2019 IL App (3d) 170685-U

Order filed June 24, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

BRIDGEVIEW BANK GROUP, an Illinois banking corporation, Plaintiff, v. FLEVOLAND, LLC, an Illinois limited liability company, JOHN PLUCIENNIK, UNKNOWN OWNERS and NONRECORD CLAIMANTS, Defendants (Flevoland, LLC, Appellee, v. Heidi Mitidiero, as Administrator of the Estate of David Mitidiero, Deceased, Appellant).	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois. Appeal No. 3-17-0685 Circuit No. 16-CH-1596 Honorable Cory D. Lund, Judge, Presiding.

HEIDI MITIDIERO, as Independent Administrator for the Estate of David Mitidiero, Deceased,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.

Former Receiver-Appellant,	)	Appeal No. 3-18-0166
	)	Circuit No. 16-CH-1596
v.	)	
	)	
FLEVOLAND, LLC,	)	Honorable Brian E. Barrett,
	)	Honorable Corry D. Lund,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in (1) ordering appellant, a court-appointed receiver and judgment debtor, to return a tortiously taken commission to the appellee, (2) refusing to award appellant his attorney fees, or (3) awarding appellee its attorney fees. However, the court did err in ordering the disgorgement of the tortiously taken commission and appellee's attorney fees outside the administration of probate.

¶ 2 This began as a foreclosure action. Plaintiff, Bridgeview Bank Group, no longer a party to this appeal, initiated a foreclosure action on a mortgage secured by defendant, Flevoland, LLC's, commercial property. The circuit court appointed David Mitidiero, appellant, as receiver in the foreclosure action. Flevoland paid off the mortgage without proceeding to a sheriff's sale. The court dismissed the foreclosure action but only partially discharged David as receiver because Flevoland contested certain amounts David paid himself. These consolidated appeals deal with a commission David claimed he earned in negotiating a lease extension between Flevoland and one of its tenants. David's first appeal (case No. 3-17-0685) is of the circuit court's judgment ordering him to disgorge the commission and to pay Flevoland's attorney fees. David died during the pendency of the appeal. After his death, Flevoland served a third party citation to discover assets on a bank with which David had certificates of deposit in the judgment amounts. The circuit court ordered the bank to disgorge the funds requested. Heidi Mitidiero, David's widow, filed a supplemental appeal of the collection (case No. 3-18-0166) contesting the

trial court's jurisdiction, as well as the propriety of ordering the disgorgement outside of probate. We affirm.

¶ 3 FACTS

¶ 4 On October 28, 2016, Judge Barrett appointed David as the receiver in a foreclosure action of a commercial property. Flevoland defaulted on its loan from Bolingbrook Investments, no longer a party to this appeal. The receiver order stated appellant "*can* receive compensation for his services *** pursuant to the payment schedule attached as Exhibit B." (Emphasis added). Exhibit B listed a 4.75% commission for procuring new leases and lease extensions. David claimed this provision justified paying himself a commission on the Flevoland-Crane lease. The case was reassigned to Judge Lund, who ultimately ordered David to disgorge the commission.

¶ 5 I. The Lease Extension

¶ 6 Prior to the court appointing David as receiver, Flevoland began negotiating with Crane, one of its tenants, to enter into a lease extension. Flevoland provided Crane with the negotiated extension contract. On October 24, 2016, the Chief Financial Officer (CFO) for Crane e-mailed a signed copy of the lease extension to Flevoland's agent. Crane's CFO requested Flevoland sign a copy and return it to him. The CFO did not change or counter any terms in the extension. Flevoland returned the countersigned copy on November 3, 2016. On November 4, Flevoland sent David a copy of the lease extension.

¶ 7 In David's first receiver report for the period between October/November 2016, he claimed he was negotiating a lease extension with Crane. David contacted Crane about his court appointment as receiver and the potential of signing a lease extension. Crane expressed surprise at this news, given Crane had only days before signed the extension. David claimed Flevoland lacked the capacity to bind Crane to the extension because it was not fully executed before the

court appointed him as receiver. He requested $2000 in receiver fees for his work at this time. He did not tender a copy of his report to Flevoland.

¶ 8 On December 12, 2016, the court held a hearing on the first report; it approved David's report. Flevoland was not present. The court scheduled a hearing for the second receiver's report on March 20, 2017.

¶ 9 II. David's Claimed Commission

¶ 10 On March 7, 2017, Flevoland paid the mortgage in full without proceeding to a sheriff's sale. The next day David filed his second receiver report. Flevoland filed a motion to dismiss the foreclosure action with prejudice. On March 20, 2017, the circuit court dismissed the foreclosure action and partially discharged David as receiver. The court only partially discharged David because Flevoland objected to the $28,640.79 he listed as a commission under the heading "Expenses" in his second receiver's report.

¶ 11 The $28,640.79 was in addition to the $6000 David claimed in receiver fees for his work from the end of November 2016 to the end of February 2017. David did not list the commission with his receiver fees. He did not seek court approval for the commission. Instead, he had already taken that amount and placed it in his receiver's account. David explained this expense reflected the commission he claimed he earned in negotiating and executing the lease extension between Flevoland and Crane, as it was not fully executed before his appointment. The second report was silent as to the commission except as listed under the heading "Expenses," which also included costs such as garbage collection and utilities. The circuit court scheduled a hearing to address Flevoland's objection to David's claimed commission.

¶ 12 III. The June 5 Order

¶ 13 On June 5, 2017, the circuit court, after considering written arguments on the commission issue, held a hearing on Flevoland's objection. It found for Flevoland. The court did not agree that David was entitled to the commission, stating, "[t]he arguments of the receiver are absolutely unpersuasive about why it should get a commission." It stated the action was "one of the most egregious efforts ever by someone *** to convert money." The court entered an order directing David to disgorge the commission. Additionally, the court, *sua sponte*, declared it would award Flevoland "reasonable fees and costs on the motion." It asked Flevoland to file a fee petition to determine the amount of the award. The court denied David the opportunity to petition for attorney fees incurred as a result of his receivership. David filed a motion to reconsider.

¶ 14 IV. September 20 Order

¶ 15 On September 20, 2017, the circuit court denied David's motion to reconsider. It finally and fully discharged him as receiver. The circuit court entered an order (1) granting Flevoland's petition for $13,292.41 in attorney fees, (2) denying the motion to reconsider, (3) ordering David to pay $28,640.79 he was holding as commission to Flevoland, and (4) ordering David to make both payments, a total of $41,933.20, by the end October 2017. At this time, the court gave Flevoland the opportunity to file a petition to find David in indirect civil contempt. The record does not indicate that Flevoland filed such a petition.

¶ 16 V. Appeal No. 3-17-0685

¶ 17 On October 12, 2017, David appealed the September order. Specifically, he appealed the disgorgement of the commission, the award of Flevoland's attorney fees, and the court's refusal to allow him to file a petition for his attorney fees. David did not timely seek a stay of enforcement of the judgment or post an appeal bond as required by Rule 305. Ill. S. Ct. R. 305(a)

(eff. July 1, 2017). On November 29, 2017, David filed a motion to approve appeal security and stay the execution of the judgment pending appeal. He attempted to post two certificates of deposit (CDs) totaling $41,933.20 as an appeal bond. Flevoland objected. The circuit court denied his attempt to post the CDs as an appeal bond. On December 1, 2017, David died.

¶ 18 VI. Third Party Citation to Discover Assets

¶ 19 On December 6, 2017, Flevoland served a third party citation to discover assets on MB Financial Bank, creating a lien on the CDs David deposited and offered as an appeal bond. Flevoland sent notice of the citation to David's attorney of record, Shorge Sato, and David's former office address. At the date of service, Flevoland was aware of David's death.

¶ 20 On January 5, 2018, Sato appeared as an officer of the court to inform the court of David's passing. Sato denied representing any party at that time.

¶ 21 On January 25, the court appointed Heidi as executrix of David's estate. She retained Sato to represent the estate. On February 7, Sato entered his appearance before the court on behalf of Heidi in her role as executrix of David's estate. Sato filed an objection to the citation to discover assets, citing a lack of personal jurisdiction and subject matter jurisdiction over the estate and the assets for failure to "perfect[] service of its third-party citation upon any 'judgment debtor' ". He also maintained that a provision from the Illinois Code of Civil Procedure barred Flevoland from seeking David's personal assets for actions he took as receiver. On February 13, 2018, the court denied David's November 29 motion to stay execution of the judgment.

¶ 22 On February 23, 2018, the circuit court held a hearing on the turnover order. It entered a turnover order, instructing MB Financial Bank to disgorge the CDs held in David's name. No one appeared on behalf of the estate.

¶ 23 The court allowed Heidi to substitute herself as appellant in case No. 3-17-0685. She appealed the collection action in case No. 3-18-0166.

¶ 24 ANALYSIS

¶ 25 This court consolidated case Nos. 3-17-0685 and 3-18-0166, as the underlying issue in both cases is the original judgment against David in the circuit court. Appellant raises the issue of this court's jurisdiction to hear the appeal in case No. 3-17-0685, which addressed the first three issues discussed below. Rule 304(b) provides for appeals without a special finding where there is a "judgment or order entered in the administration of a receivership *** which finally determines a right or status of a party." Ill. S. Ct. Rule 304(b)(2) (eff. Mar. 8, 2016). The June 5 order directed David to disgorge the amount he claimed as commission. The September 20 order reaffirmed the circuit court's decision. Rule 304(b)(2) provides this court with jurisdiction over decisions that determine a party's liability for payment. See *In re Pine Top Insurance Co.*, 292 Ill. App. 3d 597, 601 (1997). The June and September orders finally determined David's liability to pay both the amount he claimed as commission and Flevoland's attorney fees.

¶ 26 On appeal, appellant challenges (1) the circuit court's order directing David to return the commission to Flevoland, (2) the circuit court's denial of David's petition to recover attorney fees, (3) the circuit court's award of attorney fees, (4) the circuit court's jurisdiction regarding the turnover order, and (5) the circuit court's failure to apply David's statutory immunity from this judgment as a receiver.

¶ 27 I. The Disgorgement of the Commission

¶ 28 Appellant maintains the circuit court erred in finding that David wrongfully took a commission to which he was not entitled. Appellant argues that the foreclosure law of the Code of Civil Procedure (Code) (735 ILCS 5/15-1704(d) (West 2016)) uses mandatory language in

regard to receiver's fees. Additionally, appellant submits that the order appointing David as receiver specifically allowed him to collect a 4.75% commission for work performed as a receiver, such that the circuit court which heard the issue of the commission had no authority to order the disgorgement.

¶ 29 We review issues of statutory interpretation *de novo*. *In re Detention of Lieberman*, 201 Ill. 2d 300, 307 (2002). The circuit court's order directing David to disgorge the commission is reviewed for a clear abuse of discretion. *Brackett v. Sedlacek*, 116 Ill. App. 3d 978, 981 (1983).

¶ 30 A. *Section 15-1704(d) of the Code*

¶ 31 Appellant argues that "the mandate of Section 15-1704(d) of the [Illinois mortgage foreclosure law] entitled Receiver to claim the previously allowed lease commission out of the receipts from operation of the property." The relevant statutory provision provides:

> "Receipts received from operation of the real estate *** by the receiver *shall* be applied in the following order of priority.
>
> ***
>
> (4) to payment of receiver's fees *allowed by the court*[.]"

(Emphases added). 735 ILCS 5/15-1704(d)(4) (West 2016).

Appellant contends the legislature's use of the word "shall" in the statute is "persuasive evidence that trial courts were not intended to possess discretion regarding the award."

¶ 32 The goal of this court in interpreting a statute is to ascertain and give effect to the intent of the legislature. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503-04 (2000). We determine the legislature's intent by examining the language of the statute, which is "the most reliable indicator of the legislature's objectives in enacting a particular law." *Id.* at 504. We give statutory language its plain, ordinary, and normal meaning. *Union Electric Co. v.*

The Department of Revenue, 136 Ill. 2d 385, 397 (1990). We view provisions of statutory enactment as a whole, refusing to construe words or phrases in isolation. *Lieberman*, 201 Ill. 2d at 308. No reasonable person could construe this statute to mean that a receiver can take any fee he wants without court approval. Viewing the statute in its entirety, it is clear that the legislature's intent was to provide a clear order of priority for payment, not to imbue receivers with the unsupervised right to receive payment.

¶ 33 Additionally, because Judge Lund, the circuit court judge who ordered David to disgorge the commission, did not enter the order appointing David as receiver, appellant argues Judge Lund lacked the ability to "take away" David's commission. Appellant cites no Illinois authority to support this argument. Failure to cite to relevant authority waives the issue. *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613 (1999).

¶ 34 Because we have determined the circuit court possessed authority to grant or refuse the commission, we now review whether the court abused its discretion in ordering David to return the commission to Flevoland.

¶ 35 B. *The Circuit Court's Disgorgement*

¶ 36 Appellant contends the circuit court erred in finding David did not earn a commission because (1) he submitted the fully executed lease for court approval, (2) the lease was not fully executed as of October 24, 2016, and (3) the lease was not binding as of October 24, 2016. Essentially, appellant argues David was indispensable in securing Crane's lease extension. The circuit court's decision regarding an award of receiver's fees is reviewed for a clear abuse of discretion. *Sedlacek*, 116 Ill. App. 3d at 981. The burden was on David as the receiver to show the reasonableness of the fees he claimed. *Plote, Inc. v. Minnesota Alden Corp.*, 95 Ill. App. 3d 5, 7 (1981). "In the typical case, where a petition for fees is supported by a time sheet which

details the receiver's activities, and which shows other factors relevant to an award of fees, this can be sufficient to establish that the fees requested are reasonable." *Id.*

¶ 37 The record on appeal contains no such time sheet or explanation of David's activities. David claimed responsibility for the lease extension between Flevoland and Crane. On October 31, 2016, a representative for Crane e-mailed David informing him that Flevoland and Crane had an "active lease extension." Crane's representative said the terms were "straightforward" and already negotiated. He also indicated he had signed both a letter of intent with Flevoland and the lease amendment regarding the extension.

¶ 38 Appellant argues Crane's request for Flevoland to sign a copy of the lease amendment constituted a counteroffer. This, of course, is nonsense! It is a spurious argument. The facts support the conclusion that the lease extension was fully executed before the court appointed David as receiver. If David truly believed he was indispensable in securing the lease extension, then he presumably would not have tried to hide the commission in the "Expenses" portion of his report.

¶ 39 Crane signed the lease amendment on October 24, 2016, days before the court appointed David as receiver. David's e-mail correspondence with Crane indicates that Crane was acting under the assumption that it had an active lease extension in place with Flevoland. Flevoland had an enforceable contract with Crane, as Crane, the party to be charged, signed the lease extension without changing any of its terms. The circuit court did not abuse its discretion in ordering David to disgorge the commission fee.

¶ 40 II. Receiver Attorney Fees

¶ 41 In addition to appealing the court's disgorgement of the commission, appellant argues the circuit court erred in denying David the opportunity to submit a postdischarge accounting of

receiver's fees and attorney fees. Appellant relies on the holding that a court may award attorney fees for costs incurred in securing and enforcing a judgment for receiver's fees, even though the receiver had been discharged. *City of Chicago v. Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, ¶ 7; *Rosenblatt v. Michigan Avenue National Bank*, 70 Ill. App. 3d 1039, 1044 (1979). In *Concordia*, the court granted a receiver petition which allowed the receiver to retain counsel in order to perform its duties. The receiver initiated the action to collect its fees after a dispute as to the amount. *Concordia*, 2016 IL App (1st) 151864, ¶ 8. There was never any issue of general entitlement to the fee as there is here. Similarly in *Rosenblatt*, the court entered an order allowing the receiver to retain counsel in an effort to collect fees for receivership. *Rosenblatt*, 70 Ill. App. 3d at 1044. The reviewing court found the trial court did not err in awarding receiver's attorney fees where the receiver "ma[de] efforts to secure and enforce a judgment for receiver's fees." *Id.* at 1045.

¶ 42 Appellant can cite to no factually similar case in which the receiver tortiously took money and then requested attorney fees to defend his actions. The court approved David's first two receiver reports which included receiver fees. Appellant argues that the court made no findings of fact in either its June 5 or September 20 order. The transcript from the June 5 hearing belies that conclusion. The court stated David's efforts were some of "the most egregious efforts ever by someone *** to convert money." To show conversion, the court must find (1) the defendant assumed unauthorized and wrongful control over the plaintiff's personal property, (2) the plaintiff rightfully owned the property, (3) the plaintiff has the right to absolute and immediate control over the property, and (4) the plaintiff demanded the property back from the defendant. *Seymour v. Williams*, 249 Ill. App. 3d 264, 272 (1993). David took the money without court approval. Flevoland at all times was the true owner of the money. Flevoland made a

demand for return. The record supports the circuit court's finding that David committed conversion, *i.e.*, theft.

¶ 43 Normally in Illinois, each party must bear its own expense for litigation. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 572 (2000). Although there is a general rule that receivers can recover their attorney fees, the cases that support this proposition are easily distinguishable. Appellant can cite to no statute, agreement, or contempt order that would provide for an award of attorney fees. Successful litigants cannot recover attorney fees unless such recovery is expressly authorized by a statute, included in the terms of an agreement, or a consequence of a contempt order. *Estate of Downs v. Webster*, 307 Ill. App. 3d 65, 70 (1999). Accordingly, the circuit court did not err in refusing David the opportunity to submit a petition for attorney fees in defending what the court characterized as an egregious attempt to convert money.

¶ 44 III. Flevoland's Attorney Fees

¶ 45 Appellant contends there is no "statutory, equitable, or contractual basis for charging Receiver with Flevoland's attorney fees." As discussed above, successful litigants cannot recover attorney fees unless such recovery is expressly authorized by a statute, included in the terms of an agreement, or a consequence of a contempt order. *Id.*

¶ 46 Flevoland argues this court should affirm the trial court's award based on Illinois Supreme Court Rule 137 (eff. July 1, 2013). Rule 137 requires that a party's attorney sign every document the party files. Ill. S. Ct. R. 137(a) (eff. July 1, 2013). The attorney's signature "constitutes a certificate by him that he has read the pleading ***; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact." *Id.* "If an attorney signs a pleading in violation of this rule, the court may sanction either the

attorney, the party he represents, or both, 'which may include an order to pay *** a reasonable attorney fee.' " *American Access Casualty Co. v. Alcauter*, 2017 IL App (1st) 160775, ¶ 35 (quoting Ill. S. Ct. R. 137(a) (eff. July 1, 2013)). "[A] trial court's decision regarding the imposition of sanctions is entitled to considerable deference" provided "the trial court make[s] explicit factual findings upon which a court of review may make an informed reasoned decision." *Bank of Homewood v. Chapman*, 257 Ill. App. 3d 337, 349 (1993). The trial court's decision to award attorney fees under this rule will not be disturbed absent an abuse of discretion. *Kitzman*, 193 Ill. 2d at 579.

¶ 47 Appellant replies by arguing David was a nonparty to the litigation and therefore not subject to Rule 137 sanctions. She relies on *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 34, to support this assertion. The court there found the mediator was not a party to the claim when he filed a motion to compel the parties to cooperate with the guardian *ad litem*. *Id.* The court held that he mediator's nonparty status exempted him from Rule 137 sanctions. *Id.* We can easily distinguish the case *sub judice*.

¶ 48 On March 20, 2017, the court dismissed the foreclosure action with prejudice. The court only partially dismissed David as receiver due to Flevoland's objection. The court scheduled the June 5 hearing to address the objection; it found for Flevoland. On September 20, the circuit court denied David's motion to reconsider. David appealed. Here, although David was not a party to the original foreclosure action, he became a party once he submitted signed, written arguments for the court's consideration in response to Flevoland's objection. If David were not a party, he would have been unable to appeal the circuit court's judgment. See Ill. S. Ct. R. 303(a) (eff. July 1, 2017). "The notice of appeal may be filed by any *party* or by any attorney representing the party." (Emphasis added.) *Id.* After March 20, Flevoland and David were the

only parties remaining in the action. The court found David's pleadings to be "absolutely unpersuasive," "egregious," and "strictly speculation." The court found David committed conversion. In the simplest terms, the court found that David stole the money he called a commission. It continued on, "[n]ot a single argument by the receiver is an argument for why it should be entitled to a commission in this case." The court found all David's arguments were incorrect under the law; his pleadings were not credible. We find no reason why Rule 137 should not apply to David considering his affirmative act of submitting frivolous pleadings and appealing the circuit court's judgment.

¶ 49 Contrary to appellant's repeated claim, the court did make specific findings of fact regarding David's actions and assertions in the pleadings. We afford the court's decision to sanction a party under Rule 137 great deference. See *Kitzman*, 193 Ill. 2d at 579. The court did not abuse its discretion in awarding Flevoland its attorney fees following David's repeated false assertions.

¶ 50 IV. Collection Action Jurisdiction

¶ 51 David died during the pendency of the appeal containing the above three issues. Because he posted no appeal bond, Flevoland continued with collection proceedings, notwithstanding the pending appeal. In December 2017, a week after David's death, Flevoland initiated a supplemental proceeding to discover assets of a third party, MB Financial Bank. The circuit court ultimately issued a turnover order against MB Financial Bank. It directed the bank to issue CDs held in David's name to Flevoland to satisfy the judgment of both the disgorged commission and attorney fees. In the supplemental appeal, appellant first contends the circuit court lacked both personal and subject matter jurisdiction to enter its turnover order. She argues

that the court did not have jurisdiction because David was dead and could not have been "served" with the citation to discover assets.

¶ 52 Appellant misunderstands the applicable statutes. She also conflates "service" with "notice" throughout her brief. Flevoland served a citation to discover assets against a third party. The Code provides, "[a] supplementary proceeding shall be commenced by the service of a citation issued by the clerk." 735 ILCS 5/2-1402(a) (West 2016). It continues, "[w]henever a citation is *served upon a person or party other than the judgment debtor*, the officer or person serving the citation shall send to the judgment debtor, within three business days of the service upon the cited party, a copy of the citation and the *citation notice*[.]" (Emphases added.) *Id.* § 2-1402(b). A plain reading of the statute, employing the rules of statutory interpretation described above, demonstrates Flevoland was not required to *serve* the estate. See *supra* ¶ 32; *Dowling v. Chicago Options Associates, Inc.*, 365 Ill. App. 3d 341, 344 (2006) (judgment creditor served third parties and gave notice to the judgment debtor). The service requirement in the statute clearly relates to the third party. See *id.* at 347 ("Dowling, in conformity with statute *** served third parties *** with citations to discover Davis's assets."). Section 2-1402(b) of the Code required Flevoland to send the estate a copy of the citation as well as *notice* of the citation. The record shows Flevoland met this requirement. Therefore, the circuit court had subject matter jurisdiction over the supplemental proceeding in order to issue the turnover order.

¶ 53 Appellant further argues the court lacked personal jurisdiction over David because he was dead and could not have received notice. She submits Flevoland improperly gave notice to David's attorney of record. She correctly identifies that an attorney's "power to bind decedent terminated automatically upon decedent's death." *Fountas v. Breed*, 118 Ill. App. 3d 669, 675 (1983).

¶ 54 The judgment debtor raised a similar objection to personal jurisdiction in *Dowling*. *Dowling*, 365 Ill. App. 3d at 346-47. The judgment debtor, in his brief, argued the court's turnover orders were void because the citation issued to his attorney did not constitute personal service on him. *Id.* at 347. At oral argument, the attorney conceded that the judgment creditor needed only to perfect service on third parties. *Id.* The court declined to comment on whether the judgment debtor was properly served because the circuit court vacated the findings and warrants against him. *Id.* at 347-48. Because the court declined to comment on service of the judgment debtor but still held that the court had jurisdiction over the turnover order, we similarly conclude service perfected on the third party established jurisdiction.

¶ 55 Additionally, the estate at all times was on notice of the third party citation. On December 6, 2017, Flevoland sent notice of the third party citation to Sato. On January 5, 2018, Sato specially appeared before the court to inform it of David's passing. He maintained he did not, at that time, represent the estate. The circuit court gave the estate the opportunity to object to the turnover. Subsequent to his appearance, but before the estate's first filings, Heidi retained Sato as counsel for the estate. Sato appeared on behalf of the estate on February 7. The estate cannot claim Flevoland failed to comply with the statutory requirements for failure to give notice, actual or otherwise. Although not retained as counsel for the estate at the time of notice, Sato was at all times aware of the citation. There was no prejudice to the estate, as the court gave the estate leave to object to the turnover.

¶ 56 V. Nature of Funds Used to Satisfy the Turnover Order

¶ 57 Finally, appellant argues the circuit court erred in ordering MB Financial Bank to turn over CDs that she contends were the receiver's private assets. She submits a receiver cannot be personally liable for actions he took as a receiver, therefore David's personal assets were

unreachable. Appellant concedes the CDs would be reachable had the circuit court granted David's motion to approve them as collateral security to stay the pending appeal. Because the circuit court denied David's motion, the CDs were at all times his personal assets. They cannot be used to satisfy a judgment against him as receiver. Even if they could, Flevoland is attempting to avoid the administration of probate of the estate.

¶ 58 Appellant relies on Section 12-103 of the Code to advance her argument. The relevant provision states:

> "A judgment entered against a person *not as a result of* a contract made by him *** or *a tort committed by him* *** but solely because he or she is the holder of title to property as receiver *** shall be enforced only against property held in the particular representative capacity, but no judgment shall be enforced against nor shall the judgment constitute a lien upon, other property owned by such person, whether individually or in some other designated identifiable representative capacity." (Emphases added.) 735 ILCS 5/12-103 (West 2016).

¶ 59 For the reasons that follow, we hold that the circuit court erred in ordering the turnover of the commission and attorney fees to Flevoland thereby avoiding the process of probate. However, it is senseless to order Flevoland to return the commission and attorney fee amounts only to be awarded the same once the estate settles. Until the estate settles, the commission amount shall be placed into escrow to be held by the court. If there are no unsatisfied creditors with superior priority at the close of the estate, the court shall return the amount to Flevoland in full.

¶ 60 Where a judgment is not a lien on the land of a judgment debtor at the time of the debtor's death, a judgment creditor can only collect his debt in the due course of the

administration of the judgment debtor's estate. *Clingman v. Hopkie*, 78 Ill. 152, 155 (1875). The administration of an estate is an *in rem* proceeding, not an action among or between parties. *In re Estate of Denten*, 2012 IL App (2d) 110814, ¶ 42. "[T]he representative of a decedent's estate shall pay from the estate all claims entitled to be paid *** in the order of their classification, and when the estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata." 755 ILCS 5/18-13 (West 2016). "Probate courts *** exercise equitable powers, and may look beyond forms to the substance." *Chicago Title & Trust Co. v. McGlew*, 193 Ill. 457, 462 (1901).

¶ 61 The estate did not bring any creditor with superior priority to this court's attention during briefing or at oral argument. The record is absent of a showing that the result would be different had Flevoland gone through probate. Appellant does not appeal the trial court's February 13 order denying David's motion to stay execution of the judgment. It lacks common sense to order Flevoland to disgorge the commission amount only to be awarded the same in the administration of probate. If the estate is unable to satisfy its obligations, nothing in this order prevents the estate from bringing Flevoland into the action and using the amount held in escrow to satisfy other claims as the probate court finds appropriate.

¶ 62 We remand with directions ordering Flevoland to place $41,933.20 into escrow to be held by the court until David's estate closes or the probate court orders otherwise. This order assumes that a probate estate is open for David's estate.

¶ 63 CONCLUSION

¶ 64 For the foregoing reasons, we affirm in part the judgment of the circuit court of Will County and remand with directions to hold the judgment amount in escrow.

¶ 65 Affirmed in part, remanded with directions.