

No. 1-10-2786

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> ESTATE OF VERA McBRIDE, Deceased,)	Appeal from the
)	Circuit Court of
Appellee,)	Cook County.
)	
v.)	No. 07 P 4613
)	
ROBERT McBRIDE and COREANNE McBRIDE,)	Honorable
)	Mary Ellen Coghlan,
Appellants.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment of the circuit court closing the decedent's estate and discharging the independent administrator *de bonis non* affirmed where appellants failed to present an adequate record to support their allegation of fraud, accident and mistake.

¶ 2 Appellants, Robert and Coreanne McBride, heirs of the decedent, Vera McBride, appeal from an order of the circuit court of Cook County, which accepted the final report of the independent administrator *de bonis non*, discharged her and closed the estate, and the subsequent order denying their motion to vacate that order. In this court, appellants contend that the circuit

court abused its discretion in closing Vera's estate and discharging the independent administrator *de bonis non* because Robert had not received the proceeds from his settlement of an action by the estate to quiet title to certain real property. Although the estate has not filed an appellee's brief, we will consider this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 3 Vera, a widow, died intestate on February 18, 2007, survived by eight children. On July 30, 2007, a daughter of Vera, Mae Dean Gladney, by and through her attorney, Charles Conner, Jr., filed a petition for letters of administration and was appointed independent administrator of the estate. On the same date, Vera's other children, including appellants, signed a consent to the appointment of Mae as "Independent Representative" of the estate and waived, *inter alia*, notice of rights to require formal proof of the will and to contest the admission or denial of admission of the will to probate. On March 27, 2008, Mae filed an inventory of the estate describing personal property worth \$63,064.96, and real property, Vera's residence at 544 West 103rd Place in Chicago, valued at approximately \$80,000.

¶ 4 On June 9, 2008, Mae filed a petition to sell the real property to Vera's son, Raymond McBride. In the petition, Mae stated that the real property was appraised at \$120,000 in September 14, 2007, and that Raymond McBride had offered to purchase it for \$80,000. Mae attached the realty appraisal and signed agreements to sell the real property from herself, Betty Rutledge, Dorothy Carter, Richard McBride, and appellant Coreanne McBride.

¶ 5 On September 25, 2008, Mae filed an accounting for the estate through September 30, 2008. The accounting listed the estate's liquidated assets at \$75,364.96, the distribution of assets and payment of fees, expenses and taxes at \$65,927.52, and the available liquid assets at \$9,437.44. The accounting also listed the appraised value of the real property as \$120,000.

¶ 6 On December 14, 2009, Mae's attorney filed a motion to withdraw as counsel of record for the estate because Mae passed away. Meanwhile, on January 28, 2010, another daughter, Dorothy Carter, by and through her attorney, Timijanel Boyd-Odom, filed a petition for letters of administration. On February 1, 2010, after the court granted the motion of Mae's attorney to withdraw as counsel, the heirs consented to the appointment of Dorothy as the independent administrator *de bonis non* of the estate, and a written order to that effect was entered on March 9, 2010.

¶ 7 On July 12, 2010, Dorothy filed a final accounting of the estate indicating total assets of \$82,059.64, debts of \$14,562.33, and a balance of \$67,497.31 to be distributed equally among the heirs. Dorothy also presented to the court a final report stating, *inter alia*, that notice of probate and release of the estate's interest in real estate has been recorded and the remaining assets of the estate have been distributed to those entitled.

¶ 8 In a written order entered on August 25, 2010, the court noted appellants' objections, the details of which are not clear from the record, and accepted the final report of Dorothy, discharged her and closed the estate. The record on appeal includes the receipts signed and filed by appellants on August 25, 2010, acknowledging receipt of their full distributive share, approving the final accounting and consenting to the closing of the estate.

¶ 9 Appellants filed a motion and amended motion to vacate the order entered on August 25, 2010, with various exhibits purporting to establish that Robert had not received the proceeds from his settlement of an action by the estate to quiet title to the real property located at 544 West 103rd Place in Chicago. Appellants alleged that in February 2008, the estate filed a petition to quiet title against Robert for his one-half interest in the real property and a settlement was reached on July 2, 2008, in which the estate agreed to pay \$15,000 for his interest in the real property. Appellants further alleged that Robert delivered a quit claim deed transferring his one-

half interest to the estate, and that Dorothy, in her capacity as independent administrator, sold the real property to Raymond for \$55,000 in July 2010, and the estate had failed to honor its agreement to pay Robert \$15,000.

¶ 10 The supporting exhibits include the following: a letter, dated March 12, 2008, from Robert's attorney proposing a settlement offer in which Robert would convey his entire interest in the real property to the estate for \$15,000; a letter, dated July 1, 2008, from Mae's attorney stating, "my client and her siblings have agreed to insure that your client, Robert McBride, will receive at least \$15,000 from the Estate of Vera McBride"; a letter, dated July 2, 2008, wherein Mae's attorney acknowledged and agreed to the settlement offer; and a quit claim deed prepared by Mae's daughter, Shari, dated December 8, 2009, from Robert to the estate for the expressed consideration of \$10. In a written order entered on September 13, 2010, the court denied appellants' motion to vacate the order of August 25, 2010 discharging Dorothy as the independent administrator *de bonis non* and closing the estate.

¶ 11 Appellants now seek to reverse the aforesaid orders on the grounds of fraud, accident and mistake. They acknowledge that no formal objections were filed within 42 days after the final accounting was filed, as prescribed in section 28-11(e) of the Probate Act of 1975 (Act) (755 ILCS 5/28-11(e) (West 2008)), but maintain that equity and justice required the circuit court to hold an evidentiary hearing regarding their valid and serious claims.

¶ 12 Appellants direct our attention to section 28-11(f) of the Act, which provides that in the absence of fraud, accident or mistake, an order discharging the independent representative and declaring the estate closed is binding on each person whose receipt or approval was filed with the report and on each person to whom notice thereof was given in compliance with subsection (e). 755 ILCS 5/28-11(f) (West 2008). They claim that the facts "presented" suggest mistake or accident because the settlement of the 2008 action to quiet title predated the passing of Mae, the

original independent administrator. They also claim that the facts "presented" suggest the existence of fraud or self-dealing because the December 2009 quit claim deed signed by Robert was prepared by one of the other heirs, Shari Gladney, without a conflict waiver or contact with Robert's attorney. Appellants argue that once Shari took it upon herself to prepare the quit claim deed, she had a fiduciary duty to Robert to ensure the settlement proceeds were paid. We disagree.

¶ 13 By appellants' own acknowledgment, no formal objections were filed within 42 days after the final accounting was filed on July 12, 2010. Pursuant to section 28-11(f) (755 ILCS 5/28-11(f) (West 2008)), the August 25, 2010 order, discharging Dorothy as the independent administrator *de bonis non* and closing the estate, was binding on appellants absent fraud, accident or mistake. Although appellants assert that they informally objected to closing the estate on those grounds, we cannot say that the trial court erred in entering either of the complained-of orders because appellants have not presented an adequate record on appeal. *Estate of Rice v. Rice Foundation*, 108 Ill. App. 3d 751, 762 (1982). Neither a report of proceedings, nor a bystander's report is offered for the dates when those orders were entered, or when any rulings were made regarding the estate's petition to quiet title and the petition to sell the real property. The record does not reflect the sale of the real property to Raymond, aside from appellants' statement to that effect, and, strangely, Robert delivered the quit claim deed for the expressed consideration of \$10. Where, as here, the record does not disclose all of the facts upon which the trial court's actions were based, we are required to assume that the facts known to the trial court were sufficient to support the judgment. *Estate of Rice*, 108 Ill. App. 3d at 762.

¶ 14 In further support of our conclusion, we note that Shari was neither the administrator *de bonis non*, nor the attorney for the estate, and, Robert has not identified the capacity which

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created her fiduciary duty to him to ensure that the settlement proceeds were paid. Likewise, the record includes the receipts signed and filed by appellants on August 25, 2010, acknowledging receipt of their full distributive share, approving the final accounting and consenting to the closing of the estate. Under these circumstances, we cannot say that the trial court abused its discretion (*Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 6 (2006)) in closing the estate and discharging Dorothy as the independent administrator *de bonis non* (*Houser v. Michener*, 20 Ill. App. 3d 391, 397 (1974)).

¶ 15 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.