NOTICE
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2013 IL App (4th) 120342-U

NO. 4-12-0342

FILED
January 4, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RAYMOND SCHNEPF, as Executor of the Estate of Maleta Maxine Schnepf, Deceased,	)	Appeal from Circuit Court of Pike County No. 08P49
Plaintiff-Appellant,	)	
v.	)	
JOHN SCHNEPF and CAROLYN SHAFFER,	)	Honorable Thomas J. Brannan, Judge Presiding.
Defendants-Appellees.	)	

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding Raymond failed to show good cause for failing to distribute estate funds in a timely manner and consequent imposition of interest against him was not against the manifest weight of the evidence.

¶ 2 Following decedent's July 2008 death, her son, Raymond Schnepf, was issued letters of office on August 5, 2008, naming him independent executor of her estate (Raymond). In January 2012, following a hearing on several beneficiaries' petition for relief, the probate court assessed interest against Raymond in the amount of $20,405.07 pursuant to section 24-10 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/24-10 (West 2010)).

¶ 3 Raymond appeals, arguing the trial court erred in assessing interest against him because (1) case law requires a two-pronged analysis prior to the imposition of this penalty and (2) he had good cause for failing to distribute estate funds earlier.

¶ 4 We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 Maleta Maxine Schnepf died on July 31, 2008, leaving a will later admitted to probate on August 5, 2008, at which time letters of office were issued to Raymond. On December 31, 2008, Raymond filed an inventory of decedent's estate assets, followed by a supplemental inventory on January 30, 2009, and a second supplemental inventory on March 18, 2009. During the initial administration of the estate, various judges were recused with the final judge being appointed in February 2009.

¶ 7 On June 26, 2009, Raymond filed the first current report, reporting all of decedent's assets had been converted to cash with the exception of one certificate of deposit and certain United States savings bonds. Raymond reported $354,345.54 cash on hand. The report further stated as follows: a judgment had been obtained against Lyndle Schnepf for $1,800 plus court costs, the estate was due court costs from Lyndle and Brenda Schnepf in Pike County case Nos. 06-CH-37 and 04-CH-27, there were outstanding grain contracts of undetermined value, certain deer hunting revenue in which the estate may have an interest was being held by the Pike County circuit clerk, and the estate remained a party in interest in Pike County case Nos. 07-CH-2, 08-CH-42, and 08-CH-43.

¶ 8 On August 25, 2010, Raymond filed a second current report, reporting all of decedent's assets had been converted to cash, with the exception of a $250 United States savings bond. Raymond reported $388,615.49 cash on hand. The report again reflected the estate's interest in court costs in case Nos. 06-CH-37 and 04-CH-27 and the judgment previously obtained against Lyndle. Further, the report noted the estate remained a party in interest in Pike

County case Nos. 07-CH-2, 08-CH-42, 08-CH-43, and 09-MR-47. In light of continuing litigation in which the estate had an interest, Raymond proposed a partial distribution of two-thirds of the funds on hand. On October 4, 2010, a hearing was held on the matter and the probate court ordered Raymond to present a proposed partial distribution for consideration by the court. Approval of the second current report was continued.

¶ 9 On December 7, 2010, no proposed distribution having been filed, Joseph Schnepf, Dorthea Smith, Brenda Johnson, and Connie Johnessee filed a petition for relief, asking the probate court to impose penalties against Raymond pursuant to section 24-10 of the Probate Act (755 ILCS 5/24-10 (West 2010)). No hearing on the petition was requested at that time.

¶ 10 On August 22, 2011, Raymond filed a "Memorandum Regarding Interim Distribution" in which he proposed a distribution of $185,058.07.

¶ 11 On September 9, 2011, the attorney for Joseph, Dorthea, Brenda, and Connie set their petition for relief, originally filed in December 2010, for a hearing. A hearing was held on October 5, 2011, at which time Raymond was ordered to file a supplemental report within 30 days, setting out any and all contingent claims against the estate as well as an allocation of crop revenue and deer or hunting revenue he had received. On November 4, 2011, the probate court allowed Raymond's motion for extension of time, and he was ordered to file the supplemental report by November 30, 2011. A hearing was set for December 14, 2011. The court directed Raymond to present good cause for any delay in distribution of the estate funds at the December 2011 hearing.

¶ 12 On November 30, 2011, Raymond filed a third current report, reflecting $352,119.19 cash on hand, $48,221.56 of which represented funds belonging to members of the

Schnepf family due to their interest in certain real estate. Raymond proposed a partial distribution to the estate beneficiaries of $183,897.63.

¶ 13 During the December 2011 hearing, Raymond testified he had not personally received or used any funds that came under his control as executor, except for monies awarded to him as the result of a separate proceeding in which he had a personal interest, nor had he profited in any manner from the possession of funds in the estate account. Raymond further testified he was prepared to make a distribution to the estate beneficiaries following the second current report in August 2010; however, no determination by the probate court was made, and he had concerns with making any distributions without court approval due to the litigious nature of the beneficiaries. Additionally, Raymond's counsel argued numerous motions for substitutions of judges and numerous attorneys involved in various capacities had caused delays outside of Raymond's control.

¶ 14 On January 23, 2012, the probate court found Raymond had failed to show good cause for his failure to distribute estate funds as set out in section 24-10 of the Probate Act (755 ILCS 5/24-10 (West 2010)) and assessed interest against him in the amount of $20,405.07. The court noted the estate had been pending for more than 3 1/2 years, and while Raymond had more than $300,000 on hand and the claim date had long since ran, he failed to make any distributions to the beneficiaries. Further, the court noted it had ordered Raymond to file a proposed distribution with the court, which he did not file until more than 10 months later, despite his knowledge some of the beneficiaries had filed a petition for relief 8 months earlier.

¶ 15 In February 2012, Raymond filed a motion for reconsideration of the interest assessed against him, which the probate court denied in March 2012.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Raymond asserts the probate court erred in assessing interest against him pursuant to section 24-10 of the Probate Act (755 ILCS 5/24-10 (West 2010)). We disagree and affirm.

¶ 19 A. Deficiencies of Raymond's Brief

¶ 20 As an initial matter, we note Raymond's brief fails to comply with various sections of Illinois Supreme Court Rule 341(h) (eff. July 1, 2008), which governs the content of an appellant's brief.

> " 'The rules of procedure concerning appellate briefs are rules and not mere suggestions.' [Citation.] Failure to comply with the rules regarding appellate briefs is not an inconsequential matter. [Citation.] The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. [Citation.] A brief that lacks any substantial conformity to the pertinent supreme court rules may justifiably be stricken. [Citation.]" *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7, 969 N.E.2d 930.

¶ 21 Rule 341(h)(3) requires an appellant to "include a concise statement of the applicable standard of review for each issue, with citation to authority ***." Ill. S. Ct. R. 341(h)(3) (eff. July 1, 2008). Raymond's brief violates this rule because it does not include the standard of review in its discussion of the issue, nor does it mention the standard of review at any

point prior to or after discussion of the issue. Additionally, Rule 341(h)(6) requires an appellant to cite to the record in its statement of facts. Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Raymond's brief fails to do so. Rule 341(h)(7) further requires an appellant to cite to the record in its argument. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Again, Raymond's brief fails to do so.

¶ 22 Further, Raymond's attorney has submitted a brief that is mostly lacking in argument. This court is not a depository for the appellant to dump his burden of research and argument. *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11, 964 N.E.2d 1139. The argument section of Raymond's brief consists of six total paragraphs, in which counsel briefly summarizes a few cases and points to one similarity between the instant case and a cited case. "[M]ere conclusory assertion[s], without supporting analysis, is not enough." *Pilat v. Loizzo*, 359 Ill. App. 3d 1062, 1063, 835 N.E.2d 942, 944 (2005). However, because Raymond is not responsible for his attorney's actions, we will address the merits of his appeal. *Id*. at 1064, 835 N.E.2d at 944.

¶ 23 B. The Impact of Defendants' Failure To File an Appellee Brief

¶ 24 Prior to addressing the merits of this appeal, we next note the defendants have not filed an appellee brief. In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court explained the option a reviewing court may exercise when an appellee fails to file a brief, as follows:

> "We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it

> seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases[,] if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record[,] the judgment of the trial court may be reversed."

¶ 25 Stated another way, the supreme court has set forth three distinct, discretionary options a reviewing court may exercise in the absence of an appellee brief:

> "(1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record." *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009).

¶ 26 C. Raymond's Claim of Error

¶ 27 As previously stated, a reviewing court may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee brief. *Talandis Construction Corp*., 63 Ill. 2d at 133, 345 N.E.2d at 495. Here, Raymond claims the probate court erred in its application of section 24-10 of the Probate Act (755 ILCS 5/24-10 (West 2010)). Specifically, Raymond asserts he clearly established "good cause" sufficient to

avoid the application of the punitive provisions of section 24-10.

¶ 28 "In reviewing a probate court's determination, all reasonable presumptions are made in favor of the trial court, the appellant has the burden to affirmatively show the errors alleged, and the judgment will not be reversed unless the findings are clearly and palpably contrary to the manifest weight of the evidence." *In re Estate of Vail*, 309 Ill. App. 3d 435, 438, 722 N.E.2d 248, 251 (1999).

¶ 29 Section 24-10 of the Probate Act provides as follows:

> "At the expiration of a period of 2 years after the issuance of letters of office in a decedent's estate, the representative shall be charged with interest at the rate of 10% per year on the fair market value of all the personal estate which has come into his possession or control and has not been properly paid out or distributed, except for good cause shown." 755 ILCS 5/24-10 (West 2010).

On its face, section 24-10 provides where estate distributions are not made within two years of letters of office being issued, an estate representative *shall* be charged 10% interest, *unless he can show good cause* for failing to make timely distributions.

¶ 30 1. *No Personal Use Requirement*

¶ 31 Contrary to the plain language of the statute, which requires interest be assessed in the absence of good cause, Raymond's counsel devotes the majority of his short argument section to support his assertion case law requires a two-pronged analysis prior to the imposition of this penalty. According to Raymond, interest should be assessed only when an executor (1) improperly held funds which should have been distributed and (2) used those funds for his own

purpose.

¶ 32 In support of this two-pronged analysis contention, counsel cites *Fraser v. Fraser*, 149 Ill. App. 186 (1909) (Second District), *In re Estate of Kapraun*, 21 Ill. App. 2d 231, 157 N.E.2d 700 (1959) (Second District), and *In re Estate of Lindberg*, 49 Ill. App. 3d 154, 364 N.E.2d 555 (1977) (Second District). While we acknowledge the *Fraser* court opined the provision of the Probate Act "was intended as a penalty, and to make it unprofitable for executors and administrators to hold the funds of an estate in their hands, and to use them in their own business for their own benefit instead of distributing funds to those entitled thereto" (*Fraser*, 149 Ill. App. at 196-97), we do not read *Fraser* as creating a two-pronged analysis a court must undertake prior to assessing interest against an estate representative. (As an aside, we note the following errors in counsel's citation to this case: (1) Fraser is misspelled "Frazier"; (2) the Seventh District Appellate Court—which does not exist—is cited as the jurisdiction; and (3) the year of disposition is cited as 1999 instead of 1909.)

¶ 33 Likewise, neither our review of *Kapraun* or *Lindberg* reveals the requirement of this two-part test noted by Raymond. (It would have been of great assistance to this court had Raymond's counsel pointed us to the page of the opinions where he believes this two-part test is set out.) In finding the executor had good cause for withholding estate distributions in *Kapraun*, the Second District Appellate Court opined as follows:

> "The deferment of distribution here was apparently not arbitrary, or without cause, or reason, was apparently in good faith, there is nothing to indicate the Executor used any of the funds for his own benefit, it was evidently acquiesced in by the appellants

> objectors, with full knowledge of the facts, who had ample possible remedies available to them had they wished to assert them, litigation was pending which, until determined otherwise, might have materially affected the subject of distribution, and there was an at least fair question whether the five children as ultimate distributees were entitled to insist upon distribution any sooner." *Kapraun*, 21 Ill. App. 2d at 247, 157 N.E.2d at 707-08.

We recognize the *Kapraun* court noted there was no indication the executor had used funds for his own benefit; however, this is only one factor in a long list of factors considered by the court in finding good cause. In *Lindberg*, the appellant had argued the executor of the estate should be charged 10% interest for failing to make distributions pursuant to section 308 of the Probate Act (Ill. Rev. Stat. 1973, ch. 3, ¶ 309) (now 755 ILCS 5/24-10 (West 2010))). The Second District Appellate Court disposed of this argument by finding the trial judge had a reasonable basis for finding good cause based on actions taken by the appellant, who objected every time the executrix attempted to close the estate. *Lindberg*, 49 Ill. App. 3d at 156, 364 N.E.2d at 556-57. Only when addressing the appellant's alternative argument he was entitled to simple interest on his undistributed share did the *Lindberg* court mention the "executrix in no way profited by the delay in distribution." *Id.* at 157, 364 N.E.2d at 557.

¶ 34 Contrary to Raymond's assertion, section 24-10 of the Probate Act does not require a court to find an executor used estate funds for his own purpose prior to charging an executor 10% interest for improperly withholding estate funds. Thus, we must determine whether Raymond showed good cause for failing to make timely distributions.

¶ 35 2. *Good Cause Analysis*

¶ 36 Raymond's counsel devoted the last two paragraphs of his argument section to support the contention Raymond had good cause for failing to distribute estate funds earlier. In support of his good cause assertion, counsel compares *Kapraun* and *Vail*, 309 Ill. App. 3d 435, 722 N.E.2d 248 with the instant case.

¶ 37 Specifically, counsel notes "the executor in *Kapraun* did much less than [in] the instant case to timely administer the estate, waiting over five (5) years to file any reports or suggest any distribution" and yet the *Kapraun* court found good cause. Thus, according to counsel, *Kapraun* provides substantial support for a finding of good cause in the instant case. We disagree.

¶ 38 In *Kapraun*, the executor was involved in litigation with the estate beneficiaries concerning real estate the decedent had conveyed to the executor, in his individual capacity, prior to his death. The executor did not file his initial and final report until after the conclusion of the real estate litigation, five years later. In his brief, Raymond's counsel concludes, "[i]nterestingly, as here, the real estate being the subject of [the *Kapraun* litigation] was not an asset of the estate and the estate itself consisted solely of personal property capable of being readily liquidated and distributed to the beneficiaries." However, in *Kapraun*, the court noted until the litigation involving the property concluded, a fair question of whether the real estate involved was part of the decedent's estate remained. The court further opined such a consideration likely bore on the executor's decision not to make earlier distributions, "particularly so when none of the other interested parties were apparently asking at the time for any prior distribution." *Kapraun*, 21 Ill. App. 2d at 246-47, 157 N.E.2d at 707.

¶ 39 In this case, Raymond testified he was prepared to make a distribution in August 2010 when he submitted the second current report. The trial court ordered him to present a proposed partial distribution for consideration by the court following an October 2010 hearing. Raymond failed to submit the proposed distribution until August 2011, eight months after the petition for relief was filed by defendants and beneficiaries. Further, once a more complete accounting had finally been presented to the court, *i.e.*, the August 2011 third current report, it was clear to the court the claims could and should have been resolved long ago. Thus, contrary to *Kapraun*, it does not appear the outcome of the pending litigation would have impacted a partial distribution of the estate funds. Further, unlike the interested parties in *Kapraun*, the beneficiaries in this case did file a petition for relief when Raymond failed to timely distribute estate funds.

¶ 40 Raymond's counsel also cites *Vail,* where this court found the trial court's determination the executor had good cause for failing to distribute estate funds earlier was not against the manifest weight of the evidence due to repeated objections made by beneficiaries and the ensuing hearings required. *Vail*, 309 Ill. App. 3d at 439, 722 N.E.2d at 251. Counsel then concludes, "[a]s reflected in the record herein, substantial delay resulted from the actions of the beneficiaries in requesting multiple substitutions of judge, in the filing of multiple motions and objections resulting in extended trial proceedings." Although the instant probate case was initially delayed due to numerous motions for substitutions of judges, the 3 1/2 year delay cannot be attributed to the beneficiaries as was the case in *Vail*. Here, the beneficiaries did not object to the current reports filed by Raymond and attempted to speed up the distributions, rather than stalling them, by filing the petition for relief.

¶ 41 In sum, Raymond has failed to satisfy his burden as stated in *Vail* of affirmatively showing the trial court erred in its application of section 24-10 of the Probate Act and the court's finding Raymond failed to show good cause for failing to distribute estate funds in a timely manner was not against the manifest weight of the evidence.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm.

¶ 44 Affirmed.