

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).

No. 1-10-3272

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> ESTATE OF DENISE GORDON, deceased)	Appeal from the
)	Circuit Court of
(Diane Davis,)	Cook County.
)	
Petitioner-Appellee,)	
)	No. 08 P 3386
v.)	
)	
Namette George Vaughn, Supervised Administrator)	
of the Estate of Denise Gordon,)	Honorable
)	Henry A. Budzinski,
Respondent-Appellant).)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 **HELD:** Trial court orders affirmed where appellant presented an insufficient record in support of claims that the trial court erred in ordering her removal as supervised administrator of decedent's estate.

¶ 2 Respondent, Namette George Vaughn, supervised administrator of the estate of Denise

No. 1-10-3272

Gordon, appeals from the order removing her as supervised administrator of the estate of Denise Gordon, deceased, and the denial of her motion to reconsider that order. We affirm.

¶ 3 Ms. Gordon died intestate on April 24, 2008, and left six heirs: her nieces Namette Gordon Vaughn, Diane Davis, JoAnn Clark, LeNarge Booker and Tandra Singfield and nephew, Kenneth Slaughter. On May 22, 2008, Ms. Vaughn filed a petition for letters of administration as to Ms. Gordon's estate (estate). On June 27, 2008, Ms. Vaughn was appointed supervised administrator of the estate and was ordered to file an inventory and an account or verified report by a certain date. Ms. Vaughn filed an inventory, which showed that the estate included real property located at 4405 South Princeton Avenue in Chicago, Illinois, various financial accounts, savings bonds and an automobile. She did not file an accounting. Ms. Vaughn's subsequently filed petition to list the estate's real property for sale at \$140,000 was granted on December 15, 2008.

¶ 4 In August 2009, JoAnn Clark filed a motion seeking a report on the estate's assets. Additionally, a *pro se* hand-written document prepared by Diane Davis was made part of the record on August 28, 2009. Ms. Davis contended Ms. Vaughn had not provided the heirs with updates on the estate or the status of the sale of the real property, and requested the funds in the estate be released. The court ordered Ms. Vaughn to file a first-current accounting by August 28, 2009. From August 28, 2009, to November 18, 2009, the court entered a total of four orders extending the time to file the first-current accounting. It appears that a first-current accounting eventually was prepared, but is not contained in the record on appeal. Ms. Davis and Ms. Clark filed *pro se* objections to the first-current accounting on December 29, 2009, and a hearing on those objections was set for March 3, 2010. However, Ms. Davis later retained an attorney to represent her as to her objections, who obtained the entry of an order setting a briefing schedule on the objections and a

No. 1-10-3272

new hearing date of April 27, 2010. However, on the original hearing date of March 3, 2010, the court entered an order denying the objections to the first-current accounting.

¶ 5 Ms. Davis, through her attorney, filed a motion to reconsider the March 3, 2010, order citing the fact that the hearing on her objections had been continued from March 3, 2010 to April 7, 2010. The motion was granted and a hearing on the objections was then set for April 27, 2010. Before the hearing, an amended first-current accounting, a petition for fees on behalf of the supervised administrator's attorney and a petition to retroactively approve payment of administrator's fees and travel expenses were filed. At the April 27 hearing, the trial court sustained the objections to the first-current accounting and ordered Ms. Vaughn to provide certain documents to support the distributions which had been made from the estate. The trial court gave the heirs time to file objections to the amended first-current account and to respond to the petitions for attorney fees and administrator's expenses.

¶ 6 Ms. Davis filed a petition to remove Ms. Vaughn as supervised administrator on June 16, 2010. The petition set forth various reasons for her removal, including her mishandling of the deceased's real property, failure to timely provide an adequate accounting, converting personal property of the estate for her own use, and taking disbursements from the estate to cover alleged expenses for administrating the estate without prior court approval. Ms. Vaughn filed a short response to that petition denying any wrongdoing.

¶ 7 On August 5, 2010, the trial court, after hearing testimony, entered an order removing Ms. Vaughn as supervised administrator of the estate for her failure to work with the heirs and failure to sell the real property resulting in waste pursuant to section 23-2 of the Probate Act. 755 ILCS 5/23-2(a)(4), (a)(10) (West 2010). Ms. Vaughn moved for reconsideration of this order arguing,

No. 1-10-3272

in part, that the evidence did not support the trial court's findings. The trial court denied the motion to reconsider, stating in its order: "(t)here was sufficient basis in the testimony to find that the Administrator did not adequately communicate with the heirs."

¶ 8 Ms. Vaughn timely filed this interlocutory appeal pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010). Petitioner-appellee, Ms. Davis, has not filed a brief, but we may reverse the trial court "if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record." *First Capitol Mortgage Corp. v. Talandis Construction Co.*, 63 Ill. 2d 128, 133 (1976).

¶ 9 On appeal, Ms. Vaughn argues the trial court erred in removing her as supervised administrator of her aunt's estate pursuant to section 5/23-2 of the Probate Act. 755 ILCS 5/23-2 (West 2010). The order removing Ms. Vaughn is reviewed under a manifest weight of the evidence standard. *In re Estate of Savio*, 388 Ill. App. 3d 242, 249 (2009). Thus, the trial court's order will be reversed only where "it is unreasonable, arbitrary and not based on evidence, or when the opposite conclusion is clearly evident from the record." *Id.*

¶ 10 As the appellant, Ms. Vaughn has the "burden to preserve the trial evidence and to present a sufficiently complete record of the trial proceedings to support a claim of error on appeal." *Advocate Health & Hospitals Corp. v. Heber*, 355 Ill. App. 3d 1076, 1080 (2005); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Where the record on appeal is deficient, we must "presume that the circuit court's decisions are in conformity with the law and have a sufficient factual basis." *Id.*

¶ 11 The record on appeal does not include the first-current accounting filed by Ms. Vaughn as special administrator. This accounting caused Ms. Davis to file objections and, ultimately, was a

No. 1-10-3272

partial basis for the petition for removal. Ms. Vaughn also failed to file a report of any of the proceedings in the court below, or, in the absence of such reports, bystander's reports or agreed statements of facts pursuant to Illinois Supreme Court Rule 323(c) (eff. December 13, 2005). We have no record of the evidence which was presented or considered by the trial court in sustaining the objections to the first-current accounting and in removing Ms. Vaughn as supervised administrator. Ms. Vaughn has therefore, failed to provide a sufficient record on appeal to review the order of removal under the manifest weight of the evidence standard.

¶ 12 We are aware that Ms. Vaughn cites to the entries on billing statements attached to her attorney-fee petition as proof that her attorney, in fact, communicated with the heirs and, therefore, she should not have been removed for a failure to communicate. The billing statements do include charges relating to phone calls made by the heirs to the attorney. However, Ms. Vaughn cannot rely on these billing entries which were not verified and have no evidentiary foundation to support her argument that the removal for lack of communication with the heirs was erroneous. Because there are no reports of proceedings, the record does not reflect what, if any, consideration or weight was given to the billing statements by the trial court.

¶ 13 Ms. Vaughn also argues that her removal as supervised administrator for failing to sell the real property was arbitrary in light of the existing real estate market. The petition for removal alleged that, because the real property had not been sold, the estate had been diminished due to the expenses related to the property, and that the real property had not been rented to cover some or all of these expenses resulting in waste. In her appellant's brief, Ms. Vaughn acknowledges that the trial court heard evidence on these issues. In light of the record before us, we are unable to determine whether the trial court's findings as to waste resulting from the failure to sell the property

No. 1-10-3272

were against the manifest weight of the evidence or arbitrary in light of any downturns in the market place.

¶ 14 We must presume that the trial court's findings and orders complied with the law and were supported by the evidence, and must resolve any doubts which arise from the incompleteness of the record against Ms. Vaughn. *Foutch*, 99 Ill. 2d at 391-392. Furthermore, even in the absence of an appellee's brief, Ms. Vaughn's appellant's brief has not demonstrated *prima facie* reversible error, which is supported by the record. *Talandis*, 63 Ill. 2d at 133. Accordingly, we affirm the trial court's orders removing her as supervised administrator and denying her motion to reconsider that order.

¶ 15 Affirmed.