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2019 IL App (3d) 170303-U

Order filed February 5, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> ESTATE OF SHEFKI MEHMEDI,)	Appeal from the Circuit Court
Deceased)	of the 9th Judicial Circuit,
)	Fulton County, Illinois,
(Shefki Mehmedi, Independent Administrator)	
of the Estate of Shefki Mehmedi, Deceased)	
)	Appeal No. 3-17-0303
Petitioner-Appellee,)	Circuit No. 15-P-16
)	
v.)	
)	
Mefail Mehmedi,)	Honorable
)	Patricia A. Walton,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* This court was without jurisdiction over the appeal where the notice of appeal was filed more than 30 days after the trial court's June 24, 2016, order granting summary judgment on the only issue in controversy before it. Since the court has no jurisdiction over the appeal, it has no jurisdiction over the appellee's motion for sanctions. Appeal dismissed for lack of jurisdiction.

¶ 2 Mefail Mehmedi appeals from a judgment of the circuit court of Fulton County granting summary judgment to the administrator of the Estate of Shefki Mehmedi, deceased, and ordering the appellant to turn over proceeds from the sale of farmland owned by the deceased. The appellee filed a motion for sanctions pursuant to Supreme Court Rule 375(b) alleging the appeal was made in bad faith. The motion was taken with the case. We dismiss the appeal for lack of jurisdiction.

¶ 3 **FACTS**

¶ 4 On April 11, 2013, Shefki Mehmedi executed a will in which he directed that his estate be divided equally among his five children, *per stirpes*. The will designated one of Shefki's sons, Mefail, as the administrator/executor. At the same time Shefki executed the will, he also executed a Statutory Short Form Power of Attorney for Property (POA) designating Mefail as his agent. The POA gave Mefail, *inter alia*, the power to conduct real estate transactions and to make gifts of Shefki's property. The gift provision was limited by the following language: "In making gifts hereunder, my Agent shall consider my estate planning objectives as disclosed by my estate planning documents in making any gifts pursuant to any powers allowed by the Property Power of Attorney." The POA document also contained a provision in a section entitled "NOTICE TO AGENT" which stated, "As agent you must *** (4) [a]ttempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest." The document was acknowledged by Mefail. Both the will and the POA was prepared by the same attorney and executed at the same time.

¶ 5 Shefki left the United States a few days after executing the documents. He stated a wish to return to his native Macedonia to die, having received a terminal cancer diagnosis.

¶ 6 On April 17, 2013, Mefail, in his capacity as Shefki's agent pursuant to the POA, executed an agreement to auction Shefki's home and approximately 20 acres located near Adair, Illinois. The sale closed on August 28, 2013, for a sales price of \$150,000. Net proceeds of the sale in the amount \$121,026.17, were paid to "Mefail Mehmedi, as POA for Shefki Mehmedi." The real estate settlement statement contained in the record listed Shefki Mehmedi as the owner of the property and "Mefail Mehmedi as POA for Shefki Mehmedi."

¶ 7 On August 30, 2013, Mefail opened a savings account at Prairie State Bank & Trust in Lewistown, Illinois. The account was opened under the names of Shefki Mehmedi and Mefail Mehmedi. The two individuals were designated as owners in joint tenancy with the right of survivorship. The account documents contained no indication that Mefail was acting under a power of attorney executed by Shefki. The initial deposit was in the amount of \$115,000. The record established that Mefail made several subsequent cash withdrawals from the account.

¶ 8 On October 25, 2013, Shefki died in Macedonia. Shortly thereafter, Mefail executed a new signature card for the Prairie State Bank account, removing Shefki's name and designating himself as the sole owner of the account. After Shefki's death, Mefail did not file Shefki's will or commence probate proceedings.

¶ 9 On February 11, 2015, Shefki's other four children filed a petition for letters of administration seeking to probate the will and open probate proceedings in the circuit court of Fulton County. The petition sought appointment of Shefki's grandson, Shefki Mehmedi (namesake of the decedent), as administrator of the estate. On February 20, 2015, the court accepted the will into probate and appointed Shefki as administrator of the estate. The administrator filed a citation to recover estate assets alleged to be held by Mefail. Mefail was served with notice and all pleadings by private process on February 23, 2015.

¶ 10 On March 13, 2015, Mefail filed his own petition to probate Shefki's will and sought appointment of himself as administrator of the estate. In his petition, Mefail reported that the estate held personal property in the amount of \$121,000. Mefail's petition listed himself and his four siblings as heirs/legatees of the estate. The court never ruled upon Mefail's petition seeking appointment.

¶ 11 On February 18, 2016, the administrator filed a motion for summary judgment seeking a final determination by the court that the proceeds of the real estate sale were estate assets. The motion further sought an order to turn over those funds to the estate. The motion for summary judgment argued, *inter alia*, that the petition filed by Mefail seeking to be appointed administrator of the estate and listing the value of the personal property in the estate at \$121,000 constituted a judicial admission that the proceeds of the sale of the real property was an asset of the estate. On February 24, 2016, Mefail substituted counsel of record.

¶ 12 On March 5, 2016, Mefail's new counsel filed a petition for leave to amend the pleadings. In the petition, Mefail argued that his prior attorney had erred in filling out the petition for probate when he listed the value of the personal property of the estate at \$121,000. Mefail submitted a "correct" version of the petition showing "-0-" as the correct value of the estate. In the motion to amend the pleadings, Mefail further stated that, "due to language deficiencies, etc" Mefail did not understand what he was signing when he signed the petition. He further maintained that the funds in the Prairie State Band account, being designated in joint tenancy with the right of survivorship, became the sole property of Mefail by operation of law at the time of Shefki's death. On May 8, 2016, the court denied Mefail's motion to amend his petition listing estate assets at \$121,000.

¶ 13 On May 25, 2016, Mefail filed a “Motion to Conform Pleadings to Proof” attaching copies of the signature card “before” Shefki died, which listed both Shefki and Mefail as owners of the account, and “after” Shefki’s death, which showed Mefail as the sole owner.

¶ 14 On June 22, 2016, the court heard argument on the administrator’s motion for summary judgment and Mefail’s motion to conform pleadings to the proof. By written order, the court denied the motion to conform pleadings, noting that the “proof” merely established that on a certain date Mefail changed the names on the account and had no probative value as to whether the funds nonetheless belonged to the estate. The court then granted the administrator’s motion for summary judgment finding that the proceeds of the sale of the decedent’s real estate remained his property up to his death and became an estate asset thereafter. The court held that there was no genuine issue of material fact regarding the ownership of the proceeds of sale. The court held that Mefail exceeded his authority as POA when he placed the funds in an account as joint tenants with the right of survivorship and that there was no evidence presented to establish that Shefki intended anything other than to preserve an estate for his children to be divided equally among them. The court concluded that “[t]he sale proceeds are part of Shefki Mehmedi’s estate. If there were further assets or expenses, those can be determined at a later date, but the net proceeds from the sale of the real estate are in the estate and are to be divided among the children.” Mefail did not file a motion to reconsider.

¶ 15 On September 7, 2016, the administrator filed a Petition for Citation to Recover Assets. A second citation petition was filed on November 21, 2016. Following two postponements, a hearing was held on the citation petition on February 1, 2017. Mefail failed to appear and the court ordered his appearance under threat of contempt. The court issued a handwritten order that Mefail provide “a full and verified accounting of the funds previously found to have been in the

estate of Shefki Mehmedi and in Mefail Mehmedi's possession and control." The record established that Mefail failed to provide such an accounting.

¶ 16 On April 10, 2017, the court entered a judgment against Mefail in the amount of \$164,423.78, an amount that included the \$121,027.17 in real estate proceeds, plus \$4,064.08 as attorney fees "and punitive damages" resulting from Mefail's willful and wrongful acts. The order also included \$39,333.53 in pre-judgment interest.

¶ 17 On May 8, 2017, Mefail filed a notice of appeal maintaining, that in the judgment entered on April 10, 2017, the court erred in finding that: "(1) Mefail Mehmedi is liable to the estate by reason of a breach of fiduciary duty; and (2) Mefail Mehmedi exceeded the scope of the power of attorney of Shefki Mehmedi during Shefki Mehmedi's life."

¶ 18 ANALYSIS

¶ 19 Neither party has questioned our jurisdiction over this appeal. Even so, we have an independent duty to make sure we have jurisdiction and to dismiss the appeals if we lack jurisdiction. See *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). Pursuant to the Illinois constitution, our jurisdiction is generally limited to appeals from final judgments. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Moreover, we are without jurisdiction to review an untimely notice of appeal, as the timely filing of a notice of appeal is both mandatory and jurisdictional. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). Illinois Supreme Court Rule 303(a) requires a party appealing from a trial court's judgment to file a notice of appeal within 30 days after entry of the trial court's judgment. Ill. S. Ct. R. 303(a) (eff. July 1, 2017). Here, we must determine whether the judgment entered on June 24, 2016, was a final judgment requiring a notice of appeal to have been filed with 30 days of the entry of the order. If so, this appeal is untimely and we have no jurisdiction

over the matter, as it is undisputed that the notice of appeal was filed on May 8, 2017, well beyond the 30-day requirement.

¶ 20 The question of appellate jurisdiction is a matter of law, which we review *de novo*, in the same manner as if we were reviewing the jurisdiction of the trial court. *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 25; *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 21 A judgment of the trial court is final and appealable where the judgment order “ascertains and fixes absolutely and finally the rights of the parties in the lawsuit. A judgment is final if it determines the litigation on the merits so that, if affirmed, nothing remains for the trial court to do but to proceed with its execution.” *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 232-33 (2005). The denial of a motion for summary judgment is ordinarily not a final order, as the ruling does not finally fix the rights of the parties (*Clark v. Children’s Memorial Hospital*, 2011 IL 108656, ¶ 119), however, an order granting summary judgment can be a final order if it fixes absolutely and finally the rights of the parties, even where issues involving execution of the judgment remain unresolved. *Indiana Insurance Co. v. Powerscreen of Chicago, Ltd.*, 2012 IL App (1st) 103667, ¶ 22; *Bauman v. Patterson*, 2018 IL App (4th) 170169, ¶ 47 (where the judgment order disposes of all contested issues in the case, the granting of summary judgment to one party constitutes a final and appealable order).

¶ 22 In the present case, the circuit court’s June 24, 2016, order granting summary judgment to the administrator, which determined that Mefail was in possession of estate assets in the form of \$121,000 in cash, was a final and appealable order that fixed absolutely and finally the rights of the parties to that contested property. In so doing, the court had considered and rejected Mefail’s legal and factual arguments regarding the proper ownership of the cash at issue and

determined that no genuine issue of material facts existed as to the estate's ownership of that asset. Our review of the record confirms, that after the order granting summary judgment was entered, the estate began enforcement proceedings and all actions occurring after entry of the judgment against Mefail and in favor of the administrator were actions to proceed with execution of the judgment. Although it is not dispositive, we note that during the citation proceeding, the trial court itself observed that issue of the ownership of the cash in Mefail's possession had been previously decided and was not subject to further litigation.

¶ 23

CONCLUSION

¶ 24

Because the notice of appeal from the circuit court's final ruling on the ownership of the disputed asset at issue in the litigation was filed more than 30 days after the circuit court entered judgment fixing absolutely and finally the rights of the parties to that contested asset, this court has no jurisdiction to hear the appellant's objections to that determination. Thus, this court is without appellate jurisdiction to consider the appeal. Moreover, since the court is without jurisdiction over the appeal, we dismiss as moot the appellee's motion for sanctions that was taken with the case.

¶ 25

Appeal dismissed for lack of jurisdiction.