

No. 1-13-1455

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

DANIEL A. DANHAUER and DEBORAH L. SUPIS,)	
as Executors of the Estate of Daniel J.)	Appeal from the Circuit Court
Danhauer, Deceased,)	of Cook County
)	
Petitioners-Appellants,)	
)	
v.)	No. 10 P 003455
)	
)	
JEANNE NEWTON DANHAUER,)	Honorable
)	James G. Riley,
Respondent-Appellee.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

Held: The circuit court's award in favor of the respondent will be vacated where she was deceased at the time the award was given.

¶ 1 The petitioners, Daniel A. Danhauer and Deborah L. Supis, as Executors of the Estate of Daniel J. Danhauer, Deceased, appeal an order from the circuit court which allowed a claim by

the respondent, Jeanne Newton Danhauer, for reimbursement from the Estate in the amount of \$12,535, for the decedent's burial expenses. We vacate the order of the circuit court.

¶ 2 This is the second appeal by the petitioners arising from the distribution of this estate. (See *Danhauer v. Danhauer*, 2013 IL App (1st) 123537, 2 N.E.3d 424). As detailed in our prior Opinion, the decedent and the respondent were married in 1994, after the death of the decedent's first wife. The decedent died on February 19, 2010, leaving as heirs his five children from his first marriage, which included the petitioners. The Estate proceeded to probate court, where the parties disputed, *inter alia*, whether the petitioners or the respondent were the intended beneficiaries of the decedent's IRA account.

¶ 3 On May 16, 2011, while that action was pending, the respondent filed the claim at issue in this appeal, alleging that the Estate owes her a total of \$12,535, to cover expenses she incurred for the decedent's funeral and burial.

¶ 4 On January 25, 2013, the court entered an order setting the case for a status hearing on March 8, 2013, on "the closing of the Estate." On March 8, following the hearing, the court entered an order allowing the respondent's claim of May 16, 2011, and awarding her \$12,535, as a "first class" claim against the Estate. The order also noted, however, that the respondent was "now deceased," and that a "Mr. Newton" had appeared at the hearing on her behalf. The transcript of the March 8 hearing is missing from the record on appeal, and the record is silent as to the exact date of the respondent's death. The record does reflect, however, that the court had been apprised of the respondent's death on more than one occasion, yet nonetheless sustained the claim in favor of a dead person.

¶ 5 It is well-settled that a deceased person is a nonexistent entity and cannot be a party to a lawsuit. *Relf v. Shatayeva*, 2013 IL 114925 ¶ 22, 998 N.E.2d 18; *Volkmar v. State Farm Mutual*

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Automobile Insurance Co., 104 Ill. App. 3d 149, 151, 432 N.E.2d 1149 (1982). If a party dies after she has filed suit but prior to judgment being entered, any judgment entered for her subsequent to her death, while not affecting the court's jurisdiction, is nonetheless voidable and subject to vacatur. *Clafin v. Dunne*, 129 Ill. 241, 21 N.E. 834 (1889); accord, *Danforth v. Danforth*, 111 Ill. 236 (1884); *Bushnell v. Cooper*, 212 Ill. App. 503 (1918). See also *Gage v. Chicago Title & Trust Co.*, 303 Ill. 569, 136 N.E. 483 (1922); *Streeter v. Chicago Title & Trust Co.*, 14 F. 2d 331 (1926). This rule is justified for a party who, during her lifetime, submitted to the jurisdiction of the court, thereby vesting it with the " 'rightful authority to render the judgment it did.' " *Clafin*, 129 Ill. at 247, quoting *Danforth*, 111 Ill. 236. While it is clearly erroneous for the court to proceed to enter judgment after the plaintiff's death, such action does not operate to remove lawfully-acquired jurisdiction from the court. *Clafin* 129 Ill 241, citing *Danforth*, 111 Ill. 236.

¶ 6 Accordingly, we vacate the judgment for the respondent, and remand this case for the appropriate proceedings under Section 2-1008(b) of the Code of Civil Procedure. 735 ILCS 5/2-1008(b) (West 2010).

¶ 7 Vacated and remanded.