2015 IL App (1st) 143079-U

No. 1-14-3079

Fifth Division
June 30, 2015

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re ESTATE OF EVIA THARBS, a Disabled Person	)	Appeal from the Circuit Court of Cook County.
(Linda Reed,	)	
Plaintiff-Appellant,	)	No. 05 P 5236
v.	)	The Honorable Ann Collins-Dole, Judge Presiding.
Eddie Tharbs, Jr., Individually and As Guardian of the Estate of Evia Tharbs,	)	
Defendant-Appellee).	)	

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff's mother, Evia, had been adjudicated a disabled person, where a number of her adult children and professional services had served as the guardian of her person and estate, where plaintiff sought to recover missing assets in the guardianship estate for a disabled person after Evia's death and not the decedent's estate, we find that the probate court overseeing the guardianship estate for a disabled person lacked subject matter jurisdiction to consider issues not related to the guardianship estate for a disabled person because the ward had died.

¶ 2 Evia Tharbs was a disabled adult and a number of her adult children and professional services served as the guardian of her person and estate at various times from 2006 until her death on November 22, 2013.[1] The guardians were required to submit accountings and inventories to the court during their service. One of her sons, defendant Eddie Tharbs, Jr. (Eddie, Jr.), was the guardian of her person and estate as a disabled person at the time of her death and submitted a final accounting and inventory. Over the objections of *pro se* plaintiff Linda Reed, another of Evia's children, the probate court approved the accounting and closed Evia's guardianship estate as a disabled person on September 10, 2014. Plaintiff appeals, disputing the accounting and the inventory filed. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Evia was married to Eddie Tharbs, Sr. (Eddie, Sr.), who passed away on November 26, 2009. Eddie, Sr. and Evia had 13 children, including plaintiff Linda Reed and defendant Eddie Tharbs, Jr. Evia also had another biological child who was not Eddie, Sr.'s. All of the children are adults.

¶ 5 Evia suffered from a number of medical conditions, including dementia, and was adjudicated a disabled person on February 8, 2006. The probate court appointed a number of her children and professional services as the guardians of her person and estate as a disabled person at various times from early 2006 until her death in late 2013. The guardians were required to submit various accountings and inventories. The probate court closed Evia's estate as a disabled person on September 10, 2014, and accepted the final accounting and inventory prepared by Eddie, Jr. *Pro se* plaintiff Linda Reed, one of Evia's children, claims that the final accounting and inventory was incorrect because the inventory did not include

[1] The record does not contain Evia's age at the time of the death; the record also does not contain her date of birth.

various assets. She asks this court, among other things, to void that order and reopen Evia's estate as a disabled person with directions to enter an accurate and complete accounting and inventory.

¶ 6 I. Evia Tharbs' Guardianship as a Disabled Person

¶ 7 Darlene Moore, one of Evia's children, petitioned to be appointed Evia's guardian on July 23, 2005, and listed the reason for guardianship as her mother's disability as a result of Alzheimer's disease. The court appointed Michael Hubbard, an attorney, as guardian *ad litem*.[2] Eddie, Sr., and 10 of the children filed a cross-petition on October 27, 2005. In the cross-petition, Eleise Moore and Doris Wilson, two more of Evia's children, asked to be appointed co-guardians of Evia's person and estate as a disabled person. The cross-petition also alleged that it was necessary to appoint a guardian to investigate the nature and extent of Evia's assets because the majority of the assets were in Darlene's possession and Darlene had not provided any information concerning the assets or accounted for the assets since she took control several years prior. Darlene withdrew her petition for guardianship on November 23, 2005. She provided documents to the court on June 15, 2006, which the co-guardians were to review to determine if they represented a complete accounting. On September 18, 2006, the court ordered Darlene to appear and make a complete accounting on October 4, 2006. She failed to appear on that, and the court ordered the sheriff of Cook County to bring her to the judge.[3]

¶ 8 On February 8, 2006, the court appointed two of the children, Doris and Eleise, plenary co-guardians of the estate and person of Evia as a disabled person. The petition for

[2] There is nothing in the record to show why Michael Hubbard was appointed guardian *ad litem*.

[3] There is nothing in the record to show whether the Sheriff brought Darlene to the judge. There is also no evidence in the record of whether Darlene filed a complete accounting. The record appears to be incomplete because the next document is from May 3, 2007.

guardianship stated that Evia suffered from dementia, diabetes, hypertension, vascular disease, had limited mobility, and according to a medical report of Dr. Michelle Harris,[4] was totally incapable of making personal and financial decisions.

¶ 9 On May 3, 2007, the court appointed Athanasia Lagousakos-Gargano as Evia's guardian *ad litem*[5] because Eleise had requested to withdraw as co-guardian, and according to Lagousakos-Gargano's report, Evia had been moved to Darlene's home without the court's knowledge or approval. Lagousakos-Gargano visited the home and found there were no hazards to Evia and that she appeared content.

¶ 10 When Eleise resigned her appointment as co-guardian, Doris was appointed plenary guardian on January 16, 2008. That same day, Eleise and Doris submitted their First Current Account for the period of February 8, 2006, to September 2007, showing a cash on hand of $12,775.68, and an inventory, which listed total cash receipt of $17,500 from a loan reimbursement from Darlene, $6,444 in Social Security income, and a claimed cause of action against Darlene for recovery of property in Darlene's possession belonging to Evia. Two bank accounts at Beverly Bank, which Darlene opened with an unknown amount of Evia's funds, were listed in an addendum. The addendum explained that according to Darlene, the accounts no longer existed and she did not know who withdrew the funds. A handwritten note on the addendum stated that Eleise and Doris had no knowledge of the accounts or how Darlene obtained the funds.

¶ 11 In March 2009, Doris indicated that she intended to resign as the guardian of Evia's person and estate as a disabled person, and the probate court granted the children until April

[4] There is nothing in the record to show what type of doctor Dr. Harris was.

[5] It is unclear from the record whether the court appointed Lagousakos-Gargano as guardian *ad litem* of Evia's person or estate or both. Presumably she was appointed guardian *ad litem* only of Evia's person because her report shows she investigated only Evia's living conditions.

15, 2009, to petition for appointment if they wanted to be the guardian. The court appointed Marguerite Angelari as guardian *ad litem*[6] on April 30, 2009, with the authority to review financial reports, social service reports, elder abuse reports, and medical reports and share that information with a geriatric care manager.[7] The court appointed Surrogate Guardian Services, Inc. (SGS), as a temporary guardian of Evia's person and estate as a disabled person on May 14, 2009, with an order that all communication with the family was to occur through Zelma Martin, one of the children. The court appointed SGS successor plenary guardian on July 24, 2009, and the court directed SGS to contact plaintiff directly and respond to her e-mails.

¶ 12 Doris filed a Second Current Account on June 4, 2009, for the period from October 2007 to April 2009,[8] which listed the total amount for distribution as $17,265. Doris petitioned for $10,720 to be reimbursed from Evia's guardianship estate as a disabled person for expenses Doris incurred in the care of her mother. On July 8, 2009, Doris filed an amended Second Current Account for the period of October 2007 to April 2009, which listed the total amount for distribution as $16,265. On September 2, 2009, Eddie, Jr. objected to the amended Second Current Account and objected to Doris' petition for reimbursement. SGS also objected, adopting Eddie, Jr.'s objections. On February 23, 2010, the court sustained the objections, ordered that Doris be reimbursed $2000, and ordered Doris to file a list of Evia's assets by March 2, 2010.[9]

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[6] It is unclear from the record whether the court appointed Angelari as guardian *ad litem* of Evia's person or estate or both.

[7] The record does not contain a copy of any reports Angelari may have prepared or evidence of anything her investigation revealed.

[8] The accounting states the time period is from October 2007 to April 2009 but does not state the specific dates.

[9] It is unclear from the record whether Doris complied with the order and filed a list of assets. There is an undated, unsigned list of assets prepared by Doris' attorneys, Weisman and Weisman, which is attached to a petition to enforce a court order awarding attorney's fees. However, the list of assets does not list a total.

¶ 13 On September 9, 2009, Eddie, Jr. filed a proposed care plan for Evia and petitioned to become the successor guardian. The court granted him guardianship on November 30, 2009.

¶ 14 II. Present Issue

¶ 15 Although the present case involves Evia's estate as a disabled person, in filing her *pro se* motions plaintiff sometimes refers to Eddie, Sr.'s decedent's estate.[10] Some of the assets in Evia's guardianship estate as a disabled person also appear to be related to the assets of Eddie, Sr.'s decedent's estate. Therefore, we will discuss both estates as necessary to provide a full understanding of the chronology of the case at bar.

¶ 16 On February 10, 2014, plaintiff filed a *pro se* petition for appointment of an independent administrator for the estate of Eddie, Sr. and the estate of Evia.[11] She claimed decedents owned or had interest in real estate and personal property that had not been accounted for. On March 5, 2014, the court continued Eddie, Sr.'s administration until April 22, 2014, and in Evia's estate as a disabled person the court ordered Eddie, Jr. or his counsel to file an annual report on the ward by April 22, 2014.[12] On March 17, 2014, plaintiff filed *pro se* objections to the March 5, 2014, order in Eddie, Sr.'s administration, claiming that Eddie, Jr. was in default for failing to provide an annual report.

¶ 17 In Evia's estate as a disabled person, on April 22, 2014, the court appointed James Meyer as guardian *ad litem* to determine whether a petition should be filed to remove the present guardian, Eddie, Jr., for failure to file an inventory and accounting as ordered by the court on March 5, 2014. Also on April 22, 2014, in Eddie, Sr.'s administration, the court denied plaintiff's *pro se* petition for accounting and inventory and to show cause for "reasons stated

[10] No appeal was ever taken in Eddie, Sr.'s estate.

[11] Although this petition was filed after Evia's death, there was no decedent's estate that had been opened for Evia. Accordingly, plaintiff's petition was necessarily aimed at Evia's guardianship estate as a disabled person.

[12] There is some confusion in the record regarding in which cases the court was entering orders. It appears as though the cases were heard at the same time and some orders might have been for both.

in open court." However, the record contains no transcripts of the hearing. The record includes an undated fax sent by plaintiff after the April 22 hearing to the probate court's clerk, stating that the call through which she had participated in the April 22 hearing had disconnected and requesting a copy of the court order. On May 7, 2014, in Eddie, Sr.'s administration, plaintiff filed a *pro se* motion to vacate the April 22, 2014, order.

¶ 18 On May 29, 2014, the court ordered Eddie, Jr. to file an inventory and a final accounting in Evia's estate as a disabled person. On June 23, 2014, the court ordered the inventory and final accounting to be filed on or before July 23, 2014.

¶ 19 On July 8, 2014, in Eddie, Sr.'s administration, plaintiff filed a *pro se* motion that contained various objections, requested clarification of rulings, and stated there were assets missing.[13]

¶ 20 In Evia's estate as a disabled person, on August 1, 2014, plaintiff filed a *pro se* objection to Eddie, Jr.'s First and Final Accounting and Inventory,[14] request to remove Eddie, Jr. as guardian, and petition for citation of surety on bond.[15] She objected to the entire accounting and inventory because she asserted there were assets missing from the report. Heirs Lavarro Wartin, Handy Tharbs, Ernestine McClain, and Cynthia Phonard filed statements saying the information in the motion was true and that they also objected. Cynthia also included a list of personal property Evia owned. The same day, plaintiff also filed a *pro se* motion for leave requesting appointment of counsel, which the court denied on August 28, 2014. The order

[13] It is unclear exactly what plaintiff was objecting to. It appears as though one objection related to her standing to file and another related to her not receiving notice of all court orders. However, it is clear that plaintiff objected to the fact that Eddie, Jr. had never filed an accounting and inventory after Eddie, Sr.'s death.

[14] It is unclear which version of the final accounting plaintiff is referencing. In her objections, she mentions a July 23, 2014, first and final accounting and mentions an accounting and inventory filed in June 2014. The record does not contain either of those accountings.

[15] The record also contains what appears to be a duplicate of this *pro se* motion, file-stamped August 5, 2014.

stated the court had offered a list of attorneys that plaintiff refused. The court also ordered that all objections must be filed on or before September 3, 2014, or they would be denied.

¶ 21 An unsigned inventory and first and final account of second successor guardian for Evia's guardianship estate as a disabled person were filed on August 28, 2014. The inventory lists:

"ITEM # 1	Surrogate Services Escrow Account	$12,091.82
ITEM #2	Weisman & Weisman Attorney Trust Account Funds received from Doris Wilson	$10,576.00
ITEM # 3	Prudential Life Insurance Policy #76667580 Insured: Eddie Tharbs, Sr.; Beneficiary Evia Tharbs	$17,000.00
ITEM # 4	Fifth Third Checking Account #XXXXXXX6099 Possible Estate Asset, in control of Eleise Moore	Unknown
ITEM # 5	Possible Cause of Action to recover Western Nation Annuity Contract No. JL 250172 Possible Estate Asset. Eleise Moore is co-owner and beneficiary	$92,000.00
ITEM # 6	Original Les Paul Gibson Guitar In possession of Darlene Moore"	Unknown

The inventory lists the approximate value of Evia's personal estate at the date of issuance of letters of office as $36,667 and $0 for the approximate annual income from real estate. The

first and final account of second successor guardian listed the total assets remaining as $17,761.08.

¶ 22 On September 3, 2014, plaintiff filed a *pro se* motion that contained additional objections and requested relief in Evia's estate as a disabled person. She objected to the court denying her motion for an attorney, objected that she had not received copies of all documents and orders, and objected that the heirs were not able to fully participate in the proceedings. She claimed Eddie, Jr. failed to do his duty and asked that assets be distributed. Plaintiff also asserted she had standing in the court even though the probate court and the current guardian *ad litem*, James Murphy, had told her she did not have standing.

¶ 23 On September 10, 2014, the probate court held a hearing and considered the objections, approved the inventory and the final account, and closed the estate of the disabled person. The court also found it lacked subject matter jurisdiction regarding litigation of issues involving the assets of the now deceased Evia Tharbs.

¶ 24 Plaintiff filed a *pro se* petition for letters of administration on September 17, 2014, in Evia's estate as a disabled person, requesting to be the administrator of Evia's decedent's estate.[16] However, she never filed a new petition for letters of administration intestate. In other words, plaintiff used the court number of the estate of a disabled person, instead of filing a new action for the administration of a deceased person's estate intestate. She listed the estate had $100,000 in personal value, $3 million in real value, and $12,000 per year in real estate income.

¶ 25 On September 22, 2014, plaintiff filed a *pro s*e motion for clarification of the court's September 10, 2014, order; reconsideration and reopening of the estate for a disabled person.

[16] There is no indication in the record that a decedent's estate was ever opened. If it was opened, there is no indication who was named administrator.

The court continued the motion to October 27, 2014, because plaintiff did not provide proper notice. Plaintiff filed another *pro se* motion for clarification of the court's order and a *pro se* motion for summary judgment on September 29, 2014.[17]

¶ 26 Prior to the October 27, 2014, hearing on plaintiff's September 22, 2014, motions, plaintiff filed a notice of appeal on October 8, 2014. Plaintiff filed an amended notice of appeal on October 24, 2014. This appeal follows.

¶ 27 ANALYSIS

¶ 28 Plaintiff argues that the probate court erred in dismissing the case for lack of subject matter jurisdiction after Evia's death. We note that defendant has not filed a brief in response. We consider the appeal on plaintiff's brief only, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 29 We first consider whether this court has jurisdiction. Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008) states that a "notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment." "A final judgment is one which disposes of the rights of the parties, upon the entire controversy or upon a definite and distinct part thereof." *In re Marriage of Souleles*, 111 Ill. App. 3d 865, 871 (1982).

¶ 30 Plaintiff filed a *pro se* notice of appeal on October 8, 2014, which was within the 30-day period set forth in Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008). Plaintiff then filed a *pro se* amended notice of appeal on October 24, 2014. Appellants can amend the notice of appeal without leave of court if they do so within the original 30-day period, but after that period "it may be amended only on motion." Ill. S. Ct. R. 303(b)(5) (eff. June 4, 2008). There is no indication from the record that plaintiff amended her notice pursuant to a

[17] The record does not indicate whether these motions were ruled upon.

motion, so we disregard the amended notice and consider only the original notice of appeal. As noted, this court has jurisdiction over the appeal because plaintiff's original *pro se* notice of appeal was filed within 30 days of the final judgment.

¶ 31 I. Subject Matter Jurisdiction

¶ 32 Plaintiff's first argument on appeal is that the probate court erred in dismissing the case for lack of subject matter jurisdiction to oversee the accounting and inventory for Evia's guardianship estate as a disabled person. We affirm.

¶ 33 "The absence or presence of jurisdiction is a purely legal question, and our review is therefore de novo." *In re Luis R.*, 239 Ill. 2d 295, 299 (2010). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 34 Subject matter jurisdiction is "the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 334 (2002). "A circuit court's subject matter jurisdiction is conferred entirely by our state constitution." *Belleville*, 199 Ill. 2d at 334. The constitution states that circuit courts "shall have unlimited original jurisdiction of all justiciable matters." Ill. Const. 1870, art. VI (amended 1964). The probate court is a division of the circuit court, so it has the same subject matter jurisdiction as any other division of the circuit court. *Alfaro v. Meagher*, 27 Ill. App. 3d 292, 295-96 (1975).

¶ 35 In *In re Estate of Gebis*, 186 Ill. 2d 188 (1999), our supreme court ruled on whether the lower court retains subject matter jurisdiction in a guardianship estate for a disabled person after the ward dies, similar to the issue in the case at bar. There, a son and daughter had been appointed co-guardians of their mother, who was adjudicated disabled. *Gebis*, 186 Ill. 2d at

191. After their mother died, the son filed a statutory custodial claim in the guardianship estate for a disabled person requesting compensation for caring for their mother. *Gebis*, 186 Ill. 2d at 191. The sister moved to dismiss and the trial court granted the motion, holding section 18-1.1 of the Probate Act unconstitutional. *Gebis*, 186 Ill. 2d at 191-92. On appeal, our supreme court, *sua sponte*, considered, "whether the trial court possessed subject matter jurisdiction to adjudicate [the son's] statutory custodial claim." *Gebis*, 186 Ill. 2d at 192. The court determined that the trial court did not have jurisdiction. *Gebis*, 186 Ill. 2d at 193. The court stated, "the general rule is that, upon the ward's death, both the guardianship and the trial court's jurisdiction to supervise the ward's estate necessarily terminate." *Gebis*, 186 Ill. 2d at 193. The Probate Act of 1975 supports this statement because it states, "[t]he office of a representative of a ward terminates *** when the ward dies." 755 ILCS 5/24-12 (West 1998). Therefore, the court held that, "[o]nce a disabled person dies, the guardianship terminates and the court supervising the guardianship estate loses jurisdiction to adjudicate a claim filed against that estate. The decedent's estate is the only avenue for recovery." *Gebis*, 186 Ill. 2d at 194.

¶ 36 Similar to *Gebis*, the September 10, 2014, court order states that the probate court "lack[ed] subject matter jurisdiction regarding litigation of issues involving the assets of the now deceased, Evia Tharbs." We note that there was a hearing prior to the order, which plaintiff attended via telephone, but the transcript of that hearing is not contained in the record. Therefore, we can only consider the order and plaintiff's written objections prior to the order to determine what "issues involving the assets" the probate court was referencing. From our review of the record, the brunt of plaintiff's claim is that there are unaccounted-for

assets and she wants the court to discover and recover those assets so she can have her full inheritance.

¶ 37 When this estate was opened in 2005, it was opened as a guardianship for a disabled person case with the case number 05 P 5236. Evia passed away in late 2013, which would mean that the guardianship terminated upon her death under the Probate Act. 755 ILCS 5/24-12 (West 2012). The guardianship case remained open until September 10, 2014, because a final accounting had not been approved until that date.

¶ 38 There is no question that plaintiff filed her claim in Evia's guardianship estate as a disabled person. All plaintiff's filings and briefs contain the same case number, 05 P 5236, as the guardianship estate as a disabled person. Plaintiff's objections were directed to the accounting and inventory Eddie, Jr. had prepared while he was Evia's guardian, so plaintiff must have been aware she was filing it in the guardianship estate for a disabled person. Accordingly, *Gebis* instructs that the probate court properly concluded that it lacked subject matter jurisdiction to litigate the "issues involving the assets of the now deceased, Evia Tharbs" in the guardianship case. *Gebis*, 186 Ill. 2d at 192-94.

¶ 39 We note that following *Gebis*, courts have recognized some instances where a claim may be filed in a guardianship estate after the ward has died. In her *pro se* brief, plaintiff relies on *In re Estate of Barth*, 339 Ill. App. 3d 651 (2003), regarding jurisdiction, but *Barth* can be distinguished from the case at bar because *Barth* represents one such exception to *Gebis*. In *Barth*, the probate court denied a motion to vacate a pretrial settlement order in the guardianship estate. *Barth*, 339 Ill. App. 3d at 659. The order was issued during the ward's life, but the motion to vacate was brought after the ward's death. *Barth*, 339 Ill. App. 3d at 658. The plaintiff in that case argued that the trial court no longer had jurisdiction to

consider the motion to vacate after the ward's death, but the appellate court disagreed because "the relief requested is well within the purview of the guardianship court to grant." *Barth*, 339 Ill. App. 3d at 659-60. The court stated:

> "When [the ward] died, the guardianship court's jurisdiction was confined to supervising the preservation of [the ward's] estate until her will was admitted to probate or letters of administration issued because that is what the guardian's duties were confined to.
>
> [citation] The intent of the Probate Act is that any claims for monies or bequests from the deceased ward's estate should be filed against the decedent's estate." *Barth*, 339 Ill. App. 3d at 660 (citing *Gebis*, 186 Ill. 2d at 194).

The court held that there was jurisdiction because the plaintiff's claims were *not* against the ward or her estate; they were only claims of vacating an order entered in the guardianship estate. Therefore, if appellants wanted "to claim their share of the estate, they would file their claims against [the ward's] decedent's estate." *Barth*, 339 Ill. App. 3d at 661.

¶ 40 Courts have recognized a few other exceptions to *Gebis* that are instances where the claim is directly related to preserving the guardianship estate. In *In re Estate of Pellico*, 394 Ill. App. 3d 1052 (2009), the Second District held the trial court erred in ruling it did not have subject matter jurisdiction in the guardianship estate when the public guardian and guardian *ad litem* sought payment of fees from the funds of the trusts. *Pellico*, 394 Ill. App. 3d at 1065. In *In re Estate of Ahern*, 359 Ill. App. 3d 805 (2005), the First District held the trial court had subject matter jurisdiction in the guardianship estate over a claim for attorney fees. *Ahern*, 359 Ill. App. 3d at 811. There, the ward was alive when the fees were awarded, and the appellate court held that "decedent's death and the closing of her estate do not bar [the attorney] from collecting a portion of the assets she helped to protect." *Ahern*, 359 Ill.

App. 3d at 811. In both those cases, the guardian and attorney were working directly for the ward and within the guardianship estate; therefore, they were able to bring their claims in the guardianship estate.

¶ 41 The case at bar is not a recognized instance where a claim can be filed against a guardianship estate for a disabled person after the ward's death and we will not create such an exception here. Plaintiff is asking for discovery and recovery of missing assets in Evia's estate so they can be distributed among the heirs; these are claims against the estate, unlike the claims in *Barth*. In the guardianship case, the probate court was only responsible for overseeing the guardianship of Evia's person and estate; the distribution of assets only occurs in a decedent's estate. 755 ILCS 5/28-10 (West 2012). Under *Gebis*, the guardianship court does not have the ability to distribute assets. *Gebis*, 186 Ill. 2d at 192-94. Therefore, because the probate court cannot provide the relief plaintiff is requesting as part of Evia's guardianship estate as a disabled person, the court lacks subject matter jurisdiction regarding "issues involving the assets of the now deceased, Evia Tharbs." Relief can only be granted in a decedent's estate and plaintiff failed to file for an administration of the decedent's estate, which is an entirely new action.

¶ 42 Furthermore, even if the probate court did have jurisdiction, we cannot find that it erred in closing Evia's guardianship estate as a disabled person and not litigating "issues involving the assets of the now deceased, Evia Tharbs." The purpose of a guardianship under the Probate Act is "to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self-reliance and independence." 755 ILCS 5/11a-3(b) (West 2012). Here the guardianship is attached to the disabled person, and once that ward dies, the guardianship ceases. 755 ILCS 5/24-12 (West

2012). By contrast, the purposes of an administrator in a decedent estate include settling all claims against the estate and distributing assets. 755 ILCS 5/28-8, 28-10 (West 2012). In the case at bar, plaintiff is attempting to litigate issues involving the assets and distribution of those assets. The proper place for such a dispute is in the context of Evia's decedent estate, not in her guardianship estate as a disabled person. Accordingly, we cannot find that the probate court erred in finding that such litigation was not appropriately part of Evia's guardianship estate as a disabled person.

¶ 43 II. Reopening Case

¶ 44 Plaintiff's second argument on appeal is that the probate court erred in reopening the case after plaintiff filed a *pro se* notice of appeal. For the following reasons, we do not find plaintiff's argument persuasive, and we affirm the probate court's decision.

¶ 45 Illinois Supreme Court Rule 323(a) (eff. Dec. 13, 2005) provides that the appellant is responsible for providing a record on appeal, which "shall include all the evidence pertinent to the issues on appeal." "We are permitted to take cognizance of and to decide only those issues presented by the record. Appellate counsel cannot supplement the certified record by unsupported statements or allegations in their briefs or in oral argument." *In re Estate of McGaughey*, 60 Ill. App. 3d 150, 157 (1978) (citing *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill. App. 3d 637, 640 (1976)).

¶ 46 Plaintiff asks this court to vacate the November 5, 2014, order, but that order is not contained in the record. In fact, the record contains no evidence the case was reopened. We cannot decide an issue for which there are no records, so we affirm the trial court's decision.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, we find plaintiff's arguments are not persuasive, and we affirm the probate court's decision.

¶ 49 Affirmed.