

2019 IL App (1st) 181037-U  
No. 1-18-1037  
May 6, 2019

FIRST 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

---

|  |   |                               |
|--|---|-------------------------------|
| HAROLD D. TYUS,                            | ) | Appeal from the Circuit Court |
|  | ) | Of Cook County.               |
| Plaintiff-Appellant,                       | ) |                               |
|  | ) |                               |
| v.   | ) |                               |
|  | ) |                               |
| MB FINANCIAL BANK, N.A., as successor      | ) |                               |
| Trustee of the PHYLLIS TYUS OBA '93 Trust, | ) | Nos. 17 CH 13972              |
|  | ) | 17 CH 13507                   |
| Defendant-Appellee,                        | ) |                               |
|  | ) |                               |
| and  | ) |                               |
|  | ) |                               |
| KIMBERLY TYUS, SHAWN TYUS, and             | ) |                               |
| JENNIFER BAKER, each as an heir of the     | ) |                               |
| Decedent and as a remainder beneficiary of | ) | The Honorable                 |
| the Phyllis Tyus Obra '93 Trust,           | ) | Sanjay T. Tailor,             |
|  | ) | Judge Presiding.              |
| Interested Parties-Appellees.              | ) |                               |

---

JUSTICE WALKER delivered the judgment of the court.  
Justices Pierce and Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* When a petitioner files a petition to reform a trust after the circuit court has entered a final order directing distribution of the trust, *res judicata* bars the collateral attack on the court's final order.

¶ 2 The circuit court directed trustees to distribute trust assets in accord with the terms of the Phyllis Tyus OBRA '93 Trust. Phyllis's husband, Harold Tyus, later filed a petition to reform the trust. The circuit court dismissed the petition with prejudice. We hold that the *res judicata* effect of the order for distribution of the trust assets barred Harold's petition for reformation of the trust. Accordingly, we affirm the circuit court's judgment.

¶ 3 I. BACKGROUND

¶ 4 Phyllis and Harold Tyus married and had three children: Kimberly, Shawn, and Jennifer. A bus struck and severely injured Phyllis in 1997. A court appointed Phyllis's brother and sister as co-guardians for her estate and her person. The guardians filed a civil lawsuit on Phyllis's behalf, and negotiated a settlement that the court approved in March 2002. The court granted the guardians' petition to name American National Bank as substitute plenary guardian of Phyllis's estate. In April 2002, American National petitioned to establish a trust under the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. §1396p(d)(4)(A)) (OBRA trust), to help pay for Phyllis's medical needs. American National appended to the petition a proposed trust agreement. On April 8, 2002, the circuit court entered an order authorizing American National to establish the OBRA trust.

¶ 5 The trust agreement provided:

"Upon Phyllis' death, \*\*\* the Trustee shall allocate the then-remaining trust estate of the trust in separate shares *per stirpes* among the then-living descendants of Phyllis; but if no descendants of Phyllis shall then be living, then among Phyllis' then living heirs-at-law."

¶ 6 Phyllis died on January 22, 2017, leaving her three children as her descendants. In June 2017, Harold filed in the guardianship case an emergency motion for a temporary restraining order to prevent the trustee from distributing the trust assets. He also filed a petition to set aside the trust, claiming that as Phyllis's surviving spouse, he had a right to share in the trust's assets.

¶ 7 The circuit court denied the motion for a temporary restraining order on July 31, 2017. On August 21, 2017, the circuit court entered an order that (1) approved the trustee's final accounting for Phyllis's estate, (2) directed the trustee to distribute the trust assets "pursuant to the terms of the OBRA Trust," and (3) closed the guardianship case. No one appealed from the order of August 21, 2017.

¶ 8 Instead, on October 18, 2017, Harold filed a petition in Chancery seeking reformation of the trust. He alleged in the petition that he had no opportunity to review the terms of the trust before the court approved it in 2002, and he received no notice that under the terms for the trust's distribution, unless all three of his children predeceased Phyllis leaving no descendants, Harold would receive none of the trust assets. American National, in its arguments for the creation of the trust, did not advise the court that the trust had the effect of disinheriting Harold. The arguments for the trust focused on the preservation of assets to ensure that the estate could meet Phyllis's medical needs during her lifetime. Harold alleged he did not learn that he would receive nothing from the trust until after Phyllis died. He asked the court to reform the trust to conform with Phyllis's wishes or to conform with the laws of intestate succession.

¶ 9 Harold and Phyllis's children filed a motion to strike Harold's petition for reformation of the trust. They contended that the applicable statute of limitations and *res judicata* barred his lawsuit. On April 20, 2018, the circuit court dismissed Harold's petition with prejudice. The court held that the *res judicata* effect of the 2002 order authorizing the establishment of the OBRA trust barred Harold's claim. Harold now appeals.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Harold argues the trial court erred when it dismissed his petition as a collateral attack on the 2002 order because his petition did not challenge the validity of the order establishing the OBRA trust, rather sought to modify the trust. Harold contends his petition was a routine trust dispute seeking to set aside a portion of the trust based on the settlor's intentions or potential fraud. Harold maintains that the trust was validly created to provide for healthcare cost control benefits for Phyllis, but mistakenly or fraudulently precluded him from the trust's benefits. Accordingly, because he seeks equitable relief to reform and correct the trust to reflect Phyllis's original intentions, his petition is not a collateral attack on the 2002 order. We review *de novo* the dismissal of the petition as barred by *res judicata*. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001).

¶ 12 The circuit court's order of August 21, 2017, closed the guardianship case and directed the trustee to distribute the trust assets in accord with the trust's provisions. "The decree of the circuit court settles and determines the ultimate rights of the parties to the corpus of the trust and is, therefore, \*\*\* a final and appealable order." *Barnhart v. Barnhart*, 415 Ill. 303, 309 (1953). "Generally, in the absence of fraud, accident, or mistake, a court's approval of a final account makes that account binding on all persons who had notice of that account.

[Citation.] Absent fraud, accident, or mistake, persons who had notice cannot subject the order approving the final account to collateral attack." *In re Winston's Estate*, 99 Ill. App. 3d 278, 286 (1981).

¶ 13 Harold did not appeal from the order of August 21, 2017, but instead, he initiated a new lawsuit for reformation of the trust. The new lawsuit attacks the August 21 order insofar as the August 21 order directed distribution of the trust corpus "pursuant to the terms of the OBRA Trust." In the petition Harold contends that the court should not have ordered the trustees to distribute the trust in accord with the terms of the OBRA trust because the terms of that trust do not reflect Phyllis's intentions and do not comport with laws of intestate succession.

¶ 14 Illinois law generally disallows collateral attacks on judgments.

"The rule of collateral estoppel is that only void judgments are subject to collateral attack. A judgment is void when either the court rendering it did not have jurisdiction over the parties or subject matter, or the judgment was obtained fraudulently.

\*\*\*

\*\*\* However legally incorrect or logically inconsistent a decision may be, a litigant's only remedy is to appeal it. Error, however egregious, cannot be raised in a collateral proceeding." *Lady v. Montgomery Ward & Co.*, 80 Ill. App. 3d 69, 72-73 (1980).

¶ 15 The court addressed a similar situation in *In re Marriage of Verdung*, 162 Ill. App. 3d 374 (1987). There, the circuit court entered an order conveying JoAnn's interest in some real

estate to Christine. JoAnn did not appeal from the order. Instead, when Christine sold the property, JoAnn filed a claim for half of the proceeds. The appellate court held that JoAnn's claim constituted an impermissible collateral attack on the order conveying JoAnn's interest in the property to Christine. The court stated,

"However erroneous those orders may have been, JoAnn's remedy was to attack them directly by appeal or by a petition pursuant to section 2-1401 of the Code (Ill. Rev. Stat. 1985, ch. 110, par. 2-1401). She failed to do so and, consequently, has waived her right to appeal from these orders. This was clearly a collateral attack of these orders." *Verdung*, 162 Ill. App. 3d at 389.

¶ 16 The August 21, 2017 order for distribution of the trust assets in accord with the terms of the OBRA trust disposed of Harold's claim to the trust. Harold failed to appeal from that order. Supreme Court Rule 304(b)(1) requires a timely appeal from orders that dispose of a party's interest in a trust. Ill. S. Ct. R. 304(b)(1) (eff. March 8, 2016). The rule promotes efficiency and sound administration of estates, guardianships and similar proceedings. The courts recognized that some issues must be resolved to avoid repeating the entire proceeding. "Thus, with those types of issues, the courts have allowed or required that an immediate (within 30 days of the entry of the judgment) appeal be filed." *In re Estate of Lee*, 2017 IL App (3d) 150651, ¶ 23.

¶ 17 Because Harold did not appeal from the order of August 21, 2017, he forfeited the right to challenge the distribution of the trust. His subsequent petition for reformation of the trust constitutes an impermissible collateral attack on the final order entered in the guardianship case.

¶ 18 Harold contends that this court should apply the fraud exception to the doctrine of *res judicata*. See *Lady*, 80 Ill. App. 3d at 72. Harold maintains that American National obtained the 2002 judgment through fraud, by sneaking into the OBRA trust agreement provisions that disinherited Harold. Harold brought the provisions to the guardianship court's attention in 2017, before the court closed the guardianship case. No party attempted to deceive the guardianship court as to the effect of its August 2017 order directing the trustee to distribute the trust assets to Kimberly, Shawn, and Jennifer. Because the alleged fraud in 2002 did not deceive the court that entered the final order in 2017, the children did not obtain the 2017 judgment fraudulently, and therefore, the fraud exception does not apply here. See *Lady*, 80 Ill. App. 3d at 72. We hold that the *res judicata* effect of the August 21, 2017 order bars Harold's suit for reformation of the trust. Accordingly, we affirm the circuit court's judgment dismissing Harold's petition with prejudice.

¶ 19 III. CONCLUSION

¶ 20 We affirm the circuit court's order dismissing Harold's petition because Harold's petition for reformation of the trust collaterally attacks the trial court's final order directing the trustees to distribute the trust's assets pursuant to the terms of the trust, and Harold's petition is barred by *res judicata*.

¶ 21 Affirmed.