2014 IL App (1st) 130440-U

FOURTH DIVISION
January 23, 2014

No. 1-13-0440

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE ESTATE OF RONALD M. SCHWARTZ,	)	Appeal from the
	)	Circuit Court of
Citation Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 10 P 0313
	)	
STEVEN SCHWARTZ,	)	Honorable
	)	Susan M. Coleman,
Citation Respondent-Appellant.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court did not abuse its discretion in allowing citation to recover assets brought by the executor of the decedent's estate. Court's finding that the decedent's son had wrongfully converted $217,000 worth of estate assets was not against the manifest weight of the evidence. Affirmed.

¶ 2 This appeal involves a citation to discover and recover assets filed by the estate of the decedent, Ronald M. Schwartz (the Estate). Citation respondent, Steven Schwartz (Steven), appeals the circuit court's judgment against him in the amount of $217,000. We affirm.

¶ 3 BACKGROUND

¶ 4 Illinois Supreme Court Rule 341 requires that an appellant's brief contain a "Statement of Facts, which shall contain the facts *necessary to an understanding of the case*, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." (Emphasis added.) Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Steven's brief does not comply with this requirement and focuses only on certain evidence presented at trial, and contains excerpts of the record taken out of context. We agree with the Estate that Steven's "[i]gnoring all of the evidence *** doesn't make the evidence go away." We also agree with the Estate that a detailed procedural history is necessary for our determination of the appealable issues.

¶ 5 The underlying case arose on January 28, 2010, when the decedent's probate estate was opened. The decedent had died on November 24, 2009, in Chicago. In his will the sole beneficiary was his wife, Christa Schwartz. At the time of the decedent's death, Christa was living in Florida with Steven. Prior to his death, the decedent had been providing Steven with money to cover Christa's expenses. The couple had one other child, Susan Harris (nee Schwartz), who was also living in Florida. She was the named executor of decedent's estate (the Executor).

¶ 6 Prior to his demise, the decedent had accused Steven, orally and in writing, of having taken personal property from the decedent, including $217,000 in promissory notes signed by Steven to him. The first written accusation was in a letter dated October 5, 2009, which stated:

"Thanks so much for completely ruining my credit. That's what I get for

trying to help you. It always comes back to bite me in the ass.

Then to top it off you steal all of my money so I have nothing to live on. Again that's what I get for helping you to the tune of $217,000. Then you rip off the promissory notes. How do you look in the mirror or sleep at night?"

Three days later, on October 8, 2009, Steven filed suit against the decedent in Florida, purportedly as power of attorney for Christa. The decedent, represented by attorneys in Florida, executed affidavits in support of a motion to dismiss the Florida action, in which he again accused Steven. Specifically, the affidavits stated, in part:

"Finally, Steven has no equitable position. In approximately September 2009, my son, Steven D. Schwartz, came to Chicago, Illinois, with my wife and he emptied out our joint accounts and transferred from Charles Schwab accounts, in Illinois, the sum of $117,000.00 and $48,000.00 from our joint personal checking account at Manufacturer's Bank in Chicago. He also took $15,000.00 from mine and Christa's joint account in Illinois and raided our joint safe deposit box, and wrongfully removed from my filing cabinet at our house, several hundreds of thousands of dollars worth of promissory notes, *signed by him to me*." (Emphasis added.)

The affidavits were dated October 27, 2009 and November 13, 2009. The decedent died less than two weeks later.

¶ 7 On February 16, 2010, the probate court issued the following order: "This cause coming on to be heard on Executor's Emergency Petition for Citation to Discover and Recover, the court

being apprised in the premises, it is hereby ordered: Citation to issue returnable March 10, 2010 at 10 a.m.; Service by Special Process Server allowed." No objection was raised. Steven answered the citation with an affidavit, dated May 5, 2010, in which he stated, among other things, that he had been appointed attorney-in-fact for Christa, who suffered from dementia. Steven also stated that "in an effort to respond to the petition" he had requested documents from certain entities and he attached these documents. Steven also averred that he did not have any outstanding loans to the decedent on the date of his death, but had outstanding loans to Christa. Steven attended two citation testimony sessions in June 2010 and April 2011. Discovery ensued and the parties agreed to go to mediation on December 21, 2011, but no agreement was reached.

¶ 8 On May 31, 2012, the matter was returned to the original trial judge to set a trial date. On July 26, 2012, Steven's counsel withdrew and the matter was scheduled for status. On August 16, 2012, attorney Kenneth Ditkowsky appeared indicating he intended to file an appearance on behalf of Steven. Attorney Ditkowsky also presented a "Motion to Dismiss Citation Proceeding As Moot" based on the fact that the sole beneficiary, Christa, had died in Florida[1] and that the matter would best be addressed in Florida. The trial court granted attorney Ditkowsky leave to file his appearance on behalf of Steven and denied the motion to dismiss. The court continued the matter to September 20, 2012, to set a trial date.

¶ 9 Attorney Ditkowsky filed his appearance on September 4, 2012. On September 19, 2012, Steven filed another motion to dismiss pursuant to "Form (*sic*) Non-Convenience (*sic*) and Other Grounds" and set it for the following day, the date of the status hearing. Steven's motion

[1] Christa died on December 13, 2011.

requested the following relief: (1) that the "proceedings be dismissed pursuant to forum non-convenience" (*sic*); (2) alternatively, that the Executor "be required to serve upon [Steven] a bill of particulars as to all allegations made of concealment, embezzlement, conversion or other wrongful conduct"; and (3) a trial by jury. However, on September 20, 2012, Steven's counsel did not present the motion and it was not re-set or continued. On September 27, 2012, Steven filed another copy of the motion but no notice of motion or notice of filing was issued and the matter was never set before the court. The trial court scheduled the trial on the citation to recover assets for November 15, 2012, at 2 p.m. and November 20, 2012, at 2 p.m, without objection.

¶ 10 On October 16, 2012, the Executor of the Estate served upon Steven a "Request For Admission of Genuineness of Documents" pursuant to Illinois Supreme Court Rule 216. Ill. S. Ct. R. 216 (eff. Jan. 1, 2011). The request to admit was hand-delivered to Attorney Ditkowsky's office and contained the requisite language in bold face type: "**WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine**." The request to admit also stated, in bold and capital letters: "**SUSAN HARRIS SEEKS THE ADMISSION OF GENUINESS OF DOCUMENTS FOR THE FOLLOWING REQUESTED ITEMS *ALL OF WHICH HAVE BEEN PREVIOUSLY TENDERED TO CITATION RESPONDENT***." (Emphasis added.) These documents had all been tendered to Steven on March 8, 2011, in response to requests for production of documents. On October 17, 2012, however, Steven objected to the request to admit because none of the documents had been personally tendered to his new counsel, Attorney

Ditkowsky. The Estate apparently[2] filed a motion to compel Steven to answer the request to admit. On October 23, 2012, at a hearing during which Steven's counsel did not appear, the trial court entered an order granting the motion to compel and ordered Steven to answer the request to admit within 28 days from the date of service which was October 16, 2012.

¶ 11 On November 7, 2012, Steven filed his "Answer and Objections to Request to Admit Documents Not Served on Counsel for the Respondent." These were unsigned and unverified. The basis for the objection was that "not one single document [was] attached to the Request to Admit." Steven also contended that "very cogent allegations have been made by prior counsel for [Steven] and [Steven's] counsel in Florida as to the alteration of documents by the executor (and or the executor's attorney.)" The response to each of the 24 requests to admit contained the same boilerplate language:

> "[The request] cannot be either admitted or denied as no copy of the document was served on the attorney for the respondent. A request for a copy has been made, but the executor (and her attorney) refuses to furnish a copy. Without a copy of the document it is unreasonable to request any admission or denial of the aforesaid document and therefore until the executor requestor provides a copy of the document the genuiness of the document must be denied. If the document is produced in a timely manner for examination the response will be reconsidered."

Counsel for the Estate received the unsigned and unverified answers and objections on November 1, 2012, which were noticed for November 7, 2012.

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[2] Although the record contains a copy of the motion, it is not date stamped by the court.

¶ 12 On November 7, 2012, the Estate filed its "Response to Second Respondent's Objections to Request to Admit Genuiness of Documents." The response was mailed to attorney Ditkowsky's office on November 6, 2012, and also hand-delivered on November 7, 2012.

¶ 13 Also on November 7, 2012, Steven filed a motion to vacate the October 23, 2012 order compelling him to answer the requests to admit, arguing that neither he nor his counsel had been served with the motion to compel. Although the Estate states in its brief that "[o]n October 19, Counsel for the Estate personally hand delivered and served Motion to Compel Answers to Request to Admit Genuiness of Documents upon Respondent's counsel," the Estate cites to the page in the record containing the originally served request to admit, and *not* to a motion to compel. It is unclear from either the record or Steven's brief what actually transpired with respect to the motion to compel.

¶ 14 In any event, on November 7, 2012, the court ordered Steven's answers and objections stricken after Steven's counsel had failed to appear by 11:15 a.m. at the 10:00 a.m. hearing on his objection to the request to admit. The court further ordered that Steven's counsel was barred from sending the court courtesy copies of any pleadings, motions, or answers of any kind that were not date stamped by the clerk's office.

¶ 15 Meanwhile, on October 25, 2012, the Estate served upon Steven a Rule 237(b) notice to compel party's appearance and to produce. The notice provided that Steven was required to appear as a witness on November 15, 2012, and November 20, 2012, at 2 p.m, and all subsequent trial dates, "together with the originals of those documents or tangible things *previously produced by Steven Schwartz during discovery*." (Emphasis added.) Steven also served a Rule

237(b) notice upon the Executor.[3]

¶ 16 Trial commenced on November 15, 2012. Steven presented a "Motion to Dismiss Citation to Discover (Recover) Assets Based Upon Questionable Affidavits Presented to the Circuit Court of Cook County." The trial court denied the motion finding that it was "completely without merit." The court also denied Steven's motion *in limine* to restrict testimony.

¶ 17 Steven's counsel then attempted to present a motion to quash the Rule 237 notice but the court had not received a copy of the motion and Steven's counsel had no file-stamped copy; thus the court did not consider it. The parties presented opening statements. The Estate then called Steven as its first witness pursuant to the properly served Rule 237 notice, but Steven did not appear. Steven's counsel argued that Steven was "out of the state and it's unfair to drag him here. They have had previous testimony of it [*sic*]. Here is the transcript of it and just to drag him here is totally and completely unfair." As the Estate pointed out, however, Steven had served a Rule 237 notice on the Executor who *also* lived in Florida and who *was* present in court. After hearing argument from both sides, the court found that the Rule 237 notice was validly served upon Steven, he failed to appear, and no reasonable explanation, nor any explanation at all, was

[3] The Estate points out that "[c]uriously," the record contains a copy of two documents: "Motion to Quash Rule 237 Notice to Steven Schwartz And For This Matter To Be Continued To Another Date" and "Motion For Finding Filed After Executor Admitting To Having No Personal Knowledge." No notice of motion accompanies either document. As the Estate additionally notes, however, "Glaringly, the Motion for Finding etc. date stamped November 1, 2012 but never served, *references testimony of the Executor on November 15, 2012*, two weeks subsequent to the alleged filing date of the Motions." (Emphasis in original.). As the Estate notes: "The November 1, date of filing is simply impossible." We take judicial notice that the probate court docket contains no record of any filing on November 1, 2012. Steven failed to address this mystery in his reply brief.

given for his failure to appear. Noting its authority under Rule 237 to bar Steven and to enter a default judgment, the court issued a sanction pursuant to Illinois Supreme Court Rule 219 (Il. S. Ct. R. 219 (eff. Jul. 1, 2002)), barring Steven from putting on a defense and barring him from filing additional pleadings. The court decided to hear evidence from the Estate in support of the petition to recover and reserved its right to issue a default judgment at the close of evidence.

¶ 18 The court also heard arguments related to the Estate's motion to deem admitted the documents listed in the Estate's Request for Admission of Genuineness of Documents. After noting that Steven failed to take any measures to obtain the documents in question from his former attorney, the court deemed the documents admitted as genuine.

¶ 19 The Executor was called as the Estate's next witness. The trial was continued to November 20, 2012, as previously scheduled. The court clarified that Steven was barred from presenting a defense or filing additional pleadings in support of his defense.

¶ 20 On November 20, 2012, before the Estate could continue with its case, Steven's counsel presented two motions: "A Motion for Finding Filed After Executor Admitted to Having No Personal Knowledge" and a "Motion for Referral and Investigation. The court denied the first motion. The court declined to take any action on the second motion and also told Steven's counsel that "there is nothing, nothing in this record that would cause me, no matter what I have seen, to refer this matter to law enforcement." The court also told Steven's counsel "I am ready to sanction you for filing this." The court further stated that Steven's pleadings in this case were "a joke." The court told counsel it would decide the case "on the evidence." The Estate completed its case, moved to conform the pleadings to the proof, and rested. The court asked for

written closing arguments and adjourned. On January 28, 2013, the court entered its order finding against Steven and ordering him to pay $217,000 to the Estate, the value of the promissory notes wrongfully converted from the decedent.

¶ 21 ANALYSIS

¶ 22 Illinois Supreme Court Rule 341(h)(7) requires that the appellant set forth his argument "with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). As the Estate correctly notes, although Steven's brief sets forth seven issues for review, he divides his argument into three sections with no specific reference to those seven issues. "Consistent with the plain language of the rule, this court has repeatedly held that the failure to argue a point in the appellant's opening brief results in forfeiture of the issue." *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010). We therefore consider only the three arguments which can be summarized as follows: (1) the Executor failed to submit any evidence to support the petition for citation and the court's judgment was not supported by competent evidence: (2) the trial court's decision was against the manifest weight of the evidence where the court ignored the Executor's "fatal admission" that she did not know if the promissory notes were in writing; and (3) the proceedings were manifestly unfair. The primary issue on appeal is whether the trial court's judgment was against the manifest weight of the evidence. However, we will address Steven's "three" arguments and various subarguments.

¶ 23 "Section 16-1 of the Probate Act allows a party to file a citation petition on behalf of the estate, not only to discover information, but also to recover property." *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 250 (2006). The relevant language of section 16-1 states:

> "(a) Upon the filing of a petition therefor by the representative or by any other person interested in the estate or, in the case of an estate of a ward by any other person, the court shall order a citation to issue for the appearance before it of any person whom the petitioner believes (1) *to have concealed, converted or embezzled or to have in his possession or control any personal property, books of account, papers or evidences of debt or title to lands which belonged to a person whose estate is being administered in that court or which belongs to his estate or to his representative* or (2) to have information or knowledge withheld by the respondent from the representative and needed by the representative for the recovery of any property by suit or otherwise. The petition shall contain a request for the relief sought." (Emphasis added.) 755 ILCS 5/16-1 (West 2008).

"Section 16-1 of the Probate Act outlines citation proceedings that provide a simple, comprehensive and summary method of discovering and recovering estate assets found to be in the possession and control of others." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 62; accord *In re Estate of Shanahan*, 59 Ill. App. 3d 269, 273 (1978) ("The purpose of a citation proceeding is to provide an expeditious process for the discovery of estate assets."). "The citation proceeding is a special administrative process with unique procedural and evidentiary rules designed by the Illinois legislature to allow expeditious estate administration and resolution of disputes over property that may or may not belong to the estate before the court." *Fischer v. Hartford Life Ins. Co.*, 486 F. Supp. 2d 735, 740 (N.D. Ill. 2007) (holding that citation to recover assets was not removable to federal court because it was not an independent suit but, instead, a

supplementary proceeding to probate proceedings and a continuation of the estate administration). "In a citation proceeding all witnesses are witnesses of the court, and many rules of evidence are to be liberally applied, particularly the restrictions under section 2 of the Evidence Act." *In re Estate of Shanahan*, 59 Ill. App. 3d at 273. Since the citation procedures "are summary and informal in nature, the courts are liberal in the procedures they permit to be followed under these sections." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 62. "It is within the trial court's discretion to determine whether respondent's testimony is necessary to a full and fair presentation of the facts of the case." *Id*.

¶ 24 Section 16-1 is not a general collection tool for the estate and the indebtedness of a person to the estate is not a basis for use of that section. *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1068 (2008). However, section 16-1 is applicable when an estate seeks to recover property that *belonged* to the decedent. *Id*. In a proceeding to recover property, the probate court has the power to 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. *Parker*, 2011 IL App (1st) 102871, ¶ 62; *Hoellen*, 367 Ill. App. 3d at 250. "If the respondent refuses to *** obey the court's order to deliver any personal property or, if converted, its proceeds or value, *** the court may enforce its order against the respondent's real and personal property in the manner in which judgments for the payment of money are enforced.' " *Hoellen*, 367 Ill. App. 3d at 250 (citing 755 ILCS 5/16–1(d) (West 2000)). Where a citation petition seeks the recovery of property, it "must make out cognizable legal claims against the respondent just like any other complaint," which the probate court is authorized to litigate. *Hoellen*, 367 Ill. App. 3d at 250. To recover property, the

executor must initially establish a *prima facie* case that the property at issue belongs to the decedent's estate; the burden then shifts to the respondent to prove by clear and convincing evidence his or her right to possession. *In re Estate of Casey*, 155 Ill. App. 3d 116, 121-22 (1987). The probate court is empowered to determine the title and right of property and enter such order as the case requires. *In re Estate of Kolbinger*, 175 Ill. App. 3d 315, 322 (1988). The probate court's authority includes the power to enter a judgment for money damages against a respondent. *Hoellen*, 367 Ill. App. 3d at 250.

¶ 25 Steven contends that the Estate's pleading, *i.e.*, the citation petition, did not comply with pleading requirements. He contends that the failure prevented the trial court "from obtaining jurisdiction to address this matter." He also asserts that "[t]he Court should have dismissed this citation proceeding on day one." The basis for his argument appears to be that the petition did not "mention" the promissory notes. He also argues that the Executor did not mention the promissory notes until her written closing argument and this "ambush approach" should be discouraged. Steven appears to conflate the two objectives of the citation proceeding. "The objectives of a citation proceeding under the Probate Act are to obtain the return of personal property belonging to the estate but in the possession of, or being concealed by, others *or* to obtain information to recover estate property." (Emphasis added). *Kolbinger*, 175 Ill. App. 3d at 322. We first note that Steven has forfeited his argument regarding the alleged defects in the pleading by failing to file a motion to dismiss or otherwise raise this issue in the trial court. Moreover, Steven's contentions are meritless.

¶ 26 As the petition stated: "Steven Schwartz has removed from the Estate and has in

possession or control, or has concealed, converted or embezzled personal property belonging to the Estate including but not limited to bank investments, notices[,] papers, correspondence, bonds, tax records and other documents which are needed by the Executor for the recovery of property by suit or otherwise." The petition also alleged that "[d]espite numerous requests to Steven *** [he] has refused to tender any of the voluminous documents he removed from the premises." The petition also stated "upon information and belief, that Steven had "removed, concealed, converted, embezzled or wrongfully destroyed promissory notes showing thousands of dollars borrowed from the decedent and now due the Estate of the decedent."

¶ 27 There are two types of citations. *In re Estate of Weisberg*, 62 Ill. App. 3d 578, 585 (1978). One type of citation "requests only information" in which case the "court may not try the question of title and order property to be turned over." *Id*. The other involves "an allegation that certain property belonging to the estate is in the possession of respondents" and seeks recovery of that property. *Id*. In *Weisberg*, the conservator[4] of the estate filed a citation petition stating that the petitioner was of the belief that the respondents had wrongfully taken property belonging to Weisberg, and that a demand was made for such property. *Id*. at 585. The petition requested that the court direct respondents to show cause why they should not be judged in contempt for failure to turn over the property. *Id*. We concluded that the petition was sufficient to apprise respondents that petitioner sought recovery of property in their possession and control. We come to the same conclusion here with respect to the citation petition filed by the Estate in the instant

[4] The case involved the estate of Dora Weisberg, an individual who had been declared to be physically incompetent; however, the same statutory provision, section 16-1, applied.

case. The citation petition here clearly was sufficient to withstand a motion to dismiss and clearly informed Steven of the Estate's claims against him. Additionally, the petition was sufficient to invoke the probate court's jurisdiction.

¶ 28 Steven contends that the trial court's decision was against the manifest weight of the evidence because the court ignored the Executor's "fatal admission" that she did not know if the promissory notes were in writing. We disagree. The only "fatal admission" occurred on the part of Steven with respect to his failure to comply with the requirements of Supreme Court Rule 216 request to admit the genuiness of documents when he sent the Estate an unsigned and unverified response. See *In re County Treasurer*, 2012 IL App (1st) 112897, ¶ 26 ("petitioner's failure to provide the sworn statement of a party within the required 28 days was fatal"). "A request to admit facts pursuant to Supreme Court Rule 216 [citation] is a discovery procedure the trial court has wide discretion in controlling." *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 249 (2006). "[F]ailure to comply with Rule 216 will result in a judicial admission that is considered incontrovertible, withdrawing that fact from contention." *In re County Treasurer*, 2012 IL App (1st) 112897, ¶ 37. The requests to admit here became incontrovertible judicial admissions. Thus, it was "for the trier of fact to consider the effect on the credibility of witnesses at trial." *Id*.

¶ 29 It is well-settled that "[t]he trial court is in the best position to evaluate the credibility of the witnesses and to determine therefrom the facts of the case." *In re Estate of Lashmett*, 369 Ill. App. 3d 1013, 1021 (2007); accord *Shanahan v. Bowen*, 156 Ill. App. 3d 269, 312 (1978) ("The trial court is in the best position to make a determination as to witness credibility and the weight to be afforded to the testimony."); *In re Miller's Estate*, 11 Ill. App. 3d 867, 869 (1973)

("Ordinarily, since the trial court has observed the witnesses' demeanor and is thereby better able than the reviewing court to judge their credibility, the judgment of the trial court should be affirmed unless found to be against the manifest weight of the evidence."); *cf. In re Estate of Kaminski*, 200 Ill. App. 3d 309, 312 (1990) (In a citation proceeding, the testimony of a donee as to what was said to him by a deceased donor is a question of credibility and must be carefully scrutinized.). The trial court's decision will not be overturned unless it is against the manifest weight of the evidence. *Lashmett*, 369 Ill. App. 3d at 1021.

¶ 30 Moreover, in arguing that the trial court's decision was against the manifest weight of the evidence, Steven has chosen to focus only on the evidence relating to the promissory note and apparently contends there was no evidence as to whether it "was in writing" or "existed" on the date of the decedent's death. Steven does not acknowledge that the trial court admitted the decedent's October 5, 2009 letter into evidence and also heard evidence that Steven went into the decedent's file cabinet and took (or "stole"), among other things, $217,000 of promissory notes that were signed by Steven to the decedent. Steven instead argues that the fact that the Executor did not "see" the promissory notes apparently renders all of the other evidence irrelevant. In any event, he concedes in his brief that "[w]hether or not the documents that constituted the Request to Admit are admitted into evidence or not is irrelevant."

¶ 31 Although one of the "seven" issues listed initially in Steven's brief is "[w]hether barring the testimony of a citation defendant was proper or an abuse of discretion," as noted earlier, he does not include this issue in any of his "three" arguments. Regardless, we conclude that the trial court did not abuse its discretion in barring Steven from testifying as a sanction for his rule

237(b) violation. As we have explained:

> "Where counsel presents his adversary with a Rule 237 notice to produce, he has the right to assume that his opponent will comply. [Citation.]. Pursuant to Rule 237(b), '[u]pon a failure to comply with the notice, the court may enter any order that is just, including any order provided for in Rule 219(c) that may be appropriate.' [Citation.]. The remedy for noncompliance with Rule 237(b) is within the sound discretion of the trial court. [Citation.]." *Nasrallah v. Davilla*, 326 Ill. App. 3d 1036, 1044 (2001).

We believe that barring Steven from testifying was an appropriate remedy under the facts of the present case for his Rule 237 violation. Also we reiterate that in a citation to recover assets proceeding, "[i]t is within the trial court's discretion to determine whether respondent's testimony is necessary to a full and fair presentation of the facts of the case." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 62.

¶ 32 Interestingly, Steven has continued to assert that the two affidavits signed by the decedent are inconsistent. As the Estate notes, Steven "perseverates on the allegedly 'altered affidavits' arising out of the Florida litigation going so far as to state that alterations were made after decedent's demise." Steven claims that the two versions are not "identical" and argues: "These affidavits are extremely suspicious and should be the subject of an investigation by law enforcement." Steven does not dispute that the decedent was sending him money each month for Christa's expenses but focuses on the "amount" of money stated in the affidavits. One affidavit states that decedent provided Steven with an average of "$2,000" per month (deposited into a

joint bank account) "in addition" to the $3,000, on average, that the decedent paid for the credit card bills. Thus, decedent provided Steven with approximately $5,000 per month. The other affidavit states that the decedent provided Steven with $4,000-5,000 per month "including payment of credit card bills." Steven also takes issue, somehow, with the identical statement contained in both of the decedent's affidavits describing the items that Steven "wrongfully removed" from the decedent's house. As the Estate correctly notes: "[B]oth versions of the affidavit say the same thing: Steven took from Ronald's house hundreds of thousands of dollars in promissory notes." We believe that Steven's continuing attempt to raise this meritless, frivolous argument is sanctionable. However, we choose not to do so. The Estate has not requested sanctions. In any event, the Estate correctly argues that it met its burden, noting that "[s]ometimes even the dead can speak from beyond the grave."

¶ 33 Steven has also argued that the proceedings were manifestly unfair and he "could not and did not receive a fair trial." Steven cites no authority for his claim. Moreover, although he has cited to some cases in this section of his brief, he has failed to provide authority for numerous statements contained in this portion of his brief. To the extent that Steven is attempting to raise a new argument, he has failed to comply with Supreme Court Rule 341(h) and has not provided this court with a reasoned argument. As noted earlier, failure to argue a point in the appellant's opening brief results in forfeiture of the issue. *Vancura v. Katris*, 238 Ill. 2d at 369. Based on the entire record before this court, however, we conclude that the trial court's decision was not against the manifest weight of the evidence and there is no indication whatsoever that the proceedings were manifestly unfair.

¶ 34 CONCLUSION

¶ 35 In conclusion, the trial court's decision was not against the manifest weight of the evidence. The trial court did not abuse its discretion in barring Steven from testifying as a sanction for his Supreme Court Rule 237(b) violation. Also, Steven's failure to comply with Supreme Court Rule 217 resulted in his judicial admission that the documents were genuine; the trial court properly considered the documents introduced into evidence by the Estate. The trial court's decision was supported by competent evidence. In view of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.