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2019 IL App (3d) 180433-U

Order filed May 13, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

STEPHEN R. FICKLIN, Executor of the Estate)	Appeal from the Circuit Court
of Roy L. Ficklin, Deceased,)	of the 21st Judicial Circuit,
)	Iroquois County, Illinois.
Petitioner-Appellee,)	
)	Appeal No. 3-18-0433
v.)	Circuit No. 08-P-47
)	
KATHERINE KUIPERS and RUSSELL)	
FICKLIN,)	The Honorable
)	James B. Kinzer
Respondents-Appellants.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate court lacks jurisdiction to review trial court order reopening estate where other matters are still pending in probate action.

¶ 2 Petitioner Stephen Ficklin filed a petition to reopen the estate of his father, Roy L. Ficklin, eight years after the estate was closed. Respondents Katherine Kuipers and Russell Ficklin, who are Stephen's siblings, objected to the petition. The trial court granted the petition, and Stephen issued himself a warranty deed for a tract of land he had attempted to transfer into a

family trust nine years earlier in Roy's original probate action. Thereafter, Stephen filed an inventory, final accounting, and final report in Roy's reopened estate. Before filing their objections to Stephen's final report, Katherine and Russell filed a notice of appeal, seeking to appeal the trial court's decision to reopen Roy's estate. We dismiss the appeal for lack of jurisdiction.

¶ 3

I. BACKGROUND

¶ 4

Roy Ficklin and his wife, Lucille Ficklin, owned farmland in Illinois. In November 2007, they transferred a 113-acre tract into a land trust known as Trust Number 104. Petitioner Stephen Ficklin was named trustee of the trust, and Roy and Lucille were the beneficial owners. In April 2008, Lucille transferred her beneficial interest to Roy.

¶ 5

Roy died in May 2008. His will established a testamentary family trust. The family trust provided for payment of income to Lucille during her lifetime and distribution to Roy's living children in equal shares on Lucille's death. Petitioner Stephen Ficklin and respondents Katherine Kuipers and Russell Ficklin are Roy's children. Roy's will also provided specific gifts to his three children: (1) the 113-acre tract of land contained in Trust Number 104 to Stephen, (2) a residence to Katherine, and (3) the proceeds of a life insurance policy to Russell.

¶ 6

Stephen was executor of Roy's estate. On September 25, 2008, Stephen filed an inventory of Roy's estate, listing nine tracts of farmland. Two tracts, labeled Tract VII and Tract VIII, were the tracts contained in Trust Number 104. Stephen executed a trustee's deed purportedly transferring Tracts VII and VIII from Trust Number 104 to the Ficklin Family Trust. No letter of direction was filed. In 2009, Stephen filed a final report for Roy's estate. The court accepted the report and discharged Stephen as executor.

¶ 7 Lucille Ficklin passed away in 2016. Stephen was executor of Lucille's estate. As executor, Stephen executed a deed transferring the 113-acre tract of land that was previously contained in Trust 104 out of the Ficklin Family Trust and to himself without notice to his siblings.

¶ 8 When they discovered the transfer, Russell and Katherine filed a motion to set aside the deed in Lucille's probate action. On January 18, 2018, the court issued an order finding that the 113-acre tract contained in Trust Number 104 had never been validly transferred into the Ficklin Family Trust, so the deed from the family trust to Stephen had no effect. The court further found that Trust 104 remained in existence, retained legal title to the disputed tract and that the land remained an unprobated asset of Roy's estate.

¶ 9 As a result, on January 25, 2018, Stephen filed a petition to reopen Roy's estate. On February 13, 2018, Russell and Katherine filed a motion to dismiss the petition. On March 5, 2018, the trial court granted Stephen's petition. On May 3, 2018, Russell and Katherine filed an answer and affirmative defenses to Stephen's petition to reopen Roy's estate. On that date, the court reaffirmed its March 5, 2018 order and ruled that Roy's estate was properly reopened based on a "newly discovered asset." On May 31, 2018, Russell and Katherine filed a motion to vacate the order reopening the estate.

¶ 10 On June 8, 2018, Stephen filed an inventory and final accounting, stating that the disputed tract of land was distributed to him on April 5, 2018, through a warranty deed. On the same date, Stephen filed a final report. On June 25, 2018, the trial court denied Russell and Katherine's motion to vacate. Objections to Stephen's final report were due on July 16, 2018, and a hearing was scheduled for July 30, 2018, on the final report and objections thereto. On July 17, 2018, Russell and Katherine filed their notice of appeal, appealing the trial court's orders of

March 5, 2018, May 3, 2018, and June 25, 2018. On July 20, 2018, Russell and Katherine filed objections to Stephen’s final report.

¶ 11

II. ANALYSIS

¶ 12

“Appellate court jurisdiction is limited to reviewing a final judgment, which terminates the litigation and disposes of the parties’ rights on either the controversy or some definite and separate part of it.” *Baldassone v. Gorzelanczyk*, 282 Ill. App. 3d 330, 333 (1996). Illinois Supreme Court Rule 303 requires that a notice of appeal be filed within 30 days after the entry of a final judgment. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). But, if a timely posttrial motion is filed, then the time for filing the notice of appeal is extended to 30 days after the entry of the order disposing of the posttrial motion. Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017). Compliance with the deadlines for appeals is mandatory and jurisdictional. *Martin v. Cajda*, 238 Ill. App. 3d 721, 728 (1992).

¶ 13

Illinois Supreme Court Rule 304(b)(1) allows for an appeal from a “judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.” Ill. S. Ct. R. 304(b)(1) (eff. March 8, 2016). The committee comment to Rule 304(b)(1) states that the rule “applies to orders that are final in character although entered in comprehensive proceedings that include other matters.” Ill. S. Ct. R. 304(b)(1), Committee Comments (rev. Feb. 2010). Examples include “an order admitting or refusing to admit a will to probate, appointing or removing an executor, or allowing or disallowing a claim.” *Id.*

¶ 14

However, an order reopening an estate is not a final order under Rule 303 or 304(b)(1). *In re Estate of Carlen*, 2015 IL App (5th) 130599, ¶¶ 13, 15. An order reopening an estate does not finally determine the rights or status of the parties. *Id.* ¶ 15. Rather than concluding an action,

it resurrects an estate that has been closed, sometimes for years. See *id.* ¶ 13. The reopening of an estate begins “a flurry of motion activity requiring resolution by the court.” *Id.* The time to appeal an order reopening an estate is within 30 days of the court ruling on the last matter pending in the estate. See *id.* ¶ 16.

¶ 15 Here, the trial court entered its order reopening Roy’s estate on March 5, 2018, and reaffirmed that order on May 3, 2018. Those orders were not final and appealable under Supreme Court Rules 303 or 304. See *id.* ¶¶ 13, 15. Thus, this appeal is premature. All issues have not been resolved in this case. Since a final report has not been approved, there is no final judgment, and this court has no jurisdiction to hear this appeal. See *Hooks v. Bonner*, 187 Ill. App. 3d 944, 948 (1989) (order approving final report is a final judgment).

¶ 16 III. CONCLUSION

¶ 17 We dismiss this appeal for lack of jurisdiction.

¶ 18 Appeal dismissed.