2014 IL App (2d) 130443-U
Nos. 2-13-0443 & 2-13-0444 cons.
Order filed March 11, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF JEANNIE S. MIROBALLI, Deceased (Imperium Insurance Company, Proposed Intervenor-Appellant, v. Wayne Sievers, as Executor of the Estate of Jeannie S. Miroballi, Deceased, Defendant-Appellee).	)	Appeal from the Circuit Court of Du Page County. No. 11-P-86 Honorable Paul M. Fullerton, Judge, Presiding.

In re ESTATE OF JOHN F. MIROBALLI, Deceased (Imperium Insurance Company, Proposed Intervenor-Appellant, v. John S. Miroballi, as Administrator of the Estate of John F. Miroballi, Deceased, Defendant-Appellee).	)	Appeal from the Circuit Court of Du Page County. No. 11-P-87 Honorable Paul M. Fullerton, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied Imperium's petition to intervene in probate court. Therefore, we affirmed.

¶ 2 In this interlocutory appeal, Imperium Insurance Company (Imperium) argues that the circuit court erred by denying its petition to intervene in the probate proceeding regarding Jeannie M. and John F. Miroballi's estates. Imperium sought to intervene in the estates' probate proceeding to challenge the probate court's prior decision allowing the reopening of both estates. The executor of Jeannie S.'s estate moved to dismiss Imperium's petition to intervene on the basis that it lacked standing to intervene in the probate proceeding. The trial court agreed that Imperium had no interest in the probate proceeding and thus denied its petition to intervene. Imperium appeals, and we affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 3, 2010, John Miroballi and his wife Jeannie were killed in a car accident after John, who was driving, collided with a tractor trailer. Their individual estates were opened in probate court on January 28, 2011. Jeannie had a will naming her father, Wayne Sievers, as executor. John's estate was administered by his son, John S. Miroballi. On October 13, 2011, both estates were closed and the representatives (Sievers and Miroballi) were discharged.

¶ 5 On March 12, 2012, Sievers filed a wrongful death complaint against Miroballi in the law division court. Imperium, the insurer defending the wrongful death action, moved to dismiss Seivers's complaint on September 10, 2012. Imperium argued, among other things, that Sievers lacked standing to bring the wrongful death action because the suit was not brought prior to the close of the probate estates. See *In re Estate of Savio*, 388 Ill. App. 3d 242, 248 (2009) (a cause of action for wrongful death is an asset of the decedent's estate and may only be brought by the personal representative of the decedent).

¶ 6 While Imperuim's motion to dismiss was pending in the law division court, a new attorney representing both estates filed emergency petitions to reopen the estates in probate

court. The emergency petitions were filed and heard on November 30, 2012. Counsel for the estates advised the court that: (1) Imperium had moved to dismiss the wrongful death action "on the basis that there's no entity to bring it and no entity to defend it"; (2) the assets of both estates had already been administered and the reopening was solely for the wrongful death action; and (3) "both families" wanted the wrongful death action "to move forward for obvious reasons," meaning the estates needed to be reopened "as soon as possible." The court granted the emergency petitions to reopen the estates and reappointed representatives Sievers and Miroballi.

¶ 7 On December 12, 2012, the parties appeared in the law division court for a hearing on Imperuim's motion to dismiss the wrongful death action. The court denied Imperium's motion to dismiss, stating that "both estates were pending" and had standing to sue and be sued.

¶ 8 On December 31, 2012, Imperium filed a petition to intervene in the probate proceeding. Imperium petitioned to intervene under section 2-408(a)(2) of the Code of Civil Procedure (intervention statute) (735 ILCS 5/2-408(a)(2) (West 2012)), which allows intervention "as of right" when "the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action." Attached to Imperium's petition to intervene was a motion to reconsider and vacate the court's November 30, 2012, order reopening both estates.

¶ 9 Sievers responded with a motion to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2012)). In his motion, Sievers argued that Imperium lacked standing to intervene in the probate proceeding because Imperium was not an "interested party" as defined by the Probate Act of 1975 (Probate Act) (755 ILCS 5/1-2.11 (West 2012)). In addition, Sievers argued that the intervention statute did not apply because Imperium

had no "interest" in the estates and because it could not be "bound by any judgment" in the probate proceeding.

¶ 10 In rendering its decision, the trial court stated that "the big issue" was whether Imperium was an interested party under the Probate Act, which it did not believe it was. Otherwise, the court said, insurance companies would be "coming in in every one of these probate matters where really the only asset of the estate [was] a wrongful death claim." According to the court, Imperium was an interested party in the wrongful death action but not in the probate proceeding, which merely allowed a representative of the estate to either pursue an action in another court or to defend an action in another court.

¶ 11 The court continued:

> "So, for those reasons the Court is going to deny the petition – well, it's going to grant the motion to dismiss basically under the 2-619, which denies the petition to intervene in both of these estates and also denies the request to vacate the orders of November 30th. Those orders are going to stand. These estates are – they remain open for the purpose of administration of the unsettled portion of the estate, which is that wrongful death case that's pending in another courtroom."

¶ 12 Imperium timely appealed under Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 13 II. ANALYSIS

¶ 14 We first address the standard of review, which the parties dispute. The order we are reviewing in this case is the denial of Imperium's petition to intervene under section 2-408(a)(2) of the intervention statute. Citing an unpublished case that involved standing to intervene but not a petition to intervene under section 2-408(a)(2) of the intervention statute, Imperium argues that

our review is *de novo*. Imperium's confusion may stem from the trial court's ruling granting Sievers's motion to dismiss on the basis that Imperium lacked standing as an "interested party" under the Probate Act. See *International Union of Operating Engineers, Local 148, AFL-CIO v. Department of Employment Security*, 215 Ill. 2d 37, 45 (2005) (we review *de novo* the grant of a motion to dismiss for lack of standing under section 2-619). We note that the intervention statute also allows an applicant to intervene as a matter of right when a statute confers the unconditional right to intervene (735 ILCS 5/2-408(a)(1) (West 2012)), and an "interested person" has standing to intervene under the Probate Act (*In re Estate of Galiardo*, 391 Ill. App. 3d 343, 345 (2009)). However, Imperium did not seek to intervene under section 2-408(a)(1) of the intervention statute, it sought to intervene under section 2-408(a)(2) of the intervention statute.

¶ 15 In the end, what matters here is that the trial court, in granting Sievers's motion to dismiss, specifically denied Imperium's petition to intervene. That is the ruling that we review here, and the standard of review is whether the trial court abused its discretion. See *Madison Two Associates v. Pappas*, 371 Ill. App. 3d 352, 354 (2007) ("An order denying leave to intervene as of right is generally reviewed for a clear abuse of discretion."); see also *Redmond v. Devine*, 152 Ill. App. 3d 68, 74 (1987) (intervention is a matter within the sound discretion of the trial court and its decision will not be disturbed absent a clear abuse of discretion).

¶ 16 Section 2-408(a)(2) of the intervention statute states that "[u]pon timely application anyone shall be permitted as of right to intervene in an action *** when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action." 735 ILCS 5/2-408(a)(2) (West 2012). Therefore, section 2-408(a)(2) provides that anyone has a right to intervene in a particular action when (1) the representation of the person's interest by existing parties is or may be inadequate, and (2) the

person will or may be bound by an order or judgment in the action. *Joyce v. Explosives Technologies International, Inc.*, 253 Ill. App. 3d 613, 616 (1993).

¶ 17 "An intervenor need only establish an injury to an enforceable right or interest which must be more than a general interest in the subject matter of the suit"; the applicant need not assert rights sufficient to prevail. *Id*. An "interest is sufficient to intervene if the party has an enforceable right or will suffer a tangible detriment." *Schwechter v. Schwechter*, 138 Ill. App. 3d 602, 606 (1985). An applicant "will or may be bound by a judgment" when he stands to gain or lose by direct legal operation and effect of the judgment. *Redmond*, 152 Ill. App. 3d at 74. In addition, the allegations in a petition to intervene are to be taken as true in determining whether the interests of the applicant are sufficient. *Id*. The intervention statute is remedial in nature and should be construed liberally. *Id*.

¶ 18 Imperium argues that both prongs for intervention as a matter of right are present here. First, it argues that the representation of its interest by the estates was inadequate. Imperium points out that the same attorney represented both estates in filing emergency petitions to reopen the estates. Imperium argues that, as a result, its own insured, Miroballi, "affirmatively acted" to reopen the estates for the sole purpose of permitting Sievers to file a wrongful death action against it. Arguing that the opening of the estates worked against Imperium's interests "in probate court," Imperium argues that neither estate had any interest in protecting its interests.

¶ 19 Second, Imperium argues that it is bound by the November 30, 2012, orders reopening the estates. Had the November 30, 2012, orders not been entered and the estates' representatives not been reappointed, Imperium argues, the wrongful death action would fail. If the wrongful death action failed, then Imperium would have no liability arising out of the car accident. For

this reason, Imperium concludes that it had a direct economic interest in the entry of the November 30, 2012, orders. We disagree with both of these arguments.

¶ 20 Regarding the first prong, Imperium makes nothing more than a conclusory assertion that it had a "financial interest" in the probate proceeding that was not adequately represented by the estates. See *PJS Enterprises v. Klincar*, 125 Ill. App. 3d 643, 648 (1984) (averments that are merely conclusions are not sufficient to meet the requirements of the intervention statute). However, as the trial court correctly noted, Imperium had no interest in the decedents' estates; rather, its sole interest was in the wrongful death action, which was collateral to and unrelated to the probate proceeding.

¶ 21 Imperium hoped to use to its advantage the fact that the estates had been closed by filing a motion to dismiss the wrongful death action in the law division court. After the estates reopened, Imperium did not prevail on its motion to dismiss. Rather than challenge that ruling in the law division court, Imperium sought to undo the reopening of the estates by intervening in the probate proceeding. But Imperium's challenge to the reopening of the estates in probate court was nothing more than an attempt to block the wrongful death action in the law division court. Indeed, Imperium identified no independent interest in the probate proceeding; any interest was attendant to and dependent on the wrongful death action. Not surprisingly, Imperium cites no case law for its position that its interest in the wrongful death action should allow it to intervene in the probate proceeding. Therefore, Imperium possessed no interest or enforceable right with respect to the estates in the probate proceeding.

¶ 22 Without a sufficient interest in the estates, Imperium cannot demonstrate that it will or may be bound by a judgment. The November 30, 2012, orders did nothing more than reopen the estates. As a result, those orders were not binding on Imperium, who had no interest in the

estates in probate court outside of the wrongful death action. Though the orders had an indirect effect on Imperium's motion to dismiss, they had no impact on the merits of the wrongful death action and did not bind Imperium in any way. Therefore, the trial court did not abuse its discretion in denying Imperium's section 2-408(a)(2) petition to intervene in probate court.

¶ 23 Having determined that the trial court properly denied Imperium's petition to intervene, we do not consider Imperium's arguments regarding the propriety of the November 30, 2012, orders reopening the estates. See *In re Marriage of Perkinson*, 147 Ill. App. 3d 692, 699 (1986) (the only issue properly involved in the appeal was whether the trial court erred in denying the petition to intervene; a petitioner seeking review of the denial of intervention may not raise issues related to the final judgment in the action).

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, the judgment of the Du Page County circuit court is affirmed.

¶ 26 Affirmed.