

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (4th) 160119-U

NO. 4-16-0119

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

KEVIN L. THAYER,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
v.)	DeWitt County
ESTATE OF ELIZABETH O. LYNN,)	No. 08P25
Respondent-Appellee.)	
)	Honorable
)	Richard L. Broch,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in ordering the estate's real estate to be sold at public auction.

¶ 2 In December 2015, the trial court held a hearing on motions concerning the sale of real estate owned by the estate of decedent, Elizabeth O. Lynn. In January 2016, the trial court entered a written order directing the public administrator of the estate to sell the real estate by means of public auction. In doing so, the court rejected claims by petitioner, Kevin L. Thayer, that a valid agreement to sell him the real estate existed and should be enforced. The court reserved the issue of petitioner's liens for work performed on the real estate.

¶ 3 Petitioner appeals, arguing the court (1) abused its discretion by ordering the sale of the estate's real property at public auction and not to petitioner pursuant to a 2010 agreement between him and the then-administrator of the estate; and (2) erred in ordering a sale which

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November 16, 2016
Carla Bender
4th District Appellate
Court, IL

would be free and clear of petitioner's mechanics liens. We affirm.

¶ 4

I. BACKGROUND

¶ 5

In June 2008, decedent died intestate. At the time of her death, decedent was survived by her two sisters, Maxine Coppenbarger and Eloise Prunty, who became the heirs to her estate. Decedent's niece, Mary Burk, was appointed as administratrix to the estate. In November 2009, decedent's niece, Sandi Thayer, filed a motion to replace Mary as administratrix, which the court granted in March 2010.

¶ 6

In June 2010, petitioner signed a written agreement for the sale of the real estate, but Sandi's signature is absent. In July 2010, Sandi filed a motion to sell the estate's real estate "as is" to petitioner, her son, for \$70,000. Sandi, in her motion, justified the selling price by citing the poor condition of the property and attached a May 2010 appraisal valuing the real estate at \$66,500. That same day, Sandi and petitioner signed a separate written agreement which provided, if petitioner was not sold the real estate, he would be reimbursed for all improvements he made thereto. Later in July, Mary filed an objection to the sale of the real estate to petitioner. In November 2010, Sandi again filed a petition to sell real estate pursuant to the July 2010 agreement with petitioner, noting the decedent's heirs, Coppenbarger and Prunty, had consented to the sale. In December 2013, Prunty died intestate and was survived by her four daughters, Mary, Sandi, Janet Kinder, and Pamela Miller.

¶ 7

In January 2014, Sandi filed another petition to approve the sale of the real estate to petitioner. Attached to the petition was the June 2010 agreement between petitioner and Sandi, which Sandi had signed in October 2013. The petition noted Prunty, "prior to her death, consented to the sale." Coppenbarger, the same day the petition was filed, filed a written appearance and consent to the proposed agreement.

¶ 8 In March 2014, Pamela filed an objection to the sale of real estate to petitioner. Pamela noted she was not served with the January 2014 petition to sell real estate and was not given notice of or made a party to any related proceedings. She cited the disparity between the sale price and a 2009 appraisal valuing the real estate at \$853,157.07. She also cited two offers made by third parties, a July 2013 offer by Rodney Hinderliter for \$208,000 and a March 2014 offer by Dale Karr for \$150,000. In April and May 2014, Pamela filed motions to dismiss the petition to sell real estate, alleging, *inter alia*, a failure to include an accurate legal description of the property in the agreement and a conflict of interest between the administratrix and petitioner.

¶ 9 In May 2014, Sandi filed an amended petition for the sale of the real estate, including a legal description of the property. In June 2014, Pamela filed, *inter alia*, a motion to dismiss the amended petition to sell real estate, reiterating the claims in her first motion to dismiss, including the continued failure to provide Pamela notice of or make her a party to the petition, and the absence of evidence Prunty or her power of attorney, Rodney Kinder, had consented to the agreement to sell the real estate before her death. Later in June 2014, Janet filed her appearance and consent to the agreement to sell the real estate to petitioner.

¶ 10 In October 2014, petitioner filed his omnibus response and attached his claim of lien in the amount of \$125,000. Petitioner also attached his invoices for services provided from 2009 through 2014, including "mowing," "moving junk," and other work. In November 2014, Sandi filed, *inter alia*, a motion to strike Pamela's June 2014 motion to dismiss the petition for the sale of the real estate. Later in November 2014, Sandi passed away.

¶ 11 In March 2015, the trial court appointed the Sangamon County Public Administrator, Kevin McDermott, to replace Sandi as the administrator of decedent's estate. In June 2015, the public administrator filed an objection to the May 2014 amended petition to approve

the sale of the real estate. The administrator also filed a motion to amend the May 2014 amended petition, asking the he "be authorized to sell the [r]eal [e]state via licensed auctioneer for fair market value via a public sale advertised in Central Illinois, the State of Illinois, and nationwide via internet postings." He also filed a motion to dismiss the May 2014 amended petition, incorporating Pamela's June 2014 motion to dismiss. In the administrator's motion, he stated Mary and Pamela were not made parties to the petition or served with process and the May 2014 "[a]mended [p]etition would be seeking to approve a sale that was approximately four years beyond the closing deadline [in the 2010 agreement]." Later in June 2015, the administrator filed a second motion to amend the May 2014 amended petition, reiterating his first motion but adding that "[petitioner] has, or may have, a lien claim against the [r]eal [e]state." In December 2015, petitioner filed his omnibus response and attached, *inter alia*, his amended contractor's claim for a lien on the real estate in the amount of \$136,533.86.

¶ 12 After December 2015 hearing, the trial court granted the administrator's motion to dismiss petitioner's amended petition for the sale of real estate. The court granted the administrator's second motion to amend the amended petition for the sale of real estate, thereby authorizing him to sell decedent's real estate by public auction. The court, in its oral and written orders, expressly reserved the resolution of petitioner's liens on the real estate and was otherwise silent on that issue.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, petitioner argues the trial court (1) abused its discretion when it ordered the sale of the estate's real property at public auction and did not order it sold pursuant to a 2010 agreement between petitioner and the then-administrator of the estate; and (2) erred in or-

dering a sale free and clear of petitioner's liens on the real estate.

¶ 16 A. Abuse of Discretion

¶ 17 Petitioner argues the trial court abused its discretion by ordering the public administrator to sell the real estate at public auction and not pursuant to an agreement between petitioner and the second administrator of the estate.

¶ 18 The court ordering a sale of real estate actually is the seller of the real estate. The administrator is merely its agent. *Berber v. Hass*, 57 Ill. App. 2d 109, 116, 207 N.E.2d 96, 100 (1965). The court, as the seller, has the discretion to accept or reject any sale in the best interest of the parties concerned. *Id.* at 116-17, 207 N.E.2d 96 at 100. The court's decision will not be disturbed absent an abuse of discretion. *Id.* at 117, 207 N.E.2d at 100.

¶ 19 Section 20-5 of the Probate Act of 1975 (Act) (755 ILCS 5/20 (West 2014)) governs the procedure for the sale of real estate, providing as follows:

"§ 20-5. Procedure for sale or mortgage of real estate. (a)

Before selling or mortgaging real estate, the representative shall file a petition in the court which issued his letters setting forth the facts and circumstances upon which it is founded, a description of the real estate or interest therein, or of the oil, gas, coal or other mineral interest involved, the approximate value thereof, the interest of the ward or decedent therein, and the nature and extent of all liens upon and other interests, if any, in the real estate, or in the oil, gas, coal or other mineral interest so far as they may be known to the petitioner. A copy of the proposed mortgage or of the proposed contract for sale of the real estate, if any, shall be attached to the

petition.

(b) All persons holding liens against or having an interest in the real estate, or in the oil, gas, coal or other mineral interest or in any part thereof, described in the petition, in possession or otherwise, whose rights are sought to be affected by the order, except the ward shall be made parties defendant.

(c) Upon the filing of the petition, process shall be issued, served and returned as in other civil cases."

¶ 20 The trial court here found "there was no agreement to sell the real estate [to petitioner]" and "the [a]mended [p]etition to [s]ell [r]eal estate filed *** was incomplete and not in accordance with the [Act]." The court indicated, even if the 2010 agreement had been accepted and signed in a timely manner, the second administrator would have still been required to present the proposed agreement and the court must have approved the sale. In the court's own words, "[h]ad that been done at that time, followed up at that time, had the proposal go[ne] in front of the court and had the [c]ourt grant[ed] an order, that could have all been taken care of at that time. It was not. Since that time, *** the situation has changed."

¶ 21 At the date of the hearing, the trial court "would not agree to a sale at this time of the property for \$70,000 to petitioner" because it was not in the best interest of the estate. Rather, the administrator's second motion to amend the amended petition was in the best interest of the heirs of the estate, as selling the real estate at public auction would garner the real estate's fair market value. The court acknowledged, however, the final sale from an auction would still have to be approved by the court.

¶ 22 Accordingly, the trial court did not abuse its discretion when it ordered the real

estate be sold by public auction.

¶ 23 B. Petitioner's Liens

¶ 24 Petitioner argues the trial court erred in ordering a sale which would be free and clear of petitioner's liens on the real estate and issues related thereto.

¶ 25 However, as the public administrator indicates, the matter of petitioner's liens was not at issue in the 2015 hearing, and the court's order reserved the issue for later proceedings. As the trial court has not issued a final disposition on the issue of petitioner's liens, this court does not have jurisdiction to review the matter in this appeal.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment.

¶ 28 Affirmed.