

No. 1-11-2406

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(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|-------------------------------------------------------|---|------------------|
| <i>In re</i> ESTATE OF BRENDAN G. KILBRIDE, Deceased, |) | Appeal from the |
| |) | Circuit Court of |
| JOHN STACK, |) | Cook County. |
| |) | |
| Plaintiff-Appellant, |) | |
| v. |) | 07 P 7806 |
| |) | |
| CAROLYN A. KILBRIDE, individually, as Successor |) | |
| Trustee of the Brendan G. Kilbride Trust and TERENCE |) | |
| KILBRIDE, as Beneficiary of Said Trust, |) | Honorable |
| |) | Thomas Allen, |
| Defendants-Appellees. |) | Judge Presiding. |

JUSTICE NEVILLE delivered the judgment of the court.
Justices Quinn and Murphy concurred in the judgment.

ORDER

¶ 1 *HELD:* Once this court decides an issue in an appeal, the decision becomes the law of the case for subsequent proceedings. Where a prior decision precludes effective relief on a new claim, we must dismiss, as moot, the appeal with respect to the new claim.

¶ 2 This case, concerning the distribution of Brendan Kilbride's estate, comes before us for a second time. After the trial court construed a will Brendan signed in 2005, John Stack

both appealed from the trial court's judgment and also petitioned the trial court for judgments declaring invalid the 2005 will, a trust Brendan created in 2002, and some other instruments. In the appeal, we affirmed the trial court's construction of the will and the trial court's holding that the 2002 trust remained in effect at the time of Brendan's death. The trial court dismissed Stack's petition to declare the 2005 will and other instruments invalid.

¶ 3 In this second appeal, Stack argues that the court could invalidate the 2005 will after construing it. We hold that, under the law of the case, the trustee of the 2002 trust must distribute Brendan's assets according to the provisions of that trust, regardless of the validity of the 2005 will and any other instruments. We affirm the dismissal of the request to declare the 2002 trust invalid, and we dismiss as moot all of Stack's other claims for relief.

¶ 4 BACKGROUND

¶ 5 In 2002, Brendan created the Brendan G. Kilbride Trust (2002 trust), and he transferred all his accounts at banks and other depository institutions to the 2002 trust. The trust provisions required the trustee to distribute its assets after Brendan's death, giving specified amounts to several named beneficiaries, and then dividing the remaining assets equally between Carolyn Kilbride, Terence Kilbride, and Stack. Brendan also signed a will in 2002, in which he said, "I give and devise the residue of my estate, after provision is made for the payments directed in Article IV, including lapsed legacies but not including any property over which I have a power of appointment, to the acting Trustee of the BRENDAN G. KILBRIDE Trust, as in effect at my death."

¶ 6 The following year, Brendan signed several new estate documents. He created a new

trust (2003 trust) that provided for specific bequests to specified beneficiaries, including Carolyn and Terence, and for the entire remaining corpus of the trust to go to Stack alone. Brendan signed a new will (2003 will) and a document purporting to revoke the 2002 trust. The 2003 will included a provision identical to the residual provision from the 2002 will. In particular, he again gave the residue of his estate to "the acting Trustee of the BRENDAN G. KILBRIDE Trust, as in effect at my death."

¶ 7 Brendan funded the 2003 trust with \$10, and he never added to that amount. Despite the purported revocation of the 2002 trust, Brendan continued to transfer assets to the 2002 trust. In 2005, Brendan executed a new will (2005 will) that revoked his prior wills. Once again, he adopted verbatim the provision from the 2002 and 2003 wills concerning the residue of his estate. He also signed a document in which he purported to resign as trustee of the 2002 trust, and he signed a certification that the 2002 trust remained valid.

¶ 8 Brendan died on January 31, 2006. In 2007, Stack petitioned to probate the 2003 will. Carolyn filed a petition to probate and construe the 2005 will. Stack cross-petitioned for construction of the 2005 will, claiming that the bequest to "the acting Trustee of the BRENDAN G. KILBRIDE Trust, as in effect at my death" referred to the trustee of the 2003 trust.

¶ 9 The trial court held that both the 2002 and the 2003 trusts remained in effect at the time Brendan died, but the 2003 trust had only \$10 to distribute, while all other assets remained in the 2002 trust. Only the \$10 passed according to the terms of the 2003 trust. The court ordered the trustee of the 2002 trust to distribute its assets, virtually all of the

estate, according to the provisions of that trust.

¶ 10 Stack appealed, but before we could decide that first appeal, he separately filed the petition in six counts that we must address on this second appeal. In count I, Stack sought a judgment declaring the 2005 will invalid because Brendan lacked testamentary capacity when he signed that will. In counts II and III, Stack sought a judgment declaring invalid the 2005 document in which Brendan purported to resign as trustee of the 2002 trust, based on lack of testamentary capacity (count II) and the undue influence of Carolyn and Terence (count III). In counts IV and V, Stack sought a judgment declaring invalid the 2005 document in which Brendan reaffirmed the continuing validity of the 2002 trust, based on the same two reasons given in counts II and III. Finally, in count VI, Stack sought a judgment declaring that the invalidity of the resignation and certification retroactively invalidated the 2002 trust.

¶ 11 In the initial appeal from the decision construing the 2005 will, Stack argued that in the document Brendan signed in 2003, he effectively revoked the 2002 trust, and therefore the 2005 will referred to the only trust remaining at the time of Brendan's death, the 2003 trust. We found that Brendan "never resumed possession or changed the title to the assets in the 2002 Trust. Instead, Brendan Kilbride continued to recognize the existence of the 2002 Trust, and continued to handle his financial affairs through the 2002 Trust, in that (1) he funded the 2002 Trust with assets, and (2) he invested and reinvested in the name of the 2002 Trust." We held that "the trial court did not err when it found (1) that '[t]he Brendan G. Kilbride Trust dated September 26, 2002, was in full force and effect at the time of

Brendan G. Kilbride's death on January 31, 2006 and remains in full force and effect,' and (2) that '[t]he assets of the Brendan G. Kilbride Trust dated September 26, 2002, shall be distributed in accordance with the applicable terms and provisions of that trust.' " We also held that the phrase, "the acting Trustee of the BRENDAN G. KILBRIDE Trust, as in effect at my death," referred to the 2002 Trust. Accordingly, we affirmed the trial court's judgment.

¶ 12 The trial court addressed the counts of Stack's petition to declare the 2005 will invalid in two separate orders. Before we decided the first appeal, the trial court dismissed count VI of Stack's petition as superfluous. After we decided the appeal, the trial court dismissed count I of the petition, the count for a judgment declaring the 2005 will invalid, on grounds that Stack's cross-petition to construe the 2005 will estopped him from challenging that will's validity. The court dismissed the other counts, concerning the resignation and the certification, with leave to amend. Stack elected to stand on his complaint, and the court dismissed the complaint with prejudice.

¶ 13 ANALYSIS

¶ 14 We review *de novo* the dismissal of the complaint under sections 2-615 and 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-615, 5/2-619 (West 2008); *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99 (2004); *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 282 (2006). Carolyn argues that we should affirm the trial court's judgments based on the law of the case, established in our prior opinion.

¶ 15 Generally, under the law of the case doctrine, this court should not reconsider in a

second appeal an issue it has already decided in the case on an earlier appeal. See *Relph v. Board of Education of DePue Unit School District No. 103*, 84 Ill. 2d 436, 443 (1981). “The rule of the law of the case is a rule of practice, based on sound policy that, where an issue is once litigated and decided, that should be the end of the matter and the unreserved decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit.” *Continental Insurance Co. v. Skidmore, Owings and Merrill*, 271 Ill. App. 3d 692, 696-97 (1995).

¶ 16 In our order disposing of the first appeal, we affirmed the trial court's judgment that the purported revocation of the 2002 trust never took effect, because Brendan funded only the 2002 trust, and he continued to invest through the 2002 trust after its purported revocation. We also affirmed the trial court's judgment that the provisions of the 2002 trust governed the distribution of all assets in the 2002 trust. Those holdings form the law of the case, which we will not revisit.

¶ 17 Applying the law of the case, we affirm the dismissal of count VI, concerning the validity of the 2002 trust, because we already held that the purported revocation of the 2002 trust never took effect, and the 2002 trust remained in effect at the time of Brendan's death. We cannot provide Stack any effective relief for his claims in counts II through V of his petition, because a declaration of the invalidity of the purported resignation as trustee and the 2005 certification of the 2002 trust will not affect the distribution of Brendan's assets, which the trustee must distribute according to the terms of the 2002 trust. A matter is considered to be moot when it presents or involves no actual controversy, interests or rights

of the parties, or where the issues have ceased to exist. *First National Bank v. Kusper*, 98 Ill. 2d 226, 233 (1983). Because we cannot provide Stack any effective relief for those claims, we dismiss as moot the appeal from the dismissal of counts II through V of his petition. *In re Estate of Bork*, 145 Ill. App. 3d 920, 930 (1986), citing *George W. Kennedy Construction Co. v. City of Chicago*, 112 Ill. 2d 70, 76 (1986) (a court should refuse to decide a claim if the decision on the claim would have only advisory effect, and in such a case the claim would be moot).

¶ 18 Finally, a judgment declaring the 2005 will invalid, as Stack requests in count I, would also have no effect on the distribution of assets. In the first appeal, we held that the 2002 trust remained in effect at the time of Brendan's death. Stack seeks to admit the 2003 will to probate, but that will cannot affect the distribution of the 2002 trust assets, and that will, like the 2002 will and the 2005 will, leaves the residue of the estate to "the acting Trustee of the BRENDAN G. KILBRIDE Trust, as in effect at my death," which is the 2002 trust. Because our prior order established the proper distribution of Brendan's assets, as prescribed by the terms of the 2002 trust, a judgment declaring the invalidity of the 2005 will would not affect the distribution of Brendan's assets. Accordingly, we dismiss as moot the appeal from the dismissal of count I of Stack's petition.

¶ 19 CONCLUSION

¶ 20 In our first decision in this case, we held that the 2002 trust remained in effect at the time of Brendan's death, and the trust provisions governed the distribution of the assets in that trust. We affirm the dismissal of Stack's renewed attack on the 2002 trust, because we

already decided the issue of the trust's validity. We dismiss as moot the appeal from dismissal of all other counts of Stack's petition, because none of the declaratory judgments he seeks in those counts would affect the distribution of Brendan's assets or provide Stack with any other cognizable relief.

¶ 21 Affirmed in part; appeal dismissed in part.