

NOTICE
Decision filed 07/15/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 150214-U

NO. 5-15-0214

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

STAR MONSON, Independent Administrator)	Appeal from the
of the Estates of Louis Monson and Alick)	Circuit Court of
Monson, Deceased,)	Jackson County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-L-67
)	
CARLA BISHOP and DONALD BISHOP,)	
)	
Defendants)	Honorable
)	Christy W. Solverson,
(Robert Monson, Sr., Petitioner-Appellant).)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Schwarm and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's judgment apportioning wrongful death settlement proceeds is affirmed.

¶ 2 Star Monson (Star) and Robert Monson, Sr. (Robert Sr.), were the parents of two boys, Louis Monson (Louis) and Alick Monson (Alick), who drowned in a swimming pool at the home of Donald and Carla Bishop (the Bishops) in Carbondale. Star, as the administrator of Louis and Alick's estates, brought a wrongful death action against the Bishops in the circuit court of Jackson County. Eventually, Star and the Bishops reached

a wrongful death settlement, which the circuit court approved. After a hearing, the circuit court apportioned to Star almost all of the settlement proceeds, less litigation expenses and attorney fees, and apportioned \$0 to Robert Sr. Dissatisfied with this apportionment, Robert Sr. now appeals. (The Bishops play no part in this appeal.) This court affirms the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Star and Robert Sr. were wed in September 1996. Louis was born in 1998 and Alick in 2000. In October 2008, the marriage was dissolved by decree of a family court in the Commonwealth of Kentucky. Not long afterward, that same court awarded Star sole custody of Louis and Alick. Star, Louis, and Alick resided in Kentucky. In August 2012, Louis and Alick, along with their older half-brother Robert Monson, Jr. (Robert Jr.), took a trip to southern Illinois. During this trip, Louis and Alick, ages 14 and 12 years, respectively, drowned in the Bishops' residential swimming pool in Carbondale. In a Kentucky probate court, Star was named the administratrix of the estates of Louis and Alick. Robert Sr. petitioned the Kentucky probate court to name him co-administrator of the estates, but the court refused.

¶ 5 During all of the various Kentucky court proceedings described above, Robert Sr. was imprisoned in the Illinois Department of Corrections (IDOC). He had been found guilty of attempted murder (720 ILCS 5/8-4, 9-1 (West 2006)) and aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)) and had been sentenced to a total of 53 years in the IDOC. See *People v. Monson*, 2012 IL App (1st) 101350-U (affirming judgment denying Monson's posttrial motion). According to the website maintained by the IDOC, Robert

Sr. remains imprisoned; he entered into the IDOC's custody on June 27, 2006, and is not scheduled to begin mandatory supervised release until June 27, 2050.

¶ 6 As the administratrix of the estates of Louis and Alick, Star brought a wrongful death action against the Bishops in the circuit court of Jackson County. Eventually, Star and the Bishops reached a wrongful death settlement. The circuit court approved the settlement on December 17, 2014. Under the terms of the settlement, each of the two boys' estates would be paid \$150,000, less litigation expenses and attorney fees, and the court would determine how to apportion the proceeds after an apportionment hearing. An apportionment hearing was scheduled for February 20, 2015.

¶ 7 On December 24, 2014, an attorney entered her appearance on behalf of Robert Sr. However, on January 23, 2015, the attorney filed a motion to withdraw as counsel on the ground that she and Robert Sr. had "irreconcilable differences" regarding the apportionment of the settlement proceeds. According to the motion, Robert Sr. intended to hire new counsel to represent him in the matter. The motion also requested a two-month continuance of the apportionment hearing scheduled for February 20, 2015. On February 11, 2015, the attorney filed an amended motion to withdraw that was substantially similar to the original motion.

¶ 8 On February 27, 2015, the circuit court granted Robert Sr.'s attorney's motion to withdraw as counsel and continued the apportionment hearing to May 7, 2015, a continuance of approximately two months and two weeks from the February 20 setting.

¶ 9 On April 13, 2015, Robert Sr. filed *pro se* a motion that the court grant him an additional 45 days in which to hire an attorney to represent him in the matter. Robert Sr. averred that he was "seeking" an attorney.

¶ 10 On April 29, 2015, Star filed a motion asking the court to take judicial notice of, *inter alia*, IDOC online records showing that Robert Sr. had been convicted of attempted murder, was imprisoned, and was not scheduled to be paroled until June 27, 2050.

¶ 11 On May 5, 2015, Robert Sr. filed a *pro se* "motion for court to take judicial notice." In substance, this document amounted to an objection to Star's motion seeking judicial notice of Robert Sr.'s attempted-murder conviction and prison sentence. In an accompanying memorandum of law, Robert Sr. asserted that his attempted-murder conviction was void because "[o]n September 5, 2005, the date of this accused [*sic*] attempted murder, their [*sic*] existed no attempted murder statute that was valid in this state." No authority supporting this proposition was cited. Robert Sr. also asserted that the indictment charging him with attempted murder had "a fatal defect" and had been constructively amended. However, the memorandum did not include a clear description of the wording of the indictment, and it was not accompanied by a copy of the indictment.

¶ 12 Apparently, the apportionment hearing was held on May 7, 2015, as scheduled. The record on appeal does not include a verbatim transcript of that hearing, nor does it include a bystander's report or an agreed statement of facts relating to the hearing.

¶ 13 On May 11, 2015, the circuit court entered a written order that, *inter alia*, granted Star's motion to take judicial notice of Robert Sr.'s attempted-murder conviction and

prison sentence, denied Robert Sr.'s *pro se* motion for an additional 45 days in which to hire new counsel, and apportioned \$175,588.06 to Star, \$4,000 to Robert Jr., and \$0 to Robert Sr. The court explained that it denied Robert Sr.'s motion for an additional 45 days because the continuance of the apportionment hearing from February 20, 2015, to May 7, 2015, had provided Robert Sr. with sufficient time to hire an attorney or otherwise proceed, and he had failed to act. The court explained that it apportioned \$4,000 to Robert Jr. because he appeared in person at the apportionment hearing and, along with Star, orally proposed this apportionment. The court explained that it apportioned \$0 to Robert Sr. because he was 63 years old and likely to remain imprisoned for the balance of his natural life, he had failed to maintain any sort of relationship with decedents Louis and Alick, and Star had been the sole provider for Louis and Alick.

¶ 14 On June 2, 2015, Robert Sr. filed a notice of appeal, thus perfecting the instant appeal. The notice of appeal specified that the appeal was "from a civil judgment" entered on May 11, 2015.

¶ 15 ANALYSIS

¶ 16 Robert Sr. represents himself on appeal. Robert Sr. has filed an appellant's brief wherein he argues that (1) his attempted-murder conviction was void *ab initio* because (i) he was charged "under an unconstitutional statute that did not exist" on September 5, 2005, the date of the alleged attempted murder, and (ii) the indictment charging him with attempted murder was "constructively amended," "fatally flawed," and therefore "invalid"; (2) the circuit court erred in failing to take judicial notice that the statute under which he was convicted was unconstitutional and "invalid" at the time of the alleged

attempted murder; (3) the circuit court erred in failing to give him an opportunity to present evidence that the conviction was void and therefore should not be judicially noticed; (4) because his attempted-murder conviction was void *ab initio*, the circuit court violated due process when it founded its judgment, in part, on a perceived likelihood that he would remain imprisoned on that conviction for the balance of his natural life; (5) the circuit court abused its discretion, and denied him procedural due process, when it denied his motion for additional time in which to hire an attorney or to be present for the apportionment hearing; and (6) the circuit court's finding that he failed to maintain contact with, or to financially support, Alick and Louis was against the manifest weight of the evidence.

¶ 17 In her own brief, Star argues that the validity or constitutionality of Robert Sr.'s attempted-murder conviction is an issue "clearly not within the purview of this Court's scope of review in this case." This argument is correct. Illinois Supreme Court Rule 303(b)(2) (eff. Jan. 1, 2015) states that a notice of appeal "shall specify the judgment or part thereof *** appealed from and the relief sought from the reviewing court." Here, Robert Sr.'s notice of appeal states that his appeal is taken from the civil judgment entered on May 11, 2015, *i.e.*, the judgment apportioning the wrongful death settlement proceeds. Nevertheless, Robert Sr. urges this court to review the judgment entered in his 2005 Cook County criminal case and to find that his attempted-murder conviction is void *ab initio*. This court does not have jurisdiction to review judgments not specified or fairly inferred from the notice of appeal. *In re J.P.*, 331 Ill. App. 3d 220, 234 (2002). This court may not consider the claim that the attempted-murder conviction is void.

¶ 18 The circuit court certainly did not err in taking judicial notice of the IDOC's online information concerning Robert Sr.'s imprisonment. A circuit court may take judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Ill. R. Evid. 201(b) (eff. Jan. 1, 2011). The website maintained by the IDOC is a source of accurate information concerning inmates' terms of imprisonment and anticipated release dates, and a court may take judicial notice of such information. *People v. Young*, 355 Ill. App. 3d 317, 321 n.1 (2005). There was no abuse of discretion in taking judicial notice of information concerning Robert Sr.'s imprisonment. See *In re A.B.*, 308 Ill. App. 3d 227, 234 (1999) (the circuit court's decision to take judicial notice of information, like any other ruling on an evidentiary matter, is reviewed for an abuse of discretion).

¶ 19 Robert Sr. also argues that the circuit court abused its discretion when it denied his *pro se* motion for an additional 45 days in which to hire substitute counsel. "On good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or proceeding prior to judgment." 735 ILCS 5/2-1007 (West 2014). Plainly, a litigant does not have an absolute right to a continuance. *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996). Granting or denying a motion for a continuance is a matter left to the sound discretion of the circuit court, and the court's ruling will not be disturbed on appeal unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion. *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22. Here, the circuit court's denial of Robert Sr.'s motion for an additional 45 days neither resulted in palpable

injustice nor constituted an abuse of discretion. The apportionment hearing was originally scheduled for February 20, 2015. In response to a motion filed by Robert Sr.'s out-going attorney, the circuit court continued the hearing to May 7, 2015, a continuance of two months and two weeks. As the circuit court stated in its order denying Robert Sr.'s motion for an additional 45 days, the previous continuance to May 7 provided Robert Sr. with sufficient time to hire substitute counsel, but no attorney was hired in all that time.

¶ 20 Finally, Robert Sr. argues that the circuit court's finding that he failed to maintain contact with, or to financially support, Alick and Louis was against the manifest weight of the evidence. An appellant has the burden to provide a reviewing court with a sufficient record to support a claim of error, and in the absence of such a record on appeal, the reviewing court will presume that the order entered by the circuit court conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Here, the circuit court held an apportionment hearing on May 7, 2015, and it could reasonably be expected that the court heard evidence about Robert Sr.'s relationship with, and financial support of, Alick and Louis, or the lack thereof. However, the record does not include a verbatim transcript of the apportionment hearing, nor does it contain a bystander's report or an agreed statement of facts. See Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). Without any such item in the record, this court cannot know what evidence was adduced at the apportionment hearing. Therefore, under *Foutch*, this court must presume that the circuit court acted in conformity with the law and had a sufficient basis for its ruling on apportionment of the settlement proceeds.

¶ 21 For all of the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 22 Affirmed.