

2019 IL App (1st) 170053-U

No. 1-17-0053

Order filed May 16, 2019

Fourth Division

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
FIRST DISTRICT

In re ESTATE OF PATRICK J. HOULIHAN, Deceased)
(Daniel Houlihan,) Appeal from the
Petitioner-Appellant,) Circuit Court of
v.) Cook County
Deborah Soraghan, as Executor of the Estate) No. 12 P 2221
of Patrick J. Houlihan, Deceased,) Honorable
Respondent-Appellee).) Karen L. O'Malley,
Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court overruling appellant's objections and closing the estate.

¶ 2 This case comes to us on appeal from an order of the probate division of the Circuit Court of Cook County denying appellant Daniel Houlihan's, *pro se*, objections to: (1) the third amended accounting filed by the executor of his father's estate, (2) the petition for attorney fees,

and (3) the petition for executor's fees. Appellant also filed in the circuit court numerous motions seeking to remove the executor for waste and mismanagement of the estate's assets, but these pleadings were struck because appellant failed to seek leave of court to file the motions in accordance with a previous court order. In this appeal, appellant raises a number of issues, some of which are waived, forfeited, or outside of this court's jurisdiction, but almost all of which contend that the trial court erred in failing to remove the executor of the estate for waste and mismanagement and in approving the executor's inventory and accounting of the estate's assets. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 The decedent, Patrick Houlihan (Patrick), passed away on March 17, 2011. At the time of his death, Patrick had a living trust (the Trust) and a "pour over" will (Will) that devised the residuary estate to the Trust. Patrick was survived by four children who were named as beneficiaries under the Trust. The Will named Deborah Soraghan (Deborah), Patrick's daughter, as the executor and the third amendment to the Trust named Deborah as testamentary trustee. The Will was entered into probate on October 29, 2012, and letters of office were issued that same day appointing Deborah as the executor.

¶ 5 Almost immediately after the letters of office were issued, appellant began filing pleadings in the circuit court seeking to remove Deborah as executor, seeking an accounting of the estate's assets, and seeking to dismiss the circuit court judge without cause. After Deborah, through counsel, filed the first and second accounting and inventory of the estate, appellant filed objections to both accountings. The court struck appellant's objections and entered an order requiring appellant to seek leave of court before filing any further motions.

¶ 6 Despite this order, appellant continued to file objections to the accountings and inventories of the estate's assets and motions to remove Deborah as executor for waste and mismanagement of the estate's assets. He also filed objections to the closing of the estate. The court struck these pleadings because appellant had failed to seek leave of court to file them, but granted appellant leave to file an objection to the third amended accounting, an objection to the petition for attorney fees, and an objection to the petition for executor's fees. The three objections appellant filed largely recite the same contentions. Appellant contended that Deborah commingled estate and trust funds, that the three accountings and inventories did not "add up" and were evidence of fraud, that Deborah had failed to collect on outstanding loans due to the estate, and that Deborah had wasted and mismanaged the estate's assets by, *inter alia*, failing to sell real property owned by the estate in a timely manner and failing to collect rent from persons who lived in estate property. The circuit court overruled appellant's objections finding that they were "without proof or merit." The court therefore approved the third and final accounting and awarded attorney fees and executor's fees. The court subsequently closed the estate. This appeal follows.

¶ 7

II. ANALYSIS

¶ 8 We initially note that appellee has not filed a brief before this court. We will nonetheless decide the merits of this appeal because we can decide the claimed errors without the aid of an appellee's brief. See *State Farm Mutual Insurance Co. v. Ellison*, 354 Ill. App. 3d 387, 388 (2004); see also, *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). Appellant's *pro se* brief before this court is largely a recitation of the many, many pleadings he filed before the circuit court, all of which were either summarily denied or struck. Although appellant's brief is disorganized and portions of it fail to comply with Illinois Supreme

Court Rule 341(h) (eff. Nov 1, 2018)), we nonetheless will address the merits of this appeal to the extent we are able. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 9 At the outset, we observe that large portions are missing from the record filed on appeal and no report of proceedings has been filed. Appellant acknowledges that “hundreds of pages of decedent’s financial records and notes were filed with the court; they were file stamped but removed from the file by an unknown person *** the paper file is now devoid of these documents.” Appellant contends that “no one knows where [these documents] are.” With regard to a report of proceedings, appellant states that he attempted to retain the services of a court reporter, but contends that it is “difficult or impossible” for *pro se* litigants to hire court reporters “and [*pro se* litigants] are turned away by almost all of the larger agencies in Chicago.” Despite appellant’s speculation and unsupported arguments, it is well-settled that the appellant has the burden to present a sufficiently complete record of the proceedings in the circuit court to support a claim of error. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391 (1984). “[I]n the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392. We are cognizant of appellant’s *pro se* status, but this does not excuse him from meeting his burden on appeal. *Teton, Tack & Feed, LLC v. Jimenez*, 2016 IL App (1st) 150584, ¶ 19. We will nonetheless attempt to fully and fairly consider appellant’s claims based on the record before us.

¶ 10 Appellant first contends that the trial court erred in failing to remove Deborah as the executor. As noted, appellant filed numerous motions seeking to remove Deborah as executor for waste and mismanagement of the estate’s assets, but in each case the circuit court struck the

motion without addressing the merits. The record suggests that these motions were struck because appellant failed to seek leave of court to file the motions in accordance with the circuit court's order. In recognition of this, appellant also contends that the court erred in failing to "consider" his motions to remove Deborah. This essentially amounts to a contention that the court erred in not granting him leave to file the motions.

¶ 11 "Generally, decisions granting or denying 'leave of court' are reviewed for an abuse of discretion." *People v. Edwards*, 2012 IL 111711, ¶ 30 (citing *People ex rel. Graf v. Village of Lake Bluff*, 206 Ill. 2d 541, 547 (2003)). Circuit courts have the inherent right to control their docket and require parties to adhere to their orders. See, e.g., *Insulated Panel Co. v. Industrial Commission*, 318 Ill. App. 3d 100, 102 (2001) (holding that the trial court has the inherent power to control its docket); see also, *J.S.A. v. M.H.*, 224 Ill. 2d 182, 195-96 (2007) ("in general, [] the trial court possesses the inherent authority to control its own docket and the course of litigation, including the authority to prevent undue delays in the disposition of cases caused by abuses of the litigation process.").

¶ 12 Here, the court had expressly precluded appellant from filing any further pleadings or motions without first seeking leave of court. Appellant failed to do so and the court accordingly struck his pleadings. The record also shows that the arguments in appellant's motions were already before the court in his numerous previous filings. The court had already considered and struck these same arguments, for instance, in appellant's objections to the first accounting and inventory of the estate. We therefore find that the circuit court did not abuse its discretion in not granting appellant leave to file his motions to remove the executor for fraud, waste, and mismanagement. Because we find that the court did not err in not granting appellant leave to file

these motions, we cannot say that the court erred in failing to grant the relief appellant sought in the motions, *i.e.*, to remove Deborah as the executor.

¶ 13 We also reject appellant's contentions that the court erred in closing the estate. As with appellant's motions seeking to remove Deborah as executor, the court did not grant appellant leave to file a motion objecting to the closing of the estate. Accordingly, we find no abuse of discretion.

¶ 14 For the same reasons, we reject appellant's contentions that the court erred in approving the first and second accountings and inventories of the estate. As with his other pleadings, the circuit court struck these objections. While appellant was not granted leave to file objections to these initial accountings, the court did grant appellant leave to file an objection to the third and final accounting as well as leave to file objections to the petitions for attorney fees and executor fees. Accordingly, we may review the court's ruling on those objections only.

¶ 15 In his objection to the third amended accounting, appellant contended that Deborah, as executor, had commingled estate and trust funds, that the accountings did not "add up" and amounted to fraud, that Deborah had failed to collect on outstanding loans due to the estate, and that Deborah had wasted and mismanaged the estate's assets by, *inter alia*, failing to sell real property owned by the estate in a timely manner and failing to collect rent from those who lived in estate property. Attached to the objection were real property assessment evaluations, other documents concerning the estate's real property, and what appear to be a list of items compiled by appellant that he contends represented disbursements and debts of the estate. Among those items were cable and telephone expenses for the decedent that appellant contended were improperly incurred after his death. Appellant's objections to attorney fees and objections to executor fees largely mirrored his objections to the third amended accounting and inventory.

¶ 16 In response to appellant's objections, Deborah acknowledged that she had commingled estate and trust funds, but that "there was no harm to the heirs and [the commingling] probably was to their benefit." Deborah noted, however, that the Trust property was sold during the first accounting period and that accounting was already approved by the court. Deborah contended that the order granting appellant leave to file an objection to the third amended accounting did not allow him a second chance to object to accountings previously approved by the court. With regard to appellant's contentions that the accountings did not "add up" and amounted to fraud, Deborah asserted that most of appellant's objection again related to the first and second accountings, which appellant was not permitted to challenge. As to appellant's contention that Deborah had failed to collect debts due to the estate, she contended that she filed citations to recover assets in an attempt to recover the loans, but "the estate reported no success in finding the debtors and reported to the court that collection efforts did not seem to be financially worthwhile." With regard to missing rent payments for estate property, Deborah contended that Patrick allowed his children to live at his properties without paying rent. Deborah maintained that there were not written instruments detailing these arrangements, but these were instead oral agreements.

¶ 17 The circuit court overruled appellant's objections finding them "without proof or merit." We agree. In his brief before this court and in his pleadings before the circuit court, appellant fails to cite to any piece of admissible evidence to support his claims. As noted, most of the discrepancies that he contends are evident in the accountings are supported by his own typewritten documents detailing disbursements and purchase history without any sort of foundation. The record shows that appellant filed numerous subpoenas attempting to collect financial documentation from various financial institutions, but no such documentation appears

in the record. Without any credible documentary evidence, appellant's contentions are no more than baseless speculation. For instance, appellant contends that Deborah improperly used the decedent's credit card to purchase furniture in the amount of \$6,923.37 and that the court should enter judgment in that amount against Deborah in favor of the estate. In support of that contention, appellant cites to a page in the record containing one of his unsupported typewritten tables of disbursements. There is an entry for the amount appellant notes, but the amount is listed as being used for a payment to Amalgamated Bank for paying off the balance of a MasterCard credit card. There is no indication, even on appellant's own documentation, that the amount was for furniture or that the amount paid was an improper use of estate assets. Accordingly, we find no error in the court's approval of the third amended accounting. For the same reasons, we find the court did not err in its award of attorney fees and executor fees.

¶ 18 Appellant also makes some scattered arguments regarding an order of the probate court authorizing him to collect on the debts of the estate. Appellant contends that he attempted to follow the probate court's order by initiating a collection action in another case, but the case was dismissed and the court directed him to collect on the debts in the probate court. The probate court order appellant is referring to indicates that appellant "is authorized to issue citation to recover on behalf of this estate against the three debtors listed in the inventory." Appellant asks us to "clarify" this order and determine whether the probate court's order authorizing him to issue citations to recover on the loans was correct or whether his separate proceeding was improperly dismissed. We find that we lack jurisdiction to consider this claim. Appellant's action in a separate proceeding is clearly not before the court on this appeal, and thus we have no jurisdiction to review the court's ruling in that case. The probate court's judgment in this case was not a final judgment (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)), nor was it a procedural step in the

progression that led to the entry of the final judgment from which the appeal has been taken (*JPMorgan Chase Bank, N.A. v. East-West Logistics, L.L.C.*, 2014 IL App (1st) 121111, ¶ 25 (citing *Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 307 Ill. App. 3d 528, 538 (1999)) (“When the interlocutory orders of a trial court do not constitute such a procedural step [in the progression leading to the entry of the final judgment from which an appeal has been taken], we have no jurisdiction to review them absent some specific statute or rule granting us the power.”). Accordingly, we lack jurisdiction to address appellant’s claim.

¶ 19 Appellant also raises a somewhat convoluted claim regarding what he terms “docket tampering.” Essentially, appellant contends that the circuit court’s online docketing system showed a hearing date that was different from the date ordered by the court causing him to miss the court date for a hearing on his objections to the accounting, attorney fees, and executor fees. Appellant filed a motion to vacate the court’s judgment on that basis, but the court denied the motion. Appellant’s contentions on this matter are convoluted at best. He seems to suggest that the circuit court overruled his objections because he did not appear in court believing the hearing to be scheduled at another time because of the discrepancy in the docketing system. The circuit court’s order overruling his objections, however, states the order is based on its reading of the pleadings submitted by both parties and a finding that appellant’s claims were “without proof or merit.” Even assuming some sort of error occurred, which appellant’s unsupported allegations do not suggest, we fail to see how appellant was prejudiced by the error.

¶ 20 Finally, appellant contends that the court erred in finding him in direct criminal contempt. “The standard of review for direct criminal contempt is whether sufficient evidence exists to support a finding of contempt.” *People v. Hixson*, 2012 IL App (4th) 100777, ¶ 11. A party’s conduct can be sufficient to support a finding of direct criminal contempt where the conduct is

“calculated to embarrass, hinder or obstruct [the] court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute.” (Internal quotation marks omitted.) *Petrakh v. Morano*, 385 Ill. App. 3d 855, 858 (2008) (citing *People v. Simac*, 161 Ill. 2d 297, 305 (1994); *People v. L.A.S.*, 111 Ill. 2d 539, 543 (1986)). All courts have the inherent power to punish parties with a finding of contempt in order to maintain their authority. *Simac*, 161 Ill. 2d at 305.

¶ 21 Appellant contends that he was found in direct criminal contempt “for mumbling under his breath and simply turning around.” As noted, there is no report of proceedings from the hearing which precipitated the circuit court’s contempt finding, but the circuit court’s contempt order shows that the court found appellant in contempt after denying his motion to dismiss the trial court judge without cause. The order states that appellant raised his voice and “shook his hand at the court stating ‘you will not judge this case’ ” after the motion was denied. Appellant then turned his back on the trial court judge and made “disparaging comments regarding the integrity of the court.” While appellant was being escorted out of the court room, “he turned and threw his arms up and moving toward the court stated ‘go ahead lock me up.’ ” The court found that these actions disrupted the court proceedings and were contemptuous in nature. Based on the court’s order, we find that there was sufficient evidence to support a finding of direct criminal contempt. Appellant’s conduct was clearly intended to “obstruct [the] court in its administration of justice or derogate from its authority or dignity” and the court was thereby permitted to “punish the wrongdoer and vindicate the dignity and authority of the court.” *Simac*, 161 Ill. 2d at 305-06. Accordingly, we find no error.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court.

No. 1-17-0053

¶ 24 Affirmed.