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No. 15-3580

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> ESTATE OF RUTH ANN CATLEDGE,)	Appeal from the Circuit Court of
)	Cook County
(Lee Catledge,)	
Petitioner-Appellant,)	No. 14 P 5364
v.)	
)	
Lisa Catledge, as administrator of the Estate,)	Honorable James G. Riley,
Respondent-Appellee).)	Judge Presiding
)	

JUSTICE SIMON delivered the judgment of the court.
Justice Mikva concurred in the judgment.
Presiding Justice Connors dissented.

ORDER

¶ 1 *Held:* The trial court erroneously found that an heir's objections to closing an intestate estate were time barred.

¶ 2 This case deals with the propriety of the trial court's ruling that the independent representative of an estate was entitled to be discharged and the estate be closed. Petitioner objected to the estate being closed, arguing that the assets and liabilities disclosed in the letters of administration and thereafter failed to provide a true accounting for what the composition of the estate should be. The trial court held that the objections petitioner filed were time barred, so it

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discharged the independent representative and closed the estate. However, the objections were not time barred because the objection period is triggered when the independent representative files its statutory report with the court. We reverse and remand for further proceedings.

¶ 3

BACKGROUND

¶ 4 Ruth Ann Catledge died intestate. One of her daughters, Lisa Catledge, filed a petition for letters of administration. The letters of administration contain an estimate that the value of the estate is \$70,000, comprised entirely of real property. Ruth Catledge had five children—all living at the time of her death—and they were identified in an exhibit attached to the letters of administration that Lisa Catledge filed with the court.

¶ 5 Petitioner Lee Catledge Jr. ("petitioner") is one of the heirs to the estate. He filed a *pro se* appearance in the case. Petitioner first attempted to have the letters of administration dismissed but was unsuccessful. He then filed a document with the court listing assets he believed should be part of the estate—like a vehicle, bank accounts, and insurance policies. Petitioner titled that document "petition for issuance of citation to appear" and requested information with regard to the content of the letters of administration. The court denied the initial request, but later granted petitioner leave to issue a citation to discover assets in which he sought basically the same information. Petitioner also requested an accounting. The court continued the case so that he could serve subpoenas on parties that potentially held information about assets or liabilities of the estate.

¶ 6 On August 27, 2015, the parties appeared in court. An accounting was tendered to petitioner by counsel for the independent representative. At that same appearance, the court ordered "that any and all objections to the accounting, if any, must be filed in 14 days." Six days later, petitioner filed a motion to amend that court order indicating that 14 days would not be

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enough time for him to get responses to the subpoenas that he issued to potential debtors and creditors of the estate. He cited to the Probate Act of 1975 (755 ILCS 5/1-1 *et seq.*) (West 2012)) which he argued gave him 42 days to file objections. Before his motion for more time was ruled on, petitioner filed general objections to the accounting on September 11, 2015.

¶ 7 On October 8, 2015, Lisa Catledge, as independent representative of the estate, filed her statutory final report in the circuit court. Attached to the final report were acknowledgements from four of the five heirs (all but petitioner) that they had received their distributive share and approved of the final report and of closing the estate. On November 16, 2015, petitioner filed his objections to discharging the independent representative and closing the estate. Petitioner made eight specific objections that roughly mirrored the contentions he had been making all along—that the letters of administration and subsequent disclosures did not accurately represent what the composition of his mother's estate should really be. He attached evidence that he believes shows irregularities in expenses and other concerns with the administration and valuation of the estate.

¶ 8 A week after petitioner filed his objections, on November 23, 2015, the parties appeared in court. The trial court entered an order discharging the independent representative and closing the estate. The court also ruled that "the filing of Lee Catledge on November 16, 2015 (the objections) is barred as not timely filed pursuant to the Court's order of August 27, 2015."

¶ 9 Petitioner, *pro se*, appeals the order finding his objections to be time barred. He argues that the trial court erred when it dismissed his objections and ordered the estate closed. No response to the appeal was filed.

¶ 10 ANALYSIS

¶ 11 The issue raised on appeal requires us to analyze the trial court's orders and determine if

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they can be reconciled with the Probate Act of 1975 (755 ILCS 5/1-1 *et seq.*) (West 2012). Under the Act, when all administrative tasks are completed, there is no longer a need for the representative. 1 Horner Probate Practice & Estates § 17:9.30 (May 2016). At that time the representative may petition the Court to be dismissed as the representative and for the estate to be closed. *Id.*

¶ 12 When a person interested in the estate requests an accounting, the independent representative seeking discharge must (1) provide all such interested persons with an accounting and (2) file a verified report in the court averring that certain statutorily-delineated requirements for closing the estate have been met. 755 ILCS 5/28-11(a-b) (West 2012). Under the Act, "interested person" means "one who has or represents a financial interest, property right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse's or child's award and the representative." 755 ILCS 5/1-2.11 (West 2012). It is apparent that petitioner is an interested person; he is listed as a distributee in the final report so he has a financial interest, and he is also an heir to the intestate estate. Thus, the estate representative was required to provide an accounting and file a verified report in the court.

¶ 13 The Probate Act goes on to state that "[a]t any time after the expiration of a period of 42 days from the filing of the independent representative's report, the independent representative may apply to the court for a discharge and, if no objection is then pending in the court, the court shall enter an order discharging the independent representative and declaring the estate closed." 755 ILCS 5/28-11(e) (West 2012). Here, the independent representative filed its final report on October 8, 2015. On November 16, 2015, petitioner filed his objections to the closing of the

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estate—within 42 days of the final report being filed.

¶ 14 In the order closing the estate, the trial court dismissed petitioner's objections finding that they were time barred. The trial court indicated that the objections were untimely because they were not filed within the time set forth by the court in its August 27th order; i.e. 14 days from August 27th. However, the period for filing objections to the closing of the estate is statutorily set at 42 days after the report is filed. Here, the representative did not get that report on file until October 8th. The objections were, thus, due on file by November 19th and they were timely filed on November 16th.

¶ 15 Although petitioner acknowledges receiving an accounting as early as August 27, 2015, the accounting requires different information than the independent representative's statutory report. The Probate Act sets forth the criteria that must be included in the independent representative's report. See 755 ILCS 5/28-11(b) (West 2012). The statute requires that independent representatives seeking discharge not only mail or deliver an accounting to all interested persons, but also that they "file in the court" a verified report. 755 ILCS 5/28-11(b) (West 2012). The representative's report must comply with the criteria set forth in subsection (b) and, when that report is filed, the 42-day clock for objections starts. The court is then entitled to discharge the independent representative and close the estate "if no objection is filed within 42 days *after the report was filed.*" (Emphasis added). 755 ILCS 5/28-11(e). Here, petitioner timely interposed his objections once the final report was filed so the trial court erred when it rejected them as time barred under its previous order.

¶ 16 In its August 27th order, the trial court gave petitioner 14 days from the entry of that order to file objections—until September 10th. The trial court's August 27th order is directed

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specifically at the accounting that was tendered to petitioner that day. While the trial court was free to set a timetable for filing objections to the accounting, the statute sets a specific timetable for filing objections to the closing of the estate. The trial court should not have used the timetable it set for the former to bar all objections to the latter. The Probate Act gives interested persons the right to object to an estate being closed for 42 days after the independent representative has filed a final report. Petitioner was deprived of that right.

¶ 17 The independent representative is required to provide an accounting to interested persons when an accounting is demanded. The accounting does not need to be verified or even filed, just provided to certain persons and entities. The final report is the first verified document in which the independent administrator attests to the court that the administrative tasks have been completed. The statute then gives interested persons 42 days to object to the closing of the estate once the final report is filed. That period must include objections to the distribution of the estate's assets and other financial matters—the most important part of the probate process. The report must be verified and filed in the court because anyone who might be interested in the matter is entitled to notice and to object in court to the estate being closed—and that includes making specific objections to unsettled accounts. Only permitting objections to the accounting is insufficient because it is a relatively informal document, is not made under oath, and is often not even filed or made part of the record.

¶ 18 If objections to all financial matters can be barred before the final report is even filed, it is unclear what the purpose of the 42-day objection period would be. After all, the statutory guidelines for the final report basically all concern financials. The filing of the final report is the only time in an independently administered estate that the estate submits a verified statement with

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an eye toward closing the estate. The result obtained here is not in line with the applicable statutory scheme. It is inconsistent with the language and intention of the statute. The result would be that all financial aspects of the estate can become unchallengeable before the representative has even filed anything about the assets and liabilities in court.

¶ 19 The Probate Act gives interested persons the right to object to the *closing of the estate* for 42 days after the filing of the independent representative's report. 755 ILCS 5/28-11(e).

Petitioner's objections manifest the position that he held all along—that there were discrepancies between the represented character of the estate and the true nature of his mother's assets and liabilities. Those are valid objections to lodge within the 42-day objection period. According to petitioner, the estate should not be closed until the representative proves that she accurately accounted for all of the decedent's assets and liabilities. Petitioner has pointed to specific accounts, bills, and apparent discrepancies that the Probate Act entitles interested persons to have adjudicated. Whether petitioner is correct or not remains to be seen, but he timely objected to the closing of the estate with procedurally valid objections.

¶ 20 The title that petitioner gave to his objections is "Objections to the Report of Accounting." Petitioner's objections are to the estate being closed while there is evidence of outstanding account irregularities. So the trial court's order barring objections to the accounting 14 days after the order was entered is ineffectual to bar the objections at issue here. Petitioner opens his objections by citing to section 28-11 of the Probate Act of 1975—the section titled "closing the estate." He then relies on subsection (e) of that statutory section which states that he has 42 days to object to the estate being closed from the time the report is filed. He does not cite to the subsection that discusses the accounting. Petitioner then accurately reiterates that he is "a person who was entitled

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to review and file objection[s] if any to the *independent representative report* on or about November 19, 2015. (Emphasis added.)"

¶ 21 The objections are, in substance, objections to the closure of the estate—well-pled claims that the estate has not been properly and finally settled. The nature of relief sought rather than title given to the pleadings filed in opposition to final report determines their legal significance. *South Side Trust & Savings Bank of Peoria v. South Side Trust & Savings Bank of Peoria*, 5 Ill. App. 3d 474, 479 (1972). Petitioner's objections must be reasonably construed to state objections to the estate being closed until his complaints about valuation and distribution are heard.

¶ 22 The objections filed by petitioner were not time barred and they should not have been dismissed on that basis. Petitioner has interposed substantive objections and supported them with evidence. Petitioner did all he could to object to the closing of the estate. From the beginning of the probate proceedings to the end, he claimed that the estate was not accurately representing the assets and liabilities. We have indicated in the past that parties may even be entitled to challenge the propriety of financial distributions and attorney fees after the final report has been approved. See *Matter of Estate of Moore*, 175 Ill. App. 3d 926, 928-29 (1988) (holding that a party may object to the approval of a final report in the same way as any other order through post-judgment procedures). Even though petitioner timely filed objections, supported with evidence, and made his objections clear all along, he was never able to get them heard.

¶ 23 There is insufficient argument and evidence before the court on appeal to undertake the initial analysis and decide the objections on their merits. We remand the case for that purpose.

¶ 24 CONCLUSION

¶ 25 Accordingly, we reverse.

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¶ 26 Reversed and remanded.

¶ 27 PRESIDING JUSTICE CONNORS, dissenting.

¶ 28 I respectfully dissent. The only issue in this case is whether the document entitled "Objections to the Report of Accounting" (the objections) that was filed by petitioner, Lee Catledge, on November 16, 2015, was ruled on properly as not timely and barred by the trial court's order of November 23, 2015.

¶ 29 The majority claims that the objections suffice as a proper objection to the final report of the independent representative (the final report), which report is mandated by section 28-11(b) of the Probate Act. 755 ILCS 5/28-11(b) (West 2012). In this case, the final report was filed on October 8, 2015, and as a result, any objection to the final report needed to be filed within 42 days thereafter. If the objections can be construed as an appropriate response to the final report, then they should be considered timely. Since the objections are not an appropriate response to the final report, and are a rehash of issues brought to the attention of the trial court on numerous occasions, then the court, in its discretion, appropriately barred its filing.

¶ 30 I believe it is necessary to review the totality of the filings in this matter by petitioner.

The following is a summarized list of the pleadings filed by petitioner:

- Motion to Dismiss Petition for Letters of Office, filed on October 20, 2014
- Petition for Citation, filed on April 1, 2015
- Petition for Issuance of Citation to Appear, filed on April 30, 2015
- Petition for Citation to Show Cause, filed on July 15, 2015
- Petition for Issuance to Show Cause, filed on July 30, 2015
- Petition for Citation versus Representative, filed on August 7, 2015

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- Petition for Citation to Discover Assets and Recover Property, filed on August 7, 2015
- Objections to Report of Accounting, filed on September 11, 2015
- Motion for Memorandum Order and Opinion, filed on September 24, 2015
- Motion to Stay, filed on September 24, 2015
- Motion for Certification to Supreme Court of Illinois, filed on September 24, 2015

¶ 31 On August 10, 2015, the trial court allowed subpoenas to issue to the following entities as a result of petitioner's requests:

- City of Chicago Department of Water
- Lee Way Wrecking Company
- Wells Fargo bank
- Illinois Secretary of State
- State Farm Insurance
- Cook County Treasurer
- Nationwide Insurance
- Chicago Police Department Records Inquiry
- American Family Insurance
- Marquette National Bank
- Municipal Employee Annuity & Benefit Chicago
- Monumental Life Insurance Company

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¶ 32 It is apparent that throughout this case petitioner was interested in investigating every possible aspect of where assets of his deceased mother could be located. The trial court was liberal in its allowance of these pleadings and in its allowance of the issuance of subpoenas.

¶ 33 There is no report from petitioner as to his discovery of any assets of the estate that were not listed or accounted for on the accounting produced by the representative of the estate.

¶ 34 The objections filed on November 16, 2015, by petitioner restated and rehashed his allegations and opinions that other assets existed that belonged in his mother's estate. Contrary to the majority's statement above, not one objection was supported by any evidence. *Supra* ¶ 22.

¶ 35 The objections argue as follows:

- 1. Objection to the Accounting of the Estate Representative for expenditures to Lee Way Wrecking Company for trash and tire removal from the decedent's property. (This information was the subject of an issued subpoena.)
- 2. Objection as to the non-listing in the estate of a Plymouth Voyager. (Such vehicle was listed as stolen well before the death of petitioner's mother.)
- 3. Objection to furnishings of the decedent being valued at \$1000. (Such furnishings are in the possession of petitioner.)
- 4. Objection to the payoff of the Wells Fargo mortgage that was listed on the accounting. (This mortgage needed to be paid before the sale of the property could be finalized and was also subject of a subpoena.)
- 5. Objection to payment of back City of Chicago water bills. (These bills needed to be paid before the sale of the property could be finalized and were also subject of a subpoena.)

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- 6. Objection to payment of costs to Nationwide Insurance for insurance for the decedent's home. (This was listed on the accounting and also subject of a subpoena.)
- 7. Objection to real estate taxes listed in the accounting. (Such taxes would need to be paid before the sale of the property could be finalized and were also subject of a subpoena.)
- 8. Objection to legal fees of attorney for the estate.

¶ 36 Each and every one of these objections are objections to the accounting of the estate representative; not one objection has any basis and petitioner has failed to supply any evidence to support them.

¶ 37 The final report is a document demanded by section 27(b) of the Probate Act, 755 ILCS 5/27(b) (West 2012), that requires by its terms any number of items to be verified by the estate representative; it is not merely as the majority suggests, a document that "basically all concern financials." *Supra* ¶ 18. And, it is certainly not an accounting. See 755 ILCS 5/24-1 (West 2012).

¶ 38 The majority and petitioner fails to discuss the standard of review in this case in violation of Illinois Supreme Court Rule 341(h)(3) (eff. Feb. 6, 2013). Clearly since this case relates to the control of the court's docket, the standard should be an abuse of discretion. Such actions of the trial court should not be disturbed on appeal unless they are "clearly against logic." *State Farm Fire and Casualty Co. v. Leverton*, 314 Ill. App. 3d 1080, 1083 (2000). The question is whether the trial court "acted arbitrarily, without employing conscientious judgment, or whether, in view of

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all the circumstances, the court exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *Id.*

¶ 39 Here, petitioner filed a document titled "Objections to the Report of Accounting," which contained objections to the accounting, not a response to the final report and, which was filed well beyond the time for objections to the accounting. As a result, the trial court exercised its discretion in refusing to allow the filing as time-barred.

¶ 40 I would affirm the trial court's decision.