

2013 IL App (2d) 111257-U  
No. 2-11-1257  
Order filed February 4, 2013

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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*In re* ESTATE of ISAAH M., a Minor ) Appeal from the Circuit Court  
) of Lake County.  
)  
) No. 01-P-942  
)  
) Honorable  
(Joseph H. Vogler *et al.*, Petitioners-Appellees, ) Michael J. Fusz,  
v. Denise McDuffey, Respondent-Appellant). ) Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Zenoff and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Respondent's various claims on appeal failed either for want of jurisdiction or lack of development.

¶ 2 *Pro se* respondent, Denise McDuffey, appeals from orders that the circuit court of Lake County entered in the administration of the estate of her son, Isaiah M. We affirm.

¶ 3 **BACKGROUND**

¶ 4 To frame the issues in this appeal, we must go back to the start, including respondent's earlier appeal. On October 16, 2001, respondent petitioned to appoint a guardian for Isaiah, who, by respondent as his next friend, was the plaintiff in a medical malpractice suit. On November 1, 2001, the trial court appointed Joseph H. Vogler guardian of Isaiah's estate. On November 14, 2003,

Vogler filed a petition alleging that the estate's sole asset was the malpractice claim, which had been settled, and that it was in Isaiah's best interests to place the settlement funds into a trust. On November 14, 2003, the trial court authorized Vogler to execute the trust (Settlement Preservation Trust) and discharged him as the guardian of Isaiah's estate. On November 18, 2003, Morgan Chase Company (Morgan), as trustee, acknowledged the deposit of \$848,570 into the Settlement Preservation Trust.

¶ 5 On December 22, 2004, Morgan petitioned for the appointment of a guardian *ad litem* (GAL) or guardian of Isaiah's estate, alleging in part that respondent may have spent some distributions from the estate in ways contrary to Isaiah's best interests. On January 7, 2005, the trial court appointed Perry Smith GAL and ordered respondent not to take actions that might jeopardize the estate. On October 9, 2009, Fifth Third Bank, N.A. (Fifth Third), now trustee, filed an accounting for November 8, 2007, through September 14, 2009. The accounting noted that, in that period, the estate consisted of the house in which respondent and Isaiah resided and its contents, valued at \$185,000, and other assets totaling \$60,251.48. The latter figure represented \$381,902.34 received from the prior trustee, minus \$294,886.15 in distributions and \$26,764.71 in net investment losses.

¶ 6 On December 7, 2009, the trial court reassigned the case from Judge Diane E. Winter to Judge Michael J. Fusz. On December 21, 2009, respondent moved for a "change of venue," alleging in general terms, without documentation, that Judge Fusz had refused to allow her "to explain her claim," was biased against her, and had been rude to her. On January 7, 2010, after a hearing, the court denied the motion. The record on appeal contains no transcript or other account of the hearing.

¶ 7 On November 1, 2010, the GAL, now John Quinn, moved to appoint a guardian for Isaiah's estate and person. After respondent, through counsel, contested the request for a guardian of Isaiah's person, Quinn withdrew that part of his motion. On January 7, 2011, the trial court, by an agreed order, appointed Vogler guardian of Isaiah's estate.

¶ 8 On March 25, 2011, the court approved Vogler's "Supplemental First Current Account" and terminated the Settlement Preservation Trust. The court authorized Fifth Third to pay Vogler guardian fees and to "distribute the remaining assets of the Trust including the real estate to the Guardian of the estate." The court discharged Fifth Third as trustee.

¶ 9 On April 21, 2011, Vogler moved to add Pamela Balmes as coguardian of Isaiah's estate. Respondent filed nothing in opposition. On April 21, 2011, the trial court entered an order stating that, after a hearing at which "no objection [was] heard," Balmes was appointed coguardian of Isaiah's estate. The record on appeal contains no transcript or other account of the hearing.

¶ 10 On June 9, 2011, after a hearing, the trial court ordered the GAL to list respondent's house for sale and ordered respondent to cooperate in the attempts to sell the property. On June 23, 2011, on Quinn's motion, the trial court authorized Vogler and Balmes to list the property for sale for \$120,000. On September 9, 2011, Quinn moved to list the property for sale for \$99,900.

¶ 11 On September 9, 2011, respondent filed several documents. The first was a motion to "quash and vacate" the order of June 23, 2011, authorizing the listing of respondent's home for sale. Respondent contended that the sale would violate federal civil rights laws and the state homestead law. The second document was a motion to "revoke and vacate" the appointments of Vogler and Balmes as coguardians of Isaiah's estate and Quinn as GAL, contending in part that the court lacked the authority to appoint them as long as Isaiah resided with respondent and was under her care. The

third document objected to Quinn's pending motion to list her residence for sale for \$99,900, reiterating the arguments in respondent's first filing. The fourth document was a motion "to vacate the payee status of [Vogler] over Isaiah['s] Social Security Benefits." The fifth document was a motion to disburse to respondent and Isaiah "[a]ll Monetary Assets \*\*\* Left Over from the Preservation Trust" and all money held in escrow, under the coguardians' control, or in a special needs trust. Respondent alleged that the Settlement Preservation Trust had ended and that the coguardians should not control the estate's monetary assets, as they had been appointed unlawfully.

¶ 12 On September 9, 2011, the trial court authorized Vogler and Balmes to list the property for sale at \$99,900, and, on September 22, 2011, it set November 18, 2011, for a hearing on all pending motions. On September 23, 2011, respondent moved to disburse \$5,000 from the estate to pay an attorney to represent her and Isaiah at the hearing and \$1,800 to buy a computer for Isaiah's education. On September 28, 2011, the trial court denied respondent's September 23, 2011, motion. On September 29, 2011, she filed a notice of appeal from the "orders [*sic*] of Sep [*sic*] 9[,] 2011[,] and orders [*sic*] of Sep [*sic*] 28[,] 2011[,] and court order [*sic*] of March 25[,] and final release [order of] March 23-2011." On March 8, 2012, we dismissed the appeal because respondent had failed to file a brief within the required time. *In re Estate of Isaiah M.*, No. 2-11-0983 (March 8, 2012) (minute order).

¶ 13 On November 18, 2011, the trial court denied all of respondent's September 9, 2011, requests for relief. Also on November 18, 2011, on the GAL's motion, the court reduced the monthly stipend to respondent for Isaiah's benefit to \$120. On November 23, 2011, respondent filed a notice of appeal from "11-23-2011 and order [*sic*] of 11-18-2011 and court [*sic*]." On December 14, 2011, the trial court awarded the attorneys for the coguardians \$1,120 in fees, payable from the estate. On July

16, 2012, on the coguardians' motion, the court ordered respondent's house taken off the market.

The record on appeal ends at this point.

¶ 14

ANALYSIS

¶ 15 We have an independent duty to verify whether we have jurisdiction over an appeal. *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 935 (2007). Respondent's claims of error concern various judgments entered below. In what follows, we examine each claim individually to determine whether we have jurisdiction over the judgment attacked.

¶ 16 We note that respondent cites two possible sources for our jurisdiction over any particular judgment. The first is Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. February 26, 2010), which provides:

“If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the judgment or thereafter on the court's own motion or on motion of any party.”

The required finding appears in none of the judgments that respondent attacks. Therefore, Rule 304(a) is not a possible ground for jurisdiction in this appeal.

¶ 17 Respondent also cites Illinois Supreme Court Rule 304(b)(1) (Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010), which allows an immediate appeal from a “judgment or order entered in the administration of an estate, guardianship or similar proceeding which finally determines a right or status of a party.” A notice of appeal under Rule 304(b) must be filed within the time provided in Illinois Supreme Court Rule 303 (Ill. S. Ct. R. 303) (eff. June 4, 2008), which is 30 days after the

entry of the judgment or order or, if a timely motion against the judgment or order is filed, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order. Ill. S. Ct. R. 304(b); see also *In re Estate of Storino*, 51 Ill. App. 3d 49, 51-52 (1977)).

¶ 18 Respondent's *pro se* brief is highly confusing at best, but we discern four discrete contentions of error:

I. The June 23, 2011, order listing respondent's house for sale violated federal and state law.

II. The order of March 25, 2011, establishing the special needs guardianship was improper.

III. An order of February 22, 2012, awarding Vogler and Balmes guardian fees, was improper.

IV. Judge Fusz was biased against respondent and improperly refused to provide a court reporter for the proceedings, so that all orders entered in this case must be vacated and the matter remanded for assignment to another judge.

¶ 19 The first contention attacks the order of June 23, 2011. Even if, as we doubt, this order finally determined the rights of any party within the criteria of Rule 304(b)(1), respondent did not appeal it within 30 days.

¶ 20 Respondent's second claim of error is directed at the order of March 25, 2011, which terminated the Settlement Preservation Trust, established the guardianship, and appointed Vogler as the guardian of Isaiah's estate. Respondent's argument is especially confusing, because she asserts that the March 25, 2011, order also appointed Balmes as coguardian of Isaiah's estate, even

though Balmes was appointed on April 21, 2011. Since the March 25, 2011 order appointed a guardian, it was immediately appealable under Rule 304(b)(1). See *In re Estate of Neuf*, 85 Ill. App. 3d 468, 469 (1980) (order appointing or removing conservator is immediately appealable). Moreover, since the order removed the trustee by terminating the Settlement Preservation Trust, it was immediately appealable, for similar reasons. Respondent, however, did not appeal the March 25 order within 30 days.

¶ 21 We recognize that, in her September 9, 2011, filings, respondent challenged the order listing respondent's house for sale and sought to revoke the appointment of Volger. Respondent timely appealed the trial court's November 18, 2011, denial of the September 9 filings. The September 9 motions, however, could not have tolled the time for appeal from the March 25 or June 23 rulings, for the motions were themselves were not brought within 30 days of either ruling. See Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008); *Storino*, 51 Ill. App. 3d at 51-52 (where party did not appeal within 30 days from order appointing guardian, notice of appeal from order denying motion to vacate was of no help, because motion to vacate was tardy and thus did not extend the time for appeal).

¶ 22 In her third claim of error, respondent challenges a "February 22, 2012," order awarding guardianship fees to Vogler and Balmes. Since no such order of February 22 exists, this contention fails.

¶ 23 In her fourth and final contention of error (which her brief splits into the fourth and fifth sections of her argument), respondent argues that Judge Fusz was biased against her and requests that we vacate as void all judgments entered by him and remand this case for assignment to "an impartial, unbiased, [and] objective" judge." The only authority that respondent cites for such a remedy is

section 2-1001(c) of the Code of Civil Procedure (725 ILCS 5/2-1001(c) (West 2010)),<sup>1</sup> which, as she correctly notes, entitles each party in a civil case to one substitution of judge without cause as a matter of right. Such a motion cannot be made for the first time on appeal, and in fact must be made “before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case,” unless it is “presented by consent of the parties.” 735 ILCS 5/2-1001 (West 2010). Respondent does not identify where, if at all, she moved below for substitution of judge. We note that, on December 21, 2009, respondent filed a motion, which, though it pleads for and cites authority for a change of venue (735 ILCS 5/2-101 (West 2010)), reads like a motion to substitute judge.<sup>2</sup> Respondent asserts therein that the “court” (she does not identify a particular judge) was “biased in all minor and major rulings in [this] cause.” Specifically, respondent states that the court was “rude” and “harsh” toward her, “belittl[ed]” and “demean[ed]” her, and denied her a full opportunity to explain her claims in court.

¶ 24 The record contains no transcript of any hearing on the motion. The January 7, 2010, order disposing of the motion states as follows:

“The matter coming on and [respondent] raising the issue of substitution of judge in front of Judge Fusz[,] and the case transferred before Judge Mullin[,] and the file unable to be located[,] and [respondent] stating that her motion of December 21, 2009, is for substitution for cause as to Judge Fusz[,] and the court proceeding to have a hearing with respect to Judge Fusz, and the Judge hearing testimony and argument,

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<sup>1</sup> Actually, respondent’s citation is to “735 ILCS 5/2-1008 2(c),” but it is clear what provision she meant.

<sup>2</sup> There is no indication that the motion was presented by consent of the parties.

It is therefore Ordered that [the] Motion for Change/Substitution from Judge Fusz is denied and the case sent back to [Judge Fusz].”

¶ 25 Since the January 7, 2010, judgment is not specified in the November 23, 2011, notice of appeal, we would have jurisdiction over it only if it was “a step in procedural progression leading to” the November 18, 2011, order specified in the notice of appeal. See *In re Marriage of O’Brien*, 2011 IL 109039, ¶ 23. Even if we assumed that the January 7, 2010, judgment met that criteria, we would reject respondent’s argument on the merits. Consistent with respondent’s characterization as reported in the January 7 order (and she does not contest the accuracy of the report), her December 2009 motion, to the extent that it may be construed as a motion to substitute judge, resembles more a motion for substitution of judge for cause than a motion for substitution as of right. See 735 ILCS 5/2-1001 (West 2010) (distinguishing “for cause” and “as-of-right” motions for substitution of judge). As respondent cites no authority on for-cause motions, her argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 26 We conclude that respondent has developed no argument concerning any judgment over which we have jurisdiction.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 28 Affirmed