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2014 IL App (3d) 120635-U

Order filed May 23, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

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|-------------------------------------|---|-------------------------------|
| PAUL VOCK, |) | Appeal from the Circuit Court |
| |) | of the 14th Judicial Circuit |
| Plaintiff-Appellant, |) | Whiteside County, Illinois, |
| |) | |
| v. |) | Appeal No. 3-12-0635 |
| |) | Circuit No. 11-MR-90ST |
| MARTIN OSTRANDER, as Trustee of the |) | |
| Rita Jo Ann Vock Family Trust, |) | |
| |) | Honorable |
| Defendant-Appellee. |) | Frank R. Fuhr, |
| |) | Judge, Presiding. |

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held:* In a case in which a surviving spouse filed a petition challenging the validity of an *inter vivos* trust, the circuit court ruled that the petition was untimely and granted the trustee's motion to dismiss the petition. The appellate court affirmed, holding that the factual allegations supporting an allegation of conflict of interest on the part of the trust's attorney had been previously found not to constitute a basis for tolling the statute of limitations in a will contest between the same parties. Thus, the circumstances in this case did not excuse the untimely filing of the petition in the instant matter.

¶ 2 Plaintiff, Paul Vock, appeals the dismissal with prejudice of his complaint challenging the validity of an *inter vivos* trust created by his now deceased wife, Rita Jo Ann Vock. After an evidentiary hearing, the circuit court dismissed the plaintiff's petition as untimely. On appeal, the plaintiff maintains that his petition should not have been dismissed as untimely because the attorney for the trust was operating under a conflict of interest that prevented the plaintiff from filing a timely cause of action. He argues that the time period for timely filing of his petition was equitably tolled by the attorney's conflict.

¶ 3 This court addressed this same factual issue in *Estate of Rita Jo Ann Vock*, 2014 IL App (3d) 120997-U (unpublished order under Supreme Court Rule 23). In that case, this court found that the actions of the attorney for the trust did not constitute a conflict giving rise to an equitable basis for tolling the statutory period for filing a petition to renounce the will. We find that the factual conclusions in our previous ruling dictate the same result in the instant matter.

¶ 4 We will not provide a detailed recitation of the facts here as the facts were presented in detail in our previous ruling. The gist of the plaintiff's claim in the previous matter was that upon the death of his wife he did not file a timely renunciation of her will because he was led believe that he was a beneficiary of a family trust. The trust was the primary beneficiary under the will. In the previous matter, the plaintiff maintained *inter alia* that the attorney for the family trust, Russell Holesinger, permitted the plaintiff to assume on several occasions that he was a beneficiary of the family trust while knowing that the opposite was true. *Estate of Vock*, 2014 IL App (3) 120997-U ¶ 14. The plaintiff maintains that but for Holesinger's acts of omission and commission, he would have been aware of the fact that he was not a beneficiary of the family trust established by his late wife and would have taken steps to protect his interests by

renouncing the will. He now makes the same argument regarding the family trust. Specifically, he would have taken timely steps to file the petition in the instant matter challenging the validity of the trust.

¶ 5 In *Estate of Vock*, we specifically rejected the plaintiff's view of the facts regarding the actions of Holesinger. We found that the manifest weight of the evidence supported the conclusion that Holesinger did not engage in acts which prevented the plaintiff from taking any timely actions to protect his interests. This court specifically found that the plaintiff "knew as of at least July 2010 – and possibly as early as January 2010 – that he was not a beneficiary of JoAnn's family trust. There was no evidence that Martin [the trustee and defendant in the instant matter] or Holesinger at any time misrepresented any material fact to [plaintiff] or concealed any material fact from him." *Id.* at ¶ 22.

¶ 6 While our previous ruling addressed the circuit court's order finding the plaintiff's will renunciation petition to be untimely, the factual findings in that case dictate the same result in the instant matter. Here, as in the previous matter, the plaintiff maintains that Holesinger concealed or misrepresented material facts which caused him to file an untimely petition. Since we have previously held that no such concealments or misrepresentations occurred in Holesinger's dealing with the plaintiff, the same result is dictated in this case. *Radwill v. Manor Care of Westmont, LLC.*, 2013 IL App (2d) 120957 ¶ 8.

¶ 7 For the foregoing reasons, we hold that no facts exist which establish that the plaintiff was entitled to an equitable tolling of the statute of limitations for the filing of his petition challenging the validity of his wife's *inter vivos* trust resulting from the actions of the attorney for the trust. We therefore affirm the judgment of the circuit court of Whiteside County which dismissed his petition as untimely.

¶ 8 Affirmed.

¶ 9 JUSTICE SCHMIDT, dissenting.

¶ 10 For the reasons set forth in my dissent in the *Estate of Vock*, ¶¶ 26-28, I would find that plaintiff is entitled to equitable tolling of the statute of limitations and, therefore, dissent.