

NOTICE

Decision filed 11/26/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100503-U

NO. 5-10-0503

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 MICHAEL HERRIN,)	Appeal from the
Deceased)	Circuit Court of
)	Saline County.
(Jared Head,)	
)	
Claimant-Appellant,)	
)	
v.)	No. 10-P-32
)	
Roger Herrin, Administrator of the)	
Estate of Michael Herrin, Deceased,)	Honorable
)	Joseph M. Leberman,
Administrator-Appellee).)	Judge, presiding.

PRESIDING JUSTICE DONOVAN delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Court improperly denied standing to parties sharing in underinsured-motorist coverage proceeds when the ownership of such proceeds was still being contested on appeal and the probate proceedings involved distribution of a major portion of those insurance proceeds.
- ¶ 2 Appellant Jared Head appeals the order of the court declaring that he had no standing in certain probate proceedings in which he had requested that the administrator be bonded and further denying his objection to the court's approval of the administrator's final accounting and termination of the probate proceedings. We reverse and remand.
- ¶ 3 The instant controversy is yet another branch stemming from a tragic automobile accident which occurred in June of 2001. Three teenage boys were passengers in a Jeep Cherokee being driven by the mother of one of the boys. As the vehicle approached a rural

intersection on Illinois Route 34 near Raleigh, a farm truck driven by Brian Bramlet ran through the stop sign and broadsided the Jeep Cherokee. The force of the collision ejected two of the boys, killing Michael Herrin and badly injuring Jared Head. The mother, Katherine Duncan, and her son Ross were also injured. Everyone sought compensation for their injuries and losses, but the available insurance coverage was insufficient to compensate each party. After extended litigation and several appeals to this court, we determined that \$900,000 of aggregated underinsured-motorist coverage was available to cover the claims of all of the occupants of the Jeep Cherokee. It was also determined in yet another branch of the controversy that the estate of Michael Herrin (Herrin Estate or Estate) had available \$5.5 million in coverage under insurance policies connected with his father's business as well as personal auto insurance policies. The coverage was available only to the Herrin Estate for its wrongful death claim on behalf of Michael's relatives. Michael's father, Dr. Roger Herrin, accepted on behalf of the estate a settlement offer of \$1.65 million from the insurance companies. The trial court was left with determining how to distribute the underinsured-motorist coverage among the four injured occupants of the Duncan vehicle. Although all parties agreed that the case controlling the distribution scheme to be applied was *Janes v. Western States Insurance Co.*, 335 Ill. App. 3d 1109, 783 N.E.2d 37 (2001), the parties disagreed with how *Janes* should be applied. Under the formula the trial court used, each occupant of the Duncan vehicle received the following portions of the \$800,000 underinsured-motorist coverage and \$100,000 of bodily injury liability coverage:

Herrin Estate	\$677,851.06
Jared Head	\$147,368.96
Katherine Duncan	\$ 36,228.77
Ross Duncan	\$ 29,286.12
Russell Duncan	\$ <u>9,265.09</u>
	\$900,000.00 total

After notices of appeal were filed by Head and by the Duncan family, and after the insurance funds were paid into court, the Herrin Estate filed its motion to compel distribution. The

Duncans and Head objected to the Estate's motion to compel distribution of its share of the funds arguing that the pending appeals might result in the alteration of the distributive share each may receive from the pool of coverage. The court allowed the Estate's motion to compel distribution.

¶ 4 The Estate next petitioned the probate court to withdraw the amount of benefits designated for the Herrin Estate. The same day the trial court granted the motion to compel distribution, Dr. Herrin, as administrator, filed his petition for letters of administration to open a new probate estate. The following day, after being appointed administrator of the estate, Dr. Herrin withdrew and distributed the entire \$677,851.06 to Michael's relatives. No notice was given to Head or to the Duncans, and no bond was placed with the probate court.

¶ 5 Approximately a month later, Head learned of the distribution and filed a motion to require bonding in the probate case. The probate court determined that Head had no standing to move for a bond thereby denying his motion. The administrator subsequently filed a final accounting and a motion for termination of probate proceedings, both of which the court approved. Head filed a motion to reconsider the order that he had no standing and further filed an estate claim, contending that he was a contractual third-party beneficiary to the underinsured-motorist funds and that he was a contingent creditor against the common fund of underinsured-motorist proceeds. He also filed his objection to the court's approval of the final accounting and to termination of the probate proceedings. The court denied his motion to reconsider standing and further ruled that he had no standing to object to the final accounting and/or motion for termination of probate proceedings. Head now appeals these rulings.

¶ 6 Head argues on appeal that funds which passed through the Herrin Estate were distributed prematurely and wrongfully because of the lack of bonding of the administrator as well as the absence of other safeguards required by the Probate Act. According to Head,

the court should have required the administrator to post bond commensurate with the existing share of the underinsured funds before allowing the estate to remove and distribute its share of the funds. He also contends the court ignored other safeguards by allowing distribution of assets before publishing notice or providing notice of any kind to claimants or creditors and erred in allowing the estate to be terminated before the statutorily required six-month claims period had expired. Head raises as another point that he had standing to appear before the probate court to be heard to object to the lack of bonding and to object to the premature distribution of the underinsured-motorist funds and to the premature termination of the Estate. We agree. Given that Head's appeal was still in progress at the time of the probate proceedings, and given that his appeal could result in a reversal of the ownership of funds available for claims of the injured occupants, he certainly had an interest in a portion of the common pool of coverage and had a potential interest in the amount awarded to the Herrin Estate.

¶ 7 An interested person as defined under the Probate Act of 1975 (Act) is "one who has or represents a financial interest, property right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse's or child's award and the representative." 755 ILCS 5/1-2.11 (West 2010). A claim under the Act "includes any cause of action." 755 ILCS 5/1-2.05 (West 2010). Here, all of the injured occupants of the vehicle are insured beneficiaries under the auto policy. See *Skidmore v. Throgmorton*, 323 Ill. App. 3d 417, 421-22, 751 N.E.2d 637, 641 (2001); *Reagor v. Travelers Insurance Co.*, 92 Ill. App. 3d 99, 102-03, 415 N.E.2d 512, 514 (1980). Head was contesting the ownership of the proceeds available under the insurance policies, the same proceeds which the Herrin Estate was attempting to run through probate. Head is an interested party and a necessary party in any litigation concerning those funds to which he has a contingent claim. As a necessary

party to any litigation which involves the distribution of the contested funds, Head should and did have standing, including in the probate court. We therefore find that Head, and the Duncans, have standing in the probate court to be heard as parties with interests in the underinsured funds in their attempt to preserve those funds until the pending appeal as to the ownership of the funds is decided.

¶ 8 The Estate argues that the proceeds of a wrongful death action cannot be considered as property, or an asset, of an estate. A real controversy exists, however, that the amount the Herrin Estate received even belongs to the estate.¹ Title to property acquired under an

¹We recently decided in *Columbia Mutual Insurance Co. v. Herrin*, 2012 IL App (5th) 100037, ¶ 13, that in order for equal footing to be accomplished, the host (the Jeep Cherokee) vehicle's common pool of underinsured-motorist coverage initially must be distributed to the injured occupants with no outside source of underinsured-motorist coverage, effectively eliminating any recovery for the Herrin Estate. Those occupants without an outside source of underinsured-motorist coverage are placed by the trial court on level footing by allowing occupants without outside underinsured-motorist coverage to be given preferential standing to be compensated from the host's vehicle common pool of underinsured-motorist coverage, up to an amount equal to the outside source of underinsured-motorist benefits available to the occupant who does have outside underinsured coverage. Once the initial distribution from the host vehicle's common pool of underinsured coverage has placed all occupants on level footing, then all occupants can participate in the distribution of the remainder, if any, of the common pool of host vehicle underinsured-motorist coverage.

Our supreme court, on September 26, 2012, denied Herrin's petition for leave to

erroneous judgment is not divested by its reversal. *First National Bank of Jonesboro v. Road District No. 8*, 389 Ill. 156, 162-63, 58 N.E.2d 884, 887 (1945). Any dissipation of insurance money does not exonerate the administrator of the Herrin Estate from having to repay funds distributed through the estate if the order of distribution is altered because of Head's appeal. A representative of an estate should not be able to circumvent the risk inherent in distributing disputed property subject to an appeal simply because an estate is used to distribute those contested assets. Moreover, Head and the Duncans are not creditors of the estate; they are judgment creditors against the tortfeasor's bodily injury liability carrier, occupying the same status as the estate, and they are co-claimants with the estate to an interest in the common pool of underinsured-motorist coverage. Head as well as the Duncans had standing to be heard as parties with interests and should have been allowed to enter their objections to the termination of the probate proceedings.

¶ 9 For the reasons stated above, we reverse the judgment of the circuit court of Saline County and remand this cause for further proceedings consistent with this disposition.

¶ 10 Reversed and remanded.

appeal, and on November 13, 2012, we issued our mandate affirming in part, reversing in part, and remanding the cause with directions to the circuit court of Saline County for further proceedings.