2021 IL App (3d) 200196-U

Order filed October 20, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

DONALD L. ROPP, JR.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Petitioner-Appellee,	)	Henry County, Illinois.
	)	
v.	)	Appeal Nos. 3-20-0196, 3-20-0197,
	)	3-20-0198, 3-20-0199
RAYMOND L. ROPP, Trustee of the Donald	)	Circuit Nos. 17-CH-27, 19-CH-57,
Lee Ropp, Sr., Living Trust u/t/a 12/12/2007,	)	19-P-114, 20-P-8
	)	
Respondent-Appellant.	)	
	)	Honorable Mark A. VandeWiele,
	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: (1) This court lacks jurisdiction to address issues not mentioned in the notice of appeal; (2) the lower court had subject-matter jurisdiction to suspend Raymond as trustee; (3) the court did not err as a matter of law in denying confirmation of the special cotrustee's findings; and (4) the court did not err in appointing an administrator of the settlor's estate.

¶ 2 This matter is the result of six underlying cases concerning the Ropp family. The matters were consolidated in the circuit court. As a result of orders entered below, respondent Raymond

Ropp has caused to be filed 16 appeals with this court that have subsequently been consolidated into three sets of appeals. This set of appeals concerns the lower court's subject-matter jurisdiction, the denial of a petition for confirmation, *sua sponte* suspension of a trustee, and the appointment of an administrator to the estate of Raymond's father. For the reasons that follow, we dismiss certain issues for a lack of appellate jurisdiction and affirm the judgment of the lower court on those issues that remain.

¶ 3 I. BACKGROUND

¶ 4 Donald Ropp Sr. (Don Sr.) is the settlor of the trust at issue in this appeal. Don Sr. also had a pour over will with the trust as the sole beneficiary. Don Sr. and Larry L. Ropp served as cotrustees until Don Sr.'s death in July 2016. Don Sr. was survived by his four children Donald Ropp Jr. (Don Jr.), Sena Ropp, Larry L. Ropp, and Raymond Ropp as well as his wife Reba Ropp. Reba and the four children were all beneficiaries of the trust. Upon Don Sr.'s death, Larry became the sole trustee. Reba Ropp died on August 26, 2016, leaving her interest in the trust to her estate.

¶ 5 Relevant to this appeal, there are two provisions in the trust that have resulted in discord among the trustee's and beneficiaries. The first is a mandatory dispute resolution clause requiring a special cotrustee to be appointed in order to settle disagreements among beneficiaries and the trustee. Second is an *in terrorem* clause, disinheriting those who challenge the administration of the trust.

¶ 6 In April 2017, Don Jr. sought and obtained a temporary restraining order (TRO) prohibiting Larry in his capacity as trustee from transferring certain trust property that, per the trust's language, Don Jr. had the right to purchase. In May 2017, Larry sent letters to Don Jr., Sena, and Reba's estate notifying them of his determination of their disinheritance from the trust, leaving only himself and Raymond as beneficiaries. Thereafter, the court entered an agreed ordered that the

TRO would be in effect until 45 days after appointment of a special cotrustee. Larry filed a motion to dissolve the TRO asserting that, among other things, a special cotrustee had been appointed. The court subsequently entered an order finding that the special cotrustee was appointed, appeared to meet the qualifications of the trust, and that the TRO would dissolve on a date certain to allow the presentment of the issue to the special cotrustee. Thereafter, Don Jr. filed a motion to reconsider; Reba's estate filed a petition to intervene. Larry, as trustee, argued that the court had clearly stated it was limiting its jurisdiction to consider Don Jr.'s TRO motion and Reba's estate "cannot argue in good faith it has a legal interest in [Don Jr.'s] Motion for TRO, as it pertains only to [Don Jr.'s] interests."

¶ 7 In denying the petition to intervene the court stated:

> "I don't believe in this case I was asked to, nor do I have the authority to, decide who the special co-trustee is. *That's not what this case was about*. This case was filed to stay the deadlines on [Don Jr.'s] deadlines for when he had to make elections. I stayed those deadlines so they could go to a special co-trustee. ***
>
> So I don't believe that affects any of the other rights of any of the other beneficiaries, because I am not deciding who the [special] co-trustee is. *** I understand they may think that she's unqualified on those issues, *but that's not what this case was filed for*. That's not what the TRO was granted for." (Emphases added.)

¶ 8 The special cotrustee confirmed the disinheritance of Don Jr., Sena, and Reba's estate. In July 2019, Larry, as trustee, filed a petition with the circuit court requesting confirmation of the special cotrustee's findings of disinheritance. Don Jr. filed a response in opposition to the request

for confirmation in September 2019, arguing the court should deny Larry's request, deem the special cotrustee provision unworkable, retain jurisdiction to enforce and interpret the trust terms, and any other relief deemed appropriate. Reba's estate and Sena also filed a response to the petition for confirmation requesting relief similar to that requested by Don Jr., but also that the pour over will of Don Sr. be admitted to probate with Timothy Slavin, a retired Rock Island circuit court judge, appointed to administer the estate, along with other relief deemed equitable under the circumstances.

¶ 9 Don Jr. also filed a petition to probate the pour over will of Don Sr. and letters testamentary. When Don Jr. filed the petition, Don Sr. had been dead for approximately three years. Don Jr. requested the court appoint Timothy Slavin as administrator. Larry, in his individual capacity, filed a motion to dismiss the petition to probate arguing, among other things, that he as trustee should be the executor of the probate estate and that the real estate identified in Don Jr.'s petition is not subject to probate. In the interim, Larry passed away, and per the language of trust, Raymond became the successor trustee.

¶ 10 Following recusal of the judge who originally heard the TRO proceedings, Judge Mark A. VandeWiele was assigned to the cases concerning the Ropp family. As of the time of this appeal there were six cases, No. 2019-P-114, the estate of Don Sr.; No. 2017-P-117, Reba's estate; No. 2020-P-7, Larry's guardianship; No. 2020-P-8, Larry's estate; No. 2017-CH-27, the TRO suit, and No. 2019-CH-57, seeking confirmation of the special cotrustee's findings of disinheritance.

¶ 11 On March 23, 2020, the court held a status hearing on all six cases. Over Raymond's objection the court ordered: (1) Raymond to produce a trust accounting from the time of Don Sr.'s death up to the time of Larry's death; (2) Raymond to produce a trust accounting from the time of Larry's death to the present time; (3) Raymond to produce various financial records of Don Sr.;

(4) the special cotrustee file an affidavit regarding certain matters; and (5) Timothy Slavin was appointed as administrator of Don Sr.'s estate.

¶ 12 The court opined in the order that "The primary problem is Larry and now Raymond refuse to provide any sort of trust accounting which has an adverse ripple effect throughout the various cases. An inventory is deemed critical to break the litigation log jam in the six listed cases." Also of note was that Reba's estate was attempting to invoke its right to set aside Don Sr.'s will and take the marital share. Raymond failed to provide an accounting to the court.

¶ 13 On May 26, 2020, the court *sua sponte* ordered the suspension of Raymond as trustee pursuant to section 706 of the Illinois Trust Code (Code) (760 ILCS 3/706 (West 2020)). In its 24-page order, the court details its reasoning for suspending Raymond as trustee pending a rule to show cause hearing. Initially, the court found that "[p]oor communication, distrust and a failure to follow trust and probate law have led to entrenched positions and unnecessarily clogged this court's docket." The court also stated that the efforts to disinherit Don Jr., Sena, and Reba's estate stood to benefit Raymond financially. The court also cited Raymond's lack of experience and training in accounting or maintenance of business records, and the waste of assets due to the long legal battles concerning the trust. Finally, the court found that Raymond had committed serious breaches of trust, including but not limited to breaching his statutory duty to account; breaching his statutory duty to keep adequate records and segregate trust assets; breaching his statutory duty of impartiality; and self-dealing.

¶ 14 The court found the suspension of Raymond was required to preserve and protect the trust, the trust purposes, and the interests of the beneficiaries. The suspension was temporary until the lower court could "consider permanent removal." A rule to show cause hearing was set regarding whether Raymond should be removed as trustee.

¶ 15 The May 26, 2020, order also denied Raymond's motions to reconsider regarding the court's subject-matter jurisdiction over the direction of the trust, the denial of the confirmation petition, the *sua sponte* suspension of Raymond as trustee, and appointment of an administrator for the Don Sr. estate. Raymond testified on June 22, 2020, as to why he should remain as trustee. Raymond was removed as trustee on June 24, 2020.[1]

¶ 16 Raymond appeals the May 26, 2020, order.[2]

¶ 17 II. ANALYSIS

¶ 18 On appeal, Raymond argues: (1) the lower court lacked subject-matter jurisdiction to direct the administration of the trust and suspend him as trustee; (2) even if the court did acquire jurisdiction, the order suspending him as trustee and requiring an accounting was against the manifest weight of the evidence; (3) the lower court erred in denying the petition to enforce the findings of the special cotrustee as a matter of law; and (4) the lower court erred in appointing an administrator of the Don Sr. estate.

¶ 19 A. Appellate Jurisdiction

¶ 20 It is a common refrain that courts of review have an independent duty to determine whether appellate jurisdiction lies regardless of the lack of jurisdictional arguments raised by the parties.

[1] Raymond appealed as trustee. The circuit court entered an order precluding Raymond from pursuing the numerous appeals in the capacity of trustee. Raymond then filed a request with this court to strike the lower court's order, allowing him to proceed in his capacity as trustee. We admonished Raymond, struck the request, and demanded a status report to clarify Raymond's intention regarding the sixteen pending appeals. We then granted a motion to substitute Raymond in his personal capacity and allowed the amendment of the notices of appeal.

[2] Numerous motions were filed on appeal. Raymond filed a motion for mandamus that was denied owing to a lack of jurisdiction. The responding parties filed a motion to dismiss the appeal arguing Raymond lacked standing and also the orders entered were not final nor appealable pursuant to either Illinois Supreme Court Rule 303 or 304(b)(1), that was also denied. Raymond filed a motion to partially stay the orders of May 26, 2020, and June 24, 2020, and a motion to file a reply brief in excess of the limitation imposed by the court. This court denied both motions. Raymond also filed a motion to strike appellees brief that was taken with the case and we now deny.

People v. Vara, 2018 IL 121823, ¶ 12 (citing *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009)). Raymond argues this court has jurisdiction to review the lower court's order requiring a trust accounting and the suspension of Raymond as trustee pending a rule to show cause hearing. Raymond points to both Illinois Supreme Court Rule 303 and Rule 304(b)(1) as the source of this court's jurisdiction.

¶ 21 We lack jurisdiction to review the issues regarding the lower court's suspension of Raymond as trustee pending the rule to show cause hearing, and the demand of an accounting. Initially, we question the finality of the order suspending Raymond as trustee as the court clearly contemplated and scheduled further proceedings on the matter. Moreover, it is debatable whether or not his suspension pending a rule to show cause hearing finally determined a right or status of a party. See Ill. S. Ct. R. 304(b)(1) (eff. Mar. 8, 2016). We need not determine these questions though, as we find that we lack jurisdiction due to defects in Raymond's notice of appeal.

¶ 22 "A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal." *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011) (citing *People v. Lewis*, 234 Ill. 2d 32, 37 (2009)). Illinois Supreme Court Rule 303(b)(2) demands that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. May 30, 2008). "We lack jurisdiction to consider issues not specified in the notice of appeal." *In re Estate of York*, 2015 IL App (1st) 132830, ¶ 34 (citing *Atkinson v. Atkinson*, 87 Ill. 2d 174, 177-78 (1981)).

¶ 23 Raymond's notice of appeal is very specific in relation to the parts of the May 26, 2020, order he is appealing from. Particularly, he requests review of:

> "The May 26, 2020 Order appointing Tim Slavin as administrator in Case No. 2019 P 114, denying the Petition for Confirmation of Findings, Conclusions and Award of Special Co-Trustee in Case No. 2019 CH 57, and holding 'as a matter of law, the trustee and special co-trustee lack legal authority to bind Don, Jr., Sena and Reba's estate to any "legal ruling" by the special co-trustee in a document issued July 17, 2019.' "

¶ 24 Absent from the notice of appeal is a request to review several issues now presented by Raymond. Specifically, the arguments concerning the court's subject-matter jurisdiction, his suspension as trustee, and the demand of an accounting. The failure to file a proper notice of appeal is not remedied by arguing the issues in the briefing. *York*, 2015 IL App (1st) 132830, ¶ 39. Nonetheless, "[a]n alleged lack of subject-matter jurisdiction may be raised at any time, even on appeal by a party who has failed to include it in a notice of appeal." *Lorenz v. Siano*, 248 Ill. App. 3d 946, 949 (1993). Accordingly, we address only the issues properly preserved in Raymond's notice of appeal and the issue concerning the lower court's subject-matter jurisdiction.

¶ 25 B. Subject Matter Jurisdiction

¶ 26 "[S]ubject-matter jurisdiction refers to a tribunal's power to hear and determine cases of the general class to which the proceeding in question belongs." *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 13 (citing *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 23). This state's constitution vests circuit courts with original jurisdiction over all "justiciable matters" except when the state supreme court possesses " 'original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office.' " *Id.* (quoting Ill. Const. 1970, art. VI, § 9). Ergo, as long as the matter brought before a circuit court is justiciable and does not fall within the original and exclusive

jurisdiction of the Illinois Supreme Court, a circuit court has subject-matter jurisdiction to consider it. *Id.* (citing *McCormick v. Robertson*, 2015 IL 118230, ¶ 20). "Whether a circuit court has subject matter jurisdiction to entertain a claim presents a question of law which we review *de novo*." *McCormick*, 2015 IL 118230, ¶ 18.

¶ 27 We find Raymond's contention the court lacked subject-matter jurisdiction in the instant matter curious, as there was a petition before the court asking for confirmation of the findings of the special cotrustee. In response to this petition, Don Jr., Sena, and Reba's estate all filed pleadings with similar requests for relief asking the court to deny confirmation, find the special cotrustee provision in the trust unworkable, retain jurisdiction, and any other relief the court deemed appropriate. These issues were justiciable, and the proceeding is not the type falling within the original and exclusive jurisdiction of the Illinois Supreme Court.

¶ 28 Raymond points this court to section 201(a) of the Code which states, "The court may adjudicate any matter arising in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law." 760 ILCS 3/201(a) (West 2020). Raymond argues the opposing parties' failure to file a complaint or counterclaim requesting his removal as trustee precludes the court's action of doing so. This contention is belied by the record, as the request for any relief deemed appropriate by the court in the opposition to confirmation is sufficient to invoke jurisdiction. Even in the absence of these responsive pleadings, Raymond's proposed interpretation of the statute is an oversimplification. Section 201(a) clearly states a court's jurisdiction may be invoked "as provided by law." *Id.* Reviewing the applicable the law, section 706(a) of the Code provides that "A settlor, a co-trustee, or a qualified beneficiary may request the court to remove a trustee, *or a trustee may be removed by the court on its own initiative*." (Emphasis added.) *Id.* § 706(a). This statutory provision lays waste to Raymond's argument before this court. The lower

court suspended Raymond pending a hearing on his removal. This is an action that falls within the parameters of section 706(a) of the Code. *Id.* Accordingly, the circuit court was not lacking subject-matter jurisdiction and section 706(a) allows for the *sua sponte* suspension of Raymond as trustee.

¶ 29 C. Denial of Petition Requesting Confirmation

¶ 30 Raymond contends that the circuit court erred in denying the petition requesting confirmation of the special cotrustee's disinheritance finding. Raymond analogizes this confirmation proceeding to that of a confirmation of an arbitration award, arguing the lower court had limited discretion in denying the petition. He states that the special cotrustee's resolution of disputes are not subject to judicial review. Raymond argues only the ability of the court to deny the confirmation of the special cotrustee's findings as a matter of law. He fails to argue whether that decision is against the manifest weight of the evidence. We review questions of law *de novo*. *Gardner v. Mullins*, 234 Ill. 2d 503, 508 (2009).

¶ 31 While Raymond argues the plain language of the trust states that the special cotrustee's resolution of disputes "shall not be subject to review," once the findings of disinheritance were placed before the lower court in a request for confirmation, they were necessarily subject to review. Equity abhors forfeiture. *In re Estate of Wojtalewicz*, 93 Ill. App. 3d 1061, 1063 (1981). While *in terrorem* clauses may be valid, such clauses are so disfavored that courts strictly construe them in favor of beneficiaries to avoid forfeiture. *Id.* (citing *Oglesby v. Springfield Marine Bank*, 25 Ill. 2d 280 (1962); *Clark v. Bentley*, 398 Ill. 535 (1947)). We will not enforce an *in terrorem* clause when doing so would violate public policy or the rule of law. *Id.*

¶ 32 Essentially, Raymond wishes to have his cake and eat it too. He argues that the findings of the special cotrustee are beyond the purview of the courts, while at the same time seeking to cloak those same findings in the authority resulting from a favorable court order in the confirmation

proceedings. What Raymond contends is that the lower court's only choice was to rubber stamp the findings of the special cotrustee drawing an analogy to findings pursuant to arbitration proceedings. We reject this analogy. It goes without saying that a court of equity will not perpetuate an inequitable act. As laid out above, courts are extremely suspicious of *in terrorem* clauses and disfavor forfeiture. *Id.* We are unconvinced by Raymond's attempt to strip a court of equity of its discretion as it flies in the face of well-established jurisprudence. We will not condone this venture to place judicial authority behind the special cotrustee's findings without subjecting those findings and the underlying forfeiture clause to meaningful review.

¶ 33 Raymond also contends the circuit court was required to confirm the special cotrustee's findings due to collateral estoppel. Application of collateral estoppel is narrowly tailored to fit the precise facts and issues clearly determined in the prior judgment. *In re Estate of Ivy*, 2019 IL App (1st) 181691, ¶ 39. We will not apply the doctrine if it is not clear that the former judgment necessarily decided the factual questions at issue in the subsequent proceeding. *Id.* "Where uncertainty exists because more than one distinct factual issue was presented in the prior case, estoppel will not be applied." *Id.* ¶ 39. The party asserting the doctrine bears a heavy burden in showing with certainty that the identical and precise issue sought to be precluded in the later adjudication was decided in the previous adjudication. *Id.*

¶ 34 Collateral estoppel does not apply here. The TRO suit was narrow in its scope relating to Don Jr.'s option to buy certain trust property. The issues contested in this matter are different from those that were the focus of the TRO suit. Furthermore, absent from the August 3, 2018, order from the court presiding over the TRO suit is the statement that the special cotrustee was "validly appointed," or that she unequivocally met the qualifications of the trust. Instead, the court merely stated that "Patricia Ruhl *appears* to meet the qualifications." The court went on in its order to

explain the true scope of the proceedings: "The [c]ourt entered the TRO to extend the deadlines in the trust for [Don Jr.'s] options to purchase." Raymond has failed to carry his burden and show the identical and precise issue was decided in the previous adjudication. *Id.*

¶ 35 Even if collateral estoppel is applicable, exceptions apply where: (1) the issue was one of law and the two actions involved claims that were substantially unrelated, or (2) a new determination was warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws. *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 80 (2001). It appears either of the two exceptions are applicable in this instance.

¶ 36 Raymond also asserts that *res judicata* applies, pointing to the fact that Don Jr. and Sena were represented by the same counsel in the TRO suit. Moreover, he points to arguments made by Reba's estate in the petition to intervene. According to Raymond, the co-representation, and arguments in the petition to intervene evidence privity with Don Jr. Raymond goes on to argue that Sena and Reba's estate, although not parties to the TRO suit, are bound by the findings made therein owing to the fact that they are privies of Don Jr.

¶ 37 The doctrine of *res judicata* will bar a subsequent suit where: (1) a court of competent jurisdiction entered a final judgment on the merits in the prior case; (2) there is an identity of the causes of action in both cases; and (3) there is an identity of the parties or their privies in both cases. *A & R Janitorial v. Pepper Construction Co.*, 2018 IL 123220, ¶ 16. The doctrine is a creation of the courts to effectuate the practical necessity that once decided on the merits litigation and controversies shall remain in repose. *Ward v. Decatur Memorial Hospital*, 2019 IL 123937, ¶ 44. Generally, " '[t]he rule in Illinois is that *res judicata* extends only to the facts and conditions as they were at the time a judgment was rendered.' " *Hayashi v. Illinois Department of Financial*

& Professional Regulation, 2014 IL 116023, ¶ 46 (quoting *Northern Illinois Medical Center v. Home State Bank of Crystal Lake*, 136 Ill. App. 3d 129, 144 (1985)).

¶ 38 Raymond's contentions on this point are disingenuous at best. Initially, there is not an identity in the causes of action. The initial suit revolved around the TRO and both the trustee at the time and the court recognized that fact. Moreover, Reba's estate and Sena were not parties in the TRO action. When Reba's estate sought to intervene in the TRO action, counsel for the then trustee and now Raymond opposed intervention. Specifically, counsel argued that Reba's estate "cannot argue in good faith it has a legal interest in in [Don Jr.'s] Motion for TRO, as it pertains only to [Don Jr.'s] interests."

¶ 39 Judicial estoppel is an equitable doctrine that may be invoked at the discretion of the court. *Seymour v. Collins*, 2015 IL 118432, ¶ 36. The recognized purpose of the doctrine is to protect the integrity of the judicial process by estopping parties from "deliberately changing positions" according to the exigencies of the moment. *Id.* (quoting *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001). Generally, for the doctrine to apply, the party to be estopped must have "(1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it." *Id.* ¶ 37.

¶ 40 Raymond, as trustee, claimed *res judicata* applied in the lower court based on the TRO suit. However, the trustee's position advanced in opposition to the petition to intervene in the TRO suit is factually inconsistent with *res judicata*. Having succeeded in denying intervention claiming the scope of the TRO was narrow and only concerned Don Jr.'s interests, Raymond cannot now claim the TRO suit was all encompassing and included the interests of Sena and Reba's estate.

¶ 41 As a matter of law, the court had the discretion to deny the petition for confirmation.

¶ 42 C. Appointment of Administrator

¶ 43 Finally, Raymond argues that the circuit court erred in appointing an administrator for the Don Sr. estate. In appointing an administrator for the Don Sr. estate, the lower court cited section 6-3(b) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/6-3(b) (West 2020)) noting the Probate Act authorized the court to proceed to probate the will of Don Sr. The court further opined that the statutory section placed an affirmative duty on the court to probate the last known will of the decedent. The court rejected Raymond's claim that probate was unnecessary since the will was a pour over will, and he could simply take title of assets in the estate as trustee. The court pointed out a failure to probate the Don Sr. estate would deny Reba's estate the statutory right to renounce the will and take a marital share. See 755 ILCS 5/2-8 (2018).

¶ 44 We agree with the lower court. Section 6-3(b) of the Probate Act provides that:

> "When 30 days have elapsed since the death of the testator and no petition has been filed to admit [the] will to probate, the court may proceed to probate the will without the filing of a petition therefor, unless it appears to the court that probate thereof is unnecessary and failure to probate it will not prejudice the rights of any interested person. Such notice of the hearing on the admission of the will to probate shall be given to the persons in interest as the court directs." 755 ILCS 5/6-3(b) (West 2020).

This section places an affirmative duty on the court to probate the last known will of the decedent. *Matter of Estate of Nicola*, 275 Ill. App. 3d 497, 499 (1995) (citing *In re Estate of Maule*, 36 Ill. App. 2d 155 (1962)).

¶ 45 No petition for probate was filed within the 30 days after Don Sr.'s death. Nearly four years passed from the time Don Sr. died to when the court appointed an administrator. As the lower court

pointed out, the delay in probating this estate has led to congestion on its docket. Raymond's contention that he could simply take title as trustee obviating probate is concerning considering it was known to him that Reba's estate was attempting to take the statutorily allowed marital share.

¶ 46 Ignoring the statutory sections relied on by the lower court, Raymond argues the court acted in contravention of the Probate Act and granted Don Jr.'s deficient probate petition. That is not the case. As explained above the court had a duty to probate the estate "without the filing of a petition." 755 ILCS 5/6-3(b) (West 2020). Taking Raymond's argument at face value, even if Don Jr.'s probate petition was deficient, was the court then precluded from enforcing its statutorily proscribed duty? We think not.

¶ 47 Raymond also argues that the lower court erred by not issuing letters of administration with will annexed according to the preferences laid out in Section 9-3 of the Probate Act. (*Id.* § 9-3. He contends that by the language of the statute he is the preferred option to obtain the letters of administration. We disagree.

¶ 48 Our supreme court in *In re Estate of Abell*, 395 Ill. 337, 346, (1946), examined the predecessor to the statute at issue and stated:

> "[T]he statute neither expressly nor by implication confers an absolute right to persons within one of the eight enumerated classes to be appointed an administrator. Unsuitableness to administer may well consist in an adverse interest of some kind, or hostility to those immediately interested in the estate, whether as creditors or distributees, or even of an interest adverse to the estate itself."

¶ 49 Thus, if a preferred class member who is unsuitable to administer the estate due to a conflict of interest, adverse interest, or hostility between the preferred class member seeking to be

appointed and those immediately interested in the estate, whether as creditors or as distributees, the court has discretion to appoint a disinterested nominee. *In the Matter of the Estate of Hartman*, 65 Ill. App. 3d 380, 384 (1978).

¶ 50 There is a tremendous amount of conflict among the parties evidenced by the protracted litigation in these consolidated cases and the records therein. The lower court cast aspersions on Raymond and his administration of the trust, as well as his abilities to do so going forward. Raymond himself has expressed hostility toward the ability of Reba's estate to set aside the pour over will in order to take an allowed marital share. Raymond has gone as far as to claim that probate is unnecessary, and he can simply take title of certain real estate as trustee. All of the interested parties in these underlying suits advanced the nomination of the same disinterested nominee. Accordingly, the lower court likely saw the proliferation of litigation continuing if Raymond were granted preference in obtaining letters of administration. The lower court did not err in appointing disinterested nominee.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Henry County.

¶ 53 Affirmed.