

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).

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Estate of EARL D. GAUDIO,	)	Appeal from
Deceased,	)	Circuit Court of
HELEN GAUDIO,	)	Vermilion County
Petitioner-Appellant,	)	No. 16P93
v. (No. 4-18-0032)	)	
PAUL OFFUTT,	)	
Respondent-Appellee,	)	
and	)	
FIRST MIDWEST BANK,	)	
Appellee and Cross-Appellant.	)	

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In re: Estate of EARL D. GAUDIO,	)	No. 16P93
HELEN GAUDIO,	)	
Petitioner-Appellee,	)	
v. (No. 4-18-0423)	)	
FIRST MIDWEST BANK,	)	
Respondent-Appellant.	)	

-----	)	
PAUL OFFUTT,	)	No. 16CH79
Plaintiff,	)	
v. (No. 4-18-0432)	)	
HELEN M. GAUDIO, Individually and as the	)	
Administrator of the Estate of EARL GAUDIO,	)	
Deceased,	)	
Defendant and Third-Party Plaintiff,	)	
v.	)	
FIRST MIDWEST BANK, DENNIS GAUDIO, and	)	
ERIC GAUDIO,	)	
Third-Party Defendants-Appellants.	)	

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FIRST MIDWEST BANK,	)	No. 16MR94
Plaintiff-Appellant,	)	
v. (No. 4-18-0432)	)	
HELEN M. GAUDIO and PAUL OFFUTT,	)	
Defendants-Appellees.	)	
-----	)	

FIRST MIDWEST BANK,	)	No. 13L70
Plaintiff and Counterdefendant-	)	
Appellant,	)	
v. (No. 4-18-0432)	)	
HELEN M. GAUDIO, Individually and HELEN M.	)	
GAUDIO as Plenary Guardian of the Estate of EARL	)	
D. GAUDIO,	)	Honorable
Defendants and Counterplaintiffs-	)	Charles C. Hall,
Appellees.	)	Judge Presiding

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Harris and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court (1) properly removed the executor of the estate based on a conflict of interest that interfered with the objective administration of the estate and (2) did not abuse its discretion in granting the motions to stay proceedings pending appeal.

¶ 2 In May 2016, decedent, Earl D. Gaudio, passed away, leaving a last will and testament naming his wife, Helen M. Gaudio, executor of his estate. First Midwest Bank and Paul Offutt filed claims against Earl’s estate. In July 2017, First Midwest Bank filed a motion to appoint a special administrator to represent the estate in pending consolidated cases separate from probate proceedings. In September 2017, Offutt responded to First Midwest Bank’s motion, asking the trial court to (1) grant the motion to appoint a special administrator and (2) remove Helen as executor of Earl’s estate. In December 2017, the trial court denied First Midwest Bank’s motion for the appointment of a special administrator and granted Offutt’s motion to remove Helen as executor of Earl’s estate. Helen subsequently filed motions to stay proceedings in the probate case and the consolidated cases pending the appeal of the court’s December 2017 order removing her as executor. On June 15, 2018, the trial court granted Helen’s motions to stay proceedings pending appeal of the December 2017 order.

¶ 3 Helen appeals, asserting the trial court erred by removing her as executor of Earl's estate because (1) the motions filed by First Midwest Bank and Offutt were untimely under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016), (2) the court failed to address the statutory bases for her removal, and (3) the court failed to comply with the due process requirements of the Probate Act of 1975 (Probate Act) (755 ILCS 5/23-3 (West 2016)). Although First Midwest Bank filed a cross-appeal, it does not challenge the trial court's order removing Helen as executor of the estate. In the event this court reverses the trial court's order removing Helen as executor, First Midwest Bank asks this court to reverse the portion of the trial court's order denying its motion for the appointment of a special administrator.

¶ 4 I. BACKGROUND

¶ 5 A. Revocable Trust Agreements

¶ 6 In November 2011, Earl executed a revocable trust agreement naming himself as grantor and First Midwest Bank as trustee. Upon Earl's death, the 2011 trust provided for the trust assets to be distributed as directed in Earl's will.

¶ 7 On July 31, 2012, Earl and Helen executed a second revocable trust agreement naming Earl and Helen as the grantors and First Midwest Bank as trustee of the same trust assets subject to the 2011 trust. In part, the 2012 trust provided that, following the death of either of the grantors, the trust assets "shall become the sole property of the surviving [g]rantor." The 2012 trust agreement allowed for the revocation of the trust at the end of any calendar month provided written notice of revocation was given at least 10 days prior to the effective date of the revocation.

¶ 8 B. Earl's Will

¶ 9 In December 2013, Earl executed a last will and testament naming Helen as the executor of his estate. The will, in part, devised Earl's tangible personal property, as well as the rest, residue, and remainder of his estate, with 50% to Helen and 50% to his daughter, Earlynn McIntyre.

¶ 10 C. Litigation Prior to Earl's Death

¶ 11 In May 2013, the trial court entered an order finding Earl to be a disabled person and naming Helen as the limited guardian of his estate. The order appointing Helen guardian required Helen to maintain Earl's investment and checking accounts at First Midwest Bank and refrain from moving those assets without court approval.

¶ 12 In November 2013, Offutt filed suit against Earl (Vermilion County case No. 13-L-70). Although the complaint is not in the record on appeal, the suit was based on a note dated July 31, 2012, and purportedly signed by Earl as guarantor on a loan made by Offutt in the amount of \$405,000.

¶ 13 In July 2015, the court entered an order making Helen the plenary guardian of Earl's person and estate. After Earl was adjudged a disabled person, Helen orally requested that First Midwest Bank transfer \$700,000 of the trust assets into a separate account in her name.

¶ 14 In March 2016, First Midwest Bank filed a complaint for declaratory judgment (Vermilion County case No. 16-MR-94). The declaratory judgment sought, in part, a determination of whether Helen's oral request to transfer \$700,000 of the trust assets to her alone was authorized by the orders entered in the guardianship proceedings. In April 2016, First Midwest Bank filed a motion to appoint a guardian *ad litem* for Earl in connection with the declaratory judgment action. The trial court appointed a guardian *ad litem*, but Earl died the day

after the appointment, and the guardian *ad litem* did not have the opportunity to act on Earl's behalf.

¶ 15 D. Probate Proceedings

¶ 16 On May 13, 2016, Earl died, and four days later Helen filed a petition for probate of Earl's will and for letters testamentary. Also on May 17, 2016, Helen sent a letter to First Midwest Bank expressing her desire to revoke the 2012 trust and requesting the income and principal of the trust be delivered to her in the form of a cashier's check by June 10, 2016.

¶ 17 On June 21, 2016, Helen was appointed the independent executor of Earl's will. In August 2016, Offutt filed a claim against Earl's estate for \$405,000 plus interest and reasonable attorney fees. In December 2016, First Midwest Bank filed a claim against Earl's estate for an undetermined amount. First Midwest Bank's claim included an exhibit detailing the ongoing litigation (which is summarized below), and it noted Offutt was seeking leave to file an amended complaint in Vermilion County case No. 13-L-70.

¶ 18 E. Consolidated Cases

¶ 19 On May 26, 2016, First Midwest Bank filed a complaint for interpleader against Helen and Offutt (Vermilion County case No. 16-CH-79). At some point, Offutt filed an amended complaint against Helen and Earl's estate and Helen filed an amended third-party complaint against First Midwest Bank as part of the case (Vermilion County case No. 13-L-70). The trial court eventually consolidated First Midwest Bank's declaratory judgment action (Vermilion County case No. 16-MR-94), the interpleader action (No. 16-CH-79), and Offutt's amended complaint and Helen's third-party complaint (No. 13-L-70).

¶ 20 The consolidated cases concern the substantive provisions of the 2011 and 2012 trusts, as well as the funding for and validity of the 2012 trust. Offutt's amended complaint in

Vermilion County case No. 13-L-70 set forth five counts, including one count alleging the transfer that placed funds into the 2012 trust was fraudulent. If that transfer was void, the funds would remain an asset of the 2011 trust and would be governed by Earl's will instead of passing directly to Helen.

¶ 21 F. Removal of Helen as Executor

¶ 22 In July 2017, First Midwest Bank filed a motion to appoint a special administrator. The motion quoted extensively from a brief Offutt filed in opposition to Helen's motion for partial summary judgment in the consolidated cases. The quoted language alleged Helen, as executor of Earl's estate, had a duty to maximize estate assets for the creditors and beneficiaries of Earl's estate. According to the motion, as executor, Helen ought to argue the transfer of funds to the 2012 trust was fraudulent and the funds should be returned to the estate. However, if the 2012 trust is upheld as valid, the funds would pass directly to Helen. The quoted language alleged Helen had no desire to maximize the estate assets because the funds in question, if an estate asset, would be subject to the claims of creditors, with the remainder to be split between Helen and Earl's daughter. Based on this conflict of interest, First Midwest Bank asked that a special administrator be appointed to represent Earl's estate in the consolidated cases.

¶ 23 In September 2017, Offutt filed a motion titled "Paul Offutt's response to First Midwest Bank's motion to appoint special administrator and motion to remove Helen Gaudio as executor of the Earl Gaudio estate." Offutt's motion also alleged a conflict of interest between Helen as executor and as an individual, "not simply because she has an interest in the Estate, but because she is in an untenable position of attempting to collect for herself assets which should

rightfully belong to the Estate.” Offutt asked the court to grant First Midwest Bank’s motion and to grant his motion to remove Helen as executor of Earl’s estate.

¶ 24 In response, Helen asserted a mere conflict of interest was not sufficient to warrant her removal and there was no need for a special administrator. At the hearing, Helen argued the motions were an untimely attack on her original appointment as executor because the conflict was known to all parties at the time of her appointment. During the course of this argument, the trial court asked, “Is the basis for the concern by the other parties in this case not the original appointment but the fact that there hasn’t been anything done since the appointment to proceed after this potential asset?” Counsel for Offutt responded, “Yes it is, Your Honor.”

¶ 25 G. The Trial Court’s Order

¶ 26 In December 2017, the trial court entered a detailed written order granting the motion to remove Helen as executor of Earl’s estate. The order made no mention of the timeliness of the motion to remove Helen as executor, but it did note the various pending cases, including Offutt’s amended complaint in case No. 13-L-70 raising the allegation that the transfer of funds into the 2012 trust was a fraudulent transfer to avoid creditors. In part, the order stated as follows:

“The First Midwest Bank and Paul Offutt both contend that Helen Gaudio has a conflict of interest. However, the First Midwest Bank only seeks a Special Administrator to be appointed to serve with her and Paul Offutt argues for her removal and the appointment of another Administrator.

In support of his Motion[,] Paul Offutt contends that Helen Gaudio as Representative of the Estate has made no attempt to

intervene in the other pending lawsuits; or, to make any effort to protect any interest the probate estate might have in the funds held in the second Trust.

None of the parties dispute the fact that if the terms of the [2012] Trust are upheld and the assets in said Trust are allowed to remain as part of the Trust then those assets would pass entirely to Helen Gaudio and the Estate would take nothing. Under the [2011] Trust executed by Earl D. Gaudio[,] upon his death the assets passed to his estate and are governed by his will.

The central issue in the forgoing motions is whether Helen Gaudio has a conflict of interest that requires her removal as Executor of the Earl D. Gaudio estate.

As Executor, Helen Gaudio has duties to the creditors of the estate as well as duties to the beneficiaries of the estate; and, under the facts in this case[,] she has competing interests between her fiduciary duties as estate representative and her personal interest as the surviving Grantor under the [2012] trust.”

After reviewing the facts, the applicable statutes and cases cited by the parties, and the arguments at the hearing, the court concluded Helen had a conflict of interest and should be removed as executor.

¶ 27 H. Motions to Stay Proceedings Pending Appeal

¶ 28 In May 2018, Helen filed motions to stay proceedings in the probate case and the consolidated cases pending the appeal of the order removing her as executor. In making its

decision, the trial court noted the resolution of the appeal could affect who represented Earl's estate, which went "to the essence" of the probate case. The court stated the consolidated cases were "very intertwined" with the probate case and granted the motions to stay proceedings in both the probate case and the consolidated cases. In response to concerns about the possible prejudice that could result in a delay pending appeal, the court noted the parties could file a motion to lift the stay if the appeals process took an unusually long time.

¶ 29 This appeal followed. We have docketed the appeal in Vermilion County case No. 16-P-93 (the order removing Helen as executor) as No. 4-18-0032 and the interlocutory appeal as No. 4-18-0423. We have docketed the interlocutory appeal in the consolidated cases as No. 4-18-0432. We have consolidated the cases for review.

¶ 30 II. ANALYSIS

¶ 31 A. Helen's Appeal

¶ 32 On appeal, Helen argues the trial court erred by removing her as executor of Earl's estate because (1) the motions filed by First Midwest Bank and Offutt were untimely under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016) and section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2016)), (2) the court failed to address the statutory bases for her removal, and (3) the court failed to comply with the due process requirements of the Probate Act (755 ILCS 5/23-3 (West 2016)).

¶ 33 1. *Timeliness of the Motion to Remove Helen as Executor*

¶ 34 Helen first asserts First Midwest Bank's motion to appoint a special administrator and Offutt's motion to remove Helen as executor of Earl's estate were untimely under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016) and section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2016)). First Midwest Bank asserts Helen has forfeited

this argument on appeal because she failed to raise it before the trial court. Our review of the record shows counsel for Helen raised the issue of the timeliness of the motion to remove her as executor during the November 2017 hearing and specifically argued the applicability of *In re Estate of Burd*, 354 Ill. App. 3d 434, 820 N.E.2d 613 (2004)—a case relied on in her brief. Although Helen may not have specifically cited Rule 304, we conclude this argument was sufficiently raised before the trial court to preserve the claim on appeal.

¶ 35 a. Standard of Review

¶ 36 The parties dispute the appropriate standard of review. Helen contends this court should review her claims *de novo*, as they present questions of law. *Id.* at 436. First Midwest Bank and Offutt contend this court should not disturb the trial court’s decision to remove an executor unless that decision was against the manifest weight of the evidence. *In re Estate of Savio*, 388 Ill. App. 3d 242, 249, 902 N.E.2d 1113, 1120 (2009); *In re Estate of Kirk*, 242 Ill. App. 3d 68, 74, 611 N.E.2d 537, 541 (1993).

¶ 37 The discussion below of the merits of Helen’s first claim leads us to conclude this issue does not present a purely legal question. Rather, the issue presents the application of law to the facts in this case and the factual determination that the motion to remove Helen as executor was not challenging her original appointment. Accordingly, we will only reverse the trial court’s judgment if it is against the manifest weight of the evidence. *Savio*, 388 Ill. App. 3d at 247. “A trial court’s ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on evidence, or when the opposite conclusion is clearly evident from the record.” *Id.*

¶ 38 b. Nature of the Motion

¶ 39 Both First Midwest Bank and Offutt contend the motion to remove Helen did not challenge the initial appointment of Helen as executor. Instead, they contend the motion challenged Helen's failure to pursue a potential estate asset as the basis for her removal. Helen argues the conflict was known to all parties at the time of her appointment and, based on *Burd*, the motions should be viewed as untimely motions to reconsider her appointment.

¶ 40 In *Burd*, the decedent's will named his attorney (and attesting witness), Kenneth F. Theisen, as executor. *Burd*, 354 Ill. App. 3d at 435. In January 2002, Theisen filed a petition for probate of the decedent's will and for letters testamentary. *Id.* That same month, Theisen filed a waiver of notice signed by the decedent's children that specifically consented to Theisen's appointment as the independent representative of the estate. *Id.* In March 2003, one of the decedent's children filed a petition for revocation of letters of office, alleging Theisen violated section 4-6(a) of the Probate Act (755 ILCS 5/4-6(a) (West 2002)), "which provides that an attesting witness forfeits any beneficial interest in a will unless certain exceptions, not applicable to this case, are present." *Id.* at 436. The trial court granted the petition and removed Theisen as executor. *Id.*

¶ 41 On appeal, the *Burd* court concluded the order appointing Theisen executor fell within the scope of Rule 304(b)(1), requiring an appeal of the order to be filed within 30 days from the entry of the judgment or order. *Id.* at 438. However, the court further concluded that the petitioner in that case did not seek to appeal Theisen's appointment but instead filed a petition seeking his removal. *Id.* The court "agree[d] with Theisen that the time limit for filing a motion challenging his appointment for the reasons advanced by petitioner was 30 days from the order appointing him executor." *Id.* However, the court did not base this conclusion on Rule 304(b)(1) but, rather, on section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203

(West 2002)), which allows for postjudgment motions within 30 days after the entry of the judgment to toll the time for filing an appeal. *Id.* at 438-39.

¶ 42 The *Burd* court noted the petitioner filed a petition for the revocation of letters of office. *Id.* at 439. The court went on to state as follows:

“However, the petition for revocation of letters of office was based solely on facts that existed at the time of Theisen’s appointment. More specifically, the motion sought Theisen’s removal because he was an attesting witness to Burd’s will. Petitioner does not contend that she was unaware of these facts at the time Theisen was appointed. Therefore, we believe that petitioner’s motion was, in fact, a motion challenging the appointment of Theisen as executor. As Theisen had already been appointed at the time the motion was filed, the motion must be considered a postjudgment motion asking the court to reconsider Theisen’s appointment as executor because of the alleged infirmities in Theisen’s ability to be executor. Where, as in this case, the bases for challenging the appointment existed at the time of appointment and the interested party challenging the appointment was aware of the bases at the time of appointment, any postjudgment motions must be filed within 30 days of the order appointing the executor.” *Id.*

The court concluded the petitioner’s motion was filed beyond the 30-day time limit and reversed the trial court’s grant of the petitioner’s motion to remove Theisen as executor. *Id.* at 439, 442.

¶ 43 Helen argues this court should follow the *Burd* decision and find the motion to remove her as executor untimely because it was filed more than a year after the trial court entered the order appointing her executor and was based entirely on facts known to Offutt and First Midwest Bank at the time she was appointed. In support, Helen points to the lawsuit filed by Offutt in 2013 claiming an interest in trust assets. Helen’s citation to the record directs us to the trial court’s order removing her as executor. That order notes Offutt’s amended complaint includes an allegation that the transfer of funds into the 2012 trust was a fraudulent transfer to avoid creditors. However, it does not indicate what date the amended complaint was filed (though we do note the same trial court judge presides over both the probate case and the consolidated cases). In his brief, Offutt asserts his original complaint was a suit on a guarantee and made no mention of any trusts. According to Offutt, the amended complaint addressing trust provisions was filed in January 2017. Here, Helen’s citation to the trial court’s order is insufficient support for her contention that Offutt knew the terms of the 2012 trust at the time she was appointed executor. Accordingly, we find Helen’s contentions regarding the timeliness of the motion to remove her as executor unpersuasive. However, even if all the parties were aware of the terms of the 2012 trust and the potential conflict of interest at the time Helen was appointed, we conclude the motion to remove her as executor was still proper. As Helen points out, a mere conflict of interest alone is not necessarily sufficient cause to remove an executor. But, as discussed in more detail below, this case does not present a “mere” conflict of interest.

¶ 44 Offutt and First Midwest Bank both argue the motion to remove Helen as executor was not an attack on her original appointment but a proper motion for her removal under section 23-2 of the Probate Act (755 ILCS 5/23-2 (West 2016)) based on her failure to pursue an estate asset. We note nothing in the statutory language of section 23-2 requires a

motion to remove an executor be filed within 30 days of the order appointing that executor. At the hearing on the motions, the trial court specifically asked, “Is the basis for the concern by the other parties in this case not the original appointment but the fact that there hasn’t been anything done since the appointment to proceed after this potential asset?” To which, counsel for Offutt responded, “Yes it is, Your Honor.”

¶ 45 As noted above, Helen argued the applicability of *Burd* before the trial court. However, the trial court’s order granting the motion to remove her as executor makes no mention of the timeliness of the motion for removal. The order notes that Helen had duties to both creditors and beneficiaries of the estate “and, under the facts in this case[,] she has competing interests between her fiduciary duties as estate representative and her personal interest as the surviving Grantor under the [2012] Trust.” The order also states it was undisputed that under the 2012 trust, the assets would pass entirely to Helen and the estate would take nothing. Under the terms of the 2011 trust, however, the assets would pass to Earl’s estate. Helen, as executor, made no attempt to intervene in the pending consolidated cases to protect any interest the probate estate might have in the funds held in the 2012 trust. The court concluded Helen had a conflict of interest between her duties as executor and her personal interest in the 2012 trust. Accordingly, the court granted the motion to remove her as executor.

¶ 46 After reviewing the trial court’s findings, we conclude the court determined the motion to remove Helen as executor was not an untimely attack on her original appointment but rather a proper motion for her removal based on her failure to pursue a potential asset of the estate due to her conflict of interest. We further conclude, for reasons discussed below, that determination was not against the manifest weight of the evidence.

¶ 47 *2. Statutory Bases for Removal*

¶ 48 Helen argues the trial court erred by removing her as executor based solely on the existence of a conflict of interest. Specifically, Helen argues (1) a mere conflict of interest, created by Earl under the terms of the 2012 trust and his will, is insufficient to warrant her removal and (2) the trial court failed to make the “necessary” additional finding that her conflict of interest interfered with the objective administration of the estate. In support of the first argument, Helen relies on *Benak v. Duffy*, 365 Ill. App. 3d 711, 849 N.E.2d 1098 (2006), *In re Estate of Halas*, 209 Ill. App. 3d 333, 568 N.E.2d 170 (1991), and *In re Phillips’ Estate*, 3 Ill. App. 3d 1085, 280 N.E.2d 43 (1972).

¶ 49 *Benak* involved a situation where the decedent and his son (who was named co-executor of the estate) formed a financial partnership, where the decedent and the respondent were each responsible for half of the taxes on the profits of the partnership. *Benak*, 365 Ill. App. 3d at 715. The petitioners sought to remove the respondent as executor based on his conflict of interest. *Id.* at 713. The appellate court concluded that although there was a conflict of interest between the respondent’s dual roles as partner and co-executor before the decedent’s death, the decedent sanctioned the conflict of interest by creating the partnership and appointing the respondent as co-executor of his estate. *Id.* at 719-21. The petitioners also argued the executor’s “claim to one-half of the capital of the partnership and to gifts he allegedly received from the decedent constitute[d] an adverse interest requiring his removal as executor.” *Id.* at 723. However, the appellate court rejected this argument because the trial court concluded there was no showing of bad faith or wrongdoing on the part of the executor. *Id.*

¶ 50 We find *Benak* distinguishable. There was no suggestion in *Benak* that the executor’s interest in the partnership capital arose from a fraudulent transfer such that the estate might have a possible claim to those funds. Moreover, there was no mention in the case as to the

effect of the conflict of interest on the ongoing administration of the estate or any indication the executor failed to pursue estate assets.

¶ 51 In *Halas*, the petitioner, a successor executor of the estate of George Halas Jr., brought an action against the estate of the former executor, George Halas Sr. *Halas*, 209 Ill. App. 3d at 336. The suit alleged Halas Sr. breached his fiduciary duties while acting as executor of the estate and as trustee of testamentary trusts by failing to (1) protect the beneficiaries' interests during the reorganization of the Chicago Bears Football Club, Inc., (Bears) and (2) give the beneficiaries notice of the reorganization. *Id.*

¶ 52 Halas Jr. appointed his father executor of his estate and trustee of his children's trusts. *Id.* at 337. The will authorized Halas Sr. to invest in and retain the Bears stock and absolved him of any liability for any diminution in value of the Bears stock. *Id.* Halas Sr. was also authorized to exercise the rights of an individual owner of the Bears stock, including the power to participate in reorganizations. *Id.* Finally, the will authorized Halas Sr. to "take any such action without court approval and 'subject to his or her duty to act fairly, his or her actions in these respects shall be as binding and conclusive upon all of the beneficiaries hereunder *as though no such relationship or possible conflict of interest existed.*' (Emphasis added.)" *Id.* at 337-38. The trial court held Halas Sr. breached his fiduciary duty by failing to give notice of the reorganization in violation of a court order, but indicated that "benevolent intentions" motivated his participation in the reorganization. (Internal quotation marks omitted.) *Id.* at 340-41, 345.

¶ 53 The appellate court noted the will expressly waived the duty of undivided loyalty. *Id.* at 345. Even absent the express waiver, the court stated, "[I]t is clear that George Halas, Jr., authorized his father to occupy conflicting positions as he appointed his father trustee, a position he had to realize might come into conflict with his father's duties and desires as director and

shareholder of the Bears.” *Id.* The appellate court noted that, where a conflict of interest is approved or created by the testator, a fiduciary will only be held liable if “the fiduciary has acted dishonestly or in bad faith, or has abused his discretion.” *Id.* The court then concluded Halas Sr. did not act in bad faith or abuse his discretion during the reorganization. *Id.* at 346.

¶ 54 We find *Halas* distinguishable, as it did not involve the removal of an executor based on a conflict of interest. Although distinguishable on this basis alone, we further note *Halas* did not involve any claim against the executor for failing to pursue potential estate assets.

¶ 55 In *Phillips*, the trial court removed the defendant as the administrator with will annexed of the estate of Don R. Phillips. *Phillips*, 3 Ill. App. 3d at 1086. The case involved “an interdependent relationship of decedent’s will to an *inter vivos* trust of which he was grantor, and a corporation founded by him and his wife.” *Id.* The corpus of the trust was primarily composed of stock in Don R. Phillips, Inc., and the primary beneficiary was the decedent’s wife. *Id.* at 1087. The defendant became one of the successor trustees of the trust, and he was also an officer of Don R. Phillips, Inc. *Id.* This created “a situation in which defendant, because of his concurrent fiduciary obligations to the estate, the corporation, and the trust, was rendered incapable of objectively determining his duty and acting in the best interest of the estate.” *Id.* at 1088.

¶ 56 Following his appointment as administrator, the defendant made no attempt to collect items of income of any kind owed to the estate. *Id.* This was apparently because the corporation’s board of directors, of which the defendant was a part, felt the corporation needed the money more than the decedent’s wife. *Id.* According to the defendant, he could collect income owed to the estate as an administrator but he was on the board of directors and had “to

look out for the company from that standpoint.” (Internal quotation marks omitted.) *Id.* Based on these facts, the appellate court stated as follows:

“The failure of defendant to collect debts due the estate from the corporation constitutes more than a merely hypothetical conflict of interests and one which is not diminished by the interrelationship of the will with the trust and the corporation. The trial court noted in its ruling that the argument that defendant’s conflict affected only the trust (the corpus of which is predominately composed of the stock of the corporation), ignores the duties which defendant, as administrator, owed to possible creditors of the estate and to the widow should she have chosen to renounce the will.” *Id.* at 1089.

¶ 57 The appellate court noted an administrator would be removed where there was a conflict of interests between the interests of the estate and an administrator’s personal interest. *Id.* at 1090. The appellate court held that “ ‘other good cause for removal’ may be seen in the conflict of interest which interferes with the objective administration of the estate.” *Id.* Under the facts in *Phillips*, the trial court’s determination that the defendant be removed as executor was not against the manifest weight of the evidence. *Id.*

¶ 58 We find *Phillips* instructive. The conflict of interest here lies in Helen’s (1) personal interest under the terms of the 2012 trust, where the entirety of the assets pass directly to her, and (2) her duty as executor of the will to the beneficiaries and creditors of the estate. As executor, Helen had a duty to the beneficiaries and creditors, which involved pursuing assets of the estate. However, Helen’s personal interest under the terms of the 2012 trust means she has

taken no steps as executor to pursue the funds of the 2012 trust as a potential asset of the estate. Instead, Helen is defending against Offutt's complaint asserting the 2012 trust was a fraudulent transfer. This position is directly adverse to an executor's duty to collect sums owed to the estate and otherwise pursue estate assets. These conflicting interests have interfered with the objective administration of the estate.

¶ 59 As to Helen's contention that the trial court failed to make the "necessary" additional finding that her conflict of interest interfered with the objective administration of the estate, we note she has cited no authority requiring such an express factual finding. Moreover, the court noted Helen, as executor, made no attempt to intervene in the pending consolidated cases to protect any interest the probate estate might have in the funds held in the 2012 trust. We conclude the court determined this failure interfered with the objective administration of the estate. We further conclude the court's determination was not against the manifest weight of the evidence.

¶ 60 *3. Due Process Requirements of the Probate Act*

¶ 61 Finally, Helen argues the trial court failed to comply with the due process requirements of section 23-3 of the Probate Act. First Midwest Bank and Offutt argue Helen forfeited this argument by failing to raise it before the trial court. We agree. At no point in the proceedings below did Helen assert that the trial court failed to order a citation to issue directing her to show cause why she should not be removed for the cause stated in the citation (755 ILCS 5/23-3(a) (West 2016)). Nor did Helen argue she was denied the opportunity to file a pleading to the petition or charges for removal (755 ILCS 5/23-3(c) (West 2016)). Helen asserts in her brief that she alerted the trial court to the fact that no written motion for her removal was filed by any party. Although the record shows she made this assertion during the November 2017 hearing,

this argument is disingenuous. It ignores the fact that Offutt clearly filed a written request for her removal in his motion titled “Paul Offutt’s response to First Midwest Bank’s motion to appoint special administrator and motion to remove Helen Gaudio as executor of the Earl Gaudio estate.” Helen cites no authority to support the insinuation that the request for her removal was not properly before the court because it was contained within Offutt’s “response document.”

¶ 62 Moreover, we are not convinced by the suggestion that Helen was somehow denied due process by the trial court’s failure to (1) order a citation to issue directing her to show cause why she should not be removed for the cause stated in the citation or (2) allow Helen to file a pleading to the petition or charges for removal. Both First Midwest Bank and Offutt filed motions giving Helen notice of the grounds for her removal. The fact that they did not cite the specific statutory grounds for her removal did not prejudice Helen, as the motions clearly gave Helen notice of the factual basis for the claims regarding her conflict of interest. Moreover, Helen was given ample opportunity to be heard; she filed responses to both First Midwest Bank’s and Offutt’s motions and appeared at the hearing on the motions. Accordingly, we are not persuaded by Helen’s reliance on *In re Estates of Rice*, 77 Ill. App. 3d 641, 652, 396 N.E.2d 298, 307 (1979) (the citation alleged a conflict of interest with no factual basis for the claim and additional allegations were raised at the hearing, where the executor was not given the opportunity to respond to those allegations, to present evidence, or to cross-examine witnesses).

¶ 63 We conclude Helen forfeited any argument regarding the process set forth in section 23-3 of the Probate Act (755 ILCS 5/23-3 (West 2016)) by failing to raise the claim before the trial court. Moreover, Helen has not alleged or shown she was prejudiced by the notice she received of the factual basis for her removal or that she was denied an opportunity to

be heard. See *In re Estate of Talty*, 376 Ill. App. 3d 1082, 1092, 877 N.E.2d 1195, 1206 (2007). Accordingly, we affirm the judgment of the trial court.

¶ 64 B. First Midwest Bank's Cross-Appeal

¶ 65 Although First Midwest Bank filed a cross-appeal, it does not challenge the trial court's order removing Helen as executor of the estate. In the event this court reverses the trial court's order removing Helen as executor, First Midwest Bank asks this court to reverse the portion of the trial court's order denying its motion for the appointment of a special administrator. As we have affirmed the court's judgment removing Helen as executor, we decline to address the sole issue raised in First Midwest Bank's cross-appeal.

¶ 66 C. Motions to Stay Proceedings Pending Appeal

¶ 67 First Midwest Bank and Offutt filed interlocutory appeals challenging the trial court's decision to grant Helen's motions to stay proceedings in the probate case and the consolidated litigation.

¶ 68 The power to issue a stay order is an attribute of the trial court's inherent power to control the disposition of cases. *In re Estate of Lanterman*, 122 Ill. App. 3d 982, 990, 462 N.E.2d 46, 51 (1984). A court may consider factors such as judicial economy or the orderly administration of justice in determining whether to stay proceedings. *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 68, 871 N.E.2d 914, 922 (2007).

¶ 69 We review an interlocutory appeal from an order granting a motion to stay proceedings only to determine whether the trial court abused its discretion in granting the stay. *Id.* at 67. In determining whether the trial court abused its discretion, we should not decide whether we agree with the court's decision. *Marzouki v. Najjar-Marzouki*, 2014 IL App (1st) 132841, ¶ 14, 12 N.E.3d 620. Instead, we must determine whether the trial court exceeded the

bounds of reason and ignored recognized principles of law or acted arbitrarily without the employment of conscientious judgment so that substantial prejudice resulted. *Id.* Our role is not to substitute our judgment for that of the trial court “or even to determine whether the trial court acted wisely.” *Id.*

¶ 70 Here, the trial court noted the resolution of the appeal of the order removing Helen as executor could affect who represented Earl’s estate, both in the probate case and the consolidated cases. The court concluded the probate case and the consolidated cases were intertwined and the question of who represented the estate going forward was an essential issue. The court also left open the possibility of the parties filing a motion to lift the stay if the appeals process took an unusually long time, thereby alleviating concerns of prejudice due to the delay. Given these concerns, we conclude the court did not ignore recognized principles of law or exceed the bounds of reason in granting the motions to stay proceedings. As the court’s decision was not an abuse of its discretion, we affirm the court’s judgment.

¶ 71 III. CONCLUSION

¶ 72 For the foregoing reasons, we affirm the trial court's judgment.

¶ 73 Affirmed.