

NOTICE

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FILED

May 19, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160766-U

NO. 4-16-0766

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err in granting judgment in favor of respondent.

¶ 2 In March 2016, petitioner, Kevin L. Thayer, filed a “complaint to adjudicate his two mechanics liens and for *quantum meruit* relief” against respondent, the estate of Elizabeth O. Lynn (Estate). In September 2016, the trial court granted judgment in favor of the Estate. Petitioner appeals, and we affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2008, Elizabeth O. Lynn died intestate. In March 2010, the trial court appointed Sandi Thayer, decedent's niece and the mother of petitioner, as administratrix of decedent’s estate. In March 2015, following the death of Sandi Thayer, the court appointed the

Sangamon County Public Administrator as the administrator of decedent's estate.

¶ 5 In January 2016, the trial court entered a written order directing the public administrator to sell the Estate's real property by means of public auction. In doing so, the court rejected petitioner's claim a valid agreement—executed by Sandi Thayer—to sell him the property existed and should be enforced. The court's order further provided, *inter alia*, “the [c]ourt further reserves the issue of the [l]ien[s] of [petitioner] for work performed on the [e]state [p]roperty.” Petitioner appealed from the court's order, and this court later affirmed. *Thayer v. Estate of Lynn*, 2016 IL App (4th) 160119-U.

¶ 6 In February 2016, while petitioner's appeal was pending, the Estate filed under section 34 of the Mechanics Lien Act (770 ILCS 60/34 (West 2014)), a notice and demand to commence suit on any purported liens. In response, petitioner filed a motion to stay and a special and limited appearance to object to the trial court's jurisdiction. Petitioner argued the Estate's notice and demand were procedurally improper because the court lacked jurisdiction to hear the issue while the matter was on appeal. The Estate asserted the court had jurisdiction because the issue on appeal did not relate to any liens on the property. The court found it had jurisdiction to address the matter as it was an issue separate from that which was appealed.

¶ 7 In March 2016, petitioner filed a complaint “to adjudicate his two mechanics liens and for *quantum meruit* relief” against the Estate. Petitioner alleged, on July 22, 2010, he entered into a written agreement with the previous administratrix of the Estate, Sandi Thayer, whereby the Estate would pay him for all services and improvements made to its real property in the event he was not allowed to purchase the property. Petitioner attached to his complaint a copy of the written agreement. The agreement provided the rates at which petitioner would be reimbursed for

labor, general mowing, ditch and brush hog mowing, and demolition work. The agreement was signed by Sandi Thayer, as “Executor of the Lynn Estate.” Petitioner alleged, based on the written agreement, he provided labor and services for the benefit of the Estate, which increased the fair market value of its property. Petitioner filed liens against the Estate’s property for the labor and services rendered. On July 13, 2013, petitioner filed a \$125,000 lien, and on July 9, 2015, petitioner filed a \$136,533.86 lien. Petitioner asserted, because he was not allowed to purchase the Estate’s property, he was entitled to collect on the liens, plus interest and court costs. Petitioner further requested, in the event he was unable to collect on the liens, judgment be entered against the Estate under a theory of *quantum meruit* for \$143,319.26.

¶ 8 In July 2016, the Estate filed a “verified third motion to dismiss [and] motion for summary judgment.” The Estate moved for dismissal of petitioner’s complaint under sections 2-615 and 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619(a)(9) (West 2014)) or, in the alternative, summary judgment against petitioner under section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2014)). In support of both its request for dismissal under section 2-615 and summary judgment under section 2-1005, the Estate asserted:

“Section 1 of the Mechanics Lien Act [(770 ILCS 60/1 (West 2014))] requires a valid contract. *** [T]here is no valid contract in the case at hand because [Sandi Thayer] had no authority to contract with [petitioner] and failed to seek approval of the [service] contract by [the] [c]ourt. *** With the absence of a valid contract, there is no enforceable mechanics’ lien in the case at hand. *** [Petitioner] has an adequate remedy at law in this matter by pursuing a claim against the [e]state of Sandi Thayer. Ms.

Thayer, although deceased, is personally liable for the [service] [c]ontract.”

¶ 9 In August 2016, petitioner filed a “motion to strike and dismiss” the Estate’s verified third motion to dismiss and motion for summary judgment. Petitioner argued he was entitled to \$170,557.56 based on either an express or implied contract. Petitioner asserted (1) the service contract was valid as Sandi Thayer, in order to fulfill her duties under section 20-1(a) of the Probate Act (755 ILCS 5/20-1(a) (West 2010)), hired him to perform services to preserve and protect the Estate’s property; and (2) in the event a valid contract did not exist, he is entitled to recover under a theory of *quantum meruit* to avoid unjust enrichment to the Estate. Additionally, petitioner asserted the Estate’s (1) section 2-615 motion to dismiss must be denied as he sufficiently pleaded his complaint under the relaxed pleading standard for claims filed in a probate case, and (2) motion for summary judgment must be stricken and dismissed because the public administrator did not have the requisite personal knowledge to properly verify the motion under Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013). Finally, petitioner asserted, the Estate’s motions must be denied based on the “rule of estoppel by acquiescence” because the Estate readily accepted the benefits of the service contract.

¶ 10 In September 2016, the trial court held a hearing on (1) petitioner’s motion to strike and dismiss, and (2) the Estate’s verified third motion to dismiss and motion for summary judgment. The court initially denied petitioner’s motion to strike and dismiss. In doing so, the court noted:

“This is one of those cases that a mere reviewing of the court record would be able to show exactly what is being contested here. It’s basically a

simple issue, even though the length of the case has gone on for years as to whether or not it was a valid contract that was entered into between the initial [administratrix] of the [e]state, Sandi Thayer, and her son, and now heir, [petitioner], and whether or not Sandi Thayer had the statutory authority or the authority that is granted by the [c]ourt in this case to first enter into such a contract and then what if any parts of a contract would bind the [E]state in this case.”

¶ 11 After denying petitioner’s motion to strike and dismiss, the trial court proceeded with a hearing on the Estate’s verified third motion to dismiss and motion for summary judgment. The Estate argued, in relevant part, it was not bound by a valid contract as required by section 1 of the Mechanics Lien Act (770 ILCS 60/1 (West 2014)). Specifically, the Estate asserted a valid contract did not exist because Sandi Thayer did not have court authority to enter into a service contract with petitioner or mortgage the property to pay for those services. In response, petitioner asserted Sandi Thayer had the authority to make all reasonable expenditures to preserve the Estate’s property, and the issue of whether the expenditures under the service contract were reasonable was a question for a jury to decide.

¶ 12 In the oral pronouncement of its decision, the trial court initially noted:

“As the [c]ourt has indicated earlier, the [c]ourt sees the main issue in this case is whether or not there is a valid contract that was initially entered into between [the] then [administratrix], Sandi Thayer[,] and her son, [petitioner]. The contract is what it is. The contract has been on file in this case for years and that is the crux of the issue in this case.”

The court found, based on its records, Sandi Thayer did not have court authority to enter into the service contract. It also noted any debt from the service contract was incurred after the decedent's death and payment thereon would result in the property being sold. The court, relying on *Sanni, Inc. v. Fiocchi*, 111 Ill. App. 3d 234, 238, 443 N.E.2d 1108, 1112 (1982), concluded the Estate was not bound by the service contract because Sandi Thayer did not have court authority to enter into the contract. The court further rejected petitioner's request for equitable relief because an adequate remedy at law existed, that is, the estate of Sandi Thayer was accountable for the debt. The court indicated dismissal was appropriate under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)) and summary judgment was appropriate under section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2014)).

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, petitioner argues the trial court's judgment must be reversed because the court lacked jurisdiction to evaluate its claims while the matter was pending in this court. Alternatively, petitioner asserts, the trial court (1) erroneously concluded he was not entitled to recovery under a theory of *quantum meruit*, (2) failed to find the Estate's motions were barred under "the doctrine of estoppel by acquiescence," (3) improperly granted the Estate's motion for summary judgment where the public administrator lacked the required personal knowledge to properly verify its motion, and (4) improperly granted the Estate's section 2-615 motion to dismiss by evaluating the sufficiency of its pleading under an erroneous legal standard.

¶ 16 A. Jurisdiction

¶ 17 Petitioner asserts the trial court was without jurisdiction to evaluate the claims

relating to the service contract while the matter was pending on appeal.

¶ 18 “A notice of appeal is a procedural device filed with the trial court that, when timely filed, vests jurisdiction in the appellate court in order to permit review of the judgment such that it may be affirmed, reversed, or modified.” *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173, 950 N.E.2d 1136, 1142 (2011). Once the notice of appeal is filed, the appealed judgment is beyond the jurisdiction of the trial court. *Id.* The trial court, however, “retains jurisdiction after the notice of appeal is filed to determine matters collateral or incidental to the judgment.” *Id.* at 173-74, 950 N.E.2d at 1142.

¶ 19 Petitioner initially appealed the trial court’s January 2016 order directing the public administrator to sell the Estate’s real property by means of public auction. See *Thayer*, 2016 IL App (4th) 160119-U. In the trial court’s order, it specifically noted it was reserving the issue of petitioner’s liens. In fact, while petitioner argued in his previous appeal the trial court erred in ordering a sale which would be free and clear of his liens, this court found it was without jurisdiction to review the matter as the trial court had not issued a final disposition on petitioner’s liens. *Id.* ¶¶ 24-25. The trial court’s evaluation of the issues related to the service contract did not modify its previous judgment or interfere with this court’s review of that judgment. We find the trial court properly concluded it had jurisdiction to address the matter.

¶ 20 B. Trial Court’s Judgment

¶ 21 In moving for both dismissal and summary judgment, the Estate asserted (1) it was not bound by the service contract because the administratrix acted without court authority, and (2) petitioner was not entitled to equitable relief because he had an adequate remedy at law against the administratrix’s estate. The necessary facts to resolve these issues—the service

contract and the administratrix's authority—were matters of record. The trial court's analysis demonstrated it considered only petitioner's pleadings and matters of record in reaching its decision.

¶ 22 Our review of the proceedings below indicates the issue was in fact resolved by a judgment on the pleadings under section 2-615(e) of the Code (735 ILCS 5/2-615(e) (West 2014)). See *In re Estate of Carlson*, 39 Ill. App. 3d 281, 283, 350 N.E.2d 306, 308 (1976) (construing the defendant's motion to dismiss as a motion for judgment on the pleadings); *Habada v. Graft*, 33 Ill. App. 3d 810, 811-12, 338 N.E.2d 255, 256 (1975) (presuming a motion for judgment on the pleadings existed where no evidence was presented and the court concluded the plaintiff was entitled to judgment on the basis of the pleadings).

¶ 23 Section 2-615(e) of the Code (735 ILCS 5/2-615(e) (West 2014)) provides “[a]ny party may seasonably move for judgment on the pleadings.” “Judgment on the pleadings is proper only where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.” *Hooker v. Illinois State Board of Elections*, 2016 IL 121077, ¶ 21, 63 N.E.3d 824. “In ruling on a motion for judgment on the pleadings, a court may consider only those facts appearing on the face of the pleadings, matters subject to judicial notice, and any judicial admissions in the record.” *Id.* “All well-pleaded facts and reasonable inferences based on those facts are taken as true.” *Id.* We review a trial court's grant of judgment on the pleadings *de novo*. *Id.*

¶ 24 Petitioner asserts the trial court erred in denying him relief under a theory of *quantum meruit*. The court found petitioner was not entitled to equitable relief because an adequate remedy at law existed against the administratrix's estate. “It is axiomatic that an unjust

enrichment claim is viable only when there is no adequate remedy at law.” *Season Comfort Corp. v. Ben A. Borenstein Co.*, 281 Ill. App. 3d 648, 656, 655 N.E.2d 1065, 1071 (1995).

Petitioner does not dispute an action may lie against the administratrix’s estate. See *Sanni, Inc.*, 111 Ill. App. 3d at 236, 443 N.E.2d at 1111 (“The law is well settled in Illinois that an executory contract of an executor or administrator, if made on a new and independent consideration moving between the promisee and the representative, is his personal contract upon which he becomes personally liable, and does not bind the estate.”). Because petitioner has an adequate remedy at law, the court properly denied his request for equitable relief.

¶ 25 Petitioner further asserts, citing *Cashman v. Shinn*, 109 Ill. App. 3d 1112, 441 N.E.2d 940 (1982), and *Grot v. First Bank of Schaumburg*, 292 Ill. App. 3d 88, 684 N.E.2d 1016 (1997), the Estate should have been barred from denying the existence of the service contract under “the doctrine of estoppel by acquiescence” because it readily accepted the benefits from the contract. Petitioner’s argument is unpersuasive. In *Cashman*, 109 Ill. App. 3d at 1117, 441 N.E.2d at 943, the court found the plaintiff, who benefited from a resignation agreement by endorsing certain checks, was estopped from denying the agreement’s validity. In *Grot*, 292 Ill. App. 3d at 93, 684 N.E.2d at 1019-20, the court found the plaintiff, who benefited from an agreement by having its proceeds satisfy his prior debts, was estopped from denying the agreement’s existence. Unlike *Cashman* and *Grot*, the benefits obtained from petitioner’s work, if any, were involuntarily acquired by the Estate. In reaching this decision, we acknowledge petitioner suggests the public administrator sat idly by and let him amass an unpaid service contract bill. We decline to consider such an accusation as petitioner has provided no supporting citation to the record. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (requiring “citation of the

authorities and the pages of the record relied on” in the argument section of a brief).

¶ 26 Finally, we note, petitioner asserts—for the first time in his reply brief—error with respect to the trial court’s finding a valid contract did not exist to bind the Estate. Petitioner has forfeited this argument by failing to raise it in his initial brief. *Id.* (“Points not argued are [forfeited] and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”).

¶ 27 Given the arguments presented, we find the trial court properly granted judgment on the pleadings. Because judgment was proper under section 2-615(e), we need not entertain petitioner’s arguments relating to dismissal under section 2-615(a) or summary judgment under section 2-1005.

¶ 28 III. CONCLUSION

¶ 29 We affirm the trial court’s judgment.

¶ 30 Affirmed.