

NOTICE

Decision filed 07/26/11. 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.

2011 IL App (5th) 100466-U
NO. 5-10-0466
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 ELVA JUMP, Deceased)	Appeal from the
)	Circuit Court of
(LaBarre, Young & Behnke, Claimant-Appellant).)	Christian County.
)	
)	No. 05-P-89
)	
)	Honorable
)	Bradley T. Paisley,
)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Donovan and Spomer concurred in the judgment.

ORDER

- ¶ 1 *Held*: The circuit court's discretionary "vacating" of a valid mortgage lien is reversed when the Probate Act does not give the court that power.
- ¶ 2 The claimant, LaBarre, Young & Behnke, appeals the order of the circuit court of Christian County "vacating" its mortgage and distributing the proceeds of the sale of the decedent's real estate without first satisfying the outstanding mortgage. For the following reasons, we reverse the circuit court.
- ¶ 3 Only the facts necessary for the disposition of this appeal are provided below; additional facts are available in *Jump v. Libbee*, Nos. 5-07-0549 and 5-07-0558 (2009) (unpublished order under Supreme Court Rule 23 (eff. May 30, 2008)). The decedent, Elva Jump, died on March 30, 2005. Prior to her death, the law firm of LaBarre, Young & Behnke (Young) performed legal services for her, including filing a Medicaid application and performing related estate planning. Young charged a flat rate of \$4,600 for its Medicaid

application services, which the decedent paid by issuing a note secured by a mortgage against her residence. Young testified that the mortgage was issued with the understanding that if it was not paid off during the decedent's life, it would become due upon her death. Young had an additional claim against the estate for legal services rendered to the estate's executor.

¶ 4 The decedent's will was admitted to probate, where it was determined that the estate's debts greatly outweighed its assets. The estate's largest asset was the decedent's residence in Taylorville. The circuit court ordered the Taylorville real estate sold and the proceeds distributed to the estate's creditors. The real estate was sold at auction for \$30,000, free and clear of all encumbrances. The estate's administrator then filed a motion for the final approval of the sale and the disposition of the proceeds to creditors, including the payment of Young's mortgage on the real estate. Young filed a response to this motion, calling for the payment of its mortgage as well as accumulated taxes and interest. In its April 1, 2010, order the circuit court stated: "The Court finds that the note and mortgage were valid and rejects *** claims to the contrary for the reasons set forth in Young's motion. However, based upon Young's actions that benefitted Charles Jump and may have been adverse to the Estate, the Court in its equitable discretion 'surcharges' Young by vacating the mortgage and making its claim a Class I claim under the Probate Act ***." The court directed a distribution of the estate's \$13,075.70 of assets on a *pro rata* basis to all Class I claimants. The claimants and their claims were: Young for \$17,703 (35.57%), Taylorville Care Center for \$20,000 (40.19%), and the administrator for \$12,060 (24.23%). The court ordered the following distribution: \$4,651.03 to Young, \$5,256.43 to Taylorville Care Center, and \$2,922.14 to the administrator.¹ The \$17,703 used by the court to determine Young's *pro rata* distribution

¹We note that the \$2,922.14 distributed to the administrator is not 24.23% of the amount available and that the total of the sums distributed do not equal the total amount available.

was the amount of Young's Class I claim against the estate; no credit was given for Young's mortgage. It is from the court's "surcharge" of Young and the "vacating" of its valid mortgage that Young appeals.

¶ 5 The issue before this court on appeal is whether Young's mortgage should have been satisfied out of the proceeds of the sale of the real estate. This is an issue of statutory interpretation, which is reviewed *de novo*. *People v. Collins*, 214 Ill. 2d 206, 214 (2005).

¶ 6 This case is one of first impression. In order to interpret the statute, we must look first at its plain meaning. *People v. Conick*, 232 Ill. 2d 132, 138 (2008). " 'In determining the plain meaning of a statute's terms, we consider the statute in its entirety, keeping in mind the subject it addresses, and the apparent intent of the legislature in enacting the statute.' " *Conick*, 232 Ill. 2d at 138 (quoting *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 8 (2007)). The best means of determining legislative intent is through statutory language. *Petersen v. Wallach*, 198 Ill. 2d 439, 444 (2002). When the meaning of a statute is not clearly expressed in the statutory language, a court may look beyond the language employed and consider the purpose behind the law and the evils the law was designed to remedy. *Petersen*, 198 Ill. 2d at 444-45. When the language of an enactment is clear, it will be given effect without resort to other interpretative aids. *Petersen*, 198 Ill. 2d at 445.

¶ 7 Section 20-6 of the Probate Act of 1975 (the Act) (755 ILCS 5/20-6 (West 2008)) provides in relevant part as follows:

"In any proceeding to sell or mortgage real estate the court may:

(b) direct the sale or mortgage of the property free of all mortgage, judgment or other liens that are due, provide for the satisfaction of all those liens out of the proceeds of the sale or mortgage and settle and adjust all equities and all questions of priority among all interested persons[.]"

¶ 8 One of the fundamental principles of statutory construction is to view all the provisions of an enactment as a whole. *J.S.A. v. M.H.*, 224 Ill. 2d 182, 197 (2007). No part of the statute should be rendered meaningless or superfluous. *People v. Jones*, 223 Ill. 2d 569, 581 (2006). In the instant case, the statute in question contains three components: first, that the court has the power to direct the sale or mortgage of the property; second, that existing liens be satisfied by the proceeds of the sale; and third, that the court determine and adjust the priorities of the claimants. The three clauses are connected by an "and," indicating the legislature's intent to have the provisions applied all together or not at all. Thus, the provisions of this statute must be read together. A plain reading of the statute therefore indicates that the court is not vested with discretion with regard to each of the three components but instead with the power to apply the subsection in its entirety.

¶ 9 Next, the wording of the statute gives the court power to settle and adjust *all* the questions of priority among *all* the interested persons. This raises the question of whether the court has the power to vacate or adjust mortgages. We find that it does not. While the third component of the statute allows the court to adjust questions of priority, this component has to be read in conjunction with the requirement that all the liens be satisfied. Because these provisions are connected by an "and," they are to be read together. Further, at no point in this statute or the Act is the court given the power to vacate valid mortgages; had the legislature intended to give the court the power to "vacate" mortgages, it would have so provided. While we note that probate courts are vested with "extensive and explicit [equitable] powers over proceedings to sell or mortgage real estate" (*Perry v. Estate of Carpenter*, 396 Ill. App. 3d 77, 86 (2009)), these powers are not unlimited. In the absence of legislative intent or directives to the contrary, we decline the opportunity to expand the scope of this statute to allow valid and existing mortgages to be vacated at the court's discretion.

¶ 10 Here, Young's mortgage was the only secured claim against the decedent's real property that was sold; all the other remaining claims were unsecured. We find that a plain reading of section 20-6 of the Act directs that Young's mortgage lien of \$4,600 be satisfied out of the proceeds of the sale of the subject property before the remaining assets are distributed *pro rata* to the Class I claimants. We hereby reverse the order of the circuit court and remand to the circuit court of Christian County for a redistribution of the estate's assets in a manner not inconsistent with this order.

¶ 11 Reversed; cause remanded with directions.