses of administering the estate. We will, therefore, need to raise funds for all of the above. I will be in touch with you shortly regarding possible plans for payment of those bills and the administration of the estate."

¶ 9 On June 16, 2010, petitioner filed a claim against decedent's estate to recover \$10,000, representing the total amount of a loan petitioner made to decedent in 1985.

¶ 10 On October 6, 2010, petitioner filed a petition to terminate independent administration pursuant to section 28-4(a) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/28-4(a) (West 2010)). The following day, October 7, 2010, respondent executed an executor's

deed conveying 78 acres of decedent's farm real estate to Edward L. Garver III and Jennifer Garver for \$561,600.

¶ 11 On October 18, 2010, the trial court entered an order granting petitioner's petition to terminate independent administration of decedent's estate.

¶ 12 On October 26, 2010, petitioner filed an emergency petition seeking an order directing respondent to make a complete accounting of all funds and to deposit the proceeds from the unauthorized sale of decedent's farm real estate with the court. Petitioner attached to her petition the executor's deed executed by respondent on October 7, 2010.

¶ 13 Also on October 26, 2010, petitioner filed a petition to remove respondent as executor, for cause, and appoint petitioner as executrix of decedent's estate. Petitioner stated that decedent's will provided for a specific gift of decedent's farm real estate to petitioner and respondent. She and respondent each had an undivided one-half life estate interest in decedent's farm real estate, with petitioner's children and respondent's children having a vested remainder in petitioner's and respondent's undivided one-half interest. Petitioner stated she had three children, each with a vested remainder in fee simple to the farm real estate. Respondent did not have children. Petitioner alleged that by selling the farm real estate, respondent "engaged in self-dealing and [] violated his duties as a fiduciary to the estate." Further, petitioner alleged respondent violated section 28-8(i) of the Probate Act when he sold the farm real estate without written consent "of all the legatees." Petitioner sought the removal of respondent as executor of decedent's estate and the appointment of petitioner as executrix.

¶ 14 On October 27, 2010, petitioner filed a claim against decedent's estate in the amount of \$3,597.57, for funeral expenses. On October 29, 2010, Robert McQueen filed a claim

against decedent's estate in the amount of \$1,789.92, for unpaid expenses incurred while operating the farm.

¶ 15 In an order entered on November 1, 2010, the trial court granted petitioner's emergency petition directing respondent to deposit the net sum of the sale of the farm real estate into Hickory Point Bank and Trust, Decatur, Illinois, and file with the clerk a complete accounting of all funds no later than November 30, 2010.

¶ 16 On November 2, 2010, respondent wrote a letter to petitioner's three children proposing "an agreement for an earlier and fair distribution of the Estate of Irma M. Chappell among the Heirs and Legatees."

¶ 17 On November 29, 2010, PNC, NA, filed a claim against decedent's estate in the amount of \$17,942.47, for "goods and services rendered with a Master Credit Card ***."

¶ 18 On November 30, 2010, respondent filed a "FIRST CURRENT REPORT AND ACCOUNT," covering the period from January 29, 2010, to November 3, 2010. Respondent reported receipts in the amount of \$572,958.54, including the proceeds from the sale of the farm real estate, and disbursements in the amount of \$32,350.96. Petitioner did not file an objection to the first-current accounting.

¶ 19 The trial court conducted two hearings on the petition to remove respondent as executor and appoint petitioner as executrix of decedent's estate. The court conducted the first hearing on March 10, 2011, and the second hearing over one year later, on May 23, 2012. The record contains no explanation for the 14-month delay.

¶ 20 Petitioner testified she did not have "concrete evidence" that respondent "gained anything personally by selling [the farm real estate]" but believed something was "awry." If

respondent had sought her written consent to sell the farm real estate, she would have refused to consent to the sale. Petitioner stipulated the farm real estate was sold for "a fair market value."

¶ 21 Bolen testified he had multiple conversations with petitioner following decedent's death. Bolen advised petitioner that she must retain counsel if she objected to the sale of the farm real estate.

¶ 22 Respondent testified the estate had less than \$4,000 in cash when decedent died, and the farm real estate. Respondent mortgaged the farm real estate, borrowing \$30,000 to pay attorney fees associated with the administration of the estate and farm-related expenses. Respondent admitted he sold the farm real estate without written consent of the legatees. He relied on the language of the first codicil which authorized the executor "to sell any and all of the assets of this estate at public or private sale, upon such terms and conditions as my Executor deems best and all without any order of court." Also, Bolen advised respondent he could sell the farm real estate without the written consent of the legatees. Respondent sold the farm real estate because he "had too many bills and not enough cash on hand to pay them." He testified "there were a number of bills against the estate, crop bills, seed, chemicals, etc. Also taxes that were due, some other things and attorney's fees and then I didn't have money, sufficient money, to pay for them."

¶ 23 Respondent last spoke to petitioner at their mother's funeral. He advised petitioner "there were bills, substantial bills, and it may require the sale of a portion or all of the farm." In approximately June 2010, respondent advised Bolen that he was not to speak to petitioner.

¶ 24 Petitioner argued in closing argument that respondent "was motivated by getting

cash" and failed to consider alternative means of securing funds to pay the expenses associated with the estate. Respondent argued he did not obtain "any advantage whatsoever by selling [the farm real estate]." Further, there were not enough liquid assets to pay estate "claims and expenses."

¶ 25 Immediately following closing arguments, the trial court denied petitioner's petition to remove respondent as executor and appoint petitioner as executrix of decedent's estate. The court found "the claims are about double the amount of money on hand and *** [s]o *** one motivation, obviously, for selling the land was to pay the fees." On April 3, 2013, the court entered a written order, stating:

"I find that the additional statutory power to sell with written consent of the legatees controls over the decedent's Will which contained a power of sale. Because of the unresolved debts of the estate, the Independent Executor did not have to provide notice to the legatees of the sale of the farm pursuant to Section 28-8 of the Illinois Probate Act; and I find that the sale of real estate without consent of the legatees was not a sufficient reason to remove the independent executor."

The court made a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), and petitioner appeals.

¶ 26

II. ANALYSIS

¶ 27 Petitioner argues the trial court erred in failing to remove respondent as executor of decedent's estate. The standard of review for removal of an executor under the Probate Act is

whether the decision of the trial court is against the manifest weight of the evidence. *In re Estate of Kirk*, 242 Ill. App. 3d 68, 74, 611 N.E.2d 537, 541 (1993). "A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on evidence, or when the opposite conclusion is clearly evident from the record." *In re Estate of Savio*, 388 Ill. App. 3d 242, 249, 902 N.E.2d 1113, 1120 (2009). "Under a manifest weight of the evidence standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *In re D.F.*, 201 Ill. 2d 476, 498-499, 777 N.E.2d 930, 943 (2002). "A reviewing court, therefore, must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *D.F.*, 201 Ill. 2d at 499, 777 N.E.2d at 943.

¶ 28 In the first codicil to her will, decedent nominated respondent to be the executor of her estate, followed by petitioner. The executor's duty is to "carry out the wishes of the decedent," acting in the utmost good faith to protect the interests of the beneficiaries, "exercising at the very least that degree of skill and diligence any reasonably prudent person would devote to [his] own personal affairs." *Will v. Northwestern University*, 378 Ill. App. 3d 280, 291-92, 881 N.E.2d 481, 494 (2007). "[T]he beneficiaries of an estate are intended to benefit from the estate and are owed a fiduciary duty by the executor to act with due care to protect their interests." *Gagliardo v. Caffrey*, 344 Ill. App. 3d 219, 228, 421, 800 N.E.2d 489, 496 (2003). Ultimately, the executor's duty is to administer the assets of the estate so that any debts or obligations are paid and the beneficiaries receive their just and proper benefits in an orderly and expeditious

manner. *Northwestern University*, 378 Ill. App. 3d at 291-92, 881 N.E.2d at 494. In addition, an executor owes a duty of full disclosure to the beneficiaries under the testator's will. See *In re Estate of Talty*, 376 Ill. App. 3d 1082, 1089, 877 N.E.2d 1195, 1204 (2007).

¶ 29 On petition of an interested person or on the trial court's own motion, the court may remove an executor from office. 755 ILCS 5/23-2(a) (West 2010). Section 23-2 of the Probate Act (755 ILCS 5/23-2(a) (West 2010)) sets forth the grounds for removal:

- "(1) the representative is acting under letters secured by false pretenses;
- (2) the representative is adjudged a person subject to involuntary admission under the Mental Health and Developmental Disabilities Code or is adjudged a disabled person;
- (3) the representative is convicted of a felony;
- (4) the representative wastes or mismanages the estate;
- (5) the representative conducts himself or herself in such a manner as to endanger any co-representative or the surety on the representative's bond;
- (6) the representative fails to give sufficient bond or security, counter security or a new bond, after being ordered by the court to do so;
- (7) the representative fails to file an inventory or accounting after being ordered by the court to do so;
- (8) the representative conceals himself or herself so that

process cannot be served upon the representative or notice cannot be given to the representative;

(9) the representative becomes incapable of or unsuitable for the discharge of the representative's duties; or

(10) there is other good cause."

"[A]n executor should not be removed for errors or omissions which are satisfactorily explained, errors of judgment not amounting to malfeasance, or error in the construction of a will in the absence of wilful misconduct, or bad faith." *In re Estate of Breault*, 29 Ill. 2d 165, 180, 193 N.E.2d 824, 832 (1963). Further, an executor may not be removed merely because beneficiaries of the will might have handled the estate differently and prefer a different executor. *Estate of Kirk*, 242 Ill. App. 3d at 79, 611 N.E.2d at 544.

¶ 30 Petitioner argues it was error that respondent was not removed as executor based on his failure to secure the written consent of the legatees prior to his sale of the farm real estate, in violation of section 28-8(i) of the Probate Act (755 ILCS 5/28-8(i) (West 2010)). Section 28-8(i) states:

"Administrative powers. An independent representative acting reasonably for the best interests of the estate has the powers granted in the will *and the following powers*, all exercisable without court order, *except to the extent that the following powers are inconsistent with the will*:

* * *

(i) To take possession, administer and grant possession of

the decedent's real estate, which term in this subsection includes oil, gas, coal and other mineral interests therein; to pay taxes on decedent's real estate whether or not in possession of the representative; to lease the decedent's real estate upon such terms and for such length of time as he deems advisable; to sell at public or private sale, for cash or on credit, or mortgage any real estate or interest therein to which the decedent had claim or title, *but real estate specifically bequeathed shall not be leased, sold or mortgaged without the written consent of the legatee*; and to confirm the title of any heir or legatee to real estate by recording and delivering to the heir or legatee an instrument releasing the estate's interest." (Emphases added.)

¶ 31 Assuming arguendo that respondent breached his fiduciary duty to the beneficiaries of the estate when he failed to secure the written consent of the legatees prior to his sale of the farm real estate, petitioner cites no authority indicating that respondent's actions constitute "other good cause" for removal of an executor. Petitioner asserts respondent "purposely disregarded [section 28-8(i) of the Probate Act] and intentionally hid the sale of the Farm so that the Legatees could not object." The record does not support petitioner's assertions.

¶ 32 Respondent testified he relied on the language of the first codicil to decedent's will, which authorized the executor "to sell any and all of the assets of this estate at public or private sale, upon such terms and conditions as my Executor deems best and all without any order of court." (Emphasis added.) Nothing in the first codicil to decedent's will requires the

written consent of legatees prior to the sale of decedent's farm real estate. Respondent further testified that he spoke with Bolen, who advised respondent he could sell the farm real estate without the written consent of the legatees.

¶ 33 Additionally, respondent spoke to petitioner at their mother's funeral, advising petitioner "there were bills, substantial bills, and it may require the sale of a portion or all of the farm." Also, in a letter dated May 17, 2010, counsel for the executor advised petitioner that there were not sufficient funds for payment of the expenses of the estate. Further, during multiple conversations with petitioner, Bolen encouraged petitioner to seek counsel if she objected to the sale of the farm real estate. According to Bolen, petitioner knew "from day one" that respondent "was going to sell the farm." Decedent died on January 29, 2010. Petitioner first filed on June 16, 2010, a claim against decedent's estate to recover \$10,000, representing the total amount of a loan petitioner made to decedent in 1985. Next, on October 6, 2010, the day before respondent sold the farm real estate, petitioner sought an order terminating independent administration of decedent's estate, which the trial court granted on October 18, 2010. The record simply does not support petitioner's contentions that respondent "purposely disregarded [section 28-8(i) of the Probate Act] and intentionally hid the sale of the Farm so that the Legatees could not object."

¶ 34 With regard to the trial court's written order entered on April 3, 2013, we find it unclear whether the court found section 28-8(i) of the Probate Act (755 ILCS 5/28-8(i) (West 2010)) required respondent to secure written consent of the legatees before he sold the farm real estate, but respondent's failure to do so did not constitute "good cause" for removal; or, whether the court found section 28-8(i) did not apply to the instant matter and, thus, petitioner did not demonstrate "good cause" for removal. The order contains seemingly contradictory language.

¶ 35 However, it is the trial court's judgment that is on appeal to a court of review, and not whatever else the trial court may have said. *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387, 457 N.E.2d 9, 12 (1983). A reviewing court is not bound by the reasons given by the trial court for its judgment. *Material Service Corp.*, 98 Ill. 2d at 387, 457 N.E.2d at 12. The trial court judgment may be sustained upon any ground warranted in the record, regardless of whether it was relied on by the trial court. *Material Service Corp.*, 98 Ill. 2d at 387, 457 N.E.2d at 12.

¶ 36 In the instant case, we find the trial court's decision denying the petition to remove respondent as executor and appoint petitioner as executrix of decedent's estate was not against the manifest weight of the evidence. The trial court found "[t]he non-real estate assets were not sufficient to cover all of the estate debts, farm expenses, claims and administrative expenses; and in September of 2010 the independent executor sold the 78 acres of farmland." The court found the language of the first codicil authorized the executor "to sell any and all of the assets of this estate at public or private sale, upon such terms and conditions as my Executor deems best and all without any order of court." With regard to claims against the estate, the court noted at the time of the sale of the farm real estate, "debts and administration expenses *** exceeded the non-real estate assets available to pay them ***." Based on the evidence presented, we find the court's decision not to remove respondent as executor was not against the manifest weight of the evidence. A reviewing court may not reweigh the evidence or substitute its judgment for that of the trier of fact. *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 510, 841 N.E.2d 928, 945 (2005). The trial court's decision denying petitioner's petition to remove respondent as executor

and appoint petitioner as executrix of decedent's estate was supported by the evidence in the record.

¶ 37 While a review of Illinois law indicates that the present factual situation is one of first impression, previous cases lend support to the decision we reach in the present case. *In re Estate of Nuyen*, 111 Ill. App. 3d 216, 443 N.E.2d 1099 (1982), the petitioner sought removal of the executor of her deceased husband's estate, alleging it committed acts of waste and mismanagement in that it transferred decedent's dental practice two weeks after decedent's death in exchange for an assumption of decedent's obligation to perform prepaid services. *Estate of Nuyen*, 111 Ill. App. 3d at 217-18, 443 N.E.2d at 1100. Decedent's estate consisted of an orthodontics practice and two parcels of realty. The estate contained no cash and the record indicated that the estate property did not produce sufficient income to meet the expenses that arose soon after decedent's death. *Estate of Nuyen*, 111 Ill. App. 3d at 217-18, 443 N.E.2d at 1100. The appellate court affirmed the trial court's denial of the petition to remove the executor, finding "the fact that the dental practice required immediate attention in order for it to continue and not be a serious liability, we believe the disposition of the practice, including the agreement to pay the decedent's debt for dental equipment, was reasonable under the circumstances." *Estate of Nuyen*, 111 Ill. App. 3d at 225, 443 N.E.2d at 1105.

¶ 38 Similarly, respondent in this case testified the estate had less than \$4,000 in cash when decedent died and the farm real estate. Respondent mortgaged the farm real estate, borrowing \$30,000 to pay attorney fees associated with the administration of the estate and farm-related expenses. Respondent testified he sold the farm real estate because he "had too many bills and not enough cash on hand to pay them." The trial court found "[t]he non-real estate

assets were not sufficient to cover all of the estate debts, farm expenses, claims and administrative expenses ***" and ultimately denied the petition to remove.

¶ 39 In *In re Estate of Chapman*, 104 Ill. App. 3d 794, 797, 433 N.E.2d 313, 315 (1982), the appellate court affirmed the trial court's removal of an administrator on the grounds he mismanaged two estates and demonstrated he was unsuitable for the discharge of his duties. See 755 ILCS 5/23-2(a)(4), (9) (West 2010). The administrator misappropriated estate funds for his personal use, restoring the funds only after he was pressured to do so over a period of months. *Estate of Chapman*, 104 Ill. App. 3d at 797, 433 N.E.2d at 315. The administrator claimed confusion as to the effect of a power of attorney but did not seek advice of counsel. *Estate of Chapman*, 104 Ill. App. 3d at 797, 433 N.E.2d at 315.

¶ 40 Here, petitioner does not assert respondent misappropriated for his personal use the proceeds from the sale of the farm real estate. Instead, petitioner argues it was error that respondent was not removed as executor based on his failure to secure the written consent of the legatees prior to his sale of the farm real estate. Respondent testified he relied in part on the language of the first codicil to the will as authority to sell the farm real estate and, unlike the administrator in *Estate of Chapman*, respondent also sought to eliminate any confusion by seeking the advice of counsel. Counsel advised respondent he could sell the farm real estate without the written consent of the legatees.

¶ 41 In addition to removal based on an administrator's failure to timely restore misappropriated funds to an estate and failing to seek advice of counsel to eliminate claimed confusion (*Estate of Chapman*, 104 Ill. App. 3d at 797, 433 N.E.2d at 315), reviewing courts have affirmed a trial court's removal of an executor where the executor (1) personally claimed

\$75,000 of decedent's pension benefits even though decedent's will did not bequeath benefits to the executor, (2) failed to timely file federal estate tax returns resulting in \$35,000 in tax penalties, and (3) failed to comply with the trial court's order to file an accounting (see *In re Estate of O'Brien*, 166 Ill. App. 3d 285, 288, 519 N.E.2d 969, 971 (1988)). See also *In re Estate of Abbott*, 38 Ill. App. 3d 141, 144, 347 N.E.2d 215, 217-18 (1976) ("failure to account for the loss of \$33,500 and the failure to pay any real attention to the business of the estate formed a sufficient basis for removal"); and *Matter of Estate of Gullet*, 92 Ill. App. 2d 405, 408, 234 N.E.2d 551, 553 (1968) (removal was not against the manifest weight of the evidence where the executor failed to pay property taxes, transferred title to decedent's automobile to own name, failed to make proper rental payment incident to tenancy of house, had no bookkeeping system, co-mingled funds of estate, and conducted himself in such manner as to endanger his fiduciary). But see *Matter of Estate of Glenos*, 50 Ill. App. 2d 89, 98-99, 200 N.E.2d 65, 68 (1964) (probate court's finding that the executor was not guilty of mismanagement where he attempted to sell estate property for less than amount that had been offered was erroneous and contrary to the manifest weight of the evidence). We find respondent's conduct in the instant case readily distinguishable from the multiple acts and omissions committed by the administrators in the above cited cases, resulting in the removal of the administrators from office.

¶ 42 Petitioner also argues it was error that respondent was not removed as executor based on his breach of fiduciary duty and mismanagement of decedent's estate. Petitioner argues respondent breached his fiduciary duty by (1) selling the farm real estate without written consent of the legatees, (2) failing to respond to claims against the estate, and (3) allowing petitioner's son to live rent-free in a house on the farm real estate; thus, the trial court should have removed

respondent as executor based on mismanagement of decedent's estate. See 755 ILCS 5/23-2(a)(4) (West 2010). Plaintiff's petition filed on October 26, 2010, contained only an allegation that respondent "violated his duties as a fiduciary" by failing to secure the written consent of the legatees prior to his sale of the farm real estate in violation of section 28-8(i) of the Probate Act and, thus, the trial court should remove respondent as executor "for cause." See 755 ILCS 5/23-2(a)(10) (West 2010). Petitioner did not raise in her petition mismanagement of decedent's estate as a basis for removal (see 755 ILCS 5/23-2(a)(4) (West 2010)), and did not state in support of her petition that respondent (1) failed to respond to claims against the estate and (2) allowed petitioner's son to live rent-free in a house on the farm real estate.

¶ 43 Further, the trial court cautioned the parties multiple times during the hearings regarding "getting a little bit afield from the petition," stating the sole issue presented in petitioner's petition was whether respondent's failure to secure written consent of the legatees before selling the farm real estate was "grounds for removal," and also stating that "[t]he petition[er] is trying to remove [respondent] for selling the real estate. That's what the petition alleges." Also, the court's written order entered April 3, 2013, makes no reference to respondent's failure to respond to claims against the estate or his allowing petitioner's son to live rent-free in a house on the farm real estate in support of a finding of mismanagement. Since petitioner in her petition failed to raise mismanagement of decedent's estate, as evidenced by respondent's alleged failure to respond to claims against the estate and his allowing petitioner's son to live rent-free in a house on the farm real estate, and petitioner did not amend her complaint to include such claims, petitioner's argument is not properly before this court. We note, however, our decision does not impact the viability of petitioner's other claims against

respondent.

¶ 44 Accordingly, we affirm the ultimate judgment of the trial court denying petitioner's petition to remove respondent as executrix and appoint petitioner as executor of decedent's estate.

¶ 45

III. CONCLUSION

¶ 46 For the reasons stated, we affirm the Macon County circuit court's judgment.

¶ 47 Affirmed.