

2012 IL App (2d) 110919-U  
No. 2-11-0919  
Order filed September 19, 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> ESTATE OF HELEN I. BOLLER,	)	Appeal from the Circuit Court
	)	of Lake County.
Deceased	)	
	)	
	)	No. 10-P-440
	)	
(RAY K. BOLLER, Petitioner-Appellant, v.	)	
ROBERT BOLLER, Individ. and as Executor of	)	Honorable
the Estate of Helen I. Boller, deceased,	)	Diane E. Winter,
Respondent-Appellee.)	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Burke concurred in judgment.

**ORDER**

*Held:* The trial court's findings regarding the validity of the promissory notes and bills of sale on which respondent's claim was based were not against the manifest weight of the evidence, and it correctly allowed respondent's claim against the estate. We lacked jurisdiction to consider petitioner's appeal regarding the trial court's denial of his petition to remove executor, and therefore, dismissed that portion of the appeal.

¶ 1 Petitioner, Ray K. Boller, appeals the trial court's judgment allowing, respondent's, Robert Boller, claim against the estate of Helen I. Boller, deceased. Petitioner challenges two rulings of the trial court: (1) the trial court's denial of his petition to remove respondent as executor of the estate;

and (2) the trial court's decision to uphold the validity of promissory notes and allow respondent's claim against the estate. For the reasons that follow, we affirm in part and dismiss in part.

¶ 2 At the outset, we note that petitioner cites to the record on appeal only six times in his seven-page Statement of Facts section. Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008) requires a statement of facts that contains the facts "necessary to an understanding of the case." This court may strike a statement of facts when the improprieties hinder our review. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9 (citing *John Crane Inc. v. Admiral Insurance Co.*, 391 Ill. App. 3d 693, 698 (2009)). Not only does petitioner's brief lack appropriate citations to the record supporting the facts stated, the facts section also contains impermissible argument. See Ill. S. Ct. R. 341(h)(6) (requiring facts to be "stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record"). Despite petitioner's failure to comply with Rule 341(h)(6), it is within our discretion to consider the brief. See *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 228 (2008). Petitioner's violations are not so egregious that they hinder our review of the issues raised on appeal; therefore, we decline to strike petitioner's statement of facts. However, we will disregard any improper or unsupported statements. See *John Crane Inc.*, 391 Ill. App. 3d at 698.

¶ 3 The record reflects that, on March 17, 2010, Helen Boller died. On May 18, 2010, petitioner filed a petition to admit decedent's will to probate and to appoint himself as executor. On May 27, 2010, respondent filed a cross-petition for probate of will and for letters testamentary, seeking the trial court to appoint him as executor. The parties responded to each other's petitions, and on June 28, 2010, the trial court entered an order appointing respondent as executor.

¶ 4 On August 26, 2010, petitioner filed a petition to remove respondent as executor. On October 8, 2010, respondent filed his response and affirmative defenses to the petition to remove, claiming, *inter alia*, that the petition was essentially a motion to reconsider the appointment of the executor and, as such, should be deemed forfeited because it was required to be filed within 30 days of the trial court's order. On October 22, 2010, petitioner filed his reply, stating that it was not a motion to reconsider the appointment but rather a separate petition "based on the subsequent acts of the executor." On October 28, 2010, the trial court conducted a hearing and thereafter denied petitioner's petition to remove the executor.

¶ 5 Also on October 8, 2010, respondent filed a claim against the estate, seeking \$1,161,622.34 from a series of loans, and attached a schedule in support of his claim. On February 8, 2011, petitioner filed a response to respondent's claim, and on February 22, 2011, respondent filed his reply.

¶ 6 On April 19, 2011, the trial court conducted a hearing on respondent's claim against the estate. Following arguments of the parties, the trial court took the matter under advisement. On June 9, 2011, the trial court allowed respondent's claim against the estate. The trial court found that respondent's claim was based upon 23 written notes signed by the decedent. The trial court found that respondent demonstrated that he loaned the decedent in excess of \$3.6 million through a series of checks and payments that he verified and attached to his pleadings. The trial court further found that decedent had made payments on the loans through the transfer of various items of her personal property, which were evinced by the execution of bills of sale. The trial court noted that all but one of the bills of sale contained detailed lists of the specific items of personal property being transferred and its transfer value.

¶ 7 The trial court further found that respondent sufficiently explained the later notarization of the bills of sale through the un rebutted affidavits of Susan Boller and Emily Arellano. The trial court noted that the later notarization of the earlier signed bills of sale reaffirmed the decedent's transfer of personal property. The trial court found that the bills of sale reflected the payments made on the outstanding loans and concluded that consideration existed for the execution of the bills of sale. Finally, the trial court found that the payments on the outstanding loans through the bills of sale extended the statute of limitations to enforce the notes and that none of the unpaid notes were time barred.

¶ 8 On June 30, 2011, petitioner filed a motion to reconsider the trial court's June 9, 2011, order allowing respondent's claim against the estate. On August 16, 2011, the trial court denied petitioner's motion to reconsider, further finding that respondent had presented a series of checks and payments into evidence that were connected to the notes and, therefore, extended the statute of limitations. On September 13, 2011, petitioner filed his notice of appeal.

¶ 9 Although petitioner lists five "issues" for our review, his argument section provides only two: (1) whether the trial court abused its discretion in allowing respondent's claim "as the documents provided by him \*\*\* were barred under the [s]tatute of [l]imitations and contained evidence of fraud"; and (2) whether the trial court "erred when it denied [his] Petition to Remove Executor for cause pursuant to 755 ILCS 5/23-2(10)."

¶ 10 With respect to the trial court's denial of petitioner's petition to remove executor, we conclude that we lack jurisdiction to address this issue. A reviewing court has a duty to ascertain its jurisdiction before proceeding in a cause of action and must dismiss the appeal if the court lacks jurisdiction. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010); *Secura Insurance*

*Co. v. Illinois Farmers Insurance Co.*, 232 Ill.2d 209, 213 (2009). Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010) provides:

“(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:

(1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.”

¶ 11 “A final order is one that ‘disposes of the rights of the parties either with respect to the entire controversy or some definite and separate portion thereof.’ ” *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1069 (2008) (quoting *Arachnid, Inc. v. Beall*, 210 Ill. App. 3d 1096, 1103 (1991)). While generally an appeal can only be taken from a judgment as to fewer than all claims “if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both” (Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006)), no such finding is required to appeal from an order entered pursuant to Rule 304(b)(1). Reviewing courts have held that “[o]rders within the scope of Rule 304(b)(1), even though entered before the final settlement of estate proceedings, must be appealed within 30 days of entry or be barred.” *Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1051 (2005).

¶ 12 “ ‘A central reason behind making the time for appeal of such orders mandatory, and not optional, is that certainty as to some issues is a necessity during the lengthy procedure of estate administration.’ ” *Stephen*, 361 Ill. App. 3d at 1051 (quoting *In re Estate of Kime*, 95 Ill. App. 3d 262, 268 (1981)). In the present case, petitioner filed his petition to remove executor on August 10,

2010, and the parties fully briefed the issue in their response and reply to the petition. The trial court conducted a hearing on October 28, 2010, and denied petitioner's petition. The trial court's order disposed the right of petitioner with respect to his petition to remove respondent as executor and thus, was a final order subject to appeal. See *Yucis*, 382 Ill. App. 3d at 1069. Our lack of jurisdiction obviates the need to address respondent's claim that petitioner forfeited the issue because the petition was more akin to a motion to reconsider. Moreover, petitioner's claim that the issue remained pending because he reasserted it in his February 8, 2011, response to respondent's claim against the estate is unavailing and contrary to the purpose of Rule 304(b)(1). See *In re Estate of Burd*, 354 Ill. App. 3d 434, 437 (2004) (rejecting argument that an order appointing an executor is not final under Rule 304(b)(1) as an executor can be removed for a variety of reasons); *In re Estate of Mueller*, 275 Ill. App. 3d 128, 139 (1995) (stating that Rule 304(b)(1) promotes efficiency and provides certainty by allowing an appeal as to some issues as those issues are resolved during the lengthy procedure of estate administration) (citing *Yardley v. Yardley*, 137 Ill. App. 3d 747, 750-51 (1985)). Rather than calling into question the finality of the order of October 28, 2010, Rule 304(b)(1) made the appeal of the order within 30 days of its entry mandatory. Again, "[o]rders within the scope of Rule 304(b)(1), even though entered before the final settlement of estate proceedings, must be appealed within 30 days of entry or be barred." *Stephen*, 361 Ill. App. 3d at 1051.

¶ 13 Here, petitioner filed his notice of appeal on September 13, 2011, more than 30 days after the entry of the trial court's October 28, 2010, order denying petitioner's petition to remove executor. Petitioner's appeal from the trial court's order of October 28, 2010, was therefore untimely, and we dismiss it.

¶ 14 We do, however, have jurisdiction to review petitioner's other issue. Petitioner contends that the trial court abused its discretion when it allowed respondent's claim against the estate. Specifically, petitioner argues that (1) the promissory notes were invalid because they were barred by the statute of limitations, and (2) the bills of sale were invalid because they were "doctored" in that they were not notarized at the time of the transfers but rather, years later.

¶ 15 The Probate Act of 1975 (the Act) (755 ILCS 5/1-1 *et seq.* (West 2010)) provides that creditors of any decedent, may file a claim against the decedent's estate once an executor or administrator is appointed and the decedent's estate is opened. See 755 ILCS 5/18-1 (West 2010); see also *In re Estate of Gebis*, 186 Ill. 2d 188, 194 (1999). Section 18-7 of the Act discusses the procedure by which a trial court adjudicates a claim. See 755 ILCS 5/18-7 (West 2010); see also *In re Estate of Andernovics*, 197 Ill. 2d 500, 505-10 (2001). A trial court should use care when scrutinizing a claim against an estate and a claim should not be allowed except on clear proof. *Id.* at 506.

¶ 16 As noted above, the trial court concluded that respondent met his burden in sufficiently proving his claim against the estate. We will not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence. *In re Estate of Weiland*, 338 Ill. App. 3d 585, 603-04 (2003) (citing *In re Estate of Pohn*, 67 Ill. App. 2d 227, 234 (1966)). For a finding to be against the manifest weight of the evidence, it must appear that a conclusion opposite to that reached by the trial court is clearly evident. *Weiland*, 338 Ill. App. 3d at 605 (citing *Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972, 986 (1984)).

¶ 17 Petitioner argues that the promissory notes were invalid because they were barred by the statute of limitations. Section 1-6 of the Act provides that the Civil Practice Law (the Code) (735

ILCS 5/2-101 et seq. (West 2010)) shall apply to all probate proceedings except as otherwise provided in the Act. 755 ILCS 5/1-6 (West 2010); *In re Estate of Michalak*, 434 Ill. App. 3d 75, 92 (2010). The enforceability of the promissory notes at issue is governed by the statute of limitations contained in section 13-206 of the Code. Section 13-206 of the Code provides:

“Except as provided in Section 2-725 of the ‘Uniform Commercial Code,’ actions on \*\*\* promissory notes \*\*\* or other evidences of indebtedness in writing \*\*\* shall be commenced within 10 years after the cause of action accrued; but if any payment or new promise to pay has been made, in writing, on any \*\*\* written evidence of indebtedness, within or after the period of 10 years, then an action may be commenced thereon at time within 10 years after the time of such payment or promise to pay. \*\*\* With respect to a demand promissory note dated on or after the effective date of the amendatory Act of 1997, if a demand for payment is made to the maker of the demand promissory note, an action to enforce the obligation of a party to pay the demand promissory note must be commenced within 10 years after the demand. An action to enforce a demand promissory note is barred if neither principal nor interest on the demand promissory note has been paid for a continuous period of 10 years and no demand for payment has been made to the make during that period.” 735 ILCS 5/13-206 (West 2010).

When payments have been made on a debt instrument, the statute of limitations begins to run from the date of the last payment made, even if 10 years had already run on the statute of limitations by the time of the last payment. *Kranzler v. Saltzman*, 407 Ill. App. 3d 24, 31 (2011) (citing *Krajcir v. Egidi*, 305 Ill. App.3d 613, 622 (1999) (finding as timely filed a complaint within 10 years of the last payment made on a nonnegotiable promissory note). Moreover, payment on a note need not be

made in money to toll running of the statute of limitations. *Meyer v. Kramer*, 350 Ill. App. 102 (1953) (abstract of op.).

¶ 18 In the present case, the record reflects that decedent made payments on the promissory notes in the form of a transfer of property. She transferred collectibles to respondent and memorialized the transfer with 10 written and signed bills of sale. The bills of sale reflected that decedent transferred assets, established a value for the assets, and established that it was for repayment of a loan. Decedent had each transferred asset inventoried and assigned a value. The inventory list provided a description of each item, its value, and the words “sold [B]ob for partial payment of interest and loans.” Decedent’s last transfer occurred on May 28, 2008. Payment by decedent, including the bills of sale, would have been sufficient to trigger a new 10-year limitations period under section 13-206 of the Code. Thus, we agree with the trial court’s findings that the promissory notes were valid and not barred by the statute of limitations. See *Kranzler*, 407 Ill. App. 3d at 31.

¶ 19 Petitioner next challenges the validity of the bills of sale based on the notarizations. Petitioner argues that, because the notarizations were dated on a day different from the date the transfers took place, the bills of sale were invalid. Petitioner does not challenge the validity of the notarization, but rather, the validity of the bills of sale. However, petitioner presents no authoritative support for his proposition that a notarization date is material to the validity of a bill of sale. We have reviewed section 6-102 of the Illinois Notary Public Act (5 ILCS 312/6-102 (West 2010)) and find no support for petitioner’s claim. We, therefore, reject it.

¶ 20 In *In re Estate of Flynn*, 133 Ill. App. 2d 159 (1971), the reviewing court affirmed a trial court’s ruling, which allowed a claim against an estate based on three promissory notes. The reviewing court noted that the claim was sufficiently proved by evidence that included the notes, a

letter signed by the decedent acknowledging consideration for them, and possession of the notes by the claimant, as well as testimony of the decedent's sister verifying the decedent's signatures. *Id.* (abstract of op.); see also *In re Estate of Flynn*, No. 54734, slip op. at 2 (full text). Similarly, in the present case, the trial court made express findings with respect to the promissory notes and the bills of sale. The trial court found that respondent demonstrated that he loaned the decedent in excess of \$3.6 million through a series of checks and payments that respondent verified and attached to his pleadings. The trial court further found that, through the bills of sale, decedent had made payments on the loans through the transfer of various items of her personal property. The trial court discussed the affidavits and commented on the later notarization of the bills reflected a reaffirmation of the decedent's transfer of personal property. The trial court found that, through the bills of sale, decedent had made payments on the outstanding loans and concluded that consideration existed for the execution of the bills of sale. Finally, the trial court found that the payments on the outstanding loans through the bills of sale extended the statute of limitations to enforce the notes and that none of the unpaid notes were time barred.

¶ 21 On our review of the record and applicable law, we conclude that the trial court's findings were not against the manifest weight of the evidence and conclude that respondent met his burden in sufficiently proving his claim against the estate.

¶ 22 For the forgoing reasons, we affirm the judgment of the circuit court of Lake County as it pertains to the appeal of the trial court's allowance of respondent's claim against the estate; we dismiss that portion of the appeal pertaining to the trial court's denial of petitioner's petition to remove executor.

¶ 23 Affirmed in part and appeal dismissed in part.

