

NOTICE
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2019 IL App (5th) 170428-U

NO. 5-17-0428

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> ESTATE OF LITTLE PONY EAGLE,)	Appeal from the
Decedent)	Circuit Court of
)	Madison County.
(Two Star Eagle, Petitioner-Appellant, v.)	
Monica Star Jerrells, Independent)	No. 13-P-31
Administrator, Respondent-Appellee).)	
)	Honorable
)	Clarence W. Harrison II,
)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court. Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court’s finding of “good cause” for an administrator’s failure to disburse all of an estate’s personal property before the expiration of the two-year period following the issuance of her letters of office was not against the manifest weight of the evidence; the circuit court’s partial award of attorney fees to a beneficiary of the estate was not against the manifest weight of the evidence.

¶ 2 The issues in this case stem from the administration of the estate of the decedent, Little Pony Eagle (Pony). Pony died intestate and had two sisters as his only heirs: Two Star Eagle (Two Star) and Eagle Feather Barker (Eagle Feather). The circuit court appointed Eagle Feather’s daughter, Monica Star Jerrells, to serve as the independent administrator of Pony’s estate. The court later terminated the independent administration

upon Two Star's request and supervised the administration of the estate through the close of the estate.

¶ 3 In the proceedings below, Two Star alleged that Jerrells breached her fiduciary and statutory duties in administrating the estate by, among other things, failing to timely disburse the estate's assets to the heirs. On appeal, Two Star argues that the circuit court erred in refusing to order Jerrells to pay interest to the estate pursuant to section 24-10 of the Probate Act of 1975 (Probate Act) due to her failure to timely distribute the estate's assets. See 755 ILCS 5/24-10 (West 2016). In addition, Two Star argues that the circuit court erred in failing to order Jerrells to pay all of her attorney fees that she incurred allegedly due to Jerrells's breaches of her fiduciary and statutory duties. For the following reasons, we affirm.

¶ 4 **BACKGROUND**

¶ 5 Prior to Pony's death, in 2010, the circuit court adjudicated him to be a disabled adult and appointed Two Star's son, Lance Demond, as the guardian of his person and estate. Pony died intestate on October 12, 2012, at the age of 89, leaving Two Star and Eagle Feather as his only heirs. On January 3, 2013, Demond filed a final accounting and inventory of the guardianship estate. Demond's guardianship accounting listed the following assets as part of Pony's guardianship estate:

- (1) residential real estate located at 2009 Dixon Court in Godfrey, Illinois;
- (2) jewelry;
- (3) \$69,627 in cash located in a safety deposit box;
- (4) two vehicles;

- (5) two U.S. Bank accounts (#4682 and #9912);
- (6) a First Clover Leaf Bank money market account;
- (7) an Associated Bank certificate of deposit (CD);
- (8) a Liberty Bank individual retirement account (IRA);
- (9) four Liberty Bank CDs (#54535, #54538, #55144, #55192);
- (10) a U.S. Bank CD;
- (11) 717.362 shares of AT&T stock;
- (12) 131.85 shares of Praxair, Inc., stock; and
- (13) 102.732 shares of Dow Chemical stock.

¶ 6 On January 18, 2013, Jerrells filed a petition for letters of administration alleging that the approximate value of Pony's estate was \$125,000 in real estate and \$275,000 in personal property. Her estimate was based on Demond's guardianship accounting. Eagle Feather and Two Star consented to Jerrells serving as the independent executor of Pony's estate, and the circuit court issued Jerrells's letters of office on the same day.

¶ 7 In January 2013, Jerrells met with Demond, who transferred what he believed to be the guardianship estate's assets to Jerrells's possession and control, including keys to Pony's house, keys to his two vehicles, his jewelry, and his financial accounts. Jerrells opened a probate checking account and deposited the \$69,627 in cash that had been in Pony's safety deposit box into the estate's checking account. She also sold Pony's two vehicles for \$9000 and deposited those funds into the estate's checking account. The record indicates that Boeing reclaimed the funds in one of the U.S. Bank accounts

(#9912) for a “pension reimbursement” and that Jerrells deposited the funds from the other U.S. Bank account (#4682) into the estate’s checking account.

¶ 8 Jerrells determined that Pony had named Two Star as the beneficiary of the First Clover Leaf Bank money market account and the Associated Bank CD. Therefore, she determined that those assets were not estate assets and contacted Two Star to arrange for these accounts to be transferred directly to Two Star.

¶ 9 Jerrells had to correct two mistakes that Demond made while he was Pony’s guardian with respect to the Liberty Bank IRA and one of the Liberty Bank CDs (#55192). Demond noted these mistakes in his guardianship accounting. First, with respect to the IRA, prior to his disability, Pony had initially established the IRA at Associated Bank with no designated beneficiary. During the guardianship, Demond transferred the IRA to Liberty Bank and mistakenly named Two Star as a beneficiary to the account. The IRA should have had no designated beneficiary at the time of Pony’s death.

¶ 10 Second, Pony also had a CD at Associated Bank in which he had named Two Star as the designated beneficiary. During the guardianship, Demond transferred the CD to a Liberty Bank CD (#55192) and mistakenly failed to include any beneficiary designation. Jerrells had to correct this mistake and see that Two Star was designated as the beneficiary of that CD. Demond stated in his final accounting that “[a]djustments will have to be made to return the proceeds of these two accounts to accomplish the intent as established by Little Pony prior to his disability.”

¶ 11 To correct Demond's mistakes, in July 2013, Jerrells had her attorney prepare a "family settlement agreement" that Two Star and Eagle Feather signed for purposes of changing the beneficiaries of the Liberty Bank IRA and CD in accordance with Pony's intent. The agreement provided Two Star with preferential distribution of the CD and provided that the IRA would become an asset of the estate to be distributed fifty-fifty between Two Star and Eagle Feather. The proceeds in the IRA equaled \$67,745.56, and Jerrells distributed the proceeds directly to Two Star and Eagle Feather on September 20, 2013.

¶ 12 The family settlement agreement also provided that Two Star would receive the distribution of the Liberty Bank CD (#55192) upon the final distribution of the estate's assets. In February 2014, however, Two Star requested the immediate distribution of the Liberty Bank CD (#55192). Jerrells, therefore, had her attorney prepare an amendment to the family settlement agreement to facilitate this immediate transfer. On February 14, 2014, Two Star and Eagle Feather signed the amendment to the family settlement agreement, and on March 3, 2014, Jerrells distributed the proceeds of the Liberty Bank CD (#55192) in the amount of \$43,899.17 to Two Star.

¶ 13 Also in 2013, Jerrells attempted to obtain and liquidate the 102.732 shares of Dow Chemical stock that Demond had listed in his final guardianship accounting and inventory. However, Jerrells learned that in March 2012 (seven months before Pony's death) the stock shares escheated to the State of Delaware. On July 19, 2013, Jerrells received a letter from Compushare directing her to contact Delaware's "Department of Finance, Division of Revenue, State Escheator" to inquire about the escheated shares.

Jerrells, therefore, contacted Delaware in an effort to claim the stock shares. She requested shares in the names of L. Pony Eagle and Hazel R. Eagle. On March 7, 2014, she received correspondence from the Delaware's department of finance, unclaimed property division, which informed her that there were no listings matching the names that she had submitted.

¶ 14 Demond's inventory of the guardian estate included Pony's residence in Godfrey, Illinois. Jerrells and Two Star, therefore, both initially believed that the house was an estate asset. Jerrells undertook efforts to clean out the house and sell the personal property in the house. Between April 2013 and December 2013, she held yard sales on 13 different days in an effort to sell the estate's personal property. She deposited over \$6200 in proceeds from these sales into the estate's bank account. At a September 1, 2014, case management conference, Jerrells reported that the real estate had been listed for sale but had not yet sold.

¶ 15 Jerrells's attorney appeared in court for a status conference on January 16, 2014, and the court ordered the case to be reset for further status conference at a later date. On September 1, 2014, the circuit court entered an order indicating that the matter was before the court on a case management conference. The court wrote, "Real estate has been listed for sale, but has yet to sell." The court reset the matter for further case management conference in 90 days.

¶ 16 In a correspondence dated October 17, 2014, Two Star's attorney wrote to Jerrells's attorney, stating that the residence was part of the estate and questioning why the residence had not been sold. Jerrells later explained to the court that she initially

attempted to sell the real estate on her own, but was unsuccessful. In the attorney's letter, Two Star's attorney also asked for information concerning when the estate's remaining assets would be distributed and the estate closed. The attorney did not ask Jerrells to make any interim or final distribution of any of the other assets of the estate at that time.

¶ 17 January 18, 2015, marked the two-year anniversary of the court issuing Jerrells's letters of office.

¶ 18 The case was scheduled for a status hearing to be held on January 27, 2015. In a letter addressed to the circuit court dated January 26, 2015, Jerrells's attorney reported that Jerrells was in "the process of liquidating estate assets, specifically, the real estate that is part of the estate. Therefore, additional time [was] needed to allow for the sale of the real estate and final liquidation of assets." Jerrells's attorney asked the court to remove the case from the January 27 docket and reset the case in 90 days. The court, therefore, reset the status hearing to April 6, 2015. Nothing in the record indicates that Two Star objected to the rescheduling of this status hearing or otherwise requested an interim distribution of the other assets of the estate at that time.

¶ 19 On April 1, 2015, Jerrells's attorney wrote the circuit court to again inform the court that Jerrells was still in the process of liquidating assets of the estate, "specifically, the real estate that is part of this estate." The attorney requested the status hearing to be rescheduled in 90 days. Again, there are no communications in the record from Two Star or her attorney at that time with respect to any aspect of the ongoing independent administration of the estate.

¶ 20 On April 29, 2015, Two Star’s attorney filed an entry of appearance in this case. She did not file any pleadings or motions on Two Star’s behalf at that time, and the record does not reflect any communications between Two Star and Jerrells or their attorneys.

¶ 21 On May 12, 2015, Jerrells hired a realtor to sell Pony’s residence who located a buyer. On June 9, 2015, in reviewing the title search on the property, Jerrells and her attorney first learned that the property was not an estate asset but was held in a trust and that Two Star would not receive any proceeds from the sale of the house. Pony had named Jerrells and her sister as the beneficiaries of the trust. Jerrells’s attorney informed Two Star’s attorney the same day Jerrells learned this information. The proceeds from the sale of the residence were deposited into a trust bank account.

¶ 22 After learning that the residence was not an estate asset, on June 15, 2015, Two Star filed a petition to terminate the independent administration of Pony’s estate. The circuit court conducted a hearing on Two Star’s petition on August 31, 2015, and granted the petition “for good cause shown.” The record does not include a transcript of this hearing.¹

¶ 23 On August 31, 2015, Two Star filed a petition for an estate inventory and accounting. In her petition, Two Star alleged that, upon information and belief, Jerrells

¹Section 28-4(a) of the Probate Act provides that the court “shall” terminate independent administration “[u]pon petition by any interested person.” 755 ILCS 5/28-4(a) (West 2016). The court must find “good cause” only if the decedent’s “will, if any, directs independent administration.” *Id.* § 28-4(a)(1). Two Star’s petition did not allege “good cause” for terminating the independent administration; she only alleged that she was an interested person and that she was requesting the termination.

had improperly distributed some estate property.² Two Star wanted the court to order Jerrells to provide an inventory of the estate's assets and an accounting of the assets that she had received and distributed. In the motion, Two Star also alleged that more than two years had passed since the issuance of Jerrells's letters of office and that there was "no good cause for such delay in proper distribution of estate property." Two Star requested that Jerrells "be charged with interest at the rate of 10% per year on the fair market value of all the personal estate that [had] come into her possession or control and [had] not been properly paid out or distributed" as set forth in section 24-10 of the Probate Act (755 ILCS 5/24-10 (West 2014)).

¶ 24 The court conducted a hearing on Two Star's petition for an estate inventory and accounting on October 13, 2015. At the conclusion of the hearing, the court directed Jerrells to file an inventory within 45 days and an accounting within 90 days.

¶ 25 On November 19, 2015, Jerrells filed her inventory of the estate, listing the following assets of the estate:

- (1) jewelry valued at \$8183;
- (2) Liberty Bank CD (#54538) valued at \$62,129.11;
- (3) Liberty Bank CD (#54535) valued at \$28,258.56;
- (4) Liberty Bank CD (#55144) valued at \$20,716.98;
- (5) U.S. Bank checking account (estate's checking account) valued at \$69,752.42;

²Nothing in the record establishes that Jerrells made any improper distributions of any assets of the estate. The circuit court did not make any findings that any improper distributions had occurred, and no evidence was presented to prove this factual allegation.

- (6) AT&T stock valued at \$30,462.88;
- (7) Praxair, Inc., stock valued at \$11,949.16; and
- (8) Dow Chemical stock valued at \$3200.

¶ 26 In a footnote, Jerrells noted that her efforts to reclaim the escheated Dow Chemical stock had been unsuccessful. With respect to the Praxair, Inc., stock, the record includes a September 1, 2015, statement from Wells Fargo that showed only 116 shares of Praxair, Inc., stock; 30 additional shares were not included in Pony's investment portfolio and had no physical stock certificate. At some point, Jerrells began preparing paperwork to recover these 30 shares, but the record does not disclose when her efforts began.

¶ 27 Jerrells estimated that the value of the estate's assets on November 19, 2015, was \$234,652.11.

¶ 28 The day after she filed her inventory, on November 20, 2015, Jerrells filed a motion requesting court approval for the sale of the stock remaining in the estate and the estate's jewelry. The motion alleged that Jerrells would place the proceeds of the sales in the estate's account for further distribution upon approval by the circuit court. On December 2, 2015, the circuit court granted Jerrells's motion to sell the assets. However, on December 7, 2015, Two Star filed an objection to the sale of the assets, stating that she would prefer a division and in-kind distribution of the stock and that she would like to receive the jewelry as part of her distribution. Alternatively, she requested that the jewelry be divided between her and Eagle Feather. The circuit court vacated its order authorizing the sale of assets pending a hearing on Two Star's objection.

¶ 29 Two Star also filed an objection to Jerrells's estate inventory, raising inconsistencies between Jerrells's inventory and the assets that Demond had listed in his guardianship accounting and inventory. Nothing in the record indicates whether Two Star or her attorney attempted to get any clarification of the discrepancies between the inventories from Jerrells or her attorney outside of litigation. Two Star also objected to Jerrells's valuation of the estate's jewelry.

¶ 30 At a January 19, 2016, hearing, the parties agreed that Jerrells would file an accounting by January 22, 2016. On January 22, 2016, Jerrells timely filed an interim accounting that provided additional detail and clarification concerning the estate's assets, disbursements, and distributions, which clarified the differences between her inventory and the guardianship's inventory. In this interim accounting, Jerrells reported, among other things, the sale of the vehicles; the proceeds from the multiple yard sales and other efforts to liquidate personal property; disbursements for various purposes including utilities, insurance, and taxes; and the deposit of the cash from the safety deposit box into the estate's checking account. Jerrells also listed the value of the estate's jewelry as \$19,618.

¶ 31 On March 26, 2016, the parties' attorneys appeared for a case management conference and reported that the parties were undertaking efforts to "resolve the issues of the estate."

¶ 32 At some point undisclosed in the record, Jerrells either lost or inadvertently disposed of the estate's jewelry. She personally reimbursed the estate \$7943.33 for this mistake.

¶ 33 At a case management conference on June 6, 2016, the court again continued the matter for another 60 days without any objection noted in the record. On that same day, Two Star filed a petition to remove Jerrells as the estate administrator. Two Star alleged that, from January 2013 until January 2016, “Jerrells withheld and did not share any information with [her] regarding the estate inventory or the estate’s transactions” and that Jerrells had failed to timely distribute estate funds. She also alleged that Jerrells had lost the estate’s jewelry, distributed property to persons other than the heirs of the estate, failed to safe-keep estate assets, failed to obtain and maintain adequate insurance for the loss or destruction of estate property, failed to open an interest-bearing checking account, had “intentionally and unnecessarily delayed distribution of” the estate’s assets, acted in bad faith, and abused her discretion in managing the estate’s assets.

¶ 34 In addition to requesting the removal of Jerrells as the administrator, Two Star again asked the court to order Jerrells to pay 10% interest per year for the fair market value of all personal estate that had come into her possession or control but had not been properly paid out or distributed as set forth in section 24-10 of the Probate Act (755 ILCS 5/24-10 (West 2016)). She also asked the court to, among other things, enter a judgment against Jerrells personally for the value of the missing jewelry and to order Jerrells to pay her attorney fees.

¶ 35 The court had scheduled a hearing on Two Star’s petition to remove Jerrells as the estate’s administrator to be held on August 8, 2016. On that day, “[b]y agreement of the parties,” the court rescheduled the hearing to September 12, 2016.

¶ 36 On September 12, 2016, the circuit court conducted a hearing on Two Star's request to remove Jerrells as the estate's administrator. The record does not include a transcript of this hearing. At the conclusion of the hearing, the circuit court entered an order requiring Jerrells to provide Two Star with bank statements, accountings of specific CDs and the IRA, stock statements from Wells Fargo, insurance policies with respect to the missing jewelry, and an updated interim accounting. The court continued the hearing on Two Star's petition until October 17, 2016.

¶ 37 At the October 17, 2016, hearing on Two Star's petition to remove Jerrells as the administrator, Two Star agreed that Pony's house and the personal property located inside the house were property of a trust and not the estate. Also, Jerrells's attorney confirmed that Jerrells had either lost or had inadvertently discarded the estate's jewelry and that Jerrells had refunded the estate \$7943.33, representing what Jerrells believed was the value of the jewelry. Two Star objected to Jerrells's valuation of the lost jewelry, noting that there was a January 22, 2016, appraisal that valued the jewelry in excess of \$19,000. The court considered different appraisals of the jewelry submitted by the parties and ordered Jerrells to pay an additional \$5500 to the estate for the lost jewelry.

¶ 38 With respect to Two Star's request to remove Jerrells as the administrator, the court stated that it did not believe that the best option for the estate was to appoint a new personal representative to start over with a new accounting. The court believed that the estate was close enough to a final resolution that they could resolve any of the outstanding issues without removing Jerrells. The court also noted that Two Star's request for removal included a request that the court order the distribution of the estate's

assets. Jerrells's attorney stated that there were still outstanding liabilities that needed to be paid but the estate could pay out approximately \$95,000 in value to each heir at that time.

¶ 39 The parties agreed to a \$95,000 value distribution to each heir. Therefore, the circuit court ordered Jerrells to liquidate the three remaining CDs and pay the proceeds from the largest CD to Two Star and the proceeds from the two smaller CDs to Eagle Feather and to issue a separate check to equalize the value received between the two heirs. The court also ordered Jerrells to transfer half of the estate's stock to Two Star and the other half to Eagle Feather. The court ordered Jerrells to file a final report within 30 days.

¶ 40 After the October 17, 2016, hearing, Jerrells distributed the remaining CDs to Two Star and Eagle Feather and distributed a cash equalizing payment to Eagle Feather. On November 9, 2016, Jerrells equally divided the AT&T stock and the Praxair stock between Two Star and Eagle Feather and equally distributed \$2101 in cash that had accumulated in the Wells Fargo stock account. At that time, Jerrells was still in the process of completing the paperwork to obtain the 30 additional shares of Praxair stock.

¶ 41 On November 16, 2016, Jerrells filed a report with the circuit court, reporting that she had complied with the circuit court's October 17, 2016, order with respect to distributing assets and reimbursing the estate an additional \$5500 for the lost jewelry. She requested an additional 30 days to file her final report, noting that Two Star's attorney consented to the request for an additional 30 days. Jerrells also noted that obtaining the missing 30 shares of Praxair stock was "more time consuming than originally anticipated"

and that she was waiting on additional information needed to submit the paperwork for the transfer of the shares. The circuit court allowed Jerrells an additional 30 days to complete the final report.

¶ 42 On December 16, 2016, Jerrells filed an accounting and plan of distribution. She alleged that, as of the date of the accounting, the estate had assets worth \$72,359.69. She noted in the document that the paperwork needed to liquidate the missing 30 shares of Praxair, Inc., stock was “in process.” She listed the estate’s expenses and requested permission to pay the expenses upon approval of the accounting. The expenses included her attorney fees in the amount of \$21,270.67 and an administrator fee in the amount of \$2500.

¶ 43 Two Star filed an objection to Jerrells’s accounting and plan for distribution. She alleged that Jerrells had improperly included trust expenses in the estate’s accounting and that those expenses should not be paid by the estate. She also objected to the estate paying Jerrells’s attorney fees, arguing that the fees were incurred while Jerrells unreasonably prolonged the administration of the estate and the distribution of estate assets. Two Star also objected to payment of \$2500 to Jerrells as an administrator fee.

¶ 44 On February 21, 2017, the circuit court conducted a hearing on all pending matters, including Two Star’s objections to Jerrells’s accounting and plan for distribution. At the hearing, Two Star’s attorney questioned Jerrells about the missing shares of the Dow Chemical stock which Jerrells had listed as having no value. Jerrells explained that she could not obtain the stock. At the conclusion of the hearing, the court ordered Jerrells

to transfer whatever interest the estate had in the Dow Chemical stock to Two Star so that Two Star could attempt to obtain the stock as the owner of the stock.

¶ 45 With respect to the Praxair, Inc., stock, Jerrells informed the court that she obtained the necessary paperwork for the reissuance of the Praxair, Inc., stock, but Two Star had delayed providing her signature on the paperwork for 3½ months. At the hearing, Two Star signed the paperwork needed to have the 30 shares of Praxair, Inc., stock issued to the estate, and Two Star's attorney stated, "we haven't raised any issues regarding [the Praxair stock]."

¶ 46 Two Star's attorney told the court that Jerrells's final accounting did not include income that was reported on the estate's tax returns. Jerrells's attorney told the court that he did not know that was going to be an issue and that he could present information to explain the discrepancy. The court ordered Jerrells to provide Two Star's attorney with this information.

¶ 47 With respect to Jerrells's request that the estate pay her attorney fees, Two Star argued that some of the requested attorney fees were related to Pony's residence, which was an asset of the trust, not the estate. Two Star also argued that much of the fees were caused by Jerrells's breaches of her fiduciary duties and that Jerrells, not the estate, should be responsible for payment of those fees. The court gave Two Star 30 days to review the fees and file any specific objections she had.

¶ 48 At the hearing, the court addressed Jerrells's request for \$2500 in administrator fees and Two Star's objection due to Jerrells's alleged breach of fiduciary duty. In objecting to Jerrells's request for an administrator fee, Two Star's attorney emphasized

Two Star's advanced age, that the estate had been continuing for four years, and that Two Star had incurred legal fees "just to pursue and enforce distribution."

¶ 49 The court disagreed with Two Star's claim that Jerrells had breached her fiduciary duty. Instead, the court found that, at most, the administration of the estate involved "benign neglect." The court stated that it understood Two Star's argument with respect to how the estate should have been handled versus the way it was handled. The court stated that it would not award Jerrells any administrator fees, which, the court concluded, was to Jerrells's benefit. The court explained that, if it granted Jerrells's fees as an administrator, it would have to hold her to a higher standard. The court stated, "so by leaving [Jerrells] as an uncompensated administrator, it essentially says they have to prove the highest violation in order to recover anything as far as tort goes or recovery of damages, other than concerns regarding the estate itself."

¶ 50 The court agreed that Two Star could "make a case that it [had been] an inordinate length of time for what appear[ed] to be relatively simple assets." The court stated that it was "very difficult to suggest how all the substantial assets other than the real estate had to be held as long as they were." The court told Jerrells that \$2500 "doesn't cut it with regard to the liability that it opens you up to with regard to it." The court stated that it did not believe everything was done with the estate as it should have been but that nothing was done with malicious intent. The court believed that there had been some neglect or negligence in administering the estate but that there had been no conversion of estate funds by the administrator.

¶ 51 At the conclusion of the hearing, the court ordered the parties to file position statements and proposed orders with respect to all of the remaining issues.

¶ 52 On March 22, 2017, Two Star requested an additional 30 days to file her position statement. The court granted her request.

¶ 53 On April 21, 2017, Two Star filed her position statement, renewing her request that the court order Jerrells to pay 10% interest per year on the fair market value of the personal estate due to delay in the distribution of the estate's assets. Two Star requested the court to charge Jerrells with \$46,930.42 in interest to be distributed to her "to offset the attorney fees and costs [she incurred] to enforce her rights as beneficiary, force distribution to beneficiaries, and secure and preserve estate assets."

¶ 54 Two Star argued that Jerrells should be "surcharged" because the estate "was a relatively simple and straightforward estate ready for immediate probate administration and distribution" but Jerrells took "more than 4 years to administer the estate." Two Star argued that a transfer of the estate's jewelry for an in-kind distribution could have been accomplished within one month, but Jerrells did not distribute the jewelry and, almost 3½ years after the estate was opened, she lost or threw away the jewelry. Two Star also alleged that Jerrells improperly used estate funds for purposes of the trust in which she was named as a trust beneficiary. Two Star alleged that Jerrells had "cheated" and "taken advantage" of her. She emphasized her advanced age (84 at the time of the filing of the position statement) and noted the anxiety she experienced because of the possibility of "dying before receiving her estate interest from her brother."

¶ 55 On May 4, 2017, Jerrells’s attorney filed a response to Two Star’s position statement. Much of Jerrells’s response focused on the justification for her requested attorney fees as an administrative expense. The attorney outlined complications that arose during the administration of the estate that justified the fees, including Demond’s inaccurate guardianship estate inventory, preparation of the family settlement agreement and the amendment to the agreement, confusion over the real estate being included as an estate asset, and efforts to recover the Praxair and Dow Chemical stock.

¶ 56 With respect to the delay in the distribution of assets, the attorney noted that Jerrells filed a motion to sell assets on November 20, 2015, “so that final distributions could be made and the [e]state closed.” However, upon Two Star’s request, the court vacated its order granting authority to sell assets, which prohibited distributions until resolution of objections. “Much of the year 2016,” the response continued, “was spent providing [Two Star] with information explaining the status of the estate and explaining the plan for final distributions.” The attorney noted that the court filings in the record “reflected these efforts which unfortunately, resolved very little.”

¶ 57 On May 26, 2017, after considering the parties’ position statements, the circuit court entered an order on the remaining issues without any further hearing. The court held that Jerrells had satisfied the court’s prior order with respect to providing Two Star with information about the estate’s earnings and charges and providing the court with an update about the ordered stock distributions. The court held that Jerrells was personally responsible for \$11,402.02 of her attorney fees “as a proportional amount considering the interaction between the trust and the estate (particularly the real estate).” The court

ordered the estate to pay the remaining balance of Jerrells's attorney fees in the amount of \$10,093.29.

¶ 58 With respect to Two Star's request that Jerrells pay the estate interest, the court ruled as follows:

“The request for a charge of interest against the uncompensated personal representative is hereby denied. The court takes judicial notice of 10-P-420 (the prior guardianship of the decedent Little Pony Eagle) including the ‘Assets Currently in the Estate of Little Pony, Deceased’ with the Final Accounting Inventory filed January 3, 2013. The Court specifically notes the inclusion of the subject real estate.”

¶ 59 The court approved Jerrells's December 16, 2016, accounting and plan of distribution, subject to the court's rulings, and ordered her to submit “an updated Accounting and Plan of Distribution showing payments made and distributions to be made” consistent with the court's order.

¶ 60 On June 26, 2017, Two Star's attorney filed an affidavit of attorney fees in which the attorney argued that a judgment should be entered against the estate for Two Star's legal fees and costs in the amount of \$42,588.60.

¶ 61 Two Star also filed a motion to reconsider the court's May 26, 2017, order, asking the court to reconsider its denial of her request to require Jerrells to pay interest. She requested, alternatively, that the court order the \$42,108.40 interest payment as an equitable remedy “to offset/reimburse her for attorney fees and costs incurred by her due to the actions of the personal representative.” In making her request, she emphasized her

claim that Jerrells failed in performing her fiduciary duties as the estate’s administrator and argued that Jerrells’s breach of her fiduciary duty required her to employ separate counsel. She concluded that if the court did not allocate the interest payment to her, the court should “order the estate to pay her attorney fees and costs incurred in this matter.”

¶ 62 On October 6, 2017, the circuit court entered an order on Two Star’s motion to reconsider, granting it, in part. With respect to Two Star’s request that Jerrells pay interest, the circuit court again denied the request, ruling as follows:

“Contrary to argument, this interest provision has not been interpreted as automatic. Historically, the section has been considered punitive and been construed accordingly. Even the stream-lined current incarnation of the act provides a defense of good cause. On-going estate litigation has been previously considered good cause. Likewise, the Motion to Reconsider fails to address the ‘fumbled’ Guardianship hands-off, which was not a result of any action by [Jerrells]. *** The confused accounting for the estate of [Pony] (who is the decedent in the case at bar) contributed greatly to the delay in the present case. The delay is not properly attributed to [Jerrells].”

¶ 63 With respect to Two Star’s request for equitable relief in her motion to reconsider, the court ruled as follows:

“[B]uried within the reconsideration motion are several references to the jewelry lost by the personal representative. This loss was entirely the personal representative’s responsibility. As the prior orders and accounting reflect, the personal representative has had to reimburse the estate for the value of the jewelry.

While the cost of the lost asset has been recovered, the Objector Two Star Eagle is properly entitled to reimbursement from the representative of the estate for the jewelry-related attorney's fees, time, and costs. The Court finds that \$3,500.00 represents a reasonable attorney's fees with regard to litigation concerning the lost jewelry and orders [Jerrells] to pay Two Star Eagle that amount within 30 days."

¶ 64 Two Star now appeals the circuit court's judgment and argues that the court erred in failing to require Jerrells to pay interest and in failing to order Jerrells to pay all of her attorney fees.

¶ 65 ANALYSIS

¶ 66 I. Interest

¶ 67 We first address the circuit court's denial of Two Star's request that Jerrells pay interest. Two Star made her request pursuant to section 24-10 of the Probate Act, which reads as follows:

"At the expiration of a period of 2 years after the issuance of letters of office in a decedent's estate, the representative shall be charged with interest at the rate of 10% per year on the fair market value of all the personal estate which has come into his possession or control and has not been properly paid out or distributed, except for good cause shown." 755 ILCS 5/24-10 (West 2016).

¶ 68 The purpose of this provision is to serve as a penalty and "to make it unprofitable for executors and administrators to hold the funds of an estate in their hands, and to use them in their own business for their own benefit instead of distributing such funds to those entitled thereto." *In re Estate of Kapraun*, 21 Ill. App. 2d 231, 246 (1959). The

courts strictly construe this section of the Probate Act because it is penal in nature. *Id.* It does not set out any special procedure the administrator must follow in order to make a showing of “good cause.” *Id.* at 244. “As long as ‘good cause’, if any, is shown, by the record that would seem to comply with the statute.” *Id.*

¶ 69 In reviewing a trial court’s finding whether there was good cause for an administrator’s failure to distribute assets at an earlier time, “all reasonable presumptions are made in favor of the trial court, the appellant has the burden to affirmatively show the errors alleged, and the judgment will not be reversed unless the findings are clearly and palpably contrary to the manifest weight of the evidence.” *In re Estate of Vail*, 309 Ill. App. 3d 435, 438 (1999). Findings are against the manifest weight of the evidence only where the opposite conclusion is clearly evident, or where they are unreasonable, arbitrary, and not based on the evidence. *In re Estate of Kusmanoff*, 2017 IL App (5th) 160129, ¶ 83.

¶ 70 In denying Two Star’s request for interest, the court considered Jerrells’s entire effort on behalf of the estate after it appointed her as the independent administrator. The court noted that there were difficulties that arose during the independent administration of the estate including complications stemming from Demond transferring assets to the estate that did not belong to the estate, such as Pony’s residence, and complications arising from having to correct the errors that Demond made with respect to the designated beneficiaries of two assets.

¶ 71 The court found it significant that, when Jerrells obtained possession of the assets of the estate, Demond had transferred to her an IRA account that did not belong to the

estate. The account should have passed to Two Star outside of the estate, but Demond had mistakenly failed to identify Two Star as the account's beneficiary when he transferred the account to Liberty Bank. Jerrells had to correct this error and did so by preparing a family settlement agreement and a subsequent amendment to the agreement. Jerrells also had to address Demond's incorrect designation of Two Star as a beneficiary of one of the Liberty Bank CDs and facilitate the transfer of a CD and a money market account that were not estate assets. Jerrells facilitated the proper transfer of these assets to Two Star while acting as the independent administrator of the estate.

¶ 72 Jerrells also attempted to obtain the escheated Dow Chemical stock, and she processed the paperwork necessary to obtain the 30 shares of Praxair stock that were assets of the estate but were missing from Pony's brokerage account.

¶ 73 A considerable amount of Jerrells's efforts as the independent administrator centered on Pony's residence and the personal property contained within the residence. Over a nine-month period in 2013, Jerrells conducted yard sales on 13 different days in order to liquidate the personal belongings inside Pony's residence and deposited the revenue generated from these sales into the estate's checking account. Demond had listed Pony's residence as part of his estate, and everyone involved in this case believed that the residence was an estate asset, including Two Star. Therefore, by January 18, 2015 (two years after Jerrells was appointed administrator of Pony's estate), Jerrells had not distributed all of the estate's assets. However, as Two Star's attorney acknowledged, Jerrells had distributed a "significant portion of the estate *** to the beneficiaries." At the two-year mark, Jerrells was still in the process of liquidating estate assets, particularly the

real estate, so there could be a final distribution, and everyone involved was aware that Jerrells's was focused on liquidating the residence.

¶ 74 Importantly, nothing establishes that, during this two-year period, Jerrells ever refused or denied any requests by Two Star for any information with respect to the administration of the estate or refused or denied any requests for an interim distribution of any estate assets beyond what she had distributed. During this time period, Two Star requested Jerrells to distribute the proceeds of the Liberty Bank CD (#55192), and Jerrells had her attorney prepare the amendment to family settlement agreement to facilitate the immediate distribution of the CD's proceeds.

¶ 75 After the amendment to the family settlement agreement, nothing in the record evidences any further communications from Two Star until Two Star's attorney sent the October 17, 2014, letter in which the attorney described Two Star's concern about Pony's residence. Specifically, Two Star's attorney wrote, "It is my further understanding that, while a significant portion of the estate has already been transferred to the beneficiaries, [Two Star and Eagle Feather], the residence of Little Pony Eagle, to date, has neither been transferred, nor sold, nor being sold as for sale by owner." The October 17, 2014, letter did not request the immediate distribution of any of the remaining personal assets in the estate. See *In re Estate of Kapraun*, 21 Ill. App. 2d at 247 ("[N]one of the interested parties, including the present appellants' objectors, took any steps at all in the County Court to call the matter to the Court's attention and ask for a settlement and distribution, either final or interim.").

¶ 76 In the letter, Two Star’s attorney conveyed Two Star’s concern with respect to the delay of “the sale of the house” and asked Jerrells to provide the status and a timeline of the transfer of all of the estate property. In her brief, Two Star argues that “[n]one of the requested information was received,” but nothing in the record establishes this fact, and the circuit court did not make any findings that would support this factual claim.

¶ 77 The record does establish that, in October 2014, all of the parties believed that Pony’s residence was an asset of the estate, including Two Star and her attorney, and that all of the parties were aware that Jerrells was attempting to sell the asset for the benefit of the estate. The record indicates that Jerrells initially tried to sell the residence on her own, but later hired a realtor who located a buyer in June 2015. To complete the sale, a title search of the property was conducted, and, at that point, the parties (including Two Star) learned for the first time that Pony’s home and the personal property inside the home were owned by a trust and, therefore, were not part of Pony’s estate.

¶ 78 The next communication between Two Star and Jerrells contained in the record is Two Star’s petition to terminate independent administration, which she filed shortly after learning that the estate would not receive any proceeds from the sale of the residence and which the circuit court granted.

¶ 79 The circuit court considered the issues that Jerrells addressed before it terminated independent administration and concluded that the issues were beyond her control and, therefore, were good cause for not imposing an interest penalty under section 24-10 of the Probate Act. After reviewing the record, under the manifest weight of the evidence standard, we cannot reverse the circuit court’s finding that Jerrells’s efforts as the

independent administrator established sufficient “good cause” to justify the denial of Two Star’s request for penalty interest under section 24-10.

¶ 80 The court also considered Jerrells’s efforts after it terminated independent administration. The court noted that this period of the administration of the estate involved litigation initiated by Two Star that prolonged the final distribution of the estate’s assets.

¶ 81 The court granted Two Star’s petition to terminate independent administration on August 31, 2015. At that point, approximately two years and eight months had passed since the court had issued Jerrells’s letters of office as an independent administrator. After granting Two Star’s petition, Jerrells no longer had authority to exercise the independent administration powers contained in article XXVIII of the Probate Act, including authority to sell assets of the estate without leave of court. 755 ILCS 5/19-1(a) (West 2014); 755 ILCS 5/28-4(c) (West 2014). From that point on, the administration of the estate was supervised by the circuit court. 755 ILCS 5/28-4(b) (West 2014) (“After entry of an order terminating independent administration status, the representative shall be governed by all provisions of the Act applicable to the estate in supervised administration, and the order of termination shall direct the representative as to the time and manner for the performance of any acts (such as the filing of an inventory or account) which would have been required to be done earlier in supervised administration.”).

¶ 82 The record establishes that, after the court terminated independent administration, Jerrells timely complied with all of the circuit court’s orders with respect to the administration of the estate, including timely filing the estate’s inventory, providing an

accounting of previous disbursements of estate assets, and timely distributing estate assets in accordance with the circuit court's orders.

¶ 83 During the period of supervised administration, Two Star objected to many of Jerrells's efforts to close the estate. For example, Jerrells sought leave of court to sell the estate's stock and jewelry so she could deposit the proceeds into the estate's account "for distribution upon approval of [the circuit court]." The court initially granted the motion, but the court subsequently vacated that motion on Two Star's objection. Two Star also objected to Jerrells's estate inventory, noting the inconsistencies between the estate's and the guardianship's inventories, which required Jerrells to provide Two Star with additional information. In January 2016, Jerrells complied with the court's order to provide Two Star with additional detail concerning the distributions and disbursements of the estate's assets up to that date.

¶ 84 In 2016, the court scheduled several case management conferences that were continued, with no objections, as the parties made efforts to resolve the issues of the estate. In June 2016, Two Star sought to remove Jerrells as the estate's administrator, which would have further delayed the final distribution of the estate's assets, and the circuit court denied that request because of the unnecessary delay it would have caused. In October 2016, the court ordered Jerrells to distribute the estate's stock and CDs, and Jerrells timely complied with the court's order. In December 2016, Jerrells filed an accounting and plan for distribution, and Two Star again objected.

¶ 85 The court conducted a hearing on Two Star's objection in February 2017, and the court, among other things, ordered Jerrells to provide Two Star with additional

information concerning the estate's interest income. Jerrells timely complied with that order. Two Star disputed the estate's attorney fees, and the court allowed her additional time to review the fees and identify specific objections.

¶ 86 In denying Two Star's request for penalty interest, the court considered all of this litigation during the supervised portion of the administration of the estate. The circuit court correctly observed that "[o]n-going estate litigation has been previously considered good cause" under the statute. Courts interpreting section 24-10 of the Probate Act have noted that delays caused by estate litigation can provide a basis for denying penalty interest. In *In re Estate of Vail*, 309 Ill. App. 3d at 439, the court noted that litigation in that case delayed the distribution of estate assets and that the lower court could reasonably find that "there were inferences establishing good cause for not distributing assets of the estate sooner." *Id.* Also see *In re Estate of Lindberg*, 49 Ill. App. 3d 154, 156 (1977), where the court noted that "the respondent filed an objection to every attempt that the executrix made to close this estate and make distribution."

¶ 87 In the present case, after the court terminated independent administration, Two Star's motions and objections delayed the final distribution of the estate's assets. The circuit court presided over the litigation and found that the litigation, along with the issues Jerrells addressed as the independent administrator, constituted good cause for the extra time it took to close the estate. In view of all of these facts and circumstances in the record before us, we cannot find that the circuit court's denial of Two Star's request for interest under section 24-10 of the Probate Act is against the manifest weight of the evidence.

¶ 89 The next issue of contention that Two Star raises is that the circuit court abused its discretion in declining her request that Jerrells pay all of her attorney fees. The circuit court found that Two Star incurred \$3500 in attorney fees stemming from the lost jewelry and ordered Jerrells to pay Two Star that amount. Two Star argues that the circuit court should have awarded her all of her fees because she incurred the fees due to Jerrells's breach of her fiduciary duty. However, the court disagreed with Two Star's claim that Jerrells had breached her fiduciary duty, concluding that, at most, the administration of the estate involved "benign neglect."

¶ 90 We review the court's factual findings regarding breach of fiduciary duty under the manifest weight of the evidence standard. *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 373 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is "clearly evident" or if the finding is arbitrary and unreasonable and "not based on the evidence." *In re Estate of Michalak*, 404 Ill. App. 3d 75, 96 (2010).

¶ 91 The representative of an estate has a fiduciary obligation to all of the individuals having an interest in the decedent's estate, including heirs and creditors. *In re Estate of Lis*, 365 Ill. App. 3d 1, 9 (2006). "The purposes of administering an estate are to conserve the personal assets of the estate, including the collection of all debts due to the decedent; to pay all debts and taxes owed by the decedent and her estate; and to properly distribute the residue among the heirs at law according to the terms of the decedent's will or, absent a will, the statute of descent and distribution." *Id.* Generally, it is the duty of an administrator to perform these tasks and, in so doing, carry out the wishes of the decedent

and act in the best interest of the estate. *Id.* An administrator “must act with the highest degree of fidelity and with the utmost good faith but is required to have only the degree of skill and diligence as [the administrator] brings to his own personal business.” *Jewish Hospital of St. Louis v. Boatmen’s National Bank of Belleville*, 261 Ill. App. 3d 750, 768 (1994).

¶ 92 The parties have not cited, and we have not found, any cases where a breach of fiduciary duty was found in a situation similar to the facts of this case.

¶ 93 Two Star argues that Jerrells breached her fiduciary duty because Jerrells failed to promptly distribute the estate’s assets. However, for the reasons we have outlined above, the circuit court’s finding that there was “good cause” with respect to the timing of the distribution of the estate’s assets was not against the manifest weight of the evidence. For the same reasons, under the manifest weight of the evidence standard, we must affirm the circuit court’s finding that Jerrells did not breach her fiduciary duty with respect to the timing of the distribution of the estate’s assets.

¶ 94 As we explained, Jerrells encountered issues beyond her control during the period of independent administration, and nothing in the record establishes that she ever denied any requests for information concerning the estate or any requests for earlier distribution of estate assets. After the termination of independent administration, all of Jerrells’s actions were subject to approval by the court. Much of Two Star’s attorney fees were incurred after the circuit court began supervising the estate’s administration and supervising Jerrells’s actions as the administrator. These fees were incurred for litigation initiated by Two Star and which prolonged the final distribution of the estate’s assets.

¶ 95 Two Star argues that Jerrells breached her fiduciary duties with respect to preserving the estate's assets because she lost the estate's jewelry. It is undisputed that Jerrells was negligent in losing or accidentally disposing of the estate's jewelry. However, Jerrells reimbursed the estate for its loss stemming from this negligence, and the court ordered her to pay Two Star's reasonable attorney fees incurred because of the error. Nothing in the record compels us to reverse the circuit court's award to Two Star for the reasonable attorney fees she incurred due to the lost jewelry.

¶ 96 In her brief, Two Star argues that Jerrells failed to maintain detailed records of receipts and disbursements during the administration of the estate, failed to maintain an accounting, and failed to open an interest-bearing checking account for the estate, to the detriment of the estate and its beneficiaries. The circuit court did not make any factual findings to support these allegations, and nothing in the record allows us to reach these conclusions on appeal. In her brief, Two Star's citations to the record in support of these arguments are to allegations contained in her petition to remove Jerrells as the estate representative, not to evidence presented to the circuit court or findings made by the circuit court. In addition, the record indicates that, during the supervised administration of the estate, Jerrells timely complied with the circuit court's orders with respect to providing updated inventories and accountings. Although the court ordered Jerrells to provide additional information at times when Two Star objected to her filings, she timely provided the additional information as requested. These allegations, therefore, do not support Two Star's argument that Jerrells should pay all of her attorney fees.

¶ 97 We do note that, in denying Jerrells’s request for administrator’s fees, the circuit court stated that, because Jerrells was uncompensated, it would hold her to a lower standard than what it would require from a compensated administrator. On appeal, Two Star takes issue with this statement of the law. However, in affirming the circuit court’s decision, we need not determine whether uncompensated administrators are to be held to a lower level of accountability than compensated administrators. In addressing Two Star’s request for attorney fees, the circuit court focused on all of the facts of the case and determined that it would not be equitable for Jerrells to pay all of Two Star’s attorney fees. The circuit court supervised the administration of the estate beginning on August 31, 2015, and had before it sufficient facts from which it could find that Jerrells did not breach her fiduciary duty, except with respect to the admitted error that resulted in the lost jewelry, for which the court ordered compensation to the estate and Two Star. With respect to fees unrelated to the jewelry, the court stated, “Whatever equities lie, the Court finds it to be less than equitable to set all of [those] expenses at the feet of the personal representative.” After careful consideration of the circuit court’s findings and the record before us, we have been unable to find any reversible error in the circuit court’s equitable award of attorney fees.

¶ 98 CONCLUSION

¶ 99 For the foregoing reasons, we affirm the circuit court’s judgment.

¶ 100 Affirmed.