

2016 IL App (2d) 160255-U  
No. 2-16-0255  
Order filed November 30, 2016  
Modified upon denial of rehearing February 23, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> ESTATE OF ROBERT D. DONALDSON, Deceased	) ) ) ) ) ) )	Appeal from the Circuit Court of Ogle County.  Nos. 12-P-36, 13-L-7
(Rosa C. Donaldson, Executor of the Estate of Robert D. Donaldson, Petitioner- Appellant, v. Bradley A. Blake, Respondent- Appellee).	) ) )	Honorable John B. Roe, Judge, Presiding.

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices McLaren and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's decision awarding the estate only partial relief on its petition for citation to discover and recover assets was against the manifest weight of the evidence. In light of the trial court's erroneous determination, the case is remanded for additional proceedings to determine if the estate should also be awarded prejudgment interest and its attorney fees as punitive damages.

¶ 2 Following Robert Donaldson's death, his estate filed a complaint and a petition for citation to discover and recover assets (citation petition) against the defendant, Bradley Blake. The estate sought \$125,491.29 in cash, multiple pieces of farming equipment, prejudgment interest, and its attorney fees as punitive damages. Following a trial, the circuit court of Ogle

County denied the estate any relief on its complaint but ordered Blake to pay the estate \$60,000 pursuant to the citation petition. The trial court also denied the estate's request for prejudgment interest and its attorney fees. For the following reasons, we reverse the trial court's decision awarding the estate only partial relief on its citation petition, and we remand for a new hearing on the estate's request for prejudgment interest and its attorney fees.

¶ 3

### BACKGROUND

¶ 4 On May 1, 2012, Rosa Donaldson filed a petition for probate of the will of the decedent and for testamentary letters. The petition alleged that the decedent had died on March 26, 2012, and had left a will dated February 28, 2012.

¶ 5 On May 24, 2012, Rosa filed a citation petition against Blake. The citation petition alleged that on June 29, 2011, the decedent suffered a severe medical breakdown which caused him to be hospitalized for several weeks and then moved to Provena St. Joseph's Center, a nursing home, in Freeport where he resided until his death. The citation petition further alleged that shortly after the decedent's severe medical breakdown, Blake took possession and control of certain monies, machinery and equipment owned by the decedent. The citation petition requested the return of all the property that the defendant had taken from the decedent. The petition also requested attorney fees, costs, expenses and any other relief the court deemed proper.

¶ 6 On July 3, 2014, the estate filed a three-count (second amended) complaint against Blake. The complaint sounded in deception and conversion; it also requested the imposition of a constructive trust. The trial court subsequently consolidated the citation petition and the complaint for trial.

¶ 7 Between December 7 and 9, 2015, the trial court conducted a trial on the estate's citation petition and complaint. The estate submitted various exhibits and stipulations that established that Blake had possession and control of \$125,491.29 of the decedent's money both prior to and after the decedent's death.

¶ 8 Donna Flohr testified that she was Blake's ex-wife. They had divorced on December 27, 2012. She testified that, during the divorce proceedings, she had an appraiser, Todd Wills, inventory the personal property. During the appraisal, Blake was present. He told Wills not to appraise certain items because they belonged to the decedent's estate. Those items included a rotary scythe (also referred to as a stalk chopper), an Apache bale mover trailer (also referred to as a gooseneck bale mover), a spin bine, and a cattle corral. She was not sure if the John Deere rake belonged to the decedent, but it was not included in the appraisal. There were also 40 to 50 cattle gates that were not included in the divorce appraisal based on the defendant's representations that they were part of the decedent's estate.

¶ 9 Wills testified that he was a farmer, auctioneer and appraiser. He had been appraising machinery and equipment for 8 to 10 years. He had known Blake for several years. He appraised Blake's and Flohr's property in September 2012 as part of their divorce proceedings. He did not appraise the five items at issue (the stalk chopper, gooseneck bale mover, John Deere rake, spin bine, and cattle corral) on their property because Blake said those items belonged to the decedent. On cross-examination, Wills acknowledged that his wife was Flohr's cousin.

¶ 10 Dave Bicknese testified that he knew the decedent for 35 years and did vehicle and machinery repair for him. He was familiar with the decedent's equipment, machinery and tractors. He testified that the items Blake had purportedly told Flohr and Wills belonged to the decedent were in fact the decedent's. The last time he had seen those items, they were on the

decedent's farm. Bicknese stated that he had possession of the decedent's bale mover and other equipment because he was storing them at the decedent's request. While the decedent was in the nursing home, Blake came over and took the bale mover. Blake explained that the decedent said he could use it. Blake then "just asked [him] if [he] wanted to keep the equipment, that he'd help [him] keep it." Bicknese told Blake he did not want to.

¶ 11 On cross-examination, Bicknese testified that the decedent had asked him to store equipment for him so that "it wouldn't come up missing." He stated that the decedent "would let people borrow stuff."

¶ 12 Todd Hollis testified that he had known the decedent for 25 years. He had rented the decedent's farm and hauled the decedent's cattle. He was familiar with the decedent's equipment and machinery. He had known Blake for 7 to 10 years. Hollis stated that when the decedent became ill, the decedent had a stalk chopper, a bale mover, a newer spin bine, and a cattle corral (the same items Blake had purportedly told Flohr and Wills belonged to the decedent). Hollis did not remember if the decedent had a John Deere rake. Hollis told the decedent that Blake had taken the decedent's stalk chopper. He also testified that Blake had told him that he was related to the decedent.

¶ 13 On cross-examination, Hollis stated that the stalk chopper was on the decedent's property when Blake took it. He further stated that he, Dann Whipple, and Blake did hay and round baling together. He was unaware of the decedent ever giving any equipment to Blake. Hollis further testified that the decedent "was a guy that wouldn't sell anything," and the decedent "always thought he was going to get better."

¶ 14 On re-direct examination, Hollis testified that it was not consistent with the decedent's "behavior to give his equipment away."

¶ 15 Michael Donaldson, the decedent's nephew, testified that the five items at issue belonged to the decedent. He also testified that there were "probably 40" cattle gates that had not been returned to the estate. He knew that the decedent and Blake "crossed paths frequently."

¶ 16 Rosa Donaldson testified that she was the decedent's sister-in-law and the executor of his estate. In January 2012, after the decedent was moved to the nursing home, she reviewed his financial records. She noted that those records reflected deposits from social security and from trucking work, but none from selling cattle. She asked the decedent about the money he had received for his cattle. He told her that the money was at Equity. After contacting Equity, she was told that the decedent's checks had been sent and cashed.

¶ 17 After the decedent's death, she found a folder of his containing \$37 in cash. She found no other monies. She testified that she visited the decedent at least two times per week and that she never saw any "large amounts of cash."

¶ 18 Dann Whipple's deposition testimony was admitted into evidence. He was deposed on November 15, 2013, but died prior to trial. Whipple stated that he knew the decedent for 30 to 40 years. He would see him three to four times a week. After retiring from trucking, he worked baling hay with the decedent. He would pay the decedent for hauling cattle for him. The decedent would pay him for repairing his equipment.

¶ 19 Whipple knew Blake for three to four years. He would occasionally run into him at a local restaurant. He had no business relationship with Blake, but would occasionally help Blake at his farm.

¶ 20 Whipple stated the decedent asked Bicknese to pick up all of his equipment and store it to avoid others taking it. Whipple never saw any of the decedent's equipment at Blake's place. He recalled seeing checks in the decedent's truck but he never authorized Blake to take the checks.

Blake never discussed the checks with him, and he did not have any knowledge of their endorsement or deposit.

¶ 21 Whipple never saw Blake give the decedent any cash nor did he see the decedent with any cash except for \$20 that Whipple once gave him. Whipple had “no idea” of how over \$125,000 of the decedent’s money got into Blake’s possession.

¶ 22 On examination by Blake, Whipple said the decedent was “skittish” about banks. Whipple took the decedent for radiation treatments 35 to 36 times. The decedent had no ill will toward his brother, Richard, or toward Rosa. After Rosa became involved in early February, 2012, Whipple turned everything over to her. He believed that the decedent wanted to store equipment with Bicknese, not give it to him. The decedent was great at letting people use his equipment. As far as he knew, the decedent trusted Blake.

¶ 23 Michelle Lindemann, the administrator of Provena St. Joseph’s Center, testified that the decedent was admitted on July 23, 2011, and died on March 26, 2012. His emergency contacts were listed as Dann Whipple and Rosa Donaldson. Payments to the nursing home on the decedent’s behalf were made by Coventry Health Care and Public Aid. No cash payments were received on the decedent’s behalf. She explained that residents at the nursing home had the option of having money held in a resident trust where money could be held for them for safekeeping and from which they could deposit and withdraw funds. The decedent’s resident trust statements reflected that \$20 deposits had been made on his behalf in September 2011, November 2011, and January 2012.

¶ 24 Tammy Miranda testified that she was the office manager for Workman Harley-Davidson in Rock Falls. She testified that on May 1, 2012, Blake had purchased a 2012 motorcycle by trading in a 2004 motorcycle and paying \$9,001.04 in cash.

¶ 25 Gene Miller testified that he rented the decedent's land. He had known the decedent for 10 years and Blake since the 1970s. Around July 15, 2011, after the decedent had been hospitalized, Blake came on to Miller's farm and said that he was collecting the decedent's rent. Miller asked him why he was doing that. Blake explained that he was related to the decedent by marriage and that he was the executor of the decedent's estate. Miller gave Blake a check for \$11,200 and subsequently called the decedent to tell him that he had given Blake the rent money.

¶ 26 Blake was the only defense witness. He testified that he worked as a farmer and a lineman until May 2005. After 2005, he worked with the decedent. He and Whipple would help the decedent. He helped the decedent move to an efficiency apartment.

¶ 27 Blake testified that the decedent had requested that he retrieve checks from two pick-up trucks and a closet. Blake admitted that he cashed the checks. He denied that he forged the endorsements. He would give the cash to the decedent. He testified that he did not intend to deceive or defraud the decedent. Blake testified that he used his personal funds to purchase the motorcycle.

¶ 28 Blake further testified that he was not making a claim to any of the decedent's money. He stated that he had delivered money to the decedent in wrapped bills, \$50s and \$100s, \$7,000 to \$9,000 at a time, and put it in the decedent's black folder. He stated that the decedent never gave him back any cash and he gave the decedent cash whenever he requested it. He made withdrawals on April 20, 2012, and May 30, 2012, which he gave to the decedent. (The decedent died on March 26, 2012). Blake testified that no one was present when he returned the cash. He never told anyone at the nursing home regarding the cash nor did he have any records or receipt for the \$65,000 that he returned to the decedent.

¶ 29 On rebuttal, Deb Pearson testified the decedent cut her hay and hauled her cattle. She visited him at the nursing home. On one occasion, the decedent became upset and agitated and described Blake as a “counterfeit human being.”

¶ 30 On March 2, 2016, the trial court announced its judgment in open court, explaining the evidence that it considered significant. The trial court found that the decedent was “eccentric in a good way,” “a good natured person,” “an honest person, a man of integrity who treated others with respect and trust,” and was “one of those people that assumed that others were doing the same.” The trial court noted that Flohr testified regarding an appraisal and how Blake utilized their finances. Wills also testified about the equipment appraisal and how Blake “was taking the lead in pointing out what equipment that’s relevant to this case was to be appraised [and what] wasn’t to be appraised.” The trial court also noted that Flohr and Wills were cousins.

¶ 31 The trial court found that the estate had not met its burden of proof as to its complaint. The trial court therefore entered judgment for Blake and denied the estate’s request for punitive damages. The trial court also denied the plaintiff’s request for attorney fees.

¶ 32 As to the estate’s “motion for a turnover of funds,” the trial court stated that it would treat that issue separately from the second amended complaint because the burden of proof was different. The trial court found that the estate had made a *prima facie* case and Blake had not overcome the estate’s case by clear and convincing evidence. The trial court therefore ordered that Blake turn \$60,000 over to the estate that was currently in his attorney’s trust account.

¶ 33 Following the trial court’s ruling, the estate’s attorney pointed out that the motion for turnover had already been resolved earlier in the proceedings but what remained pending was the citation petition which sought approximately \$125,400 plus several items of farm equipment. The trial court then reiterated that it was granting the motion for turnover of \$60,000 and that the



remainder of the citation petition was denied. The trial court also denied the estate's request for prejudgment interest. Following the trial court's ruling, the estate filed a timely notice of appeal.

¶ 34

#### ANALYSIS

¶ 35 On appeal, the estate argues that the trial court's decision to award it only \$60,000 on its citation petition was against the manifest weight of the evidence. The estate contends that it presented evidence, through documentation and disinterested witnesses, that Blake possessed and controlled \$125,491.29 in cash as well as several pieces of farm equipment that belonged to the decedent.

¶ 36 In a citation proceeding, the probate court is empowered to determine the title and right of property and enter such order as the case requires. *In re Estate of Kolbinger*, 175 Ill. App. 3d 315, 322 (1988). One objective of a citation proceeding under the Probate Act is to obtain the return of personal property belonging to the estate but in the possession of another. *Id.* To recover property in a citation proceeding, an executor must initially establish a *prima facie* case that the property at issue belongs to the decedent's estate; the burden then shifts to the respondent to prove his or her right to possession by clear and convincing evidence. *In re Estate of Casey*, 155 Ill. App. 3d 116, 121–22 (1987).

¶ 37 Here, the estate presented various bank statements and cancelled checks establishing that Blake possessed \$125,491.29 in cash that belonged to the decedent. The estate also presented the testimony of Flohr, Wills, Bicknese, Hollis, and Michael Donaldson that Blake had possession of several items of the decedent's farm equipment. The estate also presented Miller's testimony which showed that Blake had misrepresented that he was the executor of the decedent's estate. As such, the trial court properly found that the estate had established a *prima facie* case that Blake had cash and assets that belonged to the decedent.

¶ 38 The burden then shifted to Blake to present clear and convincing evidence of his right to possess the decedent's money and assets. Blake did not dispute that he had the \$125,491.29 of the decedent's cash and several pieces of the decedent's farm equipment. Rather, he claimed that he had personally returned most of the cash (approximately \$65,000) to the decedent and the remainder (\$60,000) he had turned over to his attorney. In support of this claim, Blake pointed only to his own testimony that he had delivered approximately \$65,000 cash in increments of \$7,000 or \$9,000 to the decedent while the decedent was at the nursing home. Some of this testimony was contradicted by the record. Blake claimed that he made payments to the decedent in April and May of 2012. However, this was impossible since the decedent died on March 26, 2012. The remainder of his testimony was contradicted by Whipple, Lindemann, and Rosa. Whipple and Rosa testified that they visited the decedent at the nursing home and none of them saw the decedent with any significant amounts of money. Whipple testified that he saw the decedent with only \$20, money which Whipple himself had given the decedent. Rosa testified that after the decedent's death, she found a folder of his that contained only \$37 in cash. Lindemann testified that the decedent's resident trust statements reflected that \$60 had been deposited into his accounts over a five-month period. Further, Lindemann testified that no cash payments had been made on the decedent's behalf for him to stay at the nursing home. Rather, all of those payments had been made by Coventary Health Care or Public Aid. Based on all of this evidence, no rational trier of fact could conclude that Blake had actually returned any of the decedent's money to him. The trial court's conclusion to the contrary—that Blake only had to return \$60,000 to the estate, not the entire \$125,491.29 that he had taken—was therefore against the manifest of the weight of the evidence.

¶ 39 We also note that the estate provided ample evidence to establish a *prima facie* case that Blake possessed farm equipment that belonged to the decedent. Flohr and Wills testified that when Blake's property was being appraised pursuant to his divorce proceedings with Flohr, he told Flohr and Wills not to appraise several items of property in his possession because they actually belonged to the decedent. Bicknese, Hollis, and Michael corroborated this testimony as they all testified that they were familiar with the decedent's farm equipment and that the equipment at issue did in fact belong to the decedent. In response to this testimony, Blake did not present any evidence why he should be allowed to keep the decedent's property. Nonetheless, the trial court awarded that equipment to him anyway. As such, the trial court's decision was against the manifest weight of the evidence. Accordingly, the trial court erred in not ordering the stalk chopper, the gooseneck bale mover, the John Deere rake, the spin bine and the cattle corral be returned to the estate. The estate also presented sufficient evidence, that was not rebutted, that Blake was in possession of some of the decedent's cattle gates. As the exact amount of cattle gates that should be returned is unclear, we remand to the trial court to make that determination.

¶ 40 Blake points out that, in the decedent's will, the decedent indicated that he wanted Whipple to have his choice of the decedent's personal property. Blake therefore suggests that the trial court properly found that he "should not return the few items of [the decedent's] farm equipment to the estate because the estate no longer had a right to them—they should have gone to Whipple."

¶ 41 We note that Blake provides no authority for this argument; therefore, it is forfeited. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Further, even if we were to overlook that, Blake's argument is based on nothing more than speculation. There is no evidence that the decedent's

property Blake had in his possession is property that Whipple would have wanted. The fact remains that the estate established its right to that property and Blake provided no basis why he should be allowed to keep it.

¶ 42 We next turn to the estate's argument that the trial court erred in denying its request for prejudgment interest and its request that it be awarded attorney fees as punitive damages. Prejudgment interest may be recovered when warranted by equitable considerations, and disallowed if such an award would not comport with justice and equity. *In re Estate of Wernick*, 127 Ill. 2d 61, 87 (1989). Fundamental principles of damages and compensation dictate that when money has been wrongfully withheld the victim should receive interest for the wrongdoer's retention of his money. *Id.* Whether equitable circumstances support an award of interest is a matter lying within the sound discretion of the trial judge. *Id.* Such a determination will not be disturbed on review unless it constitutes an abuse of discretion. *Id.*

¶ 43 The purpose of punitive damages is twofold: to punish the wrongdoer, and to deter the particular wrongdoer, as well as others, from committing similar acts in the future. *Id.* at 83-84. Because of their penal nature, punitive damages are not favored in the law, and courts must be cautious in seeing that they are not improperly or unwisely awarded. *Kelsay*, 74 Ill. 2d at 188. Punitive damages may be awarded in cases where the wrongful act complained of is characterized by wantonness, malice, oppression or other circumstances of aggravation. *Wernick*, 127 Ill. 2d at 83-84. Punitive damages may be awarded in a citation proceeding. *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 252 (2006). The determination whether to impose punitive damages requires a two-step process. The trial court must initially decide whether the cause of action in general and the facts of the particular case provide sufficient proof of aggravated circumstances to warrant submitting the issue to the trier of fact. *Kelsay*, 74 Ill. 2d at

186. This determination is a matter of law. *Id.* If the facts of the case legally justify an award of punitive damages, the issue is then submitted to the trier of fact (*id.*), whose determination will not be disturbed absent an abuse of discretion (*In re Estate of Callahan*, 144 Ill. 2d 32, 43-44 (1991)).

¶ 44 Here, the trial court denied the estate's request for prejudgment interest because it found such an award to be inapplicable. It is apparent that trial court's ruling was based in part on its erroneous determination that Blake only had to reimburse the decedent's estate for some of the funds that he had taken from the decedent. As such, we remand to the trial court for additional proceedings to determine whether the estate should be awarded prejudgment interest.

¶ 45 For this same reason, we also remand to the trial court to determine whether the estate should be awarded its attorney fees as punitive damages for Blake's actions. We note that the trial court explained that it was denying the estate's request for attorney fees because it denied the estate any relief on its complaint. However, the burden of proof for the estate to prevail on its complaint was higher than its burden to prevail on its citation petition in which it needed to make only a *prima facie* case. See *Callahan v. Rickey*, 93 Ill. App. 3d 916, 919 (1981) (burden is on plaintiff to prove allegations in complaint by preponderance of evidence). The fact that the trial court found the estate was not entitled to punitive damages based on its complaint does not preclude the trial court from finding that the estate should have been awarded such damages based on its citation petition. See *Hoellen*, 367 Ill. App. 3d at 252.

¶ 46 The estate further argues that the trial court's decision denying it any relief on its complaint was against the manifest weight of the evidence. However, as the relief that the estate requested in its complaint was duplicative of the relief it requested in its citation to discover and recover assets, we need not address that issue because the estate would not be entitled to any

additional relief if in fact the trial court's ruling on the complaint was against the manifest weight of the evidence. See *In re Estate of Feinberg*, 2014 IL App (1st) 112219, ¶ 90 (tort action need not proceed where relief requested was duplicative of the remedy sought in the recovery citation).

¶ 47 Finally, as we have determined that Blake failed to present clear and convincing evidence that he was entitled to keep the property he had taken from the decedent, we need not address the estate's contention that some of the evidence he presented should have been barred by the Dead Man's Act (735 ILCS 5/8-201 (West 2012)).

¶ 48 **CONCLUSION**

¶ 49 For the foregoing reasons, we reverse the judgment of the circuit court of Ogle County and find that Blake should return to the estate \$125,491.29 as well as a goose-neck bale hauler, a John Deere rake, a spin bine, a stalk chopper and a cattle corral. We remand to the trial court for it to determine how many cattle gates Blake should return to the estate. We also remand for the trial court to conduct a hearing and determine if the estate should be awarded prejudgment interest and its attorney fees as punitive damages. At that hearing, the parties shall have the opportunity to present additional evidence and argument. The trial court may also consider any evidence and argument previously presented at trial. At the conclusion of the hearing, the trial court shall decide the estate's request for prejudgment interest and its attorney fees as punitive damages anew.

¶ 50 Reversed and remanded with directions.