2017 IL App (1st) 152493-U

Nos. 1-15-2493, 1-15-2840

Third Division
March 15, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re ESTATE OF CLAUDIA ZVUNCA, Deceased (Tiberiu Klein, Petitioner-Appellant, v. Cristina Zvunca, Supervised Administrator of the Estate of Claudia Zvunca, Respondent-Appellee).	)	Appeal from the Circuit Court of Cook County.
	)	No. 03 P 8718
	)	Honorable James G. Riley, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court's ruling on motion to vacate order was presumed to be in accordance with the law where the motion was not included in the record on appeal. Appellate court did not have jurisdiction to review motions challenging the appointment of an administrator of an estate where the motions were untimely filed. Petitioner's arguments were deemed waived where he failed to support them with appropriate legal precedent and citation to the record.

¶ 2 This consolidated appeal stems from a complicated web of related actions which this court has previously described as an example of an "appalling abuse of the judicial system." *Klein v. McNabola*, 2016 IL App (1st) 141615-U. The matter at bar arises from proceedings

in the probate court regarding the estate of Claudia Zvunca. Claudia's husband, Tiberiu Klein, appeals from orders which: (1) denied his motion to vacate the order appointing Claudia's daughter, Cristina Zvunca, administrator of the estate pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)); (2) denied his separate petition to remove Cristina; (3) denied his petition to reappoint him as administrator; (4) denied his motion to disqualify Cristina's attorney Daniel O'Brien; and (5) granted sanctions against him. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Initially, we provide a brief history of the progression of matters related to this case to provide the context necessary to understand the issues raised in the current proceedings. A more thorough recounting of this "convoluted attorney created labyrinth" (*MB Financial, N.A. v. Stevens*, No 11 C 798 (N.D. Ill. July 5, 2011) spanning more than a decade of litigation across multiple states can be found in this court's numerous prior orders and opinions related to this case, of which we take judicial notice[1]: *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768; *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197; *Cushing v. Greyhound Lines, Inc*., 2013 IL App (1st) 103176-U; *Klein v. Greyhound Lines, Inc.*, 2013 IL App (1st) 112055-U; and *Klein v. McNabola*, 2016 IL App (1st) 141615-U. Our discussion here is narrowly confined to the probate case and the details of the underlying wrongful death and survivor cases germane to the issue before us. The abundant procedural tangles of the law division case and the tangential cases alleging misconduct, awarding sanctions, and other matters that have arisen from the numerous attorneys, judges, and parties that have all been involved in this case are not relevant to the current appeal.

[1] Courts are entitled to take judicial notice of a plaintiff's underlying cause of action. *O'Callaghan v. Sartherlie*, 2016 IL App (1st) 142152, ¶ 20.

¶ 5 Claudia, the wife of Klein and mother of Cristina, was killed in January 2002 after being struck by a Greyhound bus. Cristina, at the time eight years old, witnessed the accident. Klein filed the first wrongful death and survival action against Greyhound and the bus driver on May 3, 2002, in Cook County. He attempted to bring the claims both "individually and as Executor of the Estate of Claudia Zvunca," however, Claudia had died intestate and plaintiff had not been appointed representative of her estate or appointed the special administrator. Although Klein was neither Cristina's father nor her legal guardian, he also sought to claim damages on her behalf. The case was removed to federal court and subsequently transferred to Colorado. After 12 years of litigation, the Colorado proceeding was ultimately dismissed based upon the federal court's finding that Klein had no legal authority to bring the claims.

¶ 6 In November 2003, plaintiff filed a petition in the probate division of the circuit court of Cook County to appoint Greg Marshall, a paralegal in the law firm representing Klein at the time, as the independent administrator of Claudia's estate. Marshall then filed a wrongful death action in the circuit court of Cook County that was later voluntarily dismissed. In September 2004, a third wrongful death action was filed in Cook County, on behalf of Marshall and Cristina, seeking damages from Greyhound, the driver, and a bus manufacturer. On April 27, 2005, Marshall resigned as administrator of the estate and the probate court appointed F. John Cushing as the independent administrator on May 13, 2005. Later, the probate division changed Cushing's appointment from independent administrator to supervised administrator at Klein's request. In the following years, Klein made numerous attempts to remove Cushing as administrator and intervene in the underlying Illinois wrongful death suit, but he was ultimately unsuccessful.

¶ 7 In November 2007, Klein, acting *pro se*, initiated another probate case seeking guardianship of Cristina. Subsequently, Klein retained new counsel and filed an amended petition for guardianship. The probate court eventually appointed a guardian *ad litem* for Cristina to investigate the court's concerns regarding a potential conflict of interest between Cristina and Klein. Following a hearing, the probate court appointed Klein plenary guardian of the "estate and person" of Cristina.

¶ 8 In 2010, the Illinois wrongful death case was settled without Cushing's involvement. This court subsequently invalidated that settlement, holding that Cushing, as the administrator, had the sole authority to settle the claims of Claudia's estate. *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197, ¶ 355. During the course of that appeal, Cristina turned 18 years old.

¶ 9 In November 2013, Cushing voluntarily withdrew as administrator due to illness. The probate court appointed Klein independent administrator of Claudia's estate on November 18, 2013.

¶ 10 On March 17, 2014, the probate court entered an order prepared by John Xydakis, an attorney who purported to represent both Klein and Cristina. The order appointed Cristina as co-administrator to the estate of Claudia. Noting the existence of both the Colorado lawsuit and the Illinois lawsuit, the order limited Klein's administrative authority to litigation of the Colorado action and provided that Cristina would have sole authority in litigating the Illinois action. The record does not indicate that Klein voiced any objection to the order.

¶ 11 On May 15, 2014, Cristina filed, through Xydakis, a petition to remove Klein as administrator *nunc pro tunc* and appoint her as sole supervised administrator. The court granted the petition, vacating its March 17 order and appointing Cristina sole supervised

administrator. The order indicates that Klein was present in court and does not indicate that he made any objection.

¶ 12 On June 13, 2014, Cristina, acting as sole administrator of Claudia's estate, retained Winters, Salzetta, O'Brien, & Richardson, LLC, ("WSOR") as attorneys for the estate.

¶ 13 On July 24, 2015, Klein filed a *pro se* petition to be reappointed co-administrator. In the petition, Klein argued that if the court reappointed him as co-administrator, his status as administrator would "relate back" in a fashion that would purportedly revive several claims that had been time barred. It also appears that Klein filed a section 2-1401 petition to vacate the court's *nunc pro tunc* order removing Klein as administrator. However, the petition is not contained within the record on appeal. On August 3, 2015, the probate court issued an order denying Klein's petition to be reappointed and his section 2-1401 petition to vacate.

¶ 14 On August 20, 2015, Klein filed a *pro se* petition to remove Cristina as administrator, remove her attorney, and appoint him administrator. In the petition, he argued that Cristina was not a resident of the United States at the time of appointment and, thus, could not be appointed administrator. Subsequent to the filing of Klein's petition, Cristina, through her attorney Daniel O'Brien of WSOR, filed a motion for sanctions against Klein. The motion alleged that Klein had brought his August 20, 2015, petition to court at the same time as proceedings in a related case involving both parties. O'Brien had an associate attend the probate court proceedings and inform the court that O'Brien would attend immediately following proceedings in the other matter, and O'Brien did so. Klein failed to appear. The motion sought $1,075 in sanctions for the time O'Brien spent in court and drafting the motion and $500 for the time the associate spent in court.

¶ 15 On September 2, 2015, the court heard oral arguments on Klein's petition and Cristina's motion. It denied Klein's petition and granted Cristina and WSOR's motion for sanctions in the amount of $1,175.

¶ 16 Also on September 2, 2015, Klein filed a notice of appeal (no. 1-15-2493) regarding the court's August 3 order denying the motion to appoint Klein as co-administrator and denying his section 2-1401 petition. On October 2, 2015, he filed a notice of appeal (no. 1-15-2840) regarding the court's September 2 order denying his motion to remove Cristina and her attorney and appoint him administrator, as well as the award of sanctions. This court subsequently consolidated the appeals.[2]

¶ 17 II. ANALYSIS

¶ 18 We note initially that Klein's *pro se* brief on appeal is disorganized and frequently incohesive. See *Twardowski v. Holiday Hospital Franchising, Inc.*, 321 Ill. App. 3d 509, 511, (2001) (This court is "entitled to have briefs submitted that present an organized and cohesive legal argument in accordance with the Supreme Court Rules.") His rambling and convoluted brief frequently weaves together non-legal arguments, conclusory allegations, and legal citations taken out of context, which together hinder this court's ability to discern the actual legal contentions Klein intends to put forth. Nonetheless, we are able to ascertain the issues to be decided from the opposing party's cogent brief and the notices of appeal. Thus we choose to address the merits of this appeal in order to establish a clear record and to reach a final disposition. *Id.*; *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010).

¶ 19 A. Klein's Section 2-1401 Petition

[2] Initially, these appeals were also consolidated with case nos. 1-16-0256 and 1-16-0730. However, during the pendency of this appeal those cases were unconsolidated and dismissed.

¶ 20 Klein contends that the trial court erroneously denied his section 2-1401 petition to vacate the May 15, 2014, order which removed him as administrator. However, the petition in question is absent from the record on appeal. The September 2, 2015, order which disposed of the petition states only that the petition is "denied" and offers no indication of the document's contents. A document purporting to be the missing petition is included in the appendix filed with defendant's appellate brief.

¶ 21 The appellant bears the burden of presenting a complete record of proceedings sufficient to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984); see also *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). When the record is incomplete, the reviewing court must presume that the lower court acted in full accordance with the law and that its findings had sufficient evidentiary support. *Foutch*, 99 Ill. 2d at 391. This court may not review an issue relating to the trial court's findings of fact or the basis of its legal conclusions without a record or report of the proceeding. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Additionally, this court may only consider documents that are part of the certified record on appeal. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14 (2009). The appendix attached to a party's appellate brief is not part of the certified record, and thus a party cannot supplement an incomplete record by including documents in the appendix. *Id.* Any such documents are not properly before the appellate court and will not be considered. *Id.*

¶ 22 Klein's failure to provide a complete record hinders any substantive review of the trial court's denial of his petition. Because he has not included the section 2-1401 petition in the record, this court is unable to determine what arguments were asserted in the petition and whether Klein met the requirements for such a petition as set forth in section 2-1401 (see 735

ILCS 5/2-1401(b) (West 2014) ("The petition must be supported by affidavit or other appropriate showing as to matters not of record."); See also *Warren County Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶ 51 (section 2-1401 petition requires showing of "due diligence" in asserting a factual challenge and in filing the petition)). Without the petition at issue, this court cannot determine whether the petition was meritorious and whether therefore the court below erred in denying it. Given the incomplete record, we must presume that the court's findings had sufficient evidentiary support and that it acted in full accordance with the law in denying Klein's petition. See *Foutch*, 99 Ill. 2d at 391.

¶ 23 B. The Motions to Reinstate Klein as Administrator and Remove Cristina

¶ 24 Klein also contends that the trial court erred in denying his motions to reinstate him as an administrator and remove Cristina. He argues, *inter alia*, that the court was statutorily required to appoint him as administrator, Cristina did not meet statutory requisites to be an administrator, she had waived any challenge to his appointment, and a conflict of interest foreclosed her appointment. Cristina responds that this court does not have jurisdiction to hear these claims because Klein's motions were in fact an attack on the court's May 15, 2014, order removing him as administrator and thus his appeal is untimely.

¶ 25 This court reviews the issue of jurisdiction *de novo*. *People v. Salem*, 2016 IL 118693, ¶ 11. "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). An order defining the status of a party and entered in the administration of an estate is a final order and a notice of appeal generally must be filed within 30 days of such a judgment. Ill. S. Ct. R. 304(b) (eff. Feb. 26, 2010); Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). However, where a

timely post-judgment motion is filed, the notice of appeal must be filed within 30 days of the entry disposing of the post-judgment motion. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

¶ 26 A proper post-judgment motion requests a rehearing, retrial, modification or vacatur of the judgment, or similar type of relief against the judgment. *In re Marriage of Singel*, 373 Ill. App. 3d 554, 556 (2007). Subsection 2-2103(a) of the Code requires such a motion to be filed "within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof." 735 ILCS 5/2-1203(a) (West 2014).

¶ 27 Klein did not characterize his motions to be reinstated as an administrator and to remove Cristina as post-judgment motions to vacate the May 15, 2014, order. Nevertheless, upon consideration of the substance and circumstances of the filings, we must conclude that they were, in fact, post-judgment motions. We find *In re Estate of Burd*, 354 Ill. App. 3d 434 (2004), to be instructive on this issue.

¶ 28 In *Burd*, the decedent's attorney was appointed independent executor of the estate. *Id.* at 435. Over a year later, one of the decedent's heirs filed a petition seeking to remove the attorney as executor because his appointment violated a relevant statute and the trial court granted the petition. *Id.* at 436. On appeal, the reviewing court held that the appointing of an estate's representative was a final order under Rule 304(b), and accordingly, under subsection 2-1203, any post-judgment motion regarding such an appointment was required to be filed within 30 days. *Id.* at 437-39. The court then noted that although the heir had termed her motion a petition to revoke the attorney's letters of office, she had based the motion on facts available at the time of his appointment and she had not alleged that she was unaware of those facts. *Id.* at 439. It explained that the petition challenging the attorney's appointment

was therefore in practical effect an untimely post-judgment motion because it was filed more than 30 days after the appointment. *Id.*

¶ 29 Both of Klein's motions regarding his removal as administrator and Cristina's appointment as sole administrator are based on facts available at the time of May 15, 2014, order. Neither motion asserts that Klein was unaware of these facts. Moreover, the order was requested by Cristina's attorney, who was also Klein's attorney at the time, and Klein did not object to the order. As in *Burd*, we must therefore conclude that Klein's belated challenges to his removal and Cristina's appointment were in actuality post-judgment motions in response to the May 15, 2014, order. As the motions were both filed in late 2015, they were clearly beyond the 30-day time limit and were untimely. Because the post-judgment motions were untimely, they did not toll the 30-day time limit to file a notice of appeal and his appeal on these issues is equally untimely. Accordingly, we lack jurisdiction to consider Klein's challenges to his removal and Cristina's appointment.

¶ 30 C. Sanctions

¶ 31 Klein also contends that the trial court erred in granting Cristina's motion for sanctions against him due to his failure to appear in court. We must initially comment that the previously noted deficiencies in Klein's appellate brief are particularly burdensome in our attempt at reviewing his arguments regarding sanctions. For much of his discussion on the issue, Klein alleges numerous malfeasances purportedly committed against him by O'Brien, Cristina's attorney. These allegations are unsupported by the record and wholly irrelevant to the question of whether sanctions were warranted for his failure to appear in court for proceedings on his own motion. He also makes various illogical factual and legal arguments that are without any citation to the record or to legal authority. In those instances where Klein

does cite authority, it is wholly inapposite. Not a single case cited by Klein in his discussion of sanctions even mentions sanctions, let alone discusses them in any meaningful way. As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. Accordingly, Klein's failure to cite pertinent legal authority results in his waiver of the issue of sanctions. *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613 (1999) (Appellate court "is not a depository into which the burden of research may be dumped and failure to cite legal authority in the argument section of a party's brief waives the issue for review.")

¶ 32 D. The Disqualification of O'Brien as Attorney

¶ 33 Klein briefly contends that O'Brien must be disqualified as the estate's attorney because he is "in an acute conflict of interest with Klein." He asserts, without citation to the record, that O'Brien admitted to having a conflict of interest which disqualifies him. He offers no legal citation to support this argument. As with his sanctions argument, Klein's failure to provide legal authority and factual support results in his wavier of this issue. *Id.*

¶ 34 E. Voidness

¶ 35 Finally, we note that Klein's arguments are replete with assertions that various actions and orders involved in these proceedings are "void," and thus he may attack them at any time and without regard to procedural bars such as waiver. Although Klein uses the legal term freely, he appears mistaken as to its meaning. It is well established that a void order may be attacked at any time. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38. An order is void where the court lacks jurisdiction. *Id.* ¶ 39. Although in the past what constituted a lack of jurisdiction was ambiguous, our supreme court has clarified that, in non-administrative cases, general jurisdiction is conferred on the circuit court by the Illinois Constitution and has

rejected the idea that the court did not have jurisdiction where it lacked "inherent power" to enter a judgment based upon statute. *Id.* ¶¶ 38-39. Accordingly, "subject matter jurisdiction is defined solely as the power of a court to hear and determine cases of a general class which the proceeding in question belongs." *Id.* ¶ 39.

¶ 36 Klein makes only one argument which conceivably presents a voidness claim as a matter of subject matter jurisdiction. He argues that he was appointed sole, independent administrator of the estate following the withdrawal of Cushing and that Cristina filed an untimely motion to vacate that order over eight months later. This assertion is belied by the record. The order appointing Cristina as co-administrator also modified the prior appointment of Klein as administrator. It specified that Klein's administratorship now concerned the matters pending in Colorado and not those pending in Illinois. Effectively, that order, prepared by Klein's own attorney, removed Klein from the position of administrator in regards to the matters in Illinois. The later motion *nunc pro tunc* merely removed him as administrator in regards to the Colorado litigation.

¶ 37 We note that the record contains no written motion or record of the proceedings which precipitated the order appointing Cristina. As Klein bore the burden of presenting a complete record, we must resolve any doubts that may arise from the partial record against him. *Foutch*, 99 Ill. 2d at 392. Accordingly, we presume that the order which was prepared by Klein's attorney and which ended his role as administrator of the estate in Illinois was entered on his own motion.

¶ 38 Klein's removal as administrator was not the result of an untimely post-judgment motion by Cristina, but rather the result of his own actions presumably undertaken to benefit his personal case pending in Colorado. This is made further evident by his silent acquiescence to

his removal until more than a year later after the Colorado case had been dismissed. It is axiomatic that a party cannot complain of an error he or she induced the court to make. *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004). As such, we find Klein's argument unpersuasive.

¶ 39 III. CONCLUSION

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 41 Affirmed.