

[Cite as *In re Estate of Carson*, 2011-Ohio-3651.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of the	:	
Estate of Elmer Carson,	:	
	:	No. 10AP-697
(Gary Carson,	:	(Prob. No. 497299)
	:	
Appellant).	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on July 26, 2011

Gary Carson, pro se.

APPEAL from the Franklin County Court of Common Pleas,
Probate Division

CONNOR, J.

{¶1} Appearing pro se, appellant, Gary Carson ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, Probate Division, removing him as the fiduciary of the estate of Elmer Carson ("the estate"). For the reasons that follow, we affirm the judgment of the probate court.

{¶2} On January 1, 1997, Elmer Carson died intestate. On August 19, 2003, appellant was appointed as the fiduciary of the estate. An inventory and a first partial account were filed during the summer of 2004. These documents indicated that the only remaining asset of the estate was real property that had been appraised at \$61,000. During each of the summers of 2005, 2006, 2007 and 2008, various status letters and

estate accounts were requested by the probate court. In response, appellant filed documents that generally indicated that no disbursements had been made of the estate assets. However, foreclosure proceedings had been initiated with respect to the real estate based upon unpaid taxes. According to documents filed in 2008 and 2009, the heirs had purportedly reached an agreement for one of them to pay the unpaid taxes and prevent the foreclosure, so long as the other heirs transferred their interests to him.

{¶3} Of relevance to this matter, on September 23, 2009, the probate court requested an account be filed on or before November 4, 2009. When appellant failed to meet that deadline, the probate court ordered appellant to either file an account by December 17, 2009 or personally appear on that date. The court issued an order continuing the hearing to January 7, 2010, and warning appellant of a potential contempt finding in the event he failed to appear for the hearing. After appellant failed to appear at the January 7, 2010 hearing, the court issued a charge of contempt and ordered appellant to appear before it on March 1, 2010 to show cause as to why he should not be punished for contempt. Appellant failed to appear on March 1, 2010, so the court issued an entry continuing the show cause hearing to April 14, 2010.

{¶4} On April 14, 2010, appellant appeared and explained the reason he failed to appear on January 7, 2010. He also requested additional time to pay the outstanding court costs and file the necessary paperwork, including the final account and certificate of transfer for the real estate in the estate. As a result, the probate court continued the show cause hearing to May 25, 2010, in order to afford appellant with the additional time he requested. The court then continued the show cause hearing to June 2, 2010.

{¶5} According to a judgment entry filed on June 3, 2010, appellant failed to appear on June 2, 2010, but his former counsel indicated that appellant was in the hospital. The entry ordered appellant to file an application for a certificate of transfer and a certificate of transfer with respect to the real estate on or before June 14, 2010. According to a judgment entry filed on June 25, 2010, appellant failed to file this paperwork by the deadline. As a result, the probate court found that appellant failed to fulfill his fiduciary duty to obey court orders despite having ten days' notice from the court, in accordance with R.C. 2109.24. The court therefore removed appellant as the fiduciary and granted a judgment for the costs in favor of the probate court. It is from this June 25, 2010 judgment entry that appellant has appealed and presents four assignments of error. Appellant's assignments of error all challenge the probate court's judgment removing him as the fiduciary. Because appellant does not present separate arguments for each assignment of error, we will address all four assignments of error together.

{¶6} R.C. 2109.24 sets forth the ways in which fiduciaries may be removed by a probate court and provides in pertinent part:

The court may remove any fiduciary, after giving the fiduciary not less than ten days' notice, for * * * neglect of duty * * * because the interest of the property, testamentary trust, or estate that the fiduciary is responsible for administering demands it, or for any other cause authorized by law.

{¶7} A probate court's decision to remove a fiduciary under R.C. 2109.24 is subject to an abuse of discretion standard of review. *In re Estate of Russolillo* (1990), 69 Ohio App.3d 448, 450. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Id.*

{¶8} In his assignments of error, appellant argues that three separate judges oversaw the administration of the estate in the proceedings before the probate court. He argues that there was a disconnect based upon these circumstances. He argues that either the prior judge should have entered judgment before leaving office, or the successor judge should have conducted a new hearing on the issue of his removal.

{¶9} According to the record before us, the probate court provided appellant with opportunities time and time again to file the necessary paperwork. It extended deadlines and granted continuances in this regard. Similarly, it afforded appellant with multiple opportunities to explain why he should not be held in contempt for failing to comply with its orders. Appellant has not provided this court with any transcripts from the hearings that occurred before the probate court. In the absence of transcripts and with nothing more than mere allegations presented by appellant, we cannot find an abuse of discretion based upon the record before us. Indeed, we will not find an abuse of discretion where it has not been demonstrated.

{¶10} As a result, we overrule appellant's four assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Probate Division.

Judgment affirmed.

BRYANT, P.J., and TYACK, J., concur.
