

2016 IL App (1st) 151268-U
No. 1-15-1268
December 22, 2015
Modified Upon Denial of Rehearing March 1, 2016

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DINA KUPER ON BEHALF OF:)	Appeal from the Circuit Court
ESTATE OF LUCY KUPERSHMIDT,)	Of Cook County.
)	
Plaintiff-Appellant,)	
)	No. 13 P 3511
v.)	
)	The Honorable
EUGENE KUPERSHMIDT,)	Mary Ellen Coghlan,
)	Judges Presiding.
Defendant-Appellee.)	

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

ORDER

¶ 1 *Held:* Where the appellant presented insufficient evidence to show that the decedent ever owned two alleged assets, the probate court did not abuse its discretion when it denied the appellant's motion for discovery concerning the interest of the decedent's estate in the two alleged assets.

¶ 2 Dina Kuper, the daughter of Lucy Kupershmidt, appeals from the probate court's judgment approving a final accounting for Lucy's estate. In this appeal, Dina challenges only the probate court's order denying her motion for discovery. Because Dina has not shown that

the proposed discovery would lead to admissible evidence concerning Lucy's assets, we cannot say that the probate court abused its discretion when it denied the motion for discovery.

¶ 3

BACKGROUND

¶ 4

Lucy died on April 12, 2013. Lucy's will provided that the executor of her estate should divide her estate equally between her two children, Eugene Kupershmids and Dina. The probate court appointed Eugene, who had acted as Lucy's guardian for several years, to serve as executor of her estate.

¶ 5

The guardianship court approved Eugene's final account as guardian on April 23, 2014. According to the account, Lucy retained few assets apart from the condominium where she had lived. Eugene, as executor of the estate, sold the condominium for \$240,000. After payment of the mortgage and necessary fees, the sale left \$138,093.43 for distribution to creditors of the estate and Lucy's two children.

¶ 6

Dina contested Eugene's assertion that Lucy owned no other significant assets. On October 29, 2014, Dina filed a motion for discovery, seeking to use subpoenas and other legal processes to "FIND OUT WHAT HAPPENED TO THE TWO \$100,000 LIFE INSURANCE POLICIES LUCY AND ISRAEL KUPERSHMIDT EACH HAD." (Emphasis in original). Israel Kupershmids, Lucy's husband, died in 2008. Dina remembered that Equitable insured her parents' lives. Dina alleged that "21650 Racine Dr. *** belonged to her father Israel Kupershmids in 2001," and that she saw Eugene driving Israel's Cadillac after Israel died. She saw the same Cadillac parked in the driveway at 21650 Racine Drive

shortly before she filed her motion for discovery. She noted that in the final accounting as guardian, Eugene charged Lucy \$7,000 for caretakers for seven weeks.

¶ 7 Eugene claimed in an affidavit that Israel sold his Cadillac in 2008, and a land trust, in which Lucy held no interest at her death, owned 21650 Racine Drive. Eugene also claimed that he sent inquiries regarding life insurance for Israel and Lucy to twelve insurance companies, and none reported any life insurance for either parent. However, Eugene did not attempt to contact Equitable.

¶ 8 On November 26, 2014, Eugene filed his final account as executor for Lucy's estate. Eugene allocated about \$18,000 for legal services provided to Lucy before her death, more than \$17,000 for funeral expenses, \$36,000 for legal fees paid to an attorney for the estate, and \$5,000 to Eugene for his service as executor. The total expenses left less than \$69,000 for distribution to Lucy's heirs, so that Dina stood to receive only \$34,438.32.

¶ 9 On February 25, 2015, the probate court heard argument concerning the final account and Dina's motion for discovery. In its written order, the probate court denied the motion for discovery and approved the final account, except that the court reserved ruling on the issues of the executor's fee and attorney's fees and costs.

¶ 10 Dina moved for reconsideration of the denial of her motion for discovery, again asserting that Israel's interest in his Cadillac and the property at 21650 Racine Drive should have passed to Lucy when Israel died. In an order dated April 7, 2015, the probate court denied Dina's motion for reconsideration of the discovery order. The parties reached an agreement concerning attorney's and executor's fees. The probate court entered an order approving the final account of the estate on April 27, 2015. Dina filed a timely notice of appeal.

¶ 11

ANALYSIS

¶ 12

Dina, *pro se*, challenges the probate court's order denying her motion for discovery. We will not disturb the circuit court's discovery rulings unless the circuit court abused its discretion. *Youle v. Ryan*, 349 Ill. App. 3d 377, 380 (2004). "[T]he right to discovery is limited to disclosure of matters that will be relevant to the case at hand in order to protect against abuses and unfairness, and a court should deny a discovery request where there is insufficient evidence that the requested discovery is relevant or will lead to such evidence." *Leeson v. State Farm Mutual Automobile Insurance Co.*, 190 Ill. App. 3d 359, 366 (1989).

¶ 13

Dina appended to her brief several documents not included in the record on appeal. We must disregard these documents. *Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009). Accordingly, we grant Eugene's motion to strike the documents.

¶ 14

Dina also quotes the probate court judge in her brief, and she adds allegations about what transpired in court. The record on appeal includes no transcript or bystander's report of proceedings to support the quotes or allegations about what occurred in court. We also ignore those allegations in the brief. See *In re Marriage of Chesrow*, 255 Ill. App. 3d 613, 623-24 (1994).

¶ 15

Dina seeks discovery concerning life insurance, the residence, and the car. If Equitable insured Israel's life, it should have distributed the proceeds of that insurance following his death in 2008. Dina presents no grounds for the court to find that the executor of Israel's estate withheld the proceeds from Lucy, or that, if the executor did so, Dina could now challenge the distribution of those proceeds. Dina does not explain why she could not

present any evidence beyond her recollection to show that her mother still owned life insurance when she died.

¶ 16 The record on appeal does not include Israel's will. The record does not show whether Israel owned either a Cadillac or 21650 Racine Drive when he died. Thus, the record does not support the claim that Lucy inherited from Israel either the Cadillac or 21650 Racine Drive. Because the record on appeal does not show that the requested discovery would lead to relevant evidence concerning Lucy's estate, we cannot say that the probate court abused its discretion when it denied the motion for discovery. See *Youle*, 349 Ill. App. 3d at 380.

¶ 17 Dina also mentions in her brief that in the final accounting for the guardianship, Eugene took \$7,000 for caretaker services, where the charges appear indistinguishable from charges disallowed in the guardianship case. See *Kuper v. Kupersmidt*, 2015 IL App (1st) 133701-U. However, the guardianship court approved the final accounting in April 2014, and Dina filed no appeal from that accounting. We lack jurisdiction to consider her challenge to the guardian's final accounting. See *In re Wheat*, 68 Ill. App. 3d 471, 477-78 (1979).

¶ 18 CONCLUSION

¶ 19 Because Dina failed to show that the discovery she sought would lead to relevant evidence concerning the assets of Lucy's estate, we cannot say that the probate court abused its discretion when it denied Dina's motion for discovery. Accordingly, we affirm the trial court's judgment.

¶ 20 Affirmed.