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2017 IL App (3d) 160307-U

Order filed November 2, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

IN THE MATTER OF THE ESTATE OF)	Appeal from the Circuit Court
MELVIN F. WATSON, Deceased,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
RICHARD WATSON,)	
Petitioner-Appellee,)	
)	
v.)	
)	Appeal No. 3-16-0307
MELVIN F. WATSON, JR.,)	Circuit No. 12-P-4
Respondent-Appellant,)	
and)	
ROBERT BROWN, TIMOTHY POSKIN,)	
JOSEPH SWINFORD, MELBA MORGAN,)	
CHARLENE DAY, RICHARD WATSON,)	
LORETTA MASON, LINDA ESTES,)	Honorable
CAROL SEE and DAVID WATSON,)	Ronald J. Gerts,
Respondents.)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court had jurisdiction over the parties and the subject matter at issue in a probate matter where executor filed a "petition for recoupment" seeking to recover an alleged erroneous distribution of estate assets to certain heirs/legatees of the estate. The circuit court did not commit reversible error when it ordered

certain heirs to return part of preliminary disbursement of funds to the estate after finding that the funds had been erroneously distributed by the executor of the estate.

¶ 2 This is an appeal, pursuant to Supreme Court Rule 304(a) (eff. March 8, 2016), from an order of the circuit court of Kankakee County granting relief sought by the executor of a decedent's estate. The executor filed a "petition for recoupment" seeking to recover an allegedly erroneous distribution of estate assets to certain heirs/legatees of the estate. After granting the petition, the court ordered each of eight individuals to return \$18,286 to the estate.¹ Each heir/legatee had previously received two partial distributions totaling \$237,716.13. The appellant, Melvin Watson, Jr., (Melvin, Jr.) was one of the nine parties ordered to return funds to the estate. He is the only one appealing from the ruling of the circuit court. The estate has remained open during the pendency of this appeal.

¶ 3 BACKGROUND

¶ 4 Melvin Watson, Sr. died on July 16, 2011. During his life, he had nine children: Melvin Watson, Jr., Melba Morgan, Robert Watson, Charlene Day, Richard Watson, Loretta Mason, Linda Estes, Carol See, and David Watson. All except Robert Watson survived their father. Melvin, Sr. executed a last will and testament on October 15, 2001, nominating Richard Watson to serve as the executor of his estate, and named each of his children (except David Watson) to receive an equal share of estate, *per stirpes*. It appears that Robert Watson was alive at the time the will was executed, and the will was never changed or amended after his death.

¹ One of the parties ordered to return funds to the estate, David Watson, did not actually receive any estate assets, yet he was included in the recoupment order. David Watson is not a party to this appeal and any claim or cause of action he might have is not relevant to this matter.

¶ 5 On January 5, 2012, Richard Watson (Richard) opened a decedent's estate, filing a true copy of the will and a petition for probate of will and for letters testamentary. The petition reported the approximate value of the estate at \$1.66 million in personal property (cash, deposit certificates and accounts) and \$80,000 in real estate, for a total estate value of approximately \$1.74 million. Along with the petition, Richard posted a no-surety bond of \$3.4 million. Richard also filed an affidavit of heirship, wherein he listed the decedent's children: Melba Morgan, Melvin Watson, Jr., Charlene Day, Richard Watson, Loretta Mason, Robert Watson, Linda Estes, Carol See, and David Watson. The affidavit reported that Robert Watson had predeceased his father, leaving no children. Based upon Richard's affidavit of heirship, the court entered an order showing that the decedent had nine "surviving" children, including Robert.

¶ 6 On April 25, 2012, Richard, in his capacity as executor, made a partial distribution of \$40,000 to each of the seven living legatees, including himself. On November 21, 2012, he made a second distribution of \$197,716.13 to each legatee. The April distributions were made prior to the expiration of the time period for filing claims against the estate. 755 ILCS 5/18-12 (West 2012). The estate remained open following these disbursements, with various and sundry status hearings taking place on a monthly basis. From the record, it appears that the only estate asset remaining after the second cash distribution was the real estate, which had been valued at approximately \$80,000 at the time the estate had been opened.²

¶ 7 On August 5, 2013, Charlene Day, Loretta Mason, Linda Estes, and Melvin, Jr. each filed an entry of appearance and acknowledgement of receipt of partial distribution.

² The record is not clear on whether the real estate had been sold at some point during the proceedings. However, it is clear that the value of the real estate remained an undistributed estate asset at the time this appeal was initiated.

¶ 8 On May 7, 2014, Joseph Swinford entered an appearance. On July 17, 2014, Robert Brown and Timothy Poskin also entered appearances. Swinford, Brown, and Poskin claimed the *per stirpes* share of the estate as heirs of Robert Watson. The record contains evidence establishing that the family was aware that Robert had up to three children at the time of his death.³ The record is silent as to why no one raised the issue of the missing heirs of Robert prior to May 2014, although the record is clear that the family knew of their existence, having seen them at family reunions and some written correspondence being received from at least one of them.

¶ 9 On January 8, 2015, Richard filed a pleading titled "Petition for Recoupment" seeking the return of \$18,286 from each of the parties to whom distributions had been made. The petition stated that the share of the estate that should have gone to the heirs of Robert Watson had been erroneously divided among the remaining heirs "in error because at the time of said distribution, the heirs were unaware that there were surviving heirs [of] deceased sibling, Robert Dale Watson." The petition further stated that the return of \$18,286 when combined with the value of the real property would allow the estate to provide a proper distribution to Robert's heirs.

¶ 10 On January 8, 2015, a previously scheduled status hearing was held. Counsel for Melvin, Jr. was present pursuant to notice of the status hearing. Counsel lodged an oral objection to the recoupment petition and was given 21 days in which to file a written response. On January 29, 2015, Melvin, Jr.'s counsel filed a written opposition to the petition for recoupment in which he maintained: 1) "recoupment" was not an action authorized or permitted under the Illinois Probate

³ Our review of the record indicates that Robert had two children: Joseph Swinford and Mindy Williamson. It further appears that Mindy Williamson was deceased and was survived by two children: Robert Brown and Timothy Poskin.

Act; 2) any alleged overpayment was solely the result of mismanagement of the estate by Richard and he alone should be responsible for any deficiency in estate assets; 3) equity and estoppel required that Richard reimburse the estate for matters related to his breach of fiduciary duties; and 4) the proper remedy was for the purported heirs of Robert to maintain an action against Richard on his personal bond. In his objection, Melvin, Jr. acknowledged that Robert's children were entitled to a share of the estate, but that the failure to honor that bequest was merely a unilateral "mistake" or "bad action" by Richard in his capacity as executor.

¶ 11 On June 19, 2015, oral arguments were held on the petition for recoupment, at which counsel for Melvin, Jr. presented the arguments raised in his written opposition. At the close of argument, the trial court granted Richard's petition for recoupment, ordering each of the eight heirs to "return the amount of \$18,236.00 each back to the Estate of Melvin Watson forthwith." Melvin, Jr. filed a motion for reconsideration, which was denied. He then filed this appeal.

¶ 12 ANALYSIS

¶ 13 1. Recoupment

¶ 14 The appellant first maintains that the circuit court erred in granting the petition for "recoupment." Specifically, he maintains that the court had no authority to grant such a motion as its power to recover assets for an estate is limited to a citation procedure pursuant to section 16-1 of the Probate Act. 755 ILCS 5/16-1 (West 2012). We review questions of statutory application and construction *de novo*. *In re Estate of Lower*, 365 Ill. App. 3d 469, 476 (2006).

¶ 15 The appellant maintains that the only procedural mechanism for an executor to recover erroneously distributed estate assets is by means of a citation proceeding under section 16-1 of the Probate Act. 755 ILCS 5/16-1 (West 2012). He cites no authority directly supporting that proposition. He refers to two cases where a petition for recoupment was granted by our courts,

Dow Chemical Co. v. Illinois Department of Revenue, 224 Ill. App. 3d 263, 268 (1991), where a recoupment petition was granted to recover overpayment of taxes, and *Wells Fargo Bank, N.A. v. Terry*, 401 Ill. App. 3d 18, 20 (2010), where the court granted a petition for recoupment to be filed as a cross-complaint in a breach of contract action. The appellant surmises that those situations are the only two in which a petition for recoupment can be granted. After reviewing those two cases, we find no basis upon which to conclude that those courts, in affirming the trial court's use of a petition for recoupment, intended to limit the use of a recoupment petition to those two particular circumstances.

¶ 16 Moreover, we note that there is authority for the proposition that a court sitting in probate has the "equitable jurisdiction" to hear a claim by an executor to recover monies erroneously paid from estate assets in excess of what the payee was entitled to receive under the Probate Act. *Wolf v. Beaird*, 122 Ill. 585, 593 (1888); *In re Estate of Whitaker*, 182 Ill. App. 3d 420, 423 (1989). While neither *Wolf* nor *Whitaker* refer to a pleading styled "petition for recoupment" in both cases the reviewing court affirmed the circuit court's granting of an executor's petition seeking to disgorge funds improperly distributed from a decedent's estate. *Wolf*, 122 Ill. at 593 (action to "recover back" funds overpaid to decedent's creditor); *Whitaker*, 182 Ill. App. 3d at 423 (executor entitled to file action for "regaining possession of the funds it improperly distributed").

¶ 17 In *Wolf*, the executor of a decedent's estate improperly paid a creditor's claim in full and only subsequently discovered that the estate lacked sufficient assets to pay more than a *pro rata* share on the particular class of claim paid in full to the creditor. The executor personally reimbursed the estate the amount of overpayment and the estate was closed. The executor then brought an action against the creditor's representative seeking to "recover" the monies erroneously paid to the creditor. The action was maintained by the executor, in his capacity as

executor of the decedent's estate. *Id.* The creditor sought dismissal of the action, claiming that the executor did not have the authority under the Probate Act to bring an action in the name of the estate, and therefore should have brought the action only in his own name. Our supreme court held that the executor could have brought the action in his own name, but he was not prohibited from also maintaining an action, as executor, in favor of the estate. The court held that the circuit court possessed the equitable authority to proceed on the claim as filed by the executor, noting "[e]quity disregards mere matters of form, and looks at the substance" of the claim. *Id.* at 594.

¶ 18 In *Whitaker*, a bank acting as executor of a decedent's estate, improperly allocated estate tax liability in a manner that created an excess payment of estate proceeds to one of the heirs. After the error was discovered, a judgment was entered against the bank in its corporate capacity in the amount of the overpayment. *Whitaker*, 182 Ill. App. 3d at 424. The bank appealed, arguing that it should have been allowed to pursue the windfall distribution in its capacity as executor of the estate. *Id.* The appellate court agreed and modified the judgment to include the bank in its capacity as executor of the estate. The court held:

"This indicates that while the [circuit] court intended to hold the Bank personally liable, it did not intend to preclude the Bank, in its capacity as executor, from attempting to satisfy the judgment by regaining possession of the funds it improperly distributed. *** [leaving] the Bank with at least the opportunity to attempt to recoup funds over-distributed to the widow's estate and ensur[ing] that, in any event, [the legatee] will receive the money he is owed as a result of the Bank's error. *Id.* at 425.

¶ 19 Based upon our review of *Wolf* and *Whitaker*, we hold that a circuit court, acting under the provisions of the Probate Act, possesses the equitable authority to grant an executor's petition

seeking to recover or recoup assets erroneously distributed by the executor. See *Perry v. Estate of Carpenter*, 396 Ill. App. 3d 77, 86 (2009)("it is well settled that the probate court may give relief of an equitable nature when justice so requires"). In the instant matter, we find that the court may exercise its equitable authority to return assets erroneously distributed to an heir/legatee without regard to whether the action is styled as a petition for recoupment or any other similar wording.

¶ 20 2. Personal Jurisdiction

¶ 21 The appellant next maintains that the circuit court lacked the personal and subject matter jurisdiction necessary to order him to turn over the disputed funds. He further claims that only service of summons and citation pursuant to section 16-1 of the Probate Act (755 ILCS 5/16-1 (West 2012) would have brought him within the jurisdiction of the court. We disagree. We find that the court had both personal and subject matter jurisdiction over the appellant and the erroneously distributed estate assets.

¶ 22 It is well-settled that for a court to order parties to comply with its directives, it must have jurisdiction over both the subject matter and the party. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. We will address personal and subject matter jurisdiction separately.

¶ 23 We turn first to the question of whether the circuit court had personal jurisdiction over Melvin, Jr. so as to order him to return \$18,236 to the estate. Whether a court has personal jurisdiction over a party is a question of law subject to *de novo* review. *In re Estate of Rodden*, 2015 IL App. (1st) 140798 ¶ 7. Personal jurisdiction is established either by service of process in accordance with statutory requirements or where the party voluntarily submits to the court's jurisdiction. *Id.* Here, Melvin, Jr. maintains that the only statutorily valid method of obtaining the

\$18,236 from him was by means of service of a summons and citation under section 16-1 of the Act. 755 ILCS 5/16-1 (West 2012). He ignores the fact that he submitted to the jurisdiction of the court. The record established that Melvin, Jr. voluntarily submitted himself to the personal jurisdiction of the court sufficient to give the court jurisdiction over his person in the matter of the allegedly erroneous estate distribution when he entered an appearance and acknowledged receipt of the first disbursement. There is no doubt that as of August 5, 2013, the date he filed his appearance and acknowledgment of receipt of the partial distribution of estate assets, the court had personal jurisdiction over him. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989).

¶ 24 Moreover, our courts have consistently held that a court will have personal jurisdiction over a party "because of either the person's participation in the case or recognition of benefits from the proceeding." *Id.* at 548, citing *Lord v. Hubert*, 12 Ill. 2d 83, 87 (1957); *O'Connell v. Pharmaco, Inc.*, 143 Ill. App. 3d 1061, 1069 (1986)(individual who entered appearance, participated in the proceedings, and sought relief from the court voluntarily subjected himself to the personal jurisdiction of the court); *Rock Island Bank and Trust Co. v. Stauduhar*, 59 Ill App. 3d 892, 902 (1978)(party that accepted benefit from a court voluntarily waived personal jurisdiction objection in subsequent action involving those benefits). Here it is clear that Melvin, Jr. entered his appearance and accepted the benefit of the partial distribution, thus voluntarily subjecting himself to the personal jurisdiction of that court when a subsequent dispute arose over those same benefits. We further note that Melvin, Jr. actively and fully challenged the petition for recoupment. He filed a written objection to the petition, raised jurisdictional and substantive points in opposition, and vigorously challenged the petition in oral argument. Thus he has waived all objections to personal jurisdiction by the circuit court. *In re Estate of Burmeister*, 2013 IL App. (1st) 121776, ¶ 38.

¶ 25 We find that Melvin, Jr.'s appearance and participation in the probate proceedings was sufficient for the court to invoke personal jurisdiction over him.

¶ 26 3. Subject Matter Jurisdiction

¶ 27 The appellant next maintains that the trial court lacked subject matter jurisdiction over the proceedings regarding the allegedly erroneously distributed assets. Whether a trial court had subject matter jurisdiction is a question of law subject to *de novo* review. *In re Marriage of Chrobak*, 349 Ill. App. 3d 894, 898 (2004). As we previously discussed, it is well-settled that a court exercising authority over estate assets in probate has broad power over those assets. *Wolf*, 122 Ill. at 593; *Whitaker*, 182 Ill. App. 3d at 423. Moreover, the administration of an estate in probate "is in the nature of a proceeding *in rem*, acting directly on the *res*, which is the estate of the deceased or the disabled person, and the judgment of the probate court settling the estate is a judgment *in rem*." *In re Estate of Zagaria*, 2013 IL App. (1st) 122879, ¶ 17. The remedy sought in the instant matter was the return of a specific asset alleged to have been erroneously distributed. Were, as here, an asset belonging to the estate has been erroneously distributed, the court obviously retains jurisdiction over the assets as part of the *res* of the estate and the estate administrator may take action in the probate proceedings to return the asset to the estate. *Id.*

¶ 28 4. Defenses to Recoupment

¶ 29 The appellant next maintains that even if the circuit court properly considered the matter as a petition for recoupment, the court should have ruled in his favor. In this vein, he raises three issues: 1) the court should have denied the relief sought by the executor because the alleged overpayment was the result of a unilateral mistake of law, not a mutual mistake of fact; 2) the court should have permitted him to raise the executor's breach of fiduciary duty as a defense to the remedy of returning the asset to the estate; and 3) return of the asset to the estate should have

been denied under the doctrine of equitable estoppel. We disagree with the appellant on each of the three arguments.

¶ 30 Melvin, Jr. maintains that Richard's distribution of estate assets without determining whether Robert had any heirs was a unilateral mistake of law that should prevent him from recovering any distributed estate assets. He points out that, at law, money voluntarily paid under a unilateral mistake of law, as opposed to a mutual mistake of fact, cannot be recovered by the payor. *Wolf*, 123 Ill. at 590. We find two problems with this argument. First, as we have previously addressed, the court in the instant matter was providing equitable relief to the estate and was not prevented from doing equity by principles at law. *County of Cook v. Barrett*, 36 Ill. App. 3d 623, 630 (1975).

¶ 31 In addition, there is no support in the record that the partial distribution was the result of a unilateral mistake of law, as the appellant suggests. Rather, we find that any mistake which lead to the erroneous partial distribution of estate assets was more correctly characterized as a mutual mistake of fact, *i.e.*, both Richard and Melvin, Jr. (indeed the entire family) were mistaken as to the factual existence and identity of Robert's children. A mutual mistake of fact is one that is common to the parties such that each labors under the same misconception. *Wheeler-Dealer, Ltd. v. Christ*, 379 Ill. App. 3d 864, 869 (2008). "In the event of a mutual mistake of fact as to a material matter affecting the substance of a transaction," the court may rescind the transaction and place the parties at the position of *status quo ante*. *Cameron v. Bogusz*, 305 Ill. App. 267, 272 (1999). Whether a mutual mistake of fact has occurred is a question of fact and the trial court's findings will not be overturned on appeal unless they are against the manifest weight of the evidence. *Wheeler-Dealer*, 379 Ill. App. 3d at 868. Here, the record established unequivocally that, whatever mistake Richard was laboring under regarding Robert's heirs at law

when he made the partial distributions, Melvin, Jr. and the rest of the family was laboring under that same misconception.

¶ 32 Likewise, we find no merit in the appellant's argument that the circuit court erred in not permitting the appellant to raise breach of the executor's fiduciary duty as an affirmative defense to the recoupment petition. We review a circuit court's denial of a motion to raise an affirmative defense *de novo*. *Zook v. Norfolk & Western Ry. Co.*, 268 Ill. App. 3d 157, 169 (1994). Here, the appellant cites *Sobel v. Franks*, 261 Ill. App. 3d 670, 677-78 (1983) for the proposition that a fiduciary cannot obtain compensation where there has been a breach of duty owed to the principal. He argues that Richard breached his fiduciary duty owed to the estate and its beneficiaries, and therefore should be precluded from seeking return of the funds he erroneously distributed. We find that the appellant has read *Sobel* incorrectly. In that case, an insurance agent who breached his fiduciary duty to his insured brought an action to collect the commissions due under the policies. *Id.* at 677. The court held that he could not collect compensation due to him under the policies due to the breach of his fiduciary duties to the policyholders. *Id.* Here, Richard was not seeking personal compensation, but rather sought only to return the erroneously distributed assets.

¶ 33 Moreover, we note that in *Whitaker*, the executor arguably breached its fiduciary duty, yet it was allowed to maintain an action to recoup erroneously distributed assets. *Whitaker*, 182 Ill. App. 3d at 423. Because we find that an allegation of breach of fiduciary duty by Richard would not have prevented him from maintaining the action for recoupment, we find no error in the circuit court denying Melvin, Jr.'s motion to raise breach of fiduciary duty as an affirmative defense to the recoupment petition.

¶ 34 The appellant lastly maintains that the court erred in rejecting his argument that Richard should have been equitably estopped from bring the recoupment petition. He maintains that it would be "unfair" for him to have to return the admittedly erroneously distributed funds, and that the error was solely the result of Richard's breach of duty to the estate and the other heirs/legatees. This argument must fail. Equitable estoppel bars an action where, *inter alia*, the party seeking relief from a court engaged in active misrepresentation or concealment and the party asserting estoppel reasonably relied on those misrepresentations in good faith to his detriment. *Vaughn v. Speaker*, 126 Ill. 2d 150, 162-163 (1988). Whether a party has established he is entitled to relief under an equitable estoppels theory is a question of fact and the lower court's findings in that regard will not be overturned on appeal unless they are against the manifest weight of the evidence. *Feiler v. Covenant Medical Center of Champaign-Urbana*, 232 Ill. App. 3d 1088, 1093 (1992).

¶ 35 Our review of the record leads us to conclude that the circuit court's rejection of Melvin Jr.'s equitable estoppel claim was not against the manifest weight of the evidence. There is nothing in the record to establish any of the elements of estoppel enumerated in *Vaughn. Id.* There is no evidence to establish that the Richard engaged in willful misrepresentations or active concealment of the facts regarding Robert's heirs. In fact the opposite is clear; all family members, including Richard and Melvin, Jr., were equally aware (or unaware) of the existence or identity of any of Robert's heirs.

¶ 36 Similarly, Melvin, Jr. failed to show any facts establishing that he reasonably relied to his detriment on representation of fact made by Richard in his capacity as executor of the estate. Again, whatever knowledge Richard possessed as the executor of the estate was the same knowledge that Melvin, Jr. know, or should have known. Additionally, we note that Melvin, Jr.

did not establish how he suffered harm to his detriment as a result of the recoupment order. He maintains that he would be irreparably harmed by being required to immediately return \$18,286 to the estate. His claims of detriment and undue prejudice fail in view of the fact that the initial partial distribution of \$40,000, made during the six month claims period, should have only been distributed upon his posting of a return bond prior to receiving the partial distribution. 755 ILCS 5/24-4(b)(West 2012). It appears from the record that Melvin, Jr. did not post a return bond. Since he failed to comply with a provision meant to protect the estate from erroneous distributions during the claims period, he cannot claim detriment or undue prejudice by the court requiring him to return a portion of the distribution that should have been bonded. *In re Estate of Opalinska*, 2015 IL App. (1st) 143407, ¶ 32 (unclean hands doctrine prohibits a party from seeking equitable relief if that engaged in culpable actions).

¶ 37

CONCLUSION

¶ 38

The judgment of the circuit court of Kankakee County is affirmed.

¶ 39

Affirmed.