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SECOND DIVISION
June 25, 2013

No. 1-12-1891
2012 IL App (1st) 121891-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|------------------|
| <i>In re</i> ESTATE OF OLLIE C. STEAN, |) | Appeal from the |
| |) | Circuit Court of |
| Deceased |) | Cook County |
| |) | |
| (Paul S. Franciszkowicz, Special Administrator, |) | No. 2008 P 2817 |
| |) | |
| Petitioner-Appellee, |) | Honorable |
| |) | James G. Riley, |
| v. |) | Judge Presiding. |
| |) | |
| Donette Horton, |) | |
| |) | |
| Respondent-Appellant, |) | |
| |) | |
| and |) | |
| |) | |
| Francis X. Speh, Jr., |) | |
| |) | |
| Judgment-Debtor-Appellant.) |) | |

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Quinn concurred in the judgment.

ORDER

Held: Where undisputed facts showed that former estate administrator improperly took personal possession of estate assets, judgment against administrator on citation to recover assets was not against the manifest weight of the evidence. Sanctions against former administrator and her

attorney were not an abuse of discretion where administrator submitted false affidavit and attorney failed to properly investigate prior to filing affidavit and accompanying motion.

¶ 1 Respondent Donette Horton was, for a short time, the administrator of decedent Ollie C. Stean's estate, and she was also determined to be one of eight heirs to the estate. When the estate was closed, however, the circuit court determined that respondent had not only failed to distribute a large part of the estate to the heirs but had also spent hundreds of thousands of dollars of estate funds for her own purposes. After reopening the estate and appointing a special administrator, the circuit court also learned that respondent was not, in fact, an heir to the estate. The circuit court eventually entered judgment against respondent in the amount of \$374,613.57 on a citation to recover assets, as well as sanctions in the amount of \$14,370.90 against respondent and her attorney for filing false pleadings in connection with the heirship dispute. We affirm.

¶ 2 I. BACKGROUND

¶ 3 The probate proceedings in this case were lengthy and complex, but only a few key facts are relevant for this appeal. After decedent's death in April 2008, decedent's niece, Geneva Floyd, was appointed as administrator of his estate. Floyd also submitted an affidavit of heirship that indicated she was the only heir to the estate.

¶ 4 Respondent, however, also entered the case and claimed that she and her siblings were the rightful heirs to the estate. Respondent contended that decedent was her father. The record from this period in the case is incomplete, but it appears that after a significant amount of discovery and an evidentiary hearing, the circuit court sided with respondent. On May 21, 2010, the circuit court amended the order of heirship to remove Floyd as an heir and instead named

respondent and her siblings as the heirs to the estate. Floyd filed a motion to reconsider but withdrew the motion after settling her claim with the estate in October 2010.

¶ 5 Respondent was then appointed as the independent administrator of the estate. The order of heirship listed respondent, Cassandra Warmack, Lavell Warmack, Bennie Warmack, Debora Clark, Darnell Warmack, Sabrina Warmack, and Wesley Jr. Warmack (*sic*) as heirs to the estate. At the time of her appointment, the estate consisted of some real estate as well as cash assets of about \$489,000, which were at that time held in a bank account in the estate's name. Respondent distributed about \$25,000 each to six of the heirs (including herself), but apparently did not distribute anything to two other heirs whose whereabouts were unknown. Respondent also began making significant purchases with estate funds as well withdrawing cash from the estate account. It was later determined that, during her administration of the estate, respondent transferred \$200,000 of estate assets to her personal account and withdrew \$27,000 from the estate account in order to purchase a car for her daughter. Respondent also paid \$34,000 to her attorneys without giving the required written notice to the heirs and without obtaining their consent. The court was apparently unaware of all of this, and the estate was eventually ordered closed and respondent discharged as administrator on January 13, 2011.

¶ 6 Despite being discharged, respondent continued to deplete the estate. The same day that the estate was closed, respondent deeded decedent's residence to herself. Respondent also continued to withdraw funds from the estate account, including \$44,000 to purchase a second car and \$3,700 for electronic goods. Respondent also paid \$18,000 to her husband's company and \$4,700 to another company for improvements on the residence. In March and April of 2011, respondent withdrew another \$14,000 in cash.

¶ 7 By April 2011, however, two of the other heirs listed on the order of heirship realized that something was awry and petitioned the circuit court to reopen the estate. The circuit court appointed petitioner as a special administrator for the estate, and petitioner took control of the estate accounts and filed a citation to discover and recover assets against respondent.

¶ 8 Respondent retained new counsel to represent her in the citation proceedings, and counsel entered his appearance on June 7, 2011. Less than a month later, on June 29, 2011, respondent's counsel filed a motion to amend the order of heirship. In this motion, respondent's counsel contended that decedent was also known by the name Dee Collins, and that he had married Doris Jean Warmack, respondent's mother, on May 23, 1961. Doris had not been included in the original order of heirship, so respondent now sought to add her to the order. Attached to the motion was a certificate of marriage between Dee Collins and Doris Jean Warmack. There was also an affidavit from respondent attached to the motion, in which she attested that decedent was also known by the name Dee Collins, that she and her siblings were decedent's children, and that she was not aware of any divorce between her parents.¹

¶ 9 Petitioner filed a response to the motion to amend on July 18, 2011, and in that response petitioner provided numerous facts and supporting documents showing that decedent was not the same person as Dee Collins. Petitioner pointed out that decedent had been born on May 7, 1918, in Canton, Mississippi, and had married a woman named Julia McCain on June 2, 1943. There was no record of any divorce between decedent and Julia, which would necessarily make any later marriage by decedent void as a matter of law.

¶ 10 Moreover, petitioner pointed out numerous discrepancies between the documents provided by respondent in her motion. The 1961 marriage certificate between Collins and Doris

¹ The motion also contained an affidavit from Doris, who attested to the same facts. In a deposition held on September 19, 2011, however, Doris disavowed the affidavit and denied that any of material allegations were true.

listed Collins' age as 41, but petitioner noted that decedent would have been 42 at that time. The affidavit attached to the marriage license, which was executed by Collins, listed his date of birth as May 20, 1919, but decedent's birth certificate shows that he was born more than a year earlier. Similar discrepancies appear in other documents such as respondent's birth certificate, which lists her father as Dee Collins, not decedent. Despite these discrepancies, respondent and her attorney continued to argue that Dee Collins and decedent were the same person and that, because Collins was married to Doris, respondent, her mother, and her siblings were rightful heirs to the estate.

¶ 11 The circuit court finally learned the truth of the matter on October 27, 2011, when respondent's siblings (and purported heirs to the estate) Bennie Warmack, LaValle Collins,² and Cassandra Warmack appeared before the court. Bennie explained that decedent and Collins were different people. According to Bennie, Collins had married Doris but abandoned her and their children. It was only some time later that decedent began living with Doris, and he had raised the children as his own. Bennie told the court that Collins had stopped by the house from time to time over the years but had been run off by decedent. Bennie also confirmed that respondent had known and been in contact with Julia, decedent's wife, multiple times prior to decedent's death. (Decedent and Julia had apparently become estranged at some point, but the record does not explain either the reason or precisely when this occurred.) LaValle confirmed that decedent was not the same person as Collins, and that all of the children had been aware of this. Although present at this hearing, neither respondent nor her attorney cross-examined any of the witnesses.

¶ 12 So contrary to the allegations in her motion and affidavit, it became clear to the court that respondent knew that her claim that decedent and Collins were the same person was false. Given

² LaValle Collins may or may not be the same person as the Lavell Warmack who was named as a putative heir in the amended order of heirship.

the fact that there was no evidence that decedent had actually been married to Doris, the circuit court not only denied respondent's motion to amend the order of heirship to include Doris but vacated the original order of heirship entirely.³

¶ 13 At a hearing on March 14, 2012, the circuit court considered petitioner's motion for sanctions against respondent and her attorney, which petitioner had filed contemporaneously with his response to respondent's motion to amend the order of heirship. At the hearing, petitioner argued that it was clear that, at the time the motion to amend was filed, respondent knew that decedent was not the same person as Dee Collins and that there was no evidence that decedent was lawfully married to Doris. Petitioner also noted that the allegations in the motion were completely unsupported by any facts and that their falsity could have been easily discovered. Indeed, petitioner noted that, in his July 18, 2011 response to the motion, he had provided documents that disproved the claims in the motion, yet respondent and her attorney had continued to contend for months afterward that Doris was a rightful heir to the estate due to her marriage to decedent.

¶ 14 The circuit court found that respondent had filed numerous false pleadings during the case and had made false statements to the court regarding the motion to amend the order of heirship to include Doris. The court also found that her attorney had not only helped respondent prepare the false statements but that her attorney had been on notice that the pleadings were false

³ Though not relevant to this appeal, a great deal else later happened with respect to the heirship. Because of the problems with the original determination of heirship, the circuit court decided it would be best to simply start over. The court allowed Geneva Floyd to refile her affidavit of heirship and allowed any other parties to challenge the order of heirship within 14 days. Respondent filed a new affidavit of heirship as well as a motion to amend the order of heirship to name herself as the sole heir to the estate. The circuit court eventually struck this motion as a sanction due to the numerous inconsistent and false pleadings filed by respondent during the case. (Respondent has not appealed that particular order.) Both Bennie Warmack and Cassandra Warmack also separately moved to amend the order of heirship to include themselves as heirs, but Bennie withdrew his motion after settling his claim with Floyd. The circuit court denied Cassandra's motion because there was no evidence that Doris ever married decedent, nor any proof that decedent was Cassandra's biological father or had acknowledged paternity. In the end, Geneva Floyd was determined to be the sole heir to the estate.

no later than July 18, 2011, when petitioner responded to the motion to amend the order of heirship. The court noted that respondent's attorney could have easily discovered that the claims were false before that date had he conducted a proper investigation of the case.

¶ 15 Finally, in a hearing on May 31, 2012, the circuit court considered petitioner's citation to recover assets. Respondent offered only a token argument against the citation, and the circuit court entered judgment against her on the citation. In a consolidated order, the circuit court entered judgment against respondent on the citation for \$374,613.57, as well as judgment on the sanctions order for \$14,370.90 against respondent and her attorney jointly and severally. The circuit court found that there was no just reason to delay either enforcement or appeal of this order under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), and respondent appealed.

¶ 16 II. ANALYSIS

¶ 17 There are only two issues on appeal: (1) whether the trial court was correct to enter judgment against respondent on the citation to recover assets, and (2) whether the trial court abused its discretion by imposing sanctions on respondent and her attorney.

¶ 18 A. Citation to Recover Assets

¶ 19 Section 16-1 of the Probate Act authorizes the representative of an estate to file citations to discover and recover assets that belong to the estate. See 755 ILCS 5/16-1 (West 2010). "The objectives of a citation proceeding under the Probate Act are to obtain the return of personal property belonging to the estate but in the possession of, or being concealed by, others or to obtain information to recover estate property." *In re Estate of Elias*, 408 Ill. App. 3d 301, 315 (2011). "To recover property in a citation proceeding, an executor must initially establish a *prima facie* case that the property at issue belongs to the decedent's estate; the burden then shifts to the respondent to prove his or her right to possession by clear and convincing evidence." *Id.*

We will not overrule the circuit court's finding on a citation to recover assets unless it is against the manifest weight of the evidence. See *In re Estate of Pawlinski*, 407 Ill. App. 3d 957, 963-64 (2011).

¶ 20 At the hearing on the citation, petitioner presented essentially undisputed evidence that respondent had transferred estate assets to herself without any legitimate basis. Petitioner itemized the hundreds of thousands of dollars that respondent withdrew from the estate account, and petitioner pointed out that there was no legal basis for respondent to do so. Although there was a court order in place at the time that allowed distribution of the estate to respondent and her siblings because they were, at the time, considered to be heirs to the estate, respondent failed to distribute the bulk of the estate assets to anyone but herself. Moreover, the circuit court determined in later proceedings that neither respondent nor her siblings were actually heirs to the estate. Thus, at the time of the hearing on petitioner's citation to recover assets, it was clear that all of the disbursements and withdrawals that respondent had made did not belong to her. This evidence was more than enough to satisfy petitioner's initial burden on the citation.

¶ 21 The burden accordingly shifted to respondent to show that she was entitled to the assets, but she utterly failed to present any evidence on this point. Respondent claims variously that she was given bad advice by her former attorneys, that she believed that decedent was in fact her father, and that she believed that she was entitled to the estate funds. But what respondent fails to recognize is that, even if the circuit court had accepted these excuses (which it did not), they are not a basis for avoiding judgment on a citation to recover assets. The only issue during the citation hearing was whether the assets properly belonged to the estate, and all of the available

evidence heard by the circuit court demonstrated that they did. Judgment against respondent on the citation was therefore not against the manifest weight of the evidence.⁴

¶ 22

B. Sanctions

¶ 23 In addition to judgment on the citation to recover assets, the circuit court also imposed sanctions against respondent and her attorney jointly and severally for their actions in connection with the motion to amend the order of heirship. Under Illinois Supreme Court Rule 137 (eff. Jan. 4, 2013), the signature of an attorney or party on a pleading constitutes a certification “that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” If the circuit court later finds that the rule has been violated, it may impose sanctions such as payment of the opposing party’s attorney fees. See *id.* “The purpose of Rule 137 is to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law. [Citation.] *** Using an objective standard, the trial court must determine whether a party made a reasonable inquiry into the facts and law supporting their allegations to meet the burden of Rule 137.” *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). Whether to impose sanctions under Rule 137 is within the sound discretion of the trial court, and we will not reverse the

⁴ In addition to about \$276,000 in estate assets, the judgment against respondent included over \$98,000 in attorney fees and costs that petitioner had incurred during the litigation of the citation. Attorney fees in a citation proceeding may be awarded at the circuit court’s discretion “based either on equitable contribution, or as punitive damages where there was willful or outrageous conduct due to evil motive or a reckless indifference to the rights of others.” *In re Estate of Elias*, 408 Ill. App. 3d 301, 326 (2011). Respondent does not, however, claim that the circuit court abused its discretion in awarding attorney fees to petitioner on the citation, so we consider that issue forfeit. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

circuit court's order absent an abuse of that discretion. See *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998).

¶ 24 The critical factual inaccuracies in respondent's motion to amend the order of heirship were that respondent claimed, in both the motion and in her affidavit, that Dee Collins and decedent were the same person and that decedent had been married to respondent's mother. As the circuit court later discovered through the testimony of Bennie Warmack, that was not only false but respondent was clearly aware that it was false long before she signed her affidavit and submitted the motion. Because of respondent's false allegation the circuit court wasted months trying to sort out the issue of heirship. Yet in the circuit court and now on appeal, respondent has offered no explanation for this false allegation. It is undisputed that respondent knew that the allegations in her motion were false at the time the motion was filed. The circuit court therefore did not abuse its discretion by imposing sanctions against respondent.

¶ 25 The question is somewhat closer regarding the imposition of sanctions against respondent's attorney. Respondent's counsel contends that, at the time he filed the motion, it was at best unclear whether Dee Collins and decedent were the same person, and he argues that he was entitled to rely on the representations of his client in the matter. But "[i]t is not sufficient that the signing party 'honestly believed' his or her case was well grounded in fact or law" ((internal quotation marks omitted) *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002)), and Rule 137 requires that the signer of a pleading make a reasonable inquiry into the facts alleged. What is reasonable is, of course, determined by the circumstances at the time of filing (see *id.*), but even counsel's own statements at the motion hearing indicated that it was unreasonable for him to take respondent's claims at face value. Counsel contended that he himself had been concerned about respondent's claims because he noticed that Dee Collins, not decedent, was

listed as her father on her birth certificate. When he questioned her about this, respondent and her mother both allegedly told him that decedent sometimes went by the name Dee Collins and had in fact been married to respondent's mother. Yet when respondent investigated the matter, he could find no record showing that decedent had ever been divorced from his wife Julia. This alone should have raised red flags, but it was compounded by the fact that none of the vital information associated with Dee Collins matched that of decedent. But instead of investigating the matter further, counsel elected to file a motion to amend the order of heirship based on the completely unsupported allegations that decedent was actually Dee Collins and had been married to respondent's mother.

¶ 26 Counsel contends that he is being punished merely because respondent's claims were ultimately proven to be false, and it is true that "sanctions are not warranted simply because the facts ultimately determined are adverse to those set forth in the pleadings." *Rubino v. Circuit City Stores, Inc.*, 324 Ill. App. 3d 931, 946 (2001). But what is at issue here is simply whether counsel was diligent in verifying the truth of the facts that he alleged in his motion. Counsel himself admitted that he noticed troubling discrepancies in respondent's claims, but he chose to ignore those warning signs and to file a motion to amend the order of heirship anyway without verifying that respondent's mother was actually decedent's spouse. Litigating that motion required numerous court hearings and several months to resolve, all of which could have been avoided had counsel performed a diligent inquiry as Rule 137 requires. On this record, we cannot say that the circuit court abused its discretion in finding that counsel's failure to investigate the facts in this case was unreasonable.

¶ 27

III. CONCLUSION

¶ 28 For the reasons stated above, the circuit court's ruling on the citation to recover assets was not against the manifest weight of the evidence, and its decision to impose sanctions under Rule 137 against respondent and her attorney was not an abuse of discretion.

¶ 29 Affirmed.