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2013 IL App (4th) 120707-U  
NOS. 4-12-0707, 4-12-0727 cons.

FILED  
September 12, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of JAMES D. LEVITT, Deceased.	)	Appeal from
MEREDITH A. CARGILL,	)	Circuit Court of
Petitioner-Appellant,	)	Sangamon County
v. (No. 4-12-0707)	)	No. 09P104
MARCIA FIDLER,	)	
Respondent-Appellee.	)	
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In re: the Estate of JAMES DEAN LEVITT, Deceased,	)	
EDITH BARNES,	)	
Petitioner-Appellant,	)	
v. (No. 4-12-0727)	)	Honorable
MARCIA J. FIDLER,	)	Leslie J. Graves,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Where no written order has been filed, this court has no jurisdiction to consider petitioners' claims; and (2) where the trial court was without jurisdiction to enter an order on matters of substance after the notice of appeal was filed, that order is void.

¶ 2 In February 2009, petitioner, Meredith A. Cargill, was appointed executor of the estate of James D. Levitt and trustee of a scholarship fund established by decedent's will.

Petitioner, Edith Barnes, was listed as a successor executrix and trustee. In November 2011, respondent, Marcia J. Fidler, filed a petition to show cause, alleging Meredith failed to account

and to fund the trust. In May 2012, the trial court removed Meredith as executor-trustee and appointed Marcia as successor executrix-trustee. On appeal, this court affirmed in part, reversed in part, and remanded for further proceedings. Also in May 2012, the trial court denied petitioners' claims for fees. In September 2012, the court ordered the respondent, the successor trustee, to collect the remaining funds from the estate and divide them equally between three scholarship recipients.

¶ 3 In these consolidated appeals, petitioners argue the trial court erred in denying their claims against the estate. We vacate the trial court's judgment and dismiss the appeals.

¶ 4 I. BACKGROUND

¶ 5 On February 6, 2009, James Levitt died leaving no surviving spouse or descendants. On February 20, 2009, Meredith filed a petition for probate of will and for letters testamentary. On February 24, 2009, the trial court entered an order admitting the will to probate and issuing letters of office to Meredith as executor.

¶ 6 In his will, decedent stated all of his property, with certain limited exceptions, was to be sold by his executor. Decedent nominated Meredith, his nephew, to serve as executor with Edith Barnes and Bank of Springfield to follow, respectively, if necessary. Decedent's will also established a scholarship trust "to provide scholarships for the undergraduate or graduate education of persons selected by the Trustee including [decedent's] relatives and friends." Decedent nominated Meredith to serve as trustee with Edith and Bank of Springfield to follow, if necessary.

¶ 7 In March 2009, Marcia, decedent's sister, filed a petition to require formal proof of the will. Marcia claimed the will was admitted to probate before notice in accordance with

section 6-10 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/6-10(a) (West 2008)). In May 2009, the trial court heard testimony and admitted the will to probate.

¶ 8 In November 2011, Marcia filed a petition to show cause for failure to account and to fund the scholarship trust under decedent's will. Marcia claimed Meredith, the duly appointed executor, failed to account and fund the trust created under decedent's will. Marcia also claimed Meredith would not have registered the trust as a charitable trust with the attorney general's office absent her efforts. Marcia sought a hearing to show cause as to why Meredith should not be removed from the office of executor.

¶ 9 In March 2012, Meredith filed a petition to sell real estate. Therein, Meredith indicated decedent's will provided for the funding of the scholarship trust out of the net proceeds of the estate. The trial court entered an order approving of the sale.

¶ 10 In April 2012, Meredith filed claims for services as power of attorney and other services and expenses prior to decedent's death, for services contracted by the estate, for services as executor of the estate and trustee of the scholarship trust. Meredith also filed a final account for the estate. Edith also filed a claim against the estate for services as power of attorney. She stated she submitted an accounting of her time and expenses in March 2010. Edith sought \$5,550 as compensation and reimbursement.

¶ 11 Also in April 2012, Meredith filed a document entitled "Recapitulation," indicating the current balance of the estate was \$34,269.68. He proposed to distribute the remaining assets as follows: \$745 for attorney fees, \$5,550 to Edith for services as power of attorney for healthcare, \$5,558.22 to Meredith for services as power of attorney, \$3,146.67 to Meredith for contracted services to the estate, \$6,292.74 to Meredith as executor and trustee, and

the remaining balance to the scholarship trust.

¶ 12 In May 2012, Marcia filed an objection to the final account and proposed distribution of the executor. Marcia claimed Meredith did not attempt to liquidate the estate's assets until late 2011 and the first quarter of 2012. From the net estate of \$34,269.58, Meredith and decedent's sister, Edith Barnes, claimed fees as attorneys in fact and/or as executor of \$17,400.96. Marcia stated her fear that if Meredith were allowed to continue as trustee, his claim for trustee fees would heavily impact what little remained to be used as funds in the educational trust. Marcia also objected to the claims for fees by Meredith and Edith, arguing they were not filed within the applicable six-month period under section 18-3 of the Probate Act (755 ILCS 5/18-3 (West 2012)) and were barred two years after decedent's death (755 ILCS 5/18-12(b) (West 2012)).

¶ 13 Meredith filed an answer to the petition to show cause, stating removing him as executor would be of no benefit to the estate because few tasks remained to be undertaken.

¶ 14 At the hearing on these matters on May 4, 2012, Marcia appeared with counsel. Meredith appeared *pro se*. Meredith testified he had an auction sale of decedent's house in the spring of 2012. He did not sell it sooner because it was not ready to sell. Six grants out of the educational trust were made in 2012. He did not make any disbursements in the previous three years because he was using capital of the estate to improve the property to maximize its sale value. Meredith admitted he had proceeded "slowly and haphazardly" getting the property ready for sale.

¶ 15 On examination by the trial court, Meredith stated he was decedent's nephew. During the first year in which the house sat dormant, Meredith stated he spent most of his time

cleaning out trash. He did the same "off and on" the next year. Meredith received funds from the estate for the work he performed.

¶ 16 After Marcia's counsel indicated he had nothing further, the trial court allowed Meredith time to respond to Marcia's petition. Meredith made a motion that Marcia had no legal standing as an interested person to bring the petition. The court denied the motion. Meredith then relied on his written response.

¶ 17 The trial court granted Marcia's motion. The court found Meredith's work was "sloppy" and did not enhance the best interest of the estate. The court then asked the name of the successor as named in the will. Meredith interjected an objection to being removed as trustee of the trust, claiming he could continue as trustee even if not the executor of the estate. The court disagreed. The named successor in the will was Edith, decedent's sister. The court stated it would not appoint the named successor based on what the court saw "in the documentation that it would be better to have a person that has not been involved in the neglect of taking care of business." The court believed that since Edith's name appeared in several places as it related to being paid, naming her would not be in the best interest of the estate and the trust.

¶ 18 Meredith told the trial court that the second successor named in the will was Bank of Springfield. When the court asked counsel what the bank charged for its services, counsel stated the minimum fee would be \$1,500 plus the fee structure. Marcia did not think she would charge anything. In naming Marcia as successor, the court found it best for potential recipients of the scholarship trust that the money not be spent on lawyers and banking fees.

¶ 19 In its written order, the trial court made its finding that Meredith failed to show good cause for failing to account for more than three years since decedent's death until the sale of

the real estate and the administration was not pursued with due diligence. Further, the charitable trust was not funded in a diligent manner. The court found it in the best interests of the estate that Meredith be removed as executor-trustee and that the successor executrix-trustee not be appointed because of her involvement with Meredith. The court also found the corporate successor "would be too great an expense for a trust of this size" such that a new successor executor-trustee should be appointed. The court appointed Marcia as successor executrix of the estate and successor trustee of the trust.

¶ 20 On May 31, 2012, the trial court held a settlement conference on any outstanding estate claims. The court found claims for fees by Meredith and Edith were barred by the statute of limitations. The docket entry indicates Marcia's attorney would prepare the written order.

¶ 21 In June 2012, petitioners filed a notice of appeal, asking this court to reverse the trial court's decision to remove Meredith as executor and trustee and/or the decision to appoint Marcia as successor trustee. Meredith also filed a motion to stay the judgment requiring him to transfer all accounts to Marcia. Meredith feared Marcia could disburse funds to the scholarship recipients and deplete the estate to the point where it would be impossible to pay claims brought by petitioners.

¶ 22 In February 2013, this court found the trial court did not err in removing Meredith as executor but did err in passing over Edith as successor executrix. *In re Estate of Levitt*, 2013 IL App (4th) 120548-U, ¶¶ 25, 32. We also found no abuse of discretion in the court's decision to remove Meredith as the trustee of the scholarship but the court did err in passing over Edith as successor trustee without a finding she could not serve. *Levitt*, 2013 IL App (4th) 120548-U, ¶¶ 36, 40. We remanded for a hearing on whether Edith could serve as a successor trustee. If she

could not or refused to do so, the court was to appoint the Bank of Springfield as successor trustee. *Levitt*, 2013 IL App (4th) 120548-U, ¶ 40.

¶ 23 While petitioners' appeal was proceeding in this court, issues pertaining to the disbursement of scholarship funds arose. On August 3, 2012, Meredith filed an application for scholarship from the trust, seeking financial aid to reimburse for travel costs to Nevada to view a solar eclipse that took place in May 2012.

¶ 24 Also on August 3, 2012, the trial court held a hearing, where Marcia's counsel proposed that the trustee award scholarships from the money remaining to Noah Russell, Ian Russell, and Christopher Fidler. Neither Meredith nor Edith appeared at this hearing. Counsel raised the question of how much of the total remaining in the estate should be reserved to cover any of Meredith's fees as former executor and trustee. The court suggested, "to be on the safe side," counsel award \$9,000 to each individual and hold back \$3,000 until the matter is completed. The following exchange then occurred:

"MR. HINES [Marcia's attorney]: Okay, if awarding \$9,000 expires the money on hand that would moot the issue in the Appellate Court because there would be no funds left in the scholarship fund.

THE COURT: Well, do you think that this Court has the authority to do that now that the appeal has been taken?

MR. HINES: There is no Stay Order from the trial Court.

THE COURT: That was filed when he filed this other slew of matters. His Motion for Stay has been filed, but he is not here to

argue it. I'm going to grant your motion as relates to those three scholarships.

\* \* \*

MR. HINES: Just to look ahead, if I were to distribute the money and there would be no money left, I would file a motion and there would be no money left, I would file a motion and ask that the estate be closed and Trustee be discharged, and I would then advise the Appellate Court.

THE COURT: Follow whatever path you feel best, sir, and I'll determine, make my determination after you file what you need to.

MR. HINES: Thank you.

THE COURT: Okay, thank you.

MR. HINES: Judge, the current balance, I can remind the Court, was \$34,200.

THE COURT: Okay then, the thing—off the record.

(An off-the-record discussion was held.)

THE COURT: Divide the assets by three. If the Appellate Court slaps me on the hands, then they will.

MR. HINES: They will slap me, as well. Thank you.

THE COURT: All right."

the order memorializing its decision from the previous hearing. Meredith appeared, and he raised the issue of the motion to stay the judgment filed on June 13, 2012. Meredith asked that the transfer of the accounts be stayed until the appeal was resolved. Meredith also filed a motion to amend the motion to stay the judgment, asking the court "to cancel the order that removed [him] as executor and as trustee. That would permit [him] to go ahead and pay some of those scholarship claims, including those that [Marcia] has received recently."

¶ 26 In his oral argument, Marcia's counsel stated two of three appeals in this case were premature because a signed order had not been entered by the trial court. The following exchange also took place:

"Your Honor, we need to get the order filed. We need to get this case moving. And as far as I'm concerned, the way to move it for [*sic*] \$30,000 is to do what the testator intended to be done with the money and that is to give the scholarships to the young people who will use the money for what it was intended to be used for, not for fees.

And yes, we are going to deprive the Appellate Court of the opportunity to rule on what this Court did. And the reason we're going to do that is because \*\*\* Meredith chose to file his appeal prematurely. They wouldn't have a written order to actually consider. By the time they get to the briefing and they sit down and they consider it, someone in the Appellate Court is going to say: Where is the written order. The Judge said 'see written order,' and

there is no written order. So you're not taking anything away from the Appellate Court.

THE COURT: So you're asking that I sign this order in its entirety as it is?

MR. HINES: Yes, Your Honor.

\* \* \*

THE COURT: Mr. Hines, if I sign this order, would that deplete the resources of the scholarship account?

MR. HINES: Yes, it will, Your Honor.

THE COURT: Having reviewed the file, Mr. Cargill, any final thoughts?

MR. CARGILL: Well, Your Honor, one of the duties of the executor of an estate is to pay its just debts. And just debts and creditors are higher priority to payment than beneficiaries and heirs.

And if the claims against the estate are indeed just, which is yet to be determined, I think, then it's inappropriate for the executor to be paying heirs and beneficiaries, which in this case are the trusts and scholarships, prior to paying the debts.

THE COURT: Mr. Cargill, this is one of those unusual cases, having done this for 12 years. And I can—you can tell that I have had times of great frustration with you. My frustration is that

while you're an intelligent man on some levels, you are not intelligent in the law. You don't understand the law. You think that you do, but you don't. You think that you know now to handle a piece of property, and you don't because this estate would not have been depleted like it was if someone else were in charge of it. It's just a fact. It's just a fact.

Your actions have caused this woman's estate to be depleted to the point that somebody has to stop the bleeding. Somebody has to the [*sic*] stop the bleeding so that these kids that are relatives of this person can maybe benefit from what they—what this person intended them to benefit from, from the scholarship trust.

If we continued in the Meredith Cargill way of doing business, no deserving, young person would get a dime because it would get sucked up by your ineptitude, and that's a fact.

So I'm going to sign this order."

The court also denied the motion to amend the motion for stay.

¶ 27 The trial court's September 24, 2012, written order authorized the successor trustee to collect all remaining funds of the estate and trust and divide them equally between Noah Russell, Ian Russell, and Christopher Fidler. The court ordered that, upon the transfer of the funds by the successor trustee, a final account was to be filed and, upon approval, the successor executor and trustee would be discharged and the estate closed. The court also ordered

Meredith to turn over all estate assets to Marcia. Upon the transfer of all the funds, Meredith would be discharged as trustee of the testamentary trust and as executor of the will when the court was satisfied the transfer of assets was complete.

¶ 28 In October 2012, Meredith and Edith filed motions to reconsider the trial court's decision on their estate claims and its September 24, 2012, order. In November 2012, the trial court held a hearing on the motions and denied them. These appeals followed.

¶ 29 As we have stated, this court filed its decision concerning the removal of Meredith as executor-trustee in February 2013. According to a docket entry on April 29, 2013, the trial court appointed Edith as executrix-trustee. The entry also states the court's order of September 24, 2012, stands.

¶ 30 II. ANALYSIS

¶ 31 Petitioners argue they are entitled to compensation from the estate. However, we find we have no jurisdiction to consider this issue.

¶ 32 A. Appellate Court Jurisdiction

¶ 33 An appellate court has a duty to *sua sponte* consider its jurisdiction, and it must dismiss the appeal if jurisdiction is lacking. *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1024, 822 N.E.2d 941, 942 (2005). Petitioners' claims depend on whether a final written order has been entered to confer jurisdiction on this court.

"If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party to submit a draft order, the clerk shall make a notation to that effect

and the judgment becomes final only when the signed judgment is filed." Ill. S. Ct. R. 272 (eff. Nov. 1, 1990).

"In the time between the announcement of the judgment and the entry of the contemplated written and signed formal order, a party may not enforce the judgment, attack the judgment by motion, or appeal from the judgment." *Northern Illinois Gas Co. v. Martam Construction Co.*, 240 Ill. App. 3d 988, 991, 608 N.E.2d 1271, 1273 (1993). If a written order is contemplated, "the filing of a notice of appeal before the entry of the signed written order does not confer jurisdiction on an appellate court." *Northern Illinois Gas Co.*, 240 Ill. App. 3d at 989, 608 N.E.2d at 1273.

¶ 34 In the case *sub judice*, the trial court held a settlement conference on the outstanding estate claims on May 31, 2012. The court found the claims for fees by petitioners were barred by the statute of limitations. The docket entry indicates "Attorney Hines to prepare written order." However, no written order as to the denial of petitioners' claim for fees appears in the record before us. At the September 24, 2012, hearing to consider disbursement of scholarship proceeds, Hines recognized the absence of a signed order. Instead of seeing to it that a written order was filed, the trial court and counsel decided the proper course was to enter an order disbursing the funds from the estate, which the court did. That order, however, did not announce the court's prior ruling on the denial of petitioners' request for fees. With no final written order on that ruling, we have no jurisdiction to consider the propriety of the court's decision on petitioners' claims for services.

¶ 35 B. Trial Court Jurisdiction

¶ 36 Petitioners also argue the trial court's September 24, 2012, order permitting the

executor/trustee to award certain scholarships must be vacated as void. We agree.

¶ 37 "Once the notice of appeal is filed, the appellate court's jurisdiction attaches *instanter*, and the cause of action is beyond the jurisdiction of the circuit court. [Citation.] The circuit court, however, retains jurisdiction after the notice of appeal is filed to determine matters collateral or incidental to the judgment." *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173-74, 950 N.E.2d 1136, 1142 (2011). Once a notice of appeal has been properly filed, "the trial court is prohibited from entering any order which would change or modify the judgment or its scope or which would interfere with review of the judgment." *In re Marriage of Price*, 2013 IL App (4th) 120422, ¶ 11, 986 N.E.2d 1292; see also *Cain v. Sukkar*, 167 Ill. App. 3d 941, 945, 521 N.E.2d 1292, 1294 (1988) (stating the proper filing of a notice of appeal "deprives the trial court of jurisdiction to modify its judgment or to rule on matters of substance which are the subject of appeal").

¶ 38 In this case, the trial court entered a written order on May 14, 2012, removing Meredith as executor-trustee and appointing Marcia as the new executrix-trustee. Petitioners appealed this ruling, arguing the trial court erred in removing Meredith as executor-trustee and not appointing Edith as the successor. This court affirmed in part, reversed in part, and remanded for further proceedings in February 2013.

¶ 39 While that appeal was pending, and knowing the substance of that appeal, the trial court, with help from Marcia's counsel, proceeded to enter an order allowing the successor executrix-trustee (Marcia) to disburse the scholarship funds to three recipients. This was not a collateral matter. In fact, both the court and counsel knew a ruling on the disbursement of scholarship funds by the successor executrix-trustee would, in essence, moot the issue before this

court and "deprive" this court of the opportunity to rule on the trial court's decision. Thus, the court's September 24, 2012, order interfered with our review of the judgment on appeal and it is null and void. See *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921, 926, 906 N.E.2d 7, 14 (2009) (stating any order entered while a trial court is divested of jurisdiction during the pendency of an appeal is void); *National Bank of Monmouth v. Multi National Industries, Inc.*, 286 Ill. App. 3d 638, 640, 678 N.E.2d 7, 9 (1997) ("Void orders are a complete nullity from their inception and have no legal effect.").

¶ 40 Based on the lack of a written order as to the May 31, 2012, ruling, as well as the void September 24, 2012, order, we have nothing to consider now on appeal. We are compelled to vacate the trial court's order of September 24, 2012, and to dismiss petitioners' appeals from the May 31, 2012, ruling for lack of jurisdiction.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we vacate the trial court's September 24, 2012, judgment and dismiss the appeals.

¶ 43 Judgment vacated; appeals dismissed.