2014 IL App (4th) 130902-U

NO. 4-13-0902

FILED
August 20, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of LLOYD G. LYONS,	)	Appeal from
Deceased,	)	Circuit Court of
MARY L. LYONS and SHERRI SCHNETZ,	)	Sangamon County
Petitioners-Appellees,	)	No. 12P344
v.	)	
MELODY LYONS,	)	Honorable
Respondent-Appellant.	)	Peter C. Cavanagh,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court dismissed the appeal where the order appealed from did not finally determine respondent's rights with respect to her interest in a joint checking account.

¶ 2 In June 2012, decedent, Lloyd G. Lyons, passed away. Decedent was survived by his wife, respondent Melody Lyons, who was later charged with six counts of first degree murder in relation to the deaths of decedent and his uncle. In May 2013, respondent filed a motion to release funds, seeking, *inter alia*, the release of half of the remaining funds in a checking account held by respondent and decedent as joint tenants. Following a September 2013 hearing, the trial court denied respondent's motion with respect to the release of half of the funds in the checking account. On appeal, respondent argues she is entitled to immediate possession of her half interest in the account. We conclude we lack jurisdiction over this matter and dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 On June 8, 2012, decedent died, leaving behind three heirs: respondent and petitioners, his mother, Mary L. Lyons, and his sister, Sherri Schnetz. On June 11, 2012, the State charged respondent with six counts of first degree murder (720 ILCS 5/9-1 (West 2012)) in relation to the deaths of decedent and his uncle, Henry D. Gilbert, in Sangamon County case No. 12-CF-468.

¶ 5 In August 2012, petitioners filed a petition seeking (1) to admit decedent's last will and testament to probate, and (2) the appointment of Schnetz as an administratrix of the estate. Later that month, the trial court appointed Schnetz as administratrix of decedent's estate.

¶ 6 In May 2013, respondent filed a motion to release funds. Therein, respondent stated at the time of decedent's death, she and decedent held a checking account (hereinafter, the account) at Illinois National Bank (INB) as joint tenants with rights of survivorship. The motion stated respondent and Schnetz had reached an agreement regarding certain reimbursements due following the sale of respondent's and decedent's residence. Pursuant to this agreement, "(1) [respondent] would reimburse the Estate in the amount of $298.78, and (2) *** Mildred Ippolitto would be paid $265.11 as reimbursement for repairs." Further, respondent asserted if section 2-6 of the Probate Act of 1975 (755 ILCS 5/2-6 (West 2012)) applied to this case, her half interest in the account could not be diminished by operation of that section. However, if section 2-6 did not apply, decedent's interest in the account would pass by operation of law to respondent, the account would not be an asset of the estate, and the account would not be subject to the debts or expenses of the estate. The motion sought release of funds in the account to pay (1) $597.56 to the estate, (2) $265.11 to Mildred Ippolitto, and (3) half of the remaining funds to respondent. Further, the motion requested the remaining funds, after the three payments described above, be frozen until further order of the court.

¶ 7 In September 2013, the cause proceeded to a hearing on respondent's motion to release funds. Prior to this hearing, respondent (1) requested $381.50 be paid from the account to Ameren as payment for the final gas bill at respondent's and decedent's home, and (2) withdrew her request that the estate be reimbursed in the amount of $597.56. According to a proposed report of proceedings (bystander's report), the trial court orally granted respondent's request with respect to Ameren and Ippolitto but denied respondent's request for immediate possession of her half interest in the account, stating it "would withhold the distribution of funds to [respondent] until final distribution of the estate." The court thereafter entered a written order, which states, in its entirety, as follows:

> "This cause comes forward upon [respondent's] motion to release funds.
>
> This court finds that:
>
> 1. [$]381.50 is to be paid to Ameren from the joint INB account.
>
> 2. [$]265.11 is to be paid to Mildred Ippolitto from the joint INB account.
>
> 3. This order is final pursuant to Supreme Court Rule 304."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, respondent argues the trial court erred when it denied the portion of her motion in which she sought immediate possession of her half interest in the account. Respondent also contends she was entitled to immediate possession of her half interest in the account because the parties had entered into a settlement agreement with respect to the motion to

release funds. However, we must first address whether this court has jurisdiction to consider the appeal.

¶ 11 A. Illinois Supreme Court Rule 304

¶ 12 In her opening brief, respondent asserts this court has jurisdiction to consider this appeal pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Petitioners contend this court lacks jurisdiction under Rule 304(a) for two reasons. First, petitioners assert this court lacks jurisdiction because the trial court's express written Rule 304(a) finding applies only to the court's written order, which addressed only the release of funds to Ameren and Mildred Ippolitto. Second, petitioners assert this court lacks jurisdiction because the court's order denying the release of joint checking funds to respondent was not a final order under Rule 304(a). Because the order appealed from is not a final order, we conclude we lack jurisdiction under Rule 304(a) and dismiss the appeal.

¶ 13 Rule 304(a) provides, in pertinent part:

> "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. *** In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims,

rights, and liabilities of all the parties." (Emphasis added.) Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

"By its terms, Rule 304(a) applies only to final judgments or orders; the special finding contemplated by the rule will make a final order appealable, but it can have no effect on a nonfinal order." *Kellerman v. Crowe*, 119 Ill. 2d 111, 115, 518 N.E.2d 116, 118 (1987). In other words, an order must be final before the trial court may determine, pursuant to Rule 304, whether any just reason exists to delay enforcement or appeal. An order is final if it "terminates and disposes of the parties' rights regarding issues in the suit so that, if affirmed, the trial court has only to proceed with execution of judgment." *Findley v. Posway*, 118 Ill. App. 3d 824, 826, 455 N.E.2d 861, 863 (1983). Generally, an order is not final where the court reserves an issue for further consideration or otherwise indicates its intent to retain jurisdiction to enter a later order. *Djikas v. Grafft*, 344 Ill. App. 3d 1, 8, 799 N.E.2d 887, 893 (2003).

¶ 14 In this case, the trial court's order as to respondent's immediate possession of her interest in the account did not finally determine her rights as to her interest in the account. The record shows following the September 2013 hearing on respondent's motion to release funds, the trial court orally denied the release of half of the funds in the account. Further, as part of its order, the court stated it would withhold the distribution of funds to respondent pending final distribution of the estate. The record contains no indication the court determined respondent was not entitled to her half interest in the joint checking account but, rather, it reserved the issue as to the distribution of these funds until final distribution of the estate. Because the court's order was not final with respect to her interest in the account, we find we lack jurisdiction over this matter and dismiss the appeal.

¶ 15 B. Illinois Supreme Court Rule 308

¶ 16 In her reply brief, respondent argues we can consider this appeal under Illinois Supreme Court Rule 308(a) (eff. Feb. 26, 2010). Specifically, respondent contends "[the trial court's] Order could also be considered as requesting an appeal pursuant to Supreme Court Rule 308," citing *Hutton v. Consolidated Grain & Barge Co.*, 341 Ill. App. 3d 401, 795 N.E.2d 303 (2003). We disagree.

¶ 17 Rule 308(a) provides, in pertinent part:

> "When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. *** The Appellate Court may thereupon in its discretion allow an appeal from the order." Ill. S. Ct. R. 308(a) (eff. Feb. 26, 2010).

¶ 18 In *Hutton*, the trial court's order contained an express written finding pursuant to Rule 304(a). *Hutton*, 341 Ill. App. 3d at 403, 795 N.E.2d at 305. This court concluded it did not have jurisdiction under Rule 304(a), however, because the trial court's order was not final. *Id.* at 403-04, 795 N.E.2d at 305. The court's order also stated, "The issue certified for appeal is whether [d]efendant[]s, upon proper demand, are entitled to a jury trial in a Jones Act case filed in state court." (Internal quotation marks omitted; alterations in original.) *Id.* at 404, 795 N.E.2d at 306. Based on this statement, we found the court intended to make a Rule 308 finding and exercised jurisdiction on that basis. *Id.*

¶ 19 *Hutton* is inapposite. Respondent fails to explain how the trial court's September 2013 order could be interpreted as expressing an intent to certify a question for review. The trial court's September 2013 written order contains no indication the court intended to make a finding pursuant to Rule 308. The record is devoid of any other indication the court intended to certify a question for our review. Therefore, we decline to exercise jurisdiction over this matter under Rule 308.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we dismiss the appeal.

¶ 22 Appeal dismissed.