

2015 IL App (1st) 133701-U  
No. 1-13-3701  
May 5, 2015  
Modified Upon Denial of Rehearing June 23, 2015

SECOND DIVISION

**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  
FIRST DISTRICT

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|-----------------------------|---|-----------------------------------|
| DINA KUPER ON BEHALF OF:    | ) | Appeal from the Circuit Court     |
| ESTATE OF LUCY KUPERSHMIDT, | ) | Of Cook County.                   |
|                             | ) |                                   |
| Plaintiff-Appellant,        | ) |                                   |
|                             | ) | No. 10 P 7564                     |
| v.                          | ) |                                   |
|                             | ) | The Honorable                     |
| EUGENE KUPERSHMIDT,         | ) | Cheryl D. Cesario and Kathleen M. |
|                             | ) | McGury,                           |
| Defendant-Appellee.         | ) | Judges Presiding.                 |

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Simon and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* Supreme Court Rule 304(b)(1) gives this court jurisdiction to consider appeals from orders denying motions to reconsider orders approving a guardian's account for payments made on behalf of the estate for a ward. When a guardian fails to rebut evidence that he benefited from the sale of goods or services to his ward, the court must not approve reimbursement to the guardian for the sales.

¶ 2 The trial court appointed Eugene Kupershmidt as guardian for Lucy Kupershmidt. Eugene filed an account after the first year of serving as guardian, and a second account after the second year. The trial court approved both accounts, thereby allowing Eugene to obtain

reimbursement from Lucy's estate for the listed expenses. Lucy's daughter, Dina Kuper, moved for reconsideration of the approval of the accounts. The trial court denied the motion for reconsideration.

¶ 3 Supreme Court Rule 304(b)(1) gives this court jurisdiction to review the approval of the accounts. We find that the manifest weight of the evidence shows that Eugene did not meet his burden of showing an entitlement to reimbursement for the amounts he claimed he paid to Murphy's Supply Company, because Eugene did not rebut evidence that he profited from payments made to Murphy's. We reverse the order approving the accounts insofar as the order allowed Eugene to obtain reimbursement from the estate for payments made to Murphy's. In all other respects we affirm the trial court's order.

¶ 4 BACKGROUND

¶ 5 Eugene filed his petition for appointment as Lucy's guardian in December 2010. The court appointed a guardian *ad litem* to represent Lucy in proceedings on the petition. The court found Lucy totally unable to manage her finances and totally without the capacity to make decisions for herself. The court appointed Eugene as plenary guardian of Lucy's estate and person.

¶ 6 On February 22, 2012, Eugene filed a petition for authorization to loan money to the estate. Eugene said that he "arranged for a loan from his company, Murphy's Supply Company, in the amount of \$75,000.00 with an interest rate of 2% per annum." He sought to have the loan secured by a deed of trust to the condominium Lucy owned. An appraisal of the property estimated the condominium's value as \$265,700.

¶ 7 Because the loan could diminish Lucy's estate, the court ordered Eugene to provide notice to his sister, Dina. Dina did not respond to notice published in the Daily Law Bulletin, and notice addressed to Dina came back as undeliverable, with no forwarding address. The court approved the loan.

¶ 8 In October 2012, Eugene filed his first account for Lucy's estate, covering the period from March 2011 through February 2012.

¶ 9 Dina found out about the guardianship proceedings in November 2012, when the manager of Lucy's condominium prevented Dina from visiting Lucy. The court granted Dina's petition for permission to visit her mother. In May 2013, Eugene filed a second account, covering the period from March 2012 through February 2013. Dina objected to both the first and the second accounts. The trial court considered the accounts at a hearing held on May 13, 2013.

¶ 10 In both the first and second accounts, Eugene sought reimbursement for payments for persons who took care of Lucy. Eugene presented to the court invoices from Murphy's showing that it charged Lucy's estate \$1,000 every week for "home care services for Lucy Kupershmidt, disabled." The invoices showed the address for Murphy's as "PO Box 5501, Buffalo Grove IL."

¶ 11 Dina, appearing pro se, asked to see the cancelled checks for the payments made to the two women who took care of Lucy. Eugene said, "On behalf of Murphy's Supply, I provided the money." He added, "Murphy's is a separate legal entity from me." Dina asked, "So who is the owner of Murphy's Supply?" The court said, "I am not here to decide ownership." The

court ordered Eugene to send Dina copies of the checks used to pay for the caregivers within 14 days.

¶ 12 Although Eugene sought reimbursement for grocery expenses of \$12,900 in the first account, the court awarded him reimbursement of only \$6,000. In the second account, the court reduced the grocery expenses from more than \$6,000 to \$4,800. In all other respects, in an order dated May 13, 2013, the court approved the first and second accounts.

¶ 13 On June 7, 2013, Dina filed a motion to extend the time for filing a motion to reconsider the order approving the first and second accounts. In an order dated June 11, 2013, the trial court "declined" the motion. That day, Dina, still pro se, filed a notice of appeal from the order of June 11, 2013. On June 12, 2013, Dina attempted to file a motion to reconsider the order of May 13, 2013, but because she did not pay the filing fee, the clerk did not accept the motion for filing.

¶ 14 An attorney appeared on Dina's behalf on July 1, 2013. The court gave the attorney time to file a motion to reconsider the order of May 13, 2013. The court also allowed the attorney limited discovery related to the motion.

¶ 15 Dina's attorney filed the motion to reconsider the May 13, 2013, order on September 18, 2013. Dina's attorney told the court he never received cancelled checks showing the payments made to Lucy's caregivers. Instead, the attorney received more invoices, in Russian, showing (according to a translator) that Murphy's Supply Company hired an organization named "ITC Services" to provide "Personal Services, Care for a disable[d] person" for \$840 per week. The Illinois Secretary of State reported that a company named ITC Services, LLC, created itself on June 11, 2010, and dissolved on December 9, 2011. The

Secretary of State's records showed no other similarly named companies operating during the period covered by the invoices from ITC Services shown to the court. According to the Illinois Department of Public Health, no company named ITC Services applied for a license to offer home health care or nursing services. The invoices Dina's attorney received from Eugene ostensibly covered 2012, after the formal dissolution of ITC Services, LLC. In his petition for appointment as Lucy's guardian, Eugene listed his occupation as "IT Consultant."

¶ 16 No documents showed payment of any of the invoices, and no documents showed any payments to the women who took care of Lucy. When the court again ordered Eugene to produce the cancelled checks, Eugene's attorney said, "I don't believe I can." At the hearing on the motion to reconsider, the court asked Eugene's attorney, "Does anybody have the copy of those checks for \$1000?" The attorney answered, "No, your Honor."

¶ 17 A separate document in the record, signed by Eugene, showed Eugene's mailing address as "P.O. Box 5501, Buffalo Grove, IL." The address matches the address Murphy's used as its own address on its invoices.

¶ 18 In an order dated October 22, 2013, the court denied the motion to reconsider the order of May 13, 2013. Lucy died. The court scheduled a hearing on the final account for December 4, 2013. On November 21, 2013, Dina, once again pro se, filed a notice of appeal from the order denying her motion to reconsider the order of May 13, 2013. Although Dina filed two separate notices of appeal, the appellate court gave the case only one docket number.

¶ 19 ANALYSIS

¶ 20 Eugene argues that this court should not address Dina's appeal because the court lacks jurisdiction, and because Dina altered the record on appeal.

¶ 21 Record

¶ 22 The record on appeal bears the certification from the clerk of the circuit court. See Ill. S. Ct. R. 324 (eff. May 30, 2008). According to Supreme Court Rule 329, "Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth." Ill. S. Ct. R. 329 (eff. January 1, 2006). Because Eugene has not filed a motion in the trial court for correction of the record, "[t]he record on appeal shall be taken as true and correct." Ill. S. Ct. R. 329 (eff. January 1, 2006).

¶ 23 Jurisdiction

¶ 24 In the notice of appeal filed on June 11, 2013, Dina identified only the order dated June 11, 2013, as the order challenged on appeal. That order only "declined" Dina's motion for an extension of time to file her motion to reconsider the order of May 13, 2013. The court later extended the time for filing a motion to reconsider and permitted Dina, through her attorney, to file such a motion on September 18, 2013. Because the trial court already granted Dina relief from the order challenged on appeal, the appeal from the order of June 11, 2013 is moot. See *People ex rel. Hartigan v. Illinois Commerce Comm'n*, 131 Ill. App. 3d 376, 378 (1985).

¶ 25 The notice of appeal filed November 21, 2013, challenges the order dated October 22, 2013, in which the trial court denied Dina's motion for reconsideration of the order of May 13, 2013. When a party appeals from the denial of a motion to reconsider, this court may address any issues concerning the underlying order that the trial court refused to reconsider. See *Heller Financial, Inc. v. Johns-Byrne Co.*, 264 Ill. App. 3d 681, 689-90 (1994).

¶ 26 In the order of May 13, 2013, the trial court approved the first and second accounts Eugene filed. Eugene later prepared a final account, and the court scheduled a hearing on the final account for a date in December 2013. Eugene argues that only the order on the final account qualifies as a final order. According to Eugene, the order of May 13, 2013, did not finally resolve the rights or statuses of any parties, and therefore this court lacks jurisdiction to consider the appeal.

¶ 27 Illinois Supreme Court Rule 304 provides:

"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." Ill. S. Ct. R. 304(b) (eff. Feb. 26, 2010).

¶ 28 The court that decided *Kanfer v. Busey Trust Co.*, 2013 IL App (4th) 121144, interpreted Rule 304(b)(1) in a similar context. The trial court in *Kanfer* entered several orders awarding some management fees to a guardian. The appellate court observed, "each of the orders granting management fees was immediately appealable without a finding pursuant to Rule 304(a)." *Kanfer*, 2013 IL App (4th) 121144, ¶ 74. The court's observation accords with the purpose of Rule 304(b).

¶ 29 "Rule 304(b)(1) is designed to prevent multiple lawsuits and piecemeal appeals, while encouraging efficiency and granting certainty as to specific issues during the often lengthy process of estate administration. [Citation.] Without the Rule 304(b)(1) exception, an appeal would have to be brought after an estate was closed, the result of which may require

reopening the estate and marshalling assets that have already been distributed. That result would be both impractical and inefficient." *In re Estate of Thorp*, 282 Ill. App. 3d 612, 616-17 (1996).

¶ 30 Thus, under Rule 304(b)(1), an order determining a party's right to receive payments from the estate "*must* be appealed within 30 days of entry or be barred." (Emphasis in original.) *In re Estate of Thorp*, 282 Ill. App. 3d 612 (1996).

¶ 31 In the order of May 13, 2013, the trial court approved Eugene's first and second accounts, and thereby established his right to reimbursement from Lucy's estate for the expenses listed in the first and second accounts. Under *Thorp* and *Kanfer*, to preserve her right to review of the approval of the accounts, Dina needed to file a timely appeal from the order denying her motion for reconsideration of the order approving the first and second accounts. We find that Rule 304(b)(1) gives this court jurisdiction to consider the appeal from the order of May 13, 2013.

¶ 32 **Payments to Care Givers**

¶ 33 Dina argues that the trial court should not have awarded Eugene reimbursement for the payments he claims he made to Murphy's Supply to pay for the care givers who provided services to Lucy during her final years. She relies primarily on evidence that Eugene benefited from the payments to Murphy's.

¶ 34 "It is the burden of the representative to prove that the items entered on the account are just and proper if objections to the report are filed." *In re Estate of Moore*, 189 Ill. App. 3d 920, 922-23 (1989). This court will not disturb the trial court's factual findings unless those



findings are against the manifest weight of the evidence. *In re Estate of Kime*, 42 Ill. App. 3d 505, 508-09 (1976).

¶ 35 Eugene undertook fiduciary duties to Lucy and her estate when he agreed to act as her guardian. *In re Estate of Weisberg*, 62 Ill. App. 3d 578, 588 (1978). Our supreme court explained, "the relationship between a guardian and a ward is equivalent to the relationship between a trustee and a beneficiary. [Citation.] Therefore, the fiduciary duties owed a beneficiary by a trustee and a ward by a guardian are similar. One such duty is the duty of loyalty. This duty prohibits a guardian from dealing with a ward's property for the guardian's own benefit." *In re Estate of Swiecicki*, 106 Ill. 2d 111, 117-18 (1985). The United States Supreme Court elaborated:

"It is a well-settled rule that a trustee can make no profit out of his trust. The rule in such cases springs from his duty to protect the interests of the estate, and not to permit his personal interest to in any wise conflict with his duty in that respect. The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity. 'It therefore prohibits a party from purchasing on his own account that which his duty or trust required him to sell on account of another, and from purchasing on account of another that which he sells on his own account. In effect, he is not allowed to unite the two opposite characters of buyer and seller, because his interests, when he is the seller or buyer on his own account, are directly conflicting with those of the person on whose account he buys or sells.' "

*Magruder v. Drury*, 235 U.S. 106, 119-20 (1914), quoting *Michoud v. Girod*, 45 U.S. 503, 555 (1846).

¶ 36 Eugene's role as a fiduciary imposed on the court a duty to ensure that the estate made no purchases from Eugene. See *Magruder*, 235 U.S. at 119-20; *Swiecicki*, 106 Ill. 2d at 118-19. In particular, the court needed to find out whether Eugene had a financial interest in the payments made to Murphy's. See *Magruder*, 235 U.S. at 119-20; *Swiecicki*, 106 Ill. 2d at 118-19. Thus, we find that the trial court misunderstood the applicable law when the court said, "I am not here to decide ownership [of Murphy's]."

¶ 37 In his petition for authorization to make a loan to the estate, Eugene said, "the guardian has arranged for a loan from his company, Murphy's Supply Company." During the hearing held on May 13, 2013, Eugene said, "Murphy's is a separate legal entity from me." He asserted that he had authority to act on behalf of Murphy's, as he said, " On behalf of Murphy's Supply, I provided the money [paid to the caregivers in cash]." Murphy's used the same mailing address Eugene used. We find no evidence in the record to contradict the inference that Eugene benefited from the payments made to "his company, Murphy's Supply Company."

¶ 38 Under the principles set out in *Magruder* and *Swiecicki*, Eugene did not meet his burden of proving an entitlement to reimbursement for payments made to Murphy's. See *Holyoke v. Continental Illinois National Bank*, 346 Ill. App. 284, 300 (1952). Therefore, we hold that the trial court's findings are against the manifest weight of the evidence, so we reverse the trial court's judgment insofar as the court authorized payments from Lucy's estate to Eugene to reimburse him for payments to Murphy's, payments totaling \$52,000 in the first account

plus \$52,000 in the second account. See *Weisberg*, 62 Ill. App. 3d at 588-90. Finally, because we find no citation to authority for other possible objections to the accounts, we affirm the order approving the accounts in all other respects.

¶ 39

#### CONCLUSION

¶ 40

Rule 304(b)(1) gives this court jurisdiction to review orders approving a guardian's accounts for an estate, before the approval of the guardian's final account. Dina presented evidence that Eugene benefited from payments to "his company, Murphy's Supply," and therefore the court should not authorize the estate to reimburse Eugene for any payments he made to Murphy's Supply. Eugene offered no effective rebuttal for the evidence that he had an interest in the company that shared his mailing address. We find that the manifest weight of the evidence requires reversal of the trial court's judgment insofar as the trial court approved accounts and authorized Eugene to receive reimbursement from Lucy's estate for payments he made to Murphy's. In all other respects, we affirm the trial court's judgment.

¶ 41

#### Petition for Rehearing

¶ 42

In a petition for rehearing, Eugene asks this court to remand for a second hearing on his accounts, claiming that he could present better evidence in support of his claim for compensation from the estate. He does not contend that he newly discovered the evidence. The record shows that the trial court did not restrict his presentation of evidence in support of his petitions. See *People v. Beeler*, 2012 IL App (4th) 110217 ¶ 16. Eugene cites no case in which the party with the burden of proof failed to present sufficient evidence to meet its burden, and the appellate court then remanded the case for a new evidentiary hearing. When the trial court has entered a judgment in favor of a party who failed to meet its burden of

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proof, the appellate court should reverse that part of the judgment without remand. See *In re Marriage of Winton*, 216 Ill. App. 3d 1084, 1092-93 (1991). We find that Eugene's admissions, that Murphy's was "his company" and he had authority to act on behalf of Murphy's, (see *Precision Extensions, Inc. v. Stewart*, 36 Ill. App. 2d 30, 50 (1962)) require reversal of the approval of reimbursement to Eugene for payments he made to Murphy's. Accordingly, we deny Eugene's petition for rehearing.

¶ 43            Affirmed in part, reversed in part.