2011 IL App (4th) 110288-U

Filed 10/25/11

NO. 4-11-0288

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of J.L. WADE, a/k/a JESSE LORAINE WADE, Deceased, SUSAN WADE BARR, Petitioner-Appellant, v. MERCANTILE TRUST & SAVINGS BANK, Executor of the Estate of J.L. WADE; and MERCANTILE TRUST & SAVINGS BANK, as Trustee of the J.L. WADE Trust Dated March 22, 2001, Respondents-Appellees, and PIKE COUNTY NATURE HOUSE, INC., Intervenor-Appellee.	)	Appeal from Circuit Court of Pike County No. 07P40 Honorable William O. Mays, Jr., and Diane M. Lagoski, Judges Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court only has jurisdiction over the trial court's ruling granting Nature House's petition to intervene. The trial court did not err in allowing Nature House to intervene.

¶ 2 The present appeal arises from a complex probate case involving the administration of the estate of J.L. Wade, which is still ongoing in the trial court. The present appeal only involves the trial court's orders (1) allowing the Pike County Nature House, Inc. (Nature House), to intervene in this case, (2) requiring appellant Susan Wade Barr, J.L. Wade's daughter, to remove a *lis pendens* notice she filed on a manufacturing facility owned by Nature House, and

(3) removing the *lis pendens* notice after Barr refused to comply with the trial court's order.

¶ 3 Barr appeals, *pro se*, arguing the following: (1) the trial court did not have subject-matter jurisdiction to order the release of the *lis pendens* notice on the manufacturing facility; (2) the court's order to remove the *lis pendens* notice was against the manifest weight of the evidence; (3) the court erred in granting Nature House's motion to intervene and motion to remove *lis pendens*; and (4) Judge Lagoski erred in believing she was bound by Judge Mays' prior orders. Barr also argues she neither acted improperly, maliciously, nor slandered the title to the manufacturing facility by filing the *lis pendens* notice. Nature House argues we do not have jurisdiction.

¶ 4 We find we only have jurisdiction over the trial court's decision to allow Nature House's motion to intervene. We affirm that ruling. However, because we do not have jurisdiction over the other issues raised by Barr, we dismiss the remainder of the appeal.

¶ 5 I. BACKGROUND

¶ 6 On June 9, 2007, J.L. Wade died, leaving a will dated March 22, 2001, and a first codicil dated May 4, 2004. On June 18, 2007, Mercantile Trust & Savings Bank (Mercantile Trust) filed a petition for probate of J.L. Wade's will and first codicil and for letters testamentary. J.L. Wade's will called for the residue of his estate (after payment of expenses, costs, taxes, and other proper charges against his estate), both real and personal, to pass into the J.L. Wade Trust, which he created on March 22, 2001. Mercantile Trust was also the trustee of the J.L. Wade Trust.

¶ 7 In September 2007, the trial court found the decedent's will, dated March 22, 2001, and the first codicil thereto, dated May 4, 2004, established by sufficient competent

evidence. On October 12, 2007, Barr filed a postjudgment motion. This motion is not included in the record before this court. On November 8, 2007, according to the court docket, a response was filed to Barr's postjudgment motion. The record does not contain this response.

¶ 8 On October 22, 2007, Barr filed a petition under the same case number (207-P-40) seeking an injunction to prohibit Mercantile Trust from selling "certain property in the estate, namely, the household goods and furnishings, and certain real property in the trust, namely the residence, the Perry Springs property, and Wade Marsh" that she alleged were "irreplaceable items of special and unique character and importance." According to the petition, Barr wanted this injunction to run until after the expiration of the time for her to contest the will and trust and until the final resolution of any proceedings she filed contesting the will or trust. Barr did not name Nature House in this petition or include the manufacturing facility, which is the subject of her appeal, as an irreplaceable item of special and unique character and importance.

¶ 9 On December 17, 2007, Barr filed a three-count petition under the same case number (207-P-40), contesting J.L. Wade's will dated March 22, 2001 (count I), the J.L. Wade Trust dated March 22, 2001 (count II), and alleging defendants Mimi Chunmei Hu, Michael Wade, Courtney Wade, Wilma Wade, and William Keller, none of whom are parties to this appeal, interfered with her inheritance (count III). Barr's petition alleged J.L. Wade was not competent and was subject to improper influence when he executed the will and trust on March 22, 2001. Barr argues the will and irrevocable trust J.L. Wade executed on August 22, 1996, should be admitted to probate. This will and trust are the subject of a petition for probate in the same trial court in case No. 07-P-41.

¶ 10 On July 29, 2009, Mercantile Trust filed a motion requesting an order allowing it to sell the following property owned by Nature House: "a residential property and warehouse and former manufacturing commercial property in Griggsville, Pike County, Illinois, and farm and recreational property containing 14.782 acres, more or less, in Perry Township, Pike County, Illinois, commonly referred to as the 'Perry Springs' property."

¶ 11 On November 17, 2009, Barr filed a response to Mercantile Trust's motion to sell property. She asked the trial court to either (1) order Mercantile Trust to (a) answer Barr's petition for injunction, (b) initiate the sale request by complaint for declaratory judgment, (c) file a petition following the guidelines of the Probate Act, or (2) deny the motion to sell.

¶ 12 On December 14, 2009, Judge Mays held a hearing on Mercantile Trust's motion to sell property. As to the motion, the trial court stated:

> "I think from a legal standpoint, Mr. Hansen [(attorney for Mercantile Trust)], I think you're correct. You have the–the trust sets forth you–I think you have the legal power. I have to say that I'm assuming you're filing these because you want some protection for your client as far as selling the property; and at this point I don't think you've given me enough information as far as your request to sell because I think legally you have that ability anyway. And if you want some blessing of this court, which is probably not the correct phrase for the sale, I think you've got to give me a lot more than what you did. I would also state that it seems to me there's enough controversy about what's going on and what Ms.

Barr has said about some the[,] of the[,] I'll call it[,] extrinsic value[,] of some of these properties and things, that it seems to me especially since there is some income coming in from the property that it would not be the wisest thing to try to sell it at this point anyway. So just because what I have in front of me now is your motion to sell I'm going to deny that motion."

¶ 13 On February 28, 2011, attorney Hansen entered his appearance on behalf of Mercantile Trust in the action filed by Barr requesting an injunction, which as stated earlier was filed under the same case number as the will and trust contest (No. 07-P-40). That same day, Mercantile Trust filed another motion to sell. It specified in the caption of its motion, "Injunction [P]roceeding." In that motion, Mercantile Trust stated:

"7. Among the assets owned by Nature House is real estate located in Griggsville, Illinois[,] which was previously the manufacturing plant of Nature House but is now vacant with the exception of one warehouse which has been leased but which lease is terminating (the 'Griggsville Property'). * * * In addition, Nature House owns other real property consisting of approximately 716.53 acres of farm and recreational property located in Pike County, Illinois. Said 716.53 acres are not part of the proposed sale described herein.

8. The Board of Directors of Nature House have adopted the resolution which is attached hereto and made a part hereof as

> Exhibit B in its meeting on January 26, 2011, which Resolution authorized the sale of the Griggsville Property to Big River Fish Corp. ('Big River') for the amount of $427,000.00.
>
> ***
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> 10. Attached hereto and made a part hereof as Exhibit D is a Commitment for title insurance issued by Western Illinois Title Services, as agent for Chicago Title Insurance Company, which Commitment reveals that Susan Wade Barr, the Petitioner, filed on December 23, 2009[,] a *Lis Pendens* Notice in the Recorder's Office of Pike County, Illinois[,] against the Griggsville Property[,] which is legally described on the *Lis Pendens* Notice[,] which is attached hereto and made a part hereof as Exhibit E. Pursuant to said Commitment, the title company is requiring a court Order authorizing and approving the sale as a result of the clouded title due to the *Lis Pendens* Notice filed by Susan Wade Barr. ***"

The motion also stated Nature House was not a party to Barr's petition for injunction and Barr did not request an injunction on the manufacturing facility. Mercantile Trust alleged the *lis pendens* notice had wrongfully clouded the title to the manufacturing facility. The motion asked the trial court to approve the terms and conditions set forth in the real estate purchase contract for the sale of the manufacturing facility to Big River Fish Corp. (Big River) and to deem void the *lis pendens* notice filed by Barr on the manufacturing facility and order Barr to file a release

of the *lis pendens* notice. The *lis pendens* notice at issue does not reference Barr's petition contesting the will and trust filed on December 17, 2007. Instead, the notice only states: "I, [Susan Wade Barr], do hereby certify that the above entitled cause was filed on the 22nd day of October, 2007, for injunction and is now pending in said Court ***."

¶ 14 On March 14, 2011, Nature House filed a petition to intervene pursuant to section 2-408 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-408 (West 2008)). This petition, again, specifically referenced the "Injunction proceeding." The petition stated Nature House was not a party to the injunction proceedings filed by Barr. In addition, the petition pointed out the manufacturing facility upon which Barr filed the *lis pendens* notice, using the cause number for her injunction proceeding, was owned by Nature House and was not part of her injunction request.

¶ 15 That same day, Nature House filed a motion to sell its real estate owned by Nature House. Nature House asked the trial court to deem the *lis pendens* notice filed by Barr on the manufacturing facility void, order Barr to immediately release the *lis pendens* notice, find the board of directors of the Nature House as the proper party to determine whether the manufacturing facility is sold, and approve the terms and conditions of the real estate sales contract selling the manufacturing facility to Big River.

¶ 16 On March 15, 2011, Barr filed a motion to strike both Mercantile Trust and Nature House's motions to sell. That same day, she also filed a motion to amend her petition for injunction so it would apply to all of the real estate owned by Nature House in Griggsville. She alleged Mercantile Trust actually controlled this property. Barr also sought to add Nature House as a party.

¶ 17 On March 17, 2011, the trial court held a hearing and granted Nature House's motion to intervene. The court declined to rule on Barr's motion to amend her petition and add Nature House as a party because her motion was not timely as to that hearing date. After hearing arguments from the parties, Judge Mays stated the following to counsel for Nature House, who was also representing Mercantile Trust:

> "I don't have any problem giving you an order that says the *lis pendence* [*sic*] is lifted, all right. Based on everything I see here, I think that's the correct legal answer is the *lis pendence* [*sic*] should be lifted, and I'd give you an order that says that, directing the plaintiff to do that.
>
> I'm not comfortable saying I have the authority or the legal authority to approve or not approve the sale because it's a corporate asset. It's not a probate thing, and if it's a probate thing, you haven't alleged enough stuff in your motion to get it approved because, while you say that they owe money on taxes and now you've given me an appraisal, which, by the way, was not in the motion either, if you have those things, but then you got to show me that there's a necessity for selling the assets of the estate, and that's not in there.
>
> So, I can grant your motion from the standpoint only that I can say the plaintiff is directed to release the *lis pendence* [*sic*] notice, but *** I'm not going to say it's approved or disapproved

> as far as the sale is concerned. I don't think I have the authority to do that based on what I have in front of me right now. All right.
>
> ***
>
> So, if the order is sufficient to direct the plaintiff to release the *lis pendence* [*sic*] about this real estate, then that's what I can give you, and that's what I will give you based on everything I have right here, but I'm not going to say yea or nay to the sale. I'm not going to rule on that part. It's not like I'm saying you can't do it because that's the corporate decision that the shareholders and the board of directors have to make."

The court did not rule on the pending motions to dismiss.

¶ 18 On April 1, 2011, Judge Mays recused himself from the proceedings. Judge Lagoski was assigned to the case.

¶ 19 On April 5, 2011, Judge Lagoski denied Barr's motion to reconsider Judge Mays' decision to require Barr to remove the *lis pendens* notice from the manufacturing facility. Barr had not yet removed the *lis pendens* notice, and her attorney told the court Barr was not going to voluntarily remove the *lis pendens* notice. The court then issued a rule to show cause. A hearing was scheduled for the following week for Barr to show cause why she should not be held in contempt. The court also granted Nature House's motion for immediate removal of the *lis pendens* notice on the manufacturing facility. The trial court entered two orders on April 5, 2011. One is styled "Release of Lis Pendens." The other is simply an "Order." Both release of the *lis pendens* and the "Order" specifically instructs the Recorder's Office to remove the *lis*

pendens. The "Order" purports to hold Barr in contempt, but no hearing had yet been held on the rule to show cause so no contempt finding could have been properly made. Whether that "Order" is a scrivener's error or a mistake based on a misapplication of the procedural rules of civil contempt is not material. We find Barr was not, and could not, be held in contempt on that date.

¶ 20 The hearing on the rule to show cause was moved from April 7, 2011, to April 11, 2011. On April 11, 2011, the trial court entered an order finding the contempt hearing was moot because Barr had already filed her notice of appeal.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 A. Appellate Jurisdiction

¶ 24 This appeal involves the trial court's decisions (1) allowing Nature House to intervene in the injunction proceeding, (2) ordering Barr to remove the *lis pendens* notice on the manufacturing facility, and eventually, after Barr refused to remove the *lis pendens* notice, (3) removing the *lis pendens* notice by court order. While these decisions are not insignificant, all of the issues in this probate proceeding have clearly not been resolved.

¶ 25 Supreme Court Rule 301 makes appealable as of right "[e]very final judgment of a circuit court in a civil case." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). However, Rule 304(a) states:

> "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." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

The underlying case involves multiple parties and multiple claims for relief. The court did not make an express written finding that no just reason existed for delaying enforcement or appeal or both.

¶ 26 However, Barr argues this court has jurisdiction pursuant to Supreme Court Rule 304(b). Ill. S. Ct. R. 304(b) (eff. Feb. 26, 2010). Rule 304(b)(1) states:

> "(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> (1) 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." Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010).

According to the committee comments to the rule, examples of orders final in character include, but are not limited to, "an order admitting or refusing to admit a will to probate, appointing or removing an executor, or allowing or disallowing a claim." Ill. S. Ct. R. 304(b)(1) Committee Comments (eff. Feb. 26, 2010). In *In re Estate of Kime*, 95 Ill. App. 3d 262, 268, 419 N.E.2d 1246, 1250 (1981), the First District Appellate Court explained the purpose of Rule 304(b)(1), stating:

> "A central reason behind making the time for appeal of such orders mandatory, and not optional, is that certainty as to some issues is a necessity during the lengthy procedure of estate administration. Little imagination is needed to conjure up the intolerable consequences of permitting a party, at his option, to wait until an estate administration is concluded before appealing an order, entered perhaps several years previously, which denied a motion to remove an executor or allowed a claim against the estate. In such circumstances, were an appellant successful, then the entire administration might have to be begun again. Thus, in the interests of efficiency and the sound and practical administration of estates, orders in estate proceedings must be appealed within 30 days from entry when they finally determine the right or status of a party, even though they are preliminary to a final settlement of estate proceedings."

¶ 27 Although Nature House limited its petition to intervene to only Barr's injunction petition, Barr's injunction petition was part of the probate proceeding administering J.L. Wade's estate. The trial court's order allowing Nature House to intervene determined its right as a party. See *In re Estate of Mueller*, 275 Ill. App. 3d 128, 139, 655 N.E.2d 1040, 1048 (1995) ("the trial court's order of September 16, 1993, finally determines J. Arnold's right to participate in the estate proceedings. Therefore, the judgment entered by the trial court is a final and appealable order and is sufficient to confer jurisdiction on this court under Rule 304"). As a result, we have

jurisdiction over the trial court's order allowing Nature House to intervene.

¶ 28 However, we do not have jurisdiction over any of the trial court's other orders of which Barr complains, *i.e.*, the trial court's order requiring Barr to remove the *lis pendens* notice and then its decision to remove the *lis pendens* notice by judicial order after Barr refused to remove the *lis pendens* notice. These rulings do not finally determine the status of any party or a right of any party with regard to the manufacturing facility. As the trial court made clear, it was not approving the sale of the manufacturing facility. Because we do not have jurisdiction over these rulings, we will not comment on them. As a result, we only review the trial court's decision to allow Nature House to intervene.

¶ 29 B. Decision To Allow Nature House to Intervene

¶ 30 Barr argues the trial court erred in allowing Nature House to intervene. Section 2-408 of the Procedure Code states:

> "(a) Upon timely application anyone shall be permitted as of right to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) 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; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or a court officer.
>
> (b) Upon timely application anyone may in the discretion

> of the court be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." 735 ILCS 5/2-408(a), (b) (West 2008).

Our supreme court has stated the General Assembly intended section 2-408 to liberalize the practice of intervention to avoid issues being relitigated in a second suit. *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 57, 779 N.E.2d 875, 887 (2002). "Although a party need not have a direct interest in the pending suit, it must have an interest greater than that of the general public, so that the party may stand to gain or lose by the direct legal operation and effect of a judgment in the suit." *Birkett*, 202 Ill. 2d at 57-58, 779 N.E.2d at 887-88. A trial court's decision to allow a petition to intervene will not be reversed on appeal absent a clear abuse of discretion. *Birkett*, 202 Ill. 2d at 58, 779 N.E.2d at 888.

¶ 31 We do not find the trial court abused its discretion in allowing Nature House's petition to intervene in this case. Barr did not name Nature House as a respondent in either her petition for an injunction or her petition contesting her father's will and trust. However, she placed *lis pendens* notices on property owned by Nature House under the auspices of the Pike County case number and her injunction petition. These *lis pendens* notices clouded Nature House's title to these properties. Barr believes these *lis pendens* notices were proper. Nature House believes they were improperly placed in its chain of title. A separate action brought by Nature House on this issue would be contrary to the General Assembly's intent of avoiding duplicative litigation in a second suit.

¶ 32 While Nature House could have filed its petition to intervene sooner, this does

not mean the trial court abused its discretion in allowing Nature House to intervene. The court's decision to allow Nature House to intervene would not have unduly delayed or prejudiced the adjudication of the rights of the original parties. See 735 ILCS 5/2-408(e) (West 2008) ("In cases in which the allowance of intervention is discretionary, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the *** parties"). This is especially true with regard to Barr, considering on March 15, 2011, she filed a motion asking to add Nature House as a party. The delay in this case in fact has been caused by Barr's decision to appeal the trial court's order allowing the intervention.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment allowing Nature House's petition to intervene but find we do not have jurisdiction over any other trial court order at this time and dismiss the balance of this appeal.

¶ 35 Affirmed in part and remanded for further proceedings; appeal dismissed in part.