2014 IL App (3d) 120997-U

Order filed February 4, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

ESTATE OF RITA JOANN VOCK,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Deceased	)	Whiteside County, Illinois
	)	
(Paul Vock,	)	
	)	
Plaintiff-Appellant,	)	Appeal No. 3-12-0997
	)	Circuit No. 10-P-13
v.	)	
	)	
Martin Ostrander as Executor of the	)	
estate of Rita JoAnn Vock,	)	Honorable
	)	Frank R. Fuhr,
Defendant-Appellee).	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held*: In a case in which a surviving spouse filed a petition to renounce the will of his deceased wife, the circuit court ruled that the petition was untimely and granted the executor's petition to disallow the renunciation. The appellate court affirmed, holding that even if the concepts of equitable estoppel and equitable tolling applied to the statute of limitations contained in section 2-8(b) of the Probate Act of 1975 (755 ILCS 5/2-8(b) (West 2010)), the circumstances of the case did not

warrant the application of those concepts so as to excuse the untimely petition for renunciation.

¶ 2 The plaintiff, Paul Vock, filed a petition to renounce the will of his deceased spouse, Rita JoAnn Vock (JoAnn). The defendant, Martin Ostrander, JoAnn's son and the executor of JoAnn's estate, filed a petition to disallow the renunciation. After an evidentiary hearing, the circuit court ruled that Paul's petition for renunciation was untimely and granted Martin's petition. On appeal, Paul argues that the concepts of equitable estoppel and equitable tolling should apply to excuse the late filing of his petition for renunciation. We affirm.

¶ 3 FACTS

¶ 4 JoAnn passed away on December 25, 2009. She was survived by her husband, Paul, as well as three children from a previous marriage: Carol Hill, Elizabeth Myers, and the defendant, Martin Ostrander.

¶ 5 On February 3, 2010, Martin, as executor of his mother's estate, filed a petition to admit JoAnn's will into probate. The petition listed JoAnn's heirs and legatees as Martin, Carol, and Elizabeth, as well as her family trust.[1]

¶ 6 JoAnn's will left all of her personal property and household effects to her three children. She left the rest of her estate to her family trust. She left nothing to Paul. The will was admitted to probate on February 4, 2010.

¶ 7 On December 31, 2010, Paul filed a renunciation of JoAnn's will. In his capacity as executor, Martin filed a petition to disallow the renunciation on November 4, 2011. Martin's petition alleged that Paul's renunciation was untimely as it violated section 2-8(b) of the Probate

[1] The petition was amended on April 16, 2010, to include Paul as an heir.

Act of 1975 (Act) (755 ILCS 5/2-8(b) (West 2010)), which requires, in pertinent part, that a renunciation be filed within seven months of the admission of the will to probate. The petition pointed out that Paul's renunciation was filed over 10½ months after JoAnn's will was admitted to probate and over 8½ months after the filing of the amended petition for probate of JoAnn's will. In Paul's response, he argued that the concepts of equitable estoppel and equitable tolling applied such that his untimely filing was excusable.

¶ 8 The circuit court held an evidentiary hearing on October 22, 2012. Three witnesses testified: Paul; his son, Phil Vock; and attorney Russell Holesinger. The testimony of these witnesses can be summarized as follows.

¶ 9 Paul had been married to JoAnn for almost 38 years when she died in 2009. Paul and JoAnn had agreed that their individual assets would remain as such upon their deaths and would pass to their respective children. Paul claimed, however, that he had an understanding with JoAnn that he would be able to buy the house and farm at the appraised price upon her death, with JoAnn's children receiving all of the proceeds.

¶ 10 Over the 10 years preceding JoAnn's death, Paul had retained Holesinger to handle some farm exchange transactions. Paul and JoAnn also met with Holesinger sometime around 2005 for the purpose of estate planning. Holesinger did in fact prepare an estate plan for Paul, but Paul was unsure if Holesinger also prepared an estate plan for JoAnn.[2] Paul did state that JoAnn had met with Holesinger separately on another occasion. Paul also stated that Holesinger was the only attorney he had retained over the 10 years preceding JoAnn's death.

¶ 11 Paul met with Holesinger on January 26, 2010, in Holesinger's office. JoAnn's three

[2] Holesinger had also performed work for Paul's son, Phil, regarding estate planning.

children were also present. Holesinger told Paul that he was not an heir to her estate, which did not surprise him because he and JoAnn had previously agreed that he would not be an heir. Paul stated that he believed Holesinger was representing him at that meeting and that Holesinger did nothing to dispel that assumption.

¶ 12 At that meeting, Holesinger wanted Paul to sign a document, which Paul stated he signed without reading. The document, which was filed with the circuit court on March 2, 2010, consisted of an entry of appearance on the petition for probate of JoAnn's will and a waiver of several rights Paul had as JoAnn's surviving spouse. Paul alleged that Holesinger did not mention anything at the January 2010 meeting about JoAnn's daughter, Carol, having an option to purchase the house and farm from the trust, but Holesinger testified that "I would have brought to his attention that there was a trust executed on the same date and that he was not a beneficiary of the trust." Paul also claimed that Holesinger told him that he would be able to buy the house and farm at the appraised price. Holesinger testified that he did not tell Paul that he had a legal right to purchase the house and farm.

¶ 13 After an appraisal had been performed, another meeting was held approximately six months later at Holesinger's office between Paul, Holesinger, Martin, and Phil. At that meeting, Holesinger told Paul about the existence of the trust and that Carol had an option to purchase the house and farm. Paul requested a copy of the trust document, but Holesinger told him that it was a private document and he was not entitled to see it. Phil testified that he assumed Holesinger was representing him and Paul at that meeting. Phil also claimed that Holesinger led him and Paul to believe that they would be able to purchase the house and farm at the appraised price, which according to Phil was around $1,160,000. Phil stated that he and Paul offered $1,250,000

because Holesinger suggested trying to buy at a higher price to induce Carol to forego the exercise of her option.

¶ 14 Phil also testified that there were approximately six or seven meetings in total that were held for the purpose of trying to set a purchase price for Paul and Phil, or at least a rental agreement to allow Paul to remain in the house in which he had lived for 36 years. Phil stated that Holesinger never indicated that he was no longer representing Phil and Paul and that Holesinger essentially told them that a deal would be worked out. Holesinger agreed that over the course of the meetings he expressed to Paul and Phil that he was hopeful a deal could be reached. Ultimately, no deal was reached.

¶ 15 Paul testified that he believed Holesinger was still representing him through late 2010, when Paul met with another attorney. Paul eventually retained that attorney, who within three days filed the petition for the renunciation of JoAnn's will.

¶ 16 On November 5, 2012, the circuit court issued its written order. Among its factual findings, the court noted that it was undisputed that Paul knew he was not a beneficiary of either JoAnn's estate or her family trust. The court granted Martin's petition to disallow the renunciation, ruling that nothing had occurred in the discussion between Paul and Holesinger to give rise to a valid claim for equitable estoppel in this case. Paul appealed.

¶ 17 ANALYSIS

¶ 18 On appeal, Paul argues that the circuit court erred when it granted Martin's petition to disallow the renunciation. Paul admits that he did not file his petition for renunciation within the statutory time limit, but he argues that the concepts of equitable estoppel and equitable tolling should apply to save his petition for renunciation.

¶ 19 Section 2-8(b) of the Act provides, in relevant part, that "[i]n order to renounce a will, the testator's surviving spouse must file in the court in which the will was admitted to probate a written instrument signed by the surviving spouse and declaring the renunciation *** within 7 months after the admission of the will to probate." 755 ILCS 5/2-8(b) (West 2010). The seven-month requirement in section 2-8(b) is purely procedural and therefore should be treated as a statute of limitations. *In re Estate of Goodlett*, 225 Ill. App. 3d 581, 590 (1992); see also *Fredman Brothers Furniture Co., Inc. v. Department of Revenue*, 109 Ill. 2d 202, 209 (1985) (noting that "[s]tatutes of limitation only fix the time within which the remedy for a particular wrong may be sought" and that they are procedural and do not impact substantive rights).

¶ 20 "[C]oncepts of equitable estoppel, tolling, and waiver *usually* apply to statutes of limitations." (Emphasis added.) *Larrance v. Illinois Human Rights Comm'n*, 166 Ill. App. 3d 224, 231-32 (1988). In *Goodlett*, the Second District did not address the question of whether the statute of limitations in section 2-8(b) of the Act is subject to equitable estoppel and equitable tolling. Rather, after citing *Larrance*, the *Goodlett* court proceeded directly to the question of whether the facts of *Goodlett* justified the application of these concepts. *Goodlett*, 225 Ill. App. 3d at 590. Such a determination impacts the standard of review. See, *e.g.*, *Williams v. Board of Review*, 241 Ill. 2d 352, 360 (2011) (applying *de novo* review to the question of whether a statute of limitations was subject to equitable estoppel or equitable tolling); *Morgan Place of Chicago v. City of Chicago*, 2012 IL App (1st) 091240, ¶ 33 (applying manifest-weight-of-the-evidence review to the question of whether a party met its burden of proving that the application of equitable estoppel was warranted). We find it unnecessary to determine whether the statute of limitations in section 2-8(b) of the Act is subject to the concepts of equitable estoppel or

equitable tolling because, even if it is, the facts of this case would not warrant the application of these concepts.

¶ 21 "[A] party will not be equitably estopped from asserting a statute of limitation defense where a plaintiff fails to show that: '(1) defendant has made some misrepresentation or concealment of a material fact; (2) defendant had knowledge, either actual or implied, that the representations were untrue at the time they were made; (3) plaintiff was unaware of the untruth of the representations both at the time made and the time they were acted upon; (4) defendant either intended or expected his representations or conduct to be acted upon; (5) plaintiff did in fact rely upon or act upon the representations or conduct; and (6) plaintiff has acted on the basis of the representations or conduct such that he would be prejudiced if defendant is not estopped.' " *Nickels v. Reid*, 277 Ill. App. 3d 849, 855-56 (1996) (quoting *Strom International, Ltd. v. Spar Warehouse & Distributors, Inc.*, 69 Ill. App. 3d 696, 703 (1979)).

"A plaintiff must have had no knowledge or means of knowing the true facts within the applicable statute of limitations." *Wheaton v. Steward*, 353 Ill. App. 3d 67, 71 (2004).

"Equitable tolling of a statute of limitations may be appropriate if the defendant has actively misled the plaintiff, or if the plaintiff has been prevented from asserting his or her rights in some extraordinary way, or if the plaintiff has mistakenly asserted his or her rights in the wrong forum." *Clay v. Kuhl*, 189 Ill. 2d 603, 614 (2000).

A key difference between equitable estoppel and equitable tolling is that the latter does not

require any fault on the part of the defendant. *Williams*, 241 Ill. 2d at 361.

¶ 22 Our review of the record reveals no facts to warrant the application of equitable estoppel or equitable tolling to this case. Paul and JoAnn had agreed that their assets would pass to their respective children. Paul knew as of at least January 26, 2010, that he was not a beneficiary of JoAnn's estate. He knew as of at least July 2010–and possibly as early as January 2010–that he was not a beneficiary of JoAnn's family trust. There was no evidence that Martin or Holesinger at any time misrepresented any material facts to Paul or concealed any material facts from him. While Holesinger did express to Paul and Phil that he was hopeful a deal could be reached that would allow Paul to purchase the house and farm, there was no evidence to indicate that Paul was misled in this process. Moreover, there was no evidence to suggest that Paul was prevented from filing his petition for renunciation in a timely fashion. JoAnn may have intended for Paul to purchase the house and farm, but Paul had no legal right to do so and the inability of the parties to reach a deal in this case does not warrant the application of the concepts of equitable estoppel or equitable tolling. Under these circumstances, we hold that the circuit court did not err when it granted Martin's petition to disallow the renunciation.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 25 Affirmed.

¶ 26 JUSTICE SCHMIDT, dissenting.

¶ 27 I respectfully dissent. The estate's lawyer was working under an undisclosed conflict of interest. No one disputes that there had been an ongoing attorney-client relationship between

Paul and Holesinger. Holesinger had been Paul's attorney for at least 10 years. He could not tell Paul to disavow the will without breaching his duty to the estate. Any reasonably qualified attorney would have advised Paul to do so in order to gain some leverage with respect to buying the farm Paul had lived on for over 30 years. Paul thought Holesinger was representing him. Holesinger never told Paul of the conflict of interest and never told him to get new counsel. Paul was lulled into inaction by the settlement negotiations and his lawyer's failure to disclose the conflict, and to further disclose the fact that notwithstanding their previous relationships, Holesinger was representing his widow's estate and could not give legal advice to Paul.

¶ 28 It is one thing for Holesinger to have told Paul he was not a beneficiary of the will or trust. It was another thing for Holesinger to remain silent about the conflict of interest and things Paul could do to protect any expectations of having a first right to purchase the farm. Unlike the majority, I find that these omissions by Holesinger were quite material, as is evidenced by the fact that Paul moved to disavow the will within three days of hiring a new lawyer. Because it was the estate's attorney who lulled Paul into inaction, equity demands that it be estopped from raising the limitations period as an affirmative defense. I would find Paul's petition to be timely.