

No. 1-11-1870

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

CRAIG BAUMGARTEN, ROSS BAUMGARTEN, and KAREN SUNDHEIM,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiffs-Appellants,)	
)	
v.)	No. 10 L 013126
)	
KATTEN MUCHIN ROSENMAN, LLP, and CHARLES HARRIS,)	Honorable
)	Sanjay Tailor,
Defendants-Appellees.)	Judge Presiding.

ORDER

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

¶ 1 **Held:** The trial court's order staying plaintiffs' legal malpractice action was affirmed where it did not constitute an abuse of discretion and where plaintiffs failed to provide us with a transcript of the hearing on the motion to stay.

¶ 2 Plaintiffs, Craig Baumgarten, Ross Baumgarten, and Karen Sundheim, appeal the order of the trial court staying their legal malpractice action against defendants, the law firm of Katten Muchin Rosenman, LLP, and Charles Harris, a partner at the firm. On appeal, plaintiffs contend the stay order constituted an abuse of discretion. We affirm.

No. 1-11-1870

¶ 3 Robert L. Baumgarten retained defendants to draft a July 17, 2009, amendment to the Robert L. Baumgarten Revocable Trust (sometimes referred to herein as the amended trust), of which defendant, Charles Harris, is a co-trustee with Mr. Baumgarten's spouse, Marlene G. Baumgarten. Section 5.1 of the amended trust states in pertinent part:

"With respect to each Residuary Trust, the Trustee is hereby authorized, in the sole discretion of the Trustee, at any time and from time to time, to distribute all or any part of the net income and/or principal of such trust to the Grantor's spouse as the Trustee deems desirable for the best interests of the Grantor's spouse, or to accumulate all or any part of such net income and add the same to the principal of such trust to be held, administered and distributed as a part thereof."

¶ 4 On February 26, 2010, Robert Baumgarten died, leaving his spouse Marlene, his daughters Liza Baumgarten, Julie Rozek, and Karen Sundheim, and his sons Craig and Ross Baumgarten, as his only heirs at law and next of kin. At the time of his death, Mr. Baumgarten owned property, both real and personal, of a value in excess of \$100,000.

¶ 5 Mr. Baumgarten left a written instrument purporting to be his last will and testament. The written instrument was filed with the circuit court of Cook County Probate Division for probate in case number 10 P 2270, and on April 28, 2010, was proved and admitted to record and probate in and by the probate court as the will of Robert L. Baumgarten, deceased. The probate court issued letters testamentary to Marlene G. Baumgarten as executor.

¶ 6 Article II of the purported will provides in pertinent part as follows:

"I give, devise and bequeath all the rest, residue and remainder of my estate [***] to the then

No. 1-11-1870

acting Trustee under the Declaration of Trust heretofore executed by and between myself, as Grantor and as Trustee, which created the Robert L. Baumgarten Revocable Trust, to be added to and become a part of the trust estate of such trust, and to be held, administered and distributed pursuant to the provisions of such Declaration of Trust as it has been last amended prior to my death."

¶ 7 On October 22, 2010, plaintiffs filed a petition in the probate court to set aside the Robert L. Baumgarten Revocable Trust as amended, on July 17, 2009, because it is fraudulent and the product of the undue influence of Marlene G. Baumgarten.

¶ 8 On November 17, 2010, while the petition in the probate court still was pending, plaintiffs filed a legal malpractice action against defendants. In their legal malpractice complaint, plaintiffs alleged that Mr. Baumgarten had retained defendants to draft the July 17, 2009, amendment to the Robert L. Baumgarten Revocable Trust so as to make specific bequests to plaintiffs, provide a life estate for the benefit of Marlene G. Baumgarten, and ensure that the residuary of Mr. Baumgarten's estate went to plaintiffs. Plaintiffs alleged the amended version of the trust does not accurately reflect Mr. Baumgarten's intentions. Specifically, plaintiffs alleged:

"20. Under clause 5.1 of the Trust the Defendant Charles Harris and Marlene as the Trustee may distribute all or any part of the residuary of the Trust to Marlene for the best interests of Marlene.

21. The Trust does not prevent but in fact facilitates Marlene's ability to obtain all the residuary of the Trust and subsequently devise all the residuary of the Trust to her heirs as opposed to Plaintiffs.

22. Despite their obligations to Plaintiffs, and contrary to the level of skill required of an attorney licensed to practice law in the State of Illinois and holding themselves out as reasonably well skilled in the area of probate law, Defendants breached their duties to Plaintiffs by drafting the July 17, 2009 amendment to the Trust without creating a life estate for Marlene or otherwise providing the protection for Plaintiffs that was the stated intention of Robert.

23. All Defendants' breach of their duties owed to Plaintiffs caused Plaintiffs to suffer injury in the form of the loss of the inheritance that otherwise would have been obtained, and also to incur attorney fees and expenses in taking action to correct the negligence of the defendants herein."

¶ 9 Defendants filed a motion to stay the legal malpractice suit. Defendants asserted that there is no allegation in plaintiffs' legal malpractice complaint that Marlene has devised all the residuary of the Robert L. Baumgarten Revocable Trust to her heirs as opposed to plaintiffs and, thus, "[p]laintiffs have received no current injury and uncertainty exists as to the fact of damages and [p]laintiffs' [c]omplaint is premature." Defendants further noted that on October 22, 2010, prior to filing this malpractice complaint, plaintiffs filed their petition in the probate court to set aside the Robert L. Baumgarten Revocable Trust, as amended, due to undue influence. Defendants argued that if plaintiffs succeeded in the probate court in setting aside the amended trust, then the malpractice action becomes moot. Defendants argued, "[p]roceeding with the malpractice case before a resolution of the [p]etition to [s]et [a]side undermines orderly administration of justice and judicial economy."

No. 1-11-1870

¶ 10 On June 6, 2011, the trial court held a hearing on defendants' motion and entered an order staying the legal malpractice action until further order of the court, and setting the case for status on December 7, 2011. Plaintiffs did not include in the record on appeal a transcript of the June 6, 2011, hearing on defendants' motion to stay, nor did they include a bystander's report or an agreed statement of facts. Plaintiffs also did not include any transcripts, bystander's report, or agreed statement of facts from the December 7, 2011, status hearing nor any order entered following that hearing.

¶ 11 On July 6, 2011, plaintiffs filed this interlocutory appeal of the June 6, 2011, order granting defendants' motion to stay pursuant to Illinois Supreme Court Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)). See *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 70 (2007) (holding that an order granting a stay of proceedings is appealable as of right pursuant to Rule 307(a)(1)).

¶ 12 On July 19, 2011, after plaintiffs filed their appeal of the order granting the stay of their legal malpractice action, the probate court dismissed the petition to set aside the amended trust with prejudice. On July 18, 2012, a different panel of this court affirmed that dismissal. See *In re Estate of Baumgarten*, 2012 IL App (1st) 112155. Therefore, the only issue on this appeal is whether the trial court erred in entering the June 6, 2011, stay order.

¶ 13 A stay order seeks to preserve the *status quo* on the date of its entry and does not address the merits of the underlying dispute. *Estate of Bass*, 375 Ill. App. 3d at 68. The trial court may stay proceedings as part of its inherent authority to control the disposition of the cases on its docket. *Id.* In determining whether to stay proceedings, the trial court may consider such factors as the orderly administration of justice and judicial economy. *Id.*

No. 1-11-1870

¶ 14 On review of an order granting a motion to stay proceedings, we consider whether the trial court abused its discretion. *Id.* at 67. Under the abuse of discretion standard, we determine whether the trial court " "acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted. [Citations.]" " *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1994).

¶ 15 The trial court committed no abuse of discretion in granting defendants' motion for a stay of plaintiffs' legal malpractice action. As discussed above, plaintiffs alleged in their legal malpractice action that Mr. Baumgarten retained defendants to draft the amendment to his trust so as to provide a life estate for the benefit of Marlene and ensure that the residuary of his estate went to plaintiffs. Plaintiffs alleged that clause 5.1 of the amended trust, drafted by defendants, failed to comply with Mr. Baumgarten's intentions in that it allows Marlene to obtain all the residuary of the trust and devise it all to her heirs as opposed to plaintiffs. Plaintiffs alleged they suffered injury in the form of the loss of the inheritance they otherwise would have obtained had defendants drafted the amendment in accordance with Mr. Baumgarten's intentions, as well as the attorney fees they have been forced to incur to correct defendants' negligence. However, prior to filing their legal malpractice action, plaintiffs filed a petition in the probate court to set aside the amended trust because the amendment drafted by defendants was fraudulent and the product of Marlene's undue influence. The probate court had not yet ruled on that petition as of June 6, 2011, when the trial court held its hearing on defendants' motion to stay plaintiffs' legal malpractice action. If plaintiffs' probate action ultimately proved to be successful, and the probate court set aside the amended trust,

No. 1-11-1870

Marlene would be unable to obtain the residuary of the trust and plaintiffs would not suffer the loss of their inheritance. Thus, plaintiffs' claim of injury in the legal malpractice action based on the loss of their inheritance would be mooted. As the outcome of the then-pending probate action had the potential to impact the legal malpractice action, the trial court committed no abuse of discretion in granting defendants' motion to stay. In granting the stay, the trial court was acting within its inherent authority to control its docket and to consider such factors as the administration of justice and judicial economy, and we cannot say the court acted arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason and ignored recognized principles of law resulting in substantial prejudice.

¶ 16 Although the probate court ultimately dismissed with prejudice plaintiffs' petition to set aside the amended trust, that dismissal order was entered on July 19, 2011, *after* the stay order entered by the trial court here. Plaintiffs make no arguments that the July 19, 2011, dismissal order entered by the probate court (which, as discussed, was recently affirmed on appeal) has any impact on the trial court's June 6, 2011, order granting defendants' motion to stay. Also, as discussed, plaintiffs have not informed us of what occurred at the December 7, 2011, status hearing held by the trial court subsequent to the probate court's July 19, 2011, dismissal order, nor have they made any arguments for reversal of the stay order premised on said status hearing.

¶ 17 Also, as discussed above, plaintiffs have failed to provide us with a transcript of the hearing on defendants' motion for a stay, nor have they provided us with a bystander's report or an agreed statement of facts. Plaintiffs, as the appellants, have the burden of providing a sufficiently complete record of the proceedings to support their claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92

No. 1-11-1870

(1984). Absent such a record, we presume the trial court's order granting the stay conformed with the law and had sufficient factual support. *Id.* at 392.

¶ 18 For the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 19 Affirmed.