2017 IL App (1st) 162895-U

THIRD DIVISION
September 29, 2017

No. 1-16-2895

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF YVETTE M. BARKSDALE,	)	Appeal from the
	)	Circuit Court of
(DAVID A. EPSTEIN, not personally, but as successor Supervised Administrator of the Estate of Yvette M. Barksdale, deceased,	)	Cook County.
Plaintiff-Appellant,	)	12 P 3203
v.	)	
DESPRES, SCHWARTZ & GEOGHEGAN, LTD.,	)	The Honorable
	)	James G. Riley,
Defendant-Appellee.)	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: The appellee law firm was entitled to enforce its equitable lien for attorney fees against the proceeds from a settlement later issued to the decedent's estate. Affirmed.

¶ 2 David A. Epstein, acting as the Public Administrator for the estate of the deceased Yvette M. Barksdale, appeals from a trial court order holding that the law firm of Despres, Schwartz & Geoghegan, Ltd. (Despres), was entitled to an equitable lien over proceeds of a settlement. The

lien was to satisfy attorney fees that Despres incurred in negotiating the settlement during Barksdale's lifetime even though the settlement proceeds issued after Barksdale's death. The Public Administrator now challenges the trial court's determination on appeal.

¶ 3 BACKGROUND

¶ 4 The limited common law record reveals the following pertinent facts for this appeal. Barksdale was a law professor at John Marshall Law School. Barksdale was incapacitated in some manner because the Cook County Public Guardian eventually took over managing her estate and person. Around 2011, John Marshall and the Public Guardian discussed severing her employment in a mutually agreeable manner. The Public Guardian employed the law firm of Despres in the matter. The parties through their attorneys exchanged drafts of a proposed employment separation agreement. On March 7, 2012, the trial court entered an "order approving separation agreement and attorney's fees," in case number 2010 P 5887. The court noted all parties and their attorneys were present and that the separation agreement, with its proposed amendments was fair and reasonable, and thus approved. The court authorized the parties to enter into the agreement and stated the "Public Guardian is authorized to disburse attorney's fees" of $16,000 to Despres. The court continued the case to March 28 for entry of the separation agreement along with amendments into the court record. The separation agreement purportedly required John Marshall to pay Barksdale $100,000 in severance.

¶ 5 Seven days later, on March 14, Barksdale died without a will. Following her death, John Marshall denied the separation agreement's validity based on Barksdale's death and refused to pay the $100,000 in severance.

¶ 6 In July 2012, a probate estate for Barksdale was opened and the Public Administrator appointed. The Public Administrator subsequently engaged Arnstein & Lehr, LLP, as its

attorney. On October 3, 2013, the Public Administrator filed a petition for citation to recover assets from John Marshall. In the petition, the Public Administrator noted that the trial court's previous order from March 7, 2012 (case number 2010 P 5887), had approved the final written settlement agreement with minor amendments to non-material terms. The Public Administrator claimed the settlement agreement was "immediately enforceable" and as such John Marshall owed the estate $100,000. In a December 2013 email, sent several months after the citation petition, Despres notified the Public Administrator that Despres expected payment of its attorney fees based on the 2012 order.

¶ 7 The record shows the citation petition was continued a number of times, and on September 18, 2014, the Public Administrator filed a motion for leave to approve a settlement agreement wherein John Marshall agreed to pay the estate $60,000 ($40,000 short of the originally-claimed amount). A copy of the unsigned settlement agreement was attached to the motion. On October 2, 2014, the court approved the settlement agreement between the Public Administrator and John Marshall, and the Public Administrator withdrew its citation motion.

¶ 8 Meanwhile, on September 29, 2014, Despres had filed a motion to give effect to the March 7, 2012, court order for the original settlement agreement in the guardianship proceeding and asked that the trial court award Despres the stated $16,000 (minus $2,950 already paid) in attorney fees. Despres claimed this money was its share of the proceeds from the settlement with John Marshall. In an email dated October 2, 2014, and presumably after the court approved the final settlement agreement between the estate and John Marshall, counsel for the Public Administrator offered to pay Despres $6,650 for the settlement involved in case number 2010 P 5887. Despres promptly responded via email that it wanted to further discuss the matter.

¶ 9 On October 21, 2014, Despres filed a Class 7 Claim Order for $9,500, which the court approved. Thus, Despres filed a claim for money that was last in line to be issued from the estate after funeral expenses (first in line), surviving spouses (second in line), etc.

¶ 10 Two years later, on February 18, 2016, Despres and the Public Administrator appeared in this case. The court gave Despres leave to file a citation against the Public Administrator for the $9,500 issued on October 21, 2014, and Despres filed the citation the next day. Depres also filed a motion for an equitable lien. Despres asserted the Barksdale estate had secured the settlement from John Marshall and was holding the proceeds therefrom, and as such Despres' interest had attached to that property. Despres asserted the court had the authority to adjudicate any competing creditor claims on the basis of equity.

¶ 11 In March 2016, the Public Administrator moved to have the court vacate the October 21, 2014, order entered for Despres' class 7 estate claim, arguing it was barred by the statute of limitations (which expired on March 14, 2014). The Public Administrator also argued the court should reconsider granting Despres leave to file the citation, as the citation was based on the jurisdictionally unsound October 21 order. Despres responded that its claim was *in rem* against the settlement proceeds and thus fell outside the statute of limitations requirement and argued it was entitled to an equitable lien regardless. Despres cited the October 2, 2014, email wherein counsel for the Public Administrator had offered to pay Despres $6,650.

¶ 12 The court set the matter for a hearing on April 28, 2016. The court denied the Public Administrator's motion to vacate and continued Despres' motion for an equitable lien.

¶ 13 Following a hearing, on August 24, 2016, the court granted Despres' motion for an equitable lien against the proceeds of the settlement between the Public Administrator and John Marshall. The court ordered that the money would reduce Despres' class 7 estate claim on a

dollar-for-dollar basis retroactive to the date the claim was entered. The court entered the order pursuant to the administration of the estate under Supreme Court Rule 304(b) (eff. Mar. 8, 2016), thus noting it was immediately appealable absent any special finding. The Public Administrator filed a motion to reconsider, which was denied, and this appeal followed.

¶ 14 ANALYSIS

¶ 15 We first consider our jurisdiction, which Despres challenges. The Public Administrator asserts that this case falls under Rule 304(b)(1), which makes appealable 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. We agree. The August 24, 2016, order in this case was a final determination of the rights of Despres to attorney fees gained from the Barksdale guardianship proceeding and in the estate proceeding. The court held that Despres had an equitable lien on settlement property, which the Public Administrator claimed was the estate's, and finally determined the status of Despres' class 7 claim against the estate. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 618-19 (2004). The Public Administrator appealed within 30 days of the denial of its motion to reconsider the court's August 24 judgment. See Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015); Ill. S. Ct. R. 304(b) (eff. Mar. 8, 2016). We note, however, that in its jurisdictional statement, the Public Administrator failed to properly cite to the record, as required by Rule 341(h)(4) (eff. Jan. 1, 2016), and also misstated date of the trial court's final order (claiming it was entered October 3, 2017, rather than October 3, 2016). We note the problematic jurisdictional statement because it presages other problems with the Public Administrator's appeal, which we explain further below.

¶ 16 Turning to the merits, the Public Administrator first argues that the trial court itself lacked subject matter jurisdiction to further consider Despres' equitable relief motion, noting the

court had already allowed Despres' claim a class 7 status on October 21, 2014. The Public Administrator reasons that the October 21 order was a final determination under Rule 304(b)(1), and cites cases holding that orders falling within the scope of that rule must be appealed within 30 days or be barred. See, *e.g.*, *In re Estate of Pawlinski*, 407 Ill. App. 3d 957, 963 (2011). The Public Administrator also cites cases holding that a trial court loses jurisdiction over a case 30 days after judgment is entered or 30 days after disposal of a postjudgment motion.

¶ 17 We reject the Public Administrator's argument as to subject matter jurisdiction for several reasons. First, the Public Administrator fails to cite the record in its argument, thus violating Rule 341(h)(6) (eff. Jan. 1, 2016) (requiring an appellant's argument to have citation to the pages of the record relied on). Second, and most significantly, the record on appeal is incomplete, as the Public Administrator has not filed with this court a report of proceedings betraying the trial court's full findings, the parties' arguments, or any evidence presented to the court. The appellant bears the burden of presenting a sufficiently complete record to support a claim of error, and any doubts arising from an incomplete record are resolved against the appellant. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 18 Here, the record shows Despres filed a motion on September 29, 2014, asking the trial court to give effect to the March 7, 2012, court order from the guardianship case awarding Despres $16,000 in attorney fees. The trial court continued the motion to October 21, 2014. On October 21, 2014, Despres filed a class 7 claim order for $9,500, which the court approved. There is no record of how the court ruled on the similar motion to enforce attorneys' fees, which was to be considered that same day. What we do know, however, is that two years later in February 2016 the court permitted Despres to file a motion for a citation against the Public Administrator and also its motion for an equitable lien. In the court's final order on August 24,

2016, disposing of the aforementioned motions, the court noted, "This order is entered pursuant to the administration of an estate which finally determines a right or status of a party and is therefore appealable under Illinois Supreme Court Rule 304(b)." (Although such a finding was not necessary under Rule 304(b)(1), the order clearly betrays the trial court's intention of declaring the matter final and appealable).

¶ 19 Thus, the limited record before us actually does not support the Public Administrator's contention that the October 21, 2014, order was intended as final on the particular issue of Despres' attorney fees, such that trial court no longer had continuing jurisdiction over that discreet matter. See *In re Estate of Vogt*, 249 Ill. App. 3d 282, 285 (1993) (not every order entered in an estate proceeding may be immediately appealed, and for appellate jurisdiction to attach, the order must "finally" determine the right or status of a party); see also *Guiffrida v. Boothy's Palace Tavern, Inc.*, 2014 IL App (4th) 131008, ¶ 31 (a circuit court has inherent power to review, modify, or vacate interlocutory orders while it retains jurisdiction over the entire controversy). Rather, the record indicates the opposite, that the court intended to maintain ongoing jurisdiction until the August 24, 2016, order. See *Gurga v. Roth*, 2011 IL App (2d) 100444, ¶ 16 (probate courts are courts of general jurisdiction and thus are empowered to hear and decide all justiciable matters).

¶ 20 We also note that the Public Administrator now takes a contrary position regarding the trial court's jurisdiction than it did at one point below. In March 2016, the Public Administrator sought to have the trial court vacate the October 21, 2014, order because the claim was barred by the statute of limitations. If the court had no continuing jurisdiction beyond October 21, 2014, such an action on the trial court's part would have been impossible. *People v. Denson*, 2014 IL 116231, ¶ 17 (a party may not request to proceed in one manner and then later contend on appeal

that the requested course of action was in error); *Shaw v. City of White Hall*, 1 Ill. App. 3d 864, 865 (1971) (parties cannot acquiesce in a theory in the trial court and on appeal urge that the theory was erroneous or an improper means of proceeding). Plus, even assuming the trial court lost jurisdiction over the matter after October 21, 2014, the Public Administrator essentially revested the court with jurisdiction by asking it to act on the case. *In re Marriage of Kuyk*, 2015 IL App (2d) 140733, ¶ 14 (parties may, by agreement, revest the trial court with jurisdiction). For all of the reasons stated, the Public Administrator's initial argument fails.

¶ 21 The Public Administrator next contends the trial court erred in awarding Despres an equitable lien of $9,500. The trial court has broad equitable power to grant relief when there is no adequate remedy at law. *Lewsader v. Wal-Mart Stores, Inc.*, 296 Ill. App. 3d 169, 175 (1998). The exercise of these equitable powers is a matter of sound judicial discretion controlled by established principles in equity and exercised upon a consideration of all the facts and circumstances of a particular case. *Id*. Thus, the decision to grant or deny equitable relief is within the sound discretion of the trial court and will not be reversed by this court absent an abuse of that discretion. *Id*. An equitable lien is the right to have property subjected to the payment of a claim. *Uptown National Bank of Chicago v. Stramer*, 218 Ill. App. 3d 905, 907 (1991). The essential elements are a debt, duty, or obligation owing and a *res* to which that obligation fastens and which is identified or described with reasonable certainty. *Id*. Even in the absence of an express agreement manifesting the parties' intent that property or funds be a security for debts, equitable liens may be imposed out of considerations of fairness. *Id*. at 907-08. They may also arise by judicial decree. *Lewsader*, 296 Ill. App. 3d at 178.

¶ 22 Here the trial court found a debt of Despres' attorney fees existed, and therefore attached to any settlement funds released by John Marshall. The equitable lien arose from the 2012 court

order, which was based on Despres' alleged contingency fee agreement with Barksdale.[1] As there is no transcript of the hearing on the motion to vacate here, there is no basis for holding that the trial court abused its discretion in granting the equitable lien. See *Foutch*, 99 Ill. 2d at 392.

¶ 23 In opposition to the trial court's determination, however, the Public Administrator now cites sections 18-10 and 18-13 of the Illinois Probate Act of 1975 (Probate Act) (See 755 ILCS 5/18-10, 18-13 (West 2016)), which require a decedent's estate to pay therefrom all claims in order of their classification. For example, the Public Administrator argues Despres' attorney fee constitutes a class 7 claim, which is the last in line for payment from the estate. Relying on *In re Estate of McVietty*, 312 Ill. App 3d 478 (2000), the Public Administrator argues that the court, in granting Despres equitable relief, bypassed the clear requirements of the Probate Act. In *McVietty*, the plaintiffs were two nursing homes that had furnished home healthcare to Evelyn McVietty. After her death, insurance reimbursed McVietty's estate with payment for the healthcare. The trial court ordered that the insolvent estate pay the nursing homes the exact amounts of the insurance reimbursement, ruling that failure to do so would result in unjust enrichment. This court disagreed, finding the claims were plainly class 7 claims under the Probate Act and the trial court "erred by giving them super priority." *Id*. at 481.

¶ 24 The Public Administrator now cites *McVietty* for the proposition that equity cannot trump the plain strictures of the Probate Act. We find the Public Administrator's reliance on that case misplaced. *McVietty* explicitly noted that the decedent had not assigned her rights in the insurance proceeds to the nursing homes prior to her death. This case is more analogous to *In re Shandling's Estate*, 26 Ill. App. 3d 610, 612 (1975), where David Shandling borrowed money from David Taylor, and as he was unable to pay back the money, Shandling assigned Taylor an interest in money due from another company. After Shandling's death, the estate and company

[1] Given the limited record, we presume the 2012 order was in conformity with the attorney-client fee agreement.

argued Taylor's class 7 claim against the estate for the assigned interest was untimely. This court held there could be no issue with respect to timeliness because the assigned share, having passed to Taylor during Shandling's lifetime, was the property of Taylor and not the estate's.

¶ 25 Likewise, here, Despres was not claiming any asset of Barksdale's estate. Despres' equitable lien arose at the latest when the trial court approved its attorney fees in the 2012 court order for the guardianship proceeding during Barksdale's lifetime, and Despres was entitled to enforce the equitable lien against the settlement proceeds from John Marshall even though the funds were issued after Barksdale's death. See *Lewsader*, 296 Ill. App. 3d at 177, 181 (attorney's equitable lien arose from contingency fee with client at time of agreement, and recovery for attorney fees was not barred by attorney's death even if settlement was reached thereafter); see also *Podvinec v. Popov*, 168 Ill. 2d 130, 135 (1995) (a judge in one division of the circuit court can enforce a judgment or order entered by a different judge in another division); *cf. In re Estate of Funk*, 221 Ill. 2d 30, 92 (2006) (stating that he Federal Insolvency Statute does not create a lien in the government; acknowledging the general rule that property subject to a lien before a debtor's death does not become an asset of the estate until the lien is discharged; and suggesting in *dicta* that once property has become part of the estate, a lien upon property gives a claimant no superior rights). The Public Administrator was required to pay Despres' attorney fees first before claiming the settlement funds as part of the estate. *Cf. People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 100 (2001) (contingency fee attorney lien attached to State tobacco settlement funds, and the funds were not "state funds" until after the attorneys had been paid). In such a case, the trial court had the discretion to limit the award based on the amount of contribution by Despres. See *Lewsader*, 296 Ill. App. 3d at 182.

¶ 26 We also note the way in which the Public Administrator actually sought the settlement funds from John Marshall was via a petition for citation to recover assets (see 755 ILCS 5/16-1 (West 2016)). Such a petition allows the estate to recover personal property or "evidences of a debt" that is in the possession or control of another but belongs to the estate. *Id.* The Public Administrator admittedly sought to enforce the settlement agreement that had already been approved in 2012. Additionally, section 16-2 permits a third party to similarly claim personal property or a debt from the estate, and in such a case the court "may hear the evidence offered by any party, may determine all questions of title, claims of adverse title and the right of property and may enter such orders and judgment as the case requires." 755 ILCS 5/16-2 (West 2016). This is just what Despres did. It ultimately filed a third-party citation to discover its attorney fees against Barksdale's estate, and the trial court found an equitable lien in Despres' favor, as the case required. This bolsters our conclusion. So too does the email in the record showing that the attorney for the Public Administrator in October 2014 preliminarily offered to pay Despres $6,650 for the claimed attorney fee. To say the least, that email and the Public Administrator's assertion that the 2012 settlement agreement was enforceable do not strengthen its present case.

¶ 27 Even if we were to hold that an equitable lien did not arise, we question whether Depres' attorney fees should not be classified as a class 1 claim against the estate since it appears from the limited record that Despres' work could be construed as indirectly contributing to the administration of the estate. See 755 ILCS 5/18-10 (West 2016); see also *Funk*, 221 Ill. 2d at 89, 91 (noting attorney fees are part of administering the estate and are first class claims under the Probate Act and further noting the principle that he who shares in a benefit should contribute a like share to the expenses incurred in realizing the benefit).

¶ 28 In any event, we find the Public Administrator's claim fails on other grounds, namely that it has not provided us with a sufficient record or brief to adequately address its contentions. See *Foutch*, 99 Ill. 2d at 391-92. Illinois Supreme Court Rules governing practice in the appellate court are mandatory, not suggestive, and Rule 341(h)(7) (eff. Jan. 1, 2016) requires the appellant to set forth contentions on appeal and the reasons therefor, with citation to the authorities and the pages of the record relied on. *Perona v. Volkswagen of America, Inc.*, 2014 IL App (1st) 130748, ¶ 21. The Public Administrator fails to even define what a "claim" is under the Probate Act. Again, we have no report of proceedings to examine the oral arguments made or evidence presented to the trial court. Even in the common law record, we do not have the settlement agreement negotiated between Despres and John Marshall in 2012, nor the settlement agreement negotiated between the Public Administrator and John Marshall in 2014, which the trial court in this case approved via an order.[2] We do not know the status of the original 2012 guardianship proceeding. Was the case dismissed, continued, or transferred to the trial court in this case? Although the Public Administrator essentially asserts that the funds gained from the settlement agreement became part of the estate and commingled with estate assets, and thus are unavailable to give to Despres, the Public Administrator has not cited the record in support, and we cannot find any support in the record for this assertion. The Public Administrator also suggests that Barksdale's estate has insufficient funds to pay all claims and reasons that Despres' equitable lien amount cannot be paid because it is in reality a claim that is last in line. However, the Public Administrator fails to point to anywhere in the record supporting this assertion and therefore its reasoning. That is, it does not explain the assets in the estate and the number of claims existing in order of priority. The Public Administrator also suggests that its attorneys should be paid for

[2] Although the Public Administrator attached a draft copy of the settlement agreement to its motion to approve the settlement agreement, the record does not contain a signed copy.

work on the John Marshall settlement and not Despres. Although the record shows the Public Administrator's attorneys ultimately sealed the deal on the settlement, it also shows Despres did the preceding work and was awarded fees for it. The Public Administrator again does not point to anywhere in the record hashing out exactly who did what on the case.

¶ 29 Likewise, the Public Administrator asserts Despres could have pursued legal remedies before its equitable remedy, but offers no record support for that conclusion and also fails to develop its argument sufficiently in violation of Rule 341(h)(7) (eff. Jan. 1, 2016). For example, the Public Administrator argues Despres could have sought its remedy under the Attorney Lien Act (see 770 ILCS 5/1 (West 2016)). However, that Act is strictly construed, both as to establishing a lien and its enforcement, and attorneys who do not strictly comply with the Lien Act have no lien rights. *Philip Morris, Inc.*, 198 Ill. 2d at 95. The Public Administrator fails to detail how this was in fact a viable option and cites no authority for the proposition that failure to comply with the Attorney Lien Act precludes the present equitable remedy. The Public Administrator repeats unsuccessful arguments or fails to cite legal authority for its other legal remedy arguments. This court is not a repository for an appellant to foist the burden of argument and research. *Cimino v. Sublette*, 2015 IL App (1st) 133373, ¶ 3. Our docket is full, and noncompliance with the rules does not help us resolve appeals expeditiously. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15.

¶ 30 CONCLUSION

¶ 31 In such a case as this, and given the limited record, we presume the trial court was correct in its ruling. We affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.