2018 IL App (1st) 170567-U

FOURTH DIVISION
August 30, 2018

No. 1-17-0567

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF HELEN J. MANCUSO (Jerome J. Mancuso, Petitioner-Appellant, v. Diane M. Lahman, Independent Executor of the Estate of Helen J. Mancuso, deceased; Diane M. Lahman, Successor Trustee of the Helen J. Lahman Trust, Respondents-Appellees.	) Appeal from the Circuit Court of) Cook County.)) No. 2011 P 5767)) Honorable Susan M. Coleman,) Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed in part and dismissed in part. Probate court's severance of tortious-interference claims and transfer to law division was not abuse of discretion. Challenges to discovery rulings are dismissed as moot.

¶ 2 Petitioner-appellant Jerome Mancuso's mother, Helen Mancuso, died in August 2010. After Helen's will was admitted to probate, Jerome discovered that Helen had disinherited him. Jerome then sued his sister, respondent-appellee Diane Lahman (Diane), whom Jerome believed had induced or otherwise cajoled Helen into disinheriting him. Jerome's complaint was filed in the probate division of the circuit court of Cook County and sounded in five counts. Counts I and

II were a will and trust contest, respectively, while counts III through V stated claims for tortious interference with expectancy.

¶ 3 The court dismissed Count II (the trust claim) in May 2014. Between that time and November 2014, the court entered a series of discovery orders adverse to Jerome. Then in August 2015, the court granted summary judgment to Helen on Count I of Jerome's petition (the will contest). In March 2016, the probate court severed the tortious interference claims and transferred them to the Law Division.

¶ 4 In this appeal, Jerome argues that the probate court's discovery orders, as well as the order severing the tortious interference claims, were erroneous. We affirm in part and dismiss in part.

¶ 5 BACKGROUND

¶ 6 I. Probate-Court Proceedings

¶ 7 Helen died on August 29, 2010. Her will was admitted to probate on October 11, 2011. Sometime thereafter, Jerome learned that he had been disinherited. In April 2012, Jerome responded by filing this lawsuit against Diane. Jerome's suit was ostensibly packaged as a will contest, but rather than actually contest Helen's will, Jerome's pleading instead purported to state a claim for "intentional interference with prospective advantage-inheritance." In May 2012, the probate court struck Jerome's petition. Thereafter, Jerome filed a first amended petition. Second, third, and fourth amended petitions followed in due course.

¶ 8 As relevant here, Count II challenged the validity of a trust that Helen established in her will, while Count I was more generally a will contest. The thrust of these claims was that Diane exerted undue influence over Helen in the procurement of Helen's will and trust. Counts III through V were tortious-interference counts that pleaded, respectively, tortious interference with

expectancy of inheritance of Helen's Will (Count III), Helen's trust (Count IV), and Helen's 401(k) account (Count V). These counts similarly alleged that Diane interfered with Jerome's expectancy of inheritance by exerting "secret influences" on Helen.

¶ 9 In September 2012 and March, April, and June 2013, Jerome served requests to produce upon Diane and Helen's estate. Those requests sought, among other things, records regarding Helen's legal and financial affairs. Acting in her capacity as executor of Helen's estate, Diane objected and argued that any document that did not pertain to Helen's will was not relevant. Diane further argued that, insofar as Jerome was seeking documents from her in her individual capacity, the requests were improper because Jerome did not serve Diane with the requests to produce in her individual capacity.

¶ 10 While Jerome's first two sets of requests to produce were still outstanding, on May 5, 2014, the court dismissed Count II of Jerome's third amended petition, ruling that any challenge to the trust was time-barred. Thereafter, in June 2014, Jerome filed a motion to compel, which the court denied on June 20, 2014.

¶ 11 In August 2014, Jerome served a set of amended requests for production on Diane in her capacity as executor of Helen's estate, as well as Joseph Mancuso, Jr. (Jerome's brother), Carol Skinner (Jerome's sister), and Diane, in their respective individual capacities (the Respondents). In September 2014, the Respondents filed a joint motion to quash which objected to the following enumerated document requests:

> "5. Any and all documents relating to a Power of Attorney.
>
> 6. Any and all documents relating to the exercise of any agency under a Power of Attorney.

> 7. Any and all 401(k) and self-directed IRA statements for both Joseph and Helen.
>
> 8. Any and all accounting for Joseph's Trust or Helen's Trust from 2010 through the current date.
>
> 9. Any and all income tax returns for Joseph's Trust or Helen's Trust (Form 1041) and K-1's to the beneficiaries of Joseph's Trust or Helen's Trust from 2010 through the current date.
>
> 10. August 29, 2010 date of Helen's death inventories for Joseph's Trust and Helen's Trust.
>
> 11. Any and all documents relating to or reflecting any and all distributions from Joseph's Trust from 1990 through the current date."

The motion argued that (1) requests 7 through 10 should be quashed because the court already rejected similar requests when it denied Jerome's motion to compel in June 2014 and (2) requests 5, 6, and 11 should be quashed because they sought documents "wholly unrelated to the procurement, preparation and execution of Helen's will."

¶ 12 In November 2014, Jerome filed a response to the motion to quash and an accompanying "Motion to Rule on Objections." On November 4, the court entered an order sustaining the Respondents' objections and denying "all other relief requested" by Jerome in his motion to rule.

¶ 13 On August 24, 2015, the court awarded summary judgment to Diane, in her capacity as executor of Helen's estate, on Count I of Jerome's fourth amended petition—the will contest. As relevant here, in the course of rendering its decision, the court found no question of material fact

as to the following: Helen was competent when she drafted the will; she relied on independent legal advice from lawyers who took steps to ensure she was acting of her own free will; Helen told her lawyers that nobody asked her to disinherit Jerome; and neither Diane nor Joseph engaged in any actions that would have unduly influenced Helen in the preparation of her will.

¶ 14 Finding no evidence of undue influence in the procuring of the will, the trial court thus entered summary judgment against Jerome on the will challenge. That ruling, along with the order dismissing the trust challenge about a year earlier, prompted the trial court to conclude that the remainder of the case—the tortious interference counts, or Counts III, IV, and V—did not belong in the probate division, as they sounded in tort. Thus, on March 22, 2016, the probate court entered an order that severed Counts III, IV, and V from Jerome's fourth amended petition, transferred them to the law division, and renumbered those counts as case No. 16 P 1764.

¶ 15 II. Appeal of Probate-Court Rulings

¶ 16 On April 1, 2016, Jerome filed a notice of appeal with respect to:

- the May 5, 2014 order dismissing the trust challenge;
- the August 24, 2015 order granting summary judgment in favor of Diane on the will challenge;
- a March 2016 order denying a request for Rule 304(a) language regarding those two orders;
- the order severing the remainder of the case and transferring the tortious interference counts to the law division; and
- various discovery rulings.

¶ 17 Diane moved to dismiss that appeal. She argued that the appeal of the May 2014 order dismissing the trust count, and the appeal of the August 2015 order granting summary judgment

to her on the will contest, were time-barred under Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010), because those orders "finally determine[d]" the right of Jerome to the assets of the will and, accordingly, had to be appealed within 30 days of their entry. Because Jerome's April 1, 2016 appeal of those orders came well beyond the 30-day window, the court lacked jurisdiction to consider those orders.

¶ 18 Diane also argued that an appeal of the Rule 304(a) ruling was moot, given that the dismissal and summary judgment order to which it related were already time-barred. Finally, she argued that appeal of the discovery rulings and the severance order were premature; none of those rulings were final orders, as the case remained pending in the law division, albeit under a different number.

¶ 19 A different division of this court agreed with those arguments and dismissed that appeal in its entirety for lack of jurisdiction.

¶ 20 III. Proceedings in Law Division

¶ 21 On December 22, 2016, following the transfer of the tortuous-interference claims to the law division, the law division judge awarded summary judgment to defendants on those counts, thus finally terminating the litigation in the trial court. The law division judge reasoned that the probate court had already issued a final order ruling that Diane had not unduly influenced Helen in the procurement of her will, and Jerome had not timely appealed from that order. Thus, in the eyes of the law division judge, all of the requirements of collateral estoppel were met, and it was bound by the probate judge's finding of no undue influence. Based on that finding, the court ruled, Jerome could not sustain a case for tortious interference as to the will or trust. (The law division judge's ruling is the subject of a separate appeal that we chose not to consolidate with this appeal. See *Mancuso v. Lahman*, 2018 IL App (1st) 170185-U.)

¶ 22 IV. Appeal from Probate Court Rulings

¶ 23 On January 19, 2017, Jerome filed a notice of appeal, once again appealing:

- the May 5, 2014 order dismissing the trust challenge;
- the August 24, 2015 order granting summary judgment in favor of Diane on the will challenge;
- a March 2016 order denying a request for Rule 304(a) language regarding those two orders;
- the order severing the remainder of the case and transferring the tortious interference counts to the law division; and
- various discovery rulings.

¶ 24 And once again, defendants moved to dismiss the appeal, or at least most of it.

¶ 25 This court granted the motion to dismiss almost entirely. We noted that a previous division of this court had dismissed the appeal of the May 2014 dismissal of the trust challenge as untimely; the April 2015 order of summary judgment on the will contest as untimely; and the March 2016 order denying Rule 304(a) language as moot. We determined that those rulings were law of the case and that, even if we were to reconsider them, we would not find those rulings palpably erroneous. *Kreutzer v. Illinois Commerce Commission*, 2012 IL App (2d) 110619, ¶ 23; (reviewing court's previous jurisdictional ruling is law of case for successive appeals); *Norris v. National Union Fire Insurance Co. of Pittsburgh, Pa.*, 368 Ill. App. 3d 576, 580-81 (2006) (appellate court bound by law of case unless previous appellate ruling was palpably erroneous).

¶ 26 We did not, however, dismiss the appeal regarding the trial court's severance of the case and transfer to the law division, nor were we asked to dismiss the appeals relating to the discovery rulings.

¶ 27 So those orders are before us now: (1) the trial court's severing of the tortious-interference counts and transfer to the law division; and (2) various discovery rulings while the case pended in the probate division.

¶ 28 ANALYSIS

¶ 29 I. Severance Order

¶ 30 We begin by considering Jerome's appeal of the March 22, 2016 order that severed the tortuous-interference counts, renumbered those counts as 16 P 1764, and transferred them to the Law Division. "An action may be severed, and actions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right." 735 ILCS 5/2-1006 (West 2016). A motion to sever is addressed to the sound discretion of the trial court, and its decision will not be disturbed absent an abuse of discretion. *Giraldi by Giraldi v. Community Consolidated School District No. 62*, 279 Ill. App. 3d 679, 689 (1996); accord *In re Estate of Lemke*, 203 Ill. App. 3d 999, 1001 (1990) ("The trial judge is given broad discretion to consolidate and sever claims."). A trial court abuses its discretion where its ruling is arbitrary or fanciful, or "where no reasonable person would take the view adopted by the trial court [citation] or where its ruling rests on an error of law." *People v. Prather*, 2012 IL App (2d) 111104, ¶ 20.

¶ 31 Jerome offers two arguments why the order severing Counts III, IV, and V constitutes reversible error. First, he contends that "[b]y severing the interference claims and transferring them to the Law Division for renumbering, Judge Coleman of the Probate Division led Judge Griffin of the Law Division to erroneously conclude that the Probate Division's decision on Jerome's will contest had collateral estoppel effect on the remaining claims of Jerome's Fourth Amended Petition."

¶ 32 We emphatically disagree. The probate judge did not "lead" the law division judge to do anything. The probate judge did nothing more or less than rule on a motion before it (finding that Diane exerted no undue influence over the drafting of the will) and then, at a later juncture, issue a separate ruling that the case no longer belonged in the probate division, because all that remained at that point were tort claims. The probate judge did not impose its rulings on another judge. Judges of the circuit court are not charged with predicting the future or concerning themselves with how and when their orders will be applied in later cases.

¶ 33 We should add here that the probate judge's ruling, alone, did not "lead" the law division judge to rule as he did. Rather, it was the probate judge's ruling, plus the fact that *Jerome had not appealed that order* (at least not in a timely manner), that prompted the law division judge to employ the collateral-estoppel doctrine. The law division judge specifically noted that Jerome had attempted to belatedly appeal the order on the will contest, and this court had dismissed that appeal for lack of jurisdiction. It was because that issue of no-undue-influence was now fully and *conclusively* resolved, in light of the dismissal of the appeal, that the law division judge felt it appropriate to apply collateral estoppel on the tortious-interference claims. See, *e.g.*, *Suk Kim v. St. Elizabeth's Hospital of Hospital Sisters of Third Order of St. Francis*, 395 Ill. App. 3d 1086, 1092–93 (2009) (collateral estoppel applies when parties participate in second proceeding and "some controlling factor or question material to the determination of both cases has been fully and completely resolved by a court of competent jurisdiction"). So the lack of a timely appeal had every bit as much to do with the law division judge's ruling—and Jerome certainly cannot blame the probate judge for that.

¶ 34 Jerome's second argument fares no better. Jerome contends that under *DeHart v. DeHart*, 2012 IL App (3d) 090773, *aff'd*, 2013 IL 114127, his expectancy claims "should have been

decided in the same proceeding, with the will contest claim being decided first before the court then turned to the interference claims if and when deciding that the will contest claim was unsuccessful." We disagree. To be sure, the supreme court did write: "if plaintiff fails in his will contest on remand in the probate court, however, he would then be able to proceed against defendant on his tort claims *in that same court*." (Emphasis added.) *DeHart*, 2013 IL 114127, ¶ 41. But that sentence is plucked entirely out of context.

¶ 35 The supreme court was not remotely declaring or even hinting at some bright-line rule forbidding a judge from severing and transferring portions of a case to another division of the circuit court. The court was not talking about severance at all. The court was merely observing that the trial court had prematurely dismissed the tortious-interference counts in that case, because the trial court had yet to decide the related will contest. The court's point was that if the plaintiff succeeded on the will contest, *then* the court could dismiss the tortious-interference counts as duplicative, because plaintiff would have obtained his relief; but if, on the other hand, the plaintiff *lost* his will contest, "he would then be able to proceed against defendant on his tort claims in that same court." *Id*. The court was discussing the order in which these claims are to be litigated, not whether the claims could be transferred within different divisions of a circuit court.

¶ 36 Indeed, more than 20 years ago, this court explicitly provided for the possibility that expectancy claims could be severed from garden-variety will contests. See *In re Estate of Knowlson*, 154 Ill. App. 3d 249 (1987). In *Knowlson*, the petitioner filed a multi-count petition in the probate court alleging, among other claims, a will contest and tortious interference with expectancy. The circuit court dismissed the expectancy claim, finding that "petitioners who were heirs or legatees under a prior will had no right to include in a will contest a count for tortious interference with an expectancy." *Id*. at 252. In reversing the circuit court, this court stated:

> "[I]t is our opinion that the circuit court misperceived the permissibility of joining an action for tortious interference with an expectancy under a will concurrently with an action challenging the validity of a will under section 8-1 of the Act. We do not pass upon the sufficiency of allegations in count V as that issue specifically was not considered by the circuit court. *Should the court determine that properly pleaded issues should be severed for trial, it may so exercise its discretion*." (Emphasis added) *Id*. at 255.

Based on our review of the record and in light of *Knowlson*, we find no abuse of discretion here.

¶ 37 Nor can Jerome demonstrate that the severance caused "prejudice to a substantial right" he possessed. 735 ILCS 5/2-1006 (West 2016). In fact, we are not sure what Jerome would have hoped to gain by keeping the tortious-interference counts in the probate division. The probate judge had already ruled, as a matter of law, that Diane had not exerted undue influence over Helen in the creation of her will and trust. And that order, as we have noted, was not timely appealed. That ruling thus became final and conclusive. The finding of no-undue-influence became, in other words, the law of the case. See *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006) ("[T]he law of the case doctrine bars relitigation of an issue previously decided in the same case.").

¶ 38 The tortious-interference claims alleged the same thing as the will contest—that Diane intentionally and wrongfully influenced Helen to draft the will and trust in such a way as to disinherit Jerome. Had those claims remained before the probate judge, the law-of-the-case doctrine would have thus mandated judgment in favor of Diane, no different than it did in the new law division case under the related preclusion doctrine of collateral estoppel. Either way, whether the claims remained in the probate division or moved to a new action in the law

division, Jerome could not avoid the binding and conclusive finding of no-undue-influence the probate judge had previously entered. The severance order thus could not possibly have changed the outcome here.

¶ 39 As we find no error in the severance order nor resulting prejudice to Jerome, we affirm the order severing the tortious-interference claims and transferring them to the law division.

¶ 40 II. Discovery Orders

¶ 41 We next consider Jerome's appeal of the June 20, 2014 order denying his motion to compel and the November 4, 2014 order denying his motion to rule on the Respondents' objections to his discovery requests. Diane argues that we lack jurisdiction to consider these orders. We agree that we lack jurisdiction because the appeal of those orders is moot. An appeal becomes moot if "no actual controversy exists" or if it is impossible for this court to "render effectual relief," such that any judgment would be merely advisory in nature. *Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 66 (2007).

¶ 42 The two discovery orders under review were issued before the probate court issued its August 24, 2015 order granting summary judgment in favor of Diane on the will challenge. Any problem with the discovery orders should have been raised along with the ruling on the will contest. But as we have noted, Jerome did not appeal that summary judgment ruling. Once that time to appeal came and went, rendering that final judgment of no-undue-influence conclusive and binding in the trial court, it is hard to imagine what relevance the discovery rulings could possibly have. There was no longer a will contest. There was no longer a challenge to the trust (dismissed as time-barred in May 2014 and also not timely appealed). And we do not see how they could have been relevant in the law division action with the tortious-interference claims,

because those claims were disposed of, as we have noted, based on the collateral-estoppel effect of the probate judge's no-undue-influence ruling on August 24, 2015.

¶ 43 So at this juncture, even if we were to agree that the discovery rulings were in error, that ruling could not possibly lead to any meaningful relief to Jerome. It could not revive the will contest or the trust challenge from the probate action; that case is conclusively over. It could not save the tortious-interference claims in the law division, as the law division's ruling was based on the now-unassailable ruling from the probate judge of no undue influence. Any ruling on the discovery issues would be nothing but an advisory opinion. We thus dismiss this portion of the appeal as moot.

¶ 44 We affirm the probate judge's severance order. We dismiss the remainder of this appeal.

¶ 45 Affirmed in part; dismissed in part.