

2012 IL App (2d) 110537-U
No. 2-11-0537
Order filed February 16, 2012

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
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
RENEE R. CRAGLOW,)	of Winnebago County.
)	
Petitioner-Appellee,)	
)	
and)	No. 09-D-477
)	
RICHARD S. CRAGLOW,)	
)	
Respondent)	Honorable
)	Steven L. Nordquist,
(K.O. Johnson, Appellant).)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: (1) Without record support for appellant's claim that certain funds were part of respondent's estate (and thus were improperly awarded), we rejected the claim; (2) to comment on the enforceability of an injunction, in anticipation of a proceeding involving the issue, would be to issue an advisory opinion, so we did not reach the issue.

¶ 1 Petitioner, Renee R. Craglow, petitioned for the dissolution of her marriage to respondent, Richard S. Craglow. During the pendency of the proceedings, Richard died. Richard's attorney, K.O. Johnson, moved to dismiss the proceedings and, in addition, filed a petition for attorney fees.

Renee's counsel also petitioned for attorney fees. The trial court dismissed the case and ordered that certain funds being held by Renee's attorney in a trust account be split evenly between the two attorneys as fees. Johnson filed a notice of appeal on his own behalf and on behalf of his deceased client. Johnson argues: (1) that the trial court erred in ordering that attorney fees be paid from "Richard's Estate"; and (2) that the court's May 7, 2009, injunction entered against Richard did not survive the dismissal of the case. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On April 22, 2009, Renee filed her petition for the dissolution of her marriage to Richard.

¶ 4 On May 7, 2009, the trial court entered an order, which: (1) granted Renee sole and exclusive possession of the marital home; (2) directed Richard to pay Renee \$250 per week in support and maintenance; and (3) enjoined Richard from "transferring, encumbering, concealing or disposing of any property, especially funds associated with his employment buyout or retirement."

¶ 5 During the course of the proceedings, a "trust account" was set up by Christine Taylor (Richard's attorney at the time), pursuant to an agreed order. When Taylor withdrew as counsel for Richard, the trial court ordered that the trust account be transferred to attorney John M. Gilbert and that Gilbert put the funds into an interest-bearing trust account.

¶ 6 On May 4, 2010, Johnson entered his appearance on behalf of Richard. Johnson filed a "Motion for Reconsideration of Temporary Orders." Without specifying which temporary orders he was referring to, Johnson argued that the "[c]ourt's decisions re temporary support, maintenance, and access to property are incorrect."

¶ 7 On October 20, 2010, Richard died. The following day, Johnson filed a “Motion to Dismiss and Turn Over Trust Funds to Estate” on behalf of “The Estate of RICHARD S. CRAGLOW, for RICHARD S. CRAGLOW, Respondent.”¹

¶ 8 On November 30, 2010, Renee filed an accounting of the trust account being held by Gilbert. The accounting showed that the trust account contained \$3,887.31. In addition, Gilbert filed a petition for attorney fees, seeking \$11,160. Gilbert asked that the funds in the trust account be transferred to him as attorney fees.

¶ 9 Johnson, also on November 30, 2010, filed his petition for attorney fees, seeking \$14,120.49 from Renee “as Richard is deceased.”

¶ 10 On March 3, 2011, the court dismissed the case “due to the death of Richard.” It further ruled: “The funds being held in trust by John Gilbert shall be disbursed as 50% to each (penny rounded either way if it exists at the discretion of John Gilbert) as attorneys fees for this cause.”

¶ 11 Johnson appealed. Although there is no response brief, we may decide the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 12 **II. ANALYSIS**

¶ 13 At page 6 of his appellant brief, Johnson writes:

“Appellants RICHARD CRAGLOW, RICHARD’S Estate, and attorney K.O. Johnson join in the dispute over the ability of the trial court to award RENEE attorney’s fees, and decline to award attorney’s fees against RENEE, after the death of RICHARD.”

¹There is nothing in the record indicating that Johnson was ever appointed as attorney for Richard’s estate; moreover, the estate is not a party to these proceedings.

At the outset, we note that neither Richard (who is deceased) nor Richard's estate is a proper party to this appeal. "Generally, when a client dies, the attorney-client relationship terminates, and thereafter, the attorney must obtain authorization from the decedent's personal representative in order to pursue the interests of the decedent. [Citation.] In the absence of this authorization, the attorney cannot proceed because he no longer represents a party to the litigation." *In re Estate of Horwitz*, 371 Ill. App. 3d 625, 631 (2007). A search of the record reveals no authorization from Richard's personal representative for Johnson to continue to represent Richard. In addition, as previously noted, there is nothing in the record showing that Johnson has been appointed as counsel for the estate, and the estate is not a party to the proceedings.

¶ 14 We also note that the trial court properly dismissed the dissolution action. "It has long been the rule in Illinois that the death of either party to a divorce action prior to final judgment deprives the circuit court of jurisdiction over all aspects of the marriage relationship." *In re Marriage of Ignatius*, 338 Ill. App. 3d 652, 658 (2003) (quoting *In re Estate of Chandler*, 90 Ill. App. 3d 674, 677 (1980)). Nevertheless, "[a] trial court retains jurisdiction to hear the issue of attorney's fees even after a dissolution proceeding has abated with the death of one of the parties." *In re Marriage of Baltzer*, 150 Ill. App. 3d 890, 893 (1986). Therefore, the trial court properly heard the fee petitions notwithstanding Richard's death.

¶ 15 While difficult to decipher, the gist of Johnson's first argument seems to be that the trial court erred in awarding attorney fees from the trust account, because the trust account was part of Richard's estate. However, Johnson has provided no record support for his claim that the funds in the trust account were part of Richard's estate or that Richard had any interest in the trust account at all. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Argument" section of appellant's brief "shall

contain” citation to “the pages of the record relied on”). The court’s order provided that the funds being held in trust be shared evenly between the attorneys; it did not specify that the funds were coming from Richard’s estate. Without more, we cannot say that the court erred.

¶ 16 Turning to Johnson’s second issue, whether the court’s May 7, 2009, injunction survived the dismissal of the case, we find that the issue is not properly before us. The injunction enjoined Richard from “transferring, encumbering, concealing or disposing of any property, especially funds associated with his employment buyout or retirement.” Under *Ignatius*, the viability of an injunction in a marriage case dismissed for a party’s death might be raised in a probate or other independent proceeding. See *Ignatius*, 338 Ill. App. 3d at 659-60. For us to comment on the enforceability of the injunction in anticipation of such a proceeding would be to render an advisory opinion. See *In re Chilean D.*, 304 Ill. App. 3d 580, 584 (1999) (quoting *Stokes v. Pekin Insurance Co.*, 298 Ill. App. 3d 278, 284 (1998) (“ [t]his court may not issue advisory opinions that are contingent upon the possible happening of a future event’ ”)).

¶ 17

III. CONCLUSION

¶ 18 Based on the foregoing, we affirm.

¶ 19 Affirmed.