[Cite as *In re Estate of Jones* , 2009-Ohio-4457.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

IN THE MATTER OF THE ESTATE OF JEFFREY D. JONES.	:	CASE NO. 09CA879
	:	**Released: August 27, 2009**
	:	DECISION AND JUDGMENT ENTRY

APPEARANCES:

John W. Slagle, Dayton Ohio, for Appellant.

Jon C. Hapner, Hapner and Hapner, Hillsboro, Ohio, for Appellee.

McFarland, J.:

{¶1} Jerilyn Jones, Appellant, appeals the decision of the Adams County Probate Court denying her motion to remove Susan Bogard, Appellee, as administrator of Jeffrey Jones' estate. Though the trial court incorrectly determined that, under R.C. 2113.06, Appellee had priority of appointment as administrator, Appellant lacks standing to challenge that appointment. As such, we dismiss the appeal due to lack of standing.

I. Facts

{¶2} Jeffrey Jones, the decedent in the matter under consideration, was killed in an automobile accident. He died intestate. Appellee, his sister, applied to administer his estate. Appellee's parents and siblings waived

appointment in her favor. Appellant, the ex-wife of the decedent, objected to Appellee's appointment as administrator. The decedent and Appellant had two children as a result of their marriage. Because the two children will inherit the entirety of the estate, Appellant also applied to be the administrator. After holding a hearing on the matter, the magistrate issued a decision appointing Appellee as administrator and overruling Appellant's objections. The trial court adopted the magistrate's decision.

{¶3} Appellant appealed Appellee's appointment and filed a motion to stay the proceedings in the trial court. We dismissed that appeal for lack of a final appealable order. Appellant then filed a motion with the trial court to remove Appellee as administrator. The trial court denied that motion and the motion to stay the proceedings. Subsequent to that decision, Appellant timely filed the current appeal.

II. Assignments of Error

I. THE LOWER COURT ERRED TO THE DETRIMENT OF APPELLANT BY FAILING TO PROPERLY INTERPRET THE "SUITABILITY" FOR APPOINTMENT ISSUE PRESENTED TO IT.

II. THE LOWER COURT ERRED TO THE DETRIMENT OF APPELLANT BY FAILING TO APPLY ANY WEIGHT WHATSOEVER REGARDING THE CASE OF IN RE ESTATE OF ROBERTSON 26 Ohio App. 3d 64, 26 Ohio B. 238, 498 N.E.2d 206, 1985 OHIO APP. [sic].

III. THE LOWER COURT ERRED TO THE DETRIMENT OF APPELLANT BY FAILING TO CONSIDER THAT THE

NATURAL MOTHER OF THE ONLY HEIRS TO THIS ESTATE IS "MOST SUITABLE" THAN THE HEIR'S AUNT, THE SISTER OF THE DECEASED [sic].

IV. THE LOWER COURT ERRED TO THE DETRIMENT OF APPELLANT BY FAILING TO DETERMINE THAT AN AUNT TO THE ONLY HEIRS TO THIS ESTATE IS NOT A SUITABLE PERSON, WITHIN THE STATUTORY DEFINITION, TO ADMINISTER THIS ESTATE AND THE LOWER COURT ERRED IN FINDING THAT SHE WAS A SUITABLE PERSON.

V. THE LOWER COURT ERRED TO THE DETRIMENT OF APPELLANT BY FAILING TO CONSIDER WHATSOEVER THE TESTIMONY PRESENTED AT THE HEARING BEFORE ITS MAGISTRATE ON THE ISSUE OF SUITABILITY.

III. Legal Analysis

{¶4} Though Appellant presents five separate assignments of error, they essentially comprise one argument: the trial court erred in appointing Appellee as administrator of the decedent's estate. As such, we address the assignments of error as one.

{¶5} R.C. 2113.06 provides for the administration of the estate of a decedent who dies intestate:

{¶6} "Administration of the estate of an intestate shall be granted to persons mentioned in this section, in the following order:

{¶7} (A) To the surviving spouse of the deceased, if resident of the state;

{¶8} (B) To one of the next of kin of the deceased, resident of the state.

{¶9} If the persons entitled to administer the estate fail to take or renounce administration voluntarily, they shall be cited by the probate court for that purpose.

{¶10} If there are no persons entitled to administration, or if they are for any reason unsuitable for the discharge of the trust, or if without sufficient cause they neglect to apply within a reasonable time for the administration of the estate, their right to priority shall be lost, and the court shall commit the administration to some suitable person who is a resident of the state * * * ." R.C. 2113.06.

{¶11} The trial court interpreted R.C. 2113.06 as requiring it to appoint Appellee, the decedent's sister, as administrator. In it's judgment entry adopting the magistrate's amended decision, the trial court stated:

{¶12} "The Court finds that, according to O.R.C. 2113.06, the decedent's sister is the next of kin for the purpose of administering the estate. No probative evidence that she is unsuitable for the purpose of administering the estate has been produced."

{¶13} Appellant interprets R.C. 2113.06 differently than Appellee and the trial court. Appellant seems to argue that the trial court erred in finding Appellee next of kin under R.C. 2113.06. According to this rationale, Appellant's children are the only next of kin for purposes of

administering the estate. And, because the children are ineligible due to their minority, there is no party *entitled* to administer the estate. As such, the trial court must submit the administration to a suitable person. Accordingly, we must first address the trial court's determination that Appellee is next of kin and has priority of appointment under R.C. 2113.06.

{¶14} In *In re Golembiewski's Estate* (1946), 146 Ohio St. 551, 67 N.E.2d 328, the Supreme Court of Ohio faced a similar issue.[1] In that case, the intestate decedent's spouse was a minor. The probate court denied the administration applications of the decedent's father and the minor spouse and appointed the spouse's guardian instead. The court of appeals reversed that decision and ordered the father of the decedent, as next of kin, to be appointed administrator if he was competent.

{¶15} In affirming the court of appeal's decision, the *Golembiewski* Court stated that "the incompetency of one individual does not destroy the right of priority of other classes enumerated in the statute. The succeeding provision requires that next in priority after the surviving spouse shall be 'one of the next of kin of the deceased, resident of the county.' It is not denied that the decedent's father comes within the classification of 'next of kin'; but it is contended that under the facts in this case the interest of the

[1] The *Golembiewski* decision dealt with the interpretation of General Code Section 10509-3, predecessor section to R.C. 2113.06.

surviving spouse in the assets of the estate is greater than that of the decedent's father and that therefore the latter is entitled to no consideration. The applicable rule in this state is properly indicated in 18 Ohio Jurisprudence, 98, Section 50, as follows: 'The statute of Ohio regarding appointment is apparently mandatory and unequivocal. Whether the next of kin may have any actual interest under a will is evidently not to be considered.'" Id. at 554.

{¶16} The Tenth District Court of Appeals refined the holding of *Golembiewski* in *In re Kelly's Estate* (1956), 102 Ohio App. 518, 144 N.E.2d 130. In that case, the intestate decedent was survived by two uncles, an aunt, and others more distantly related. The uncles and aunt were the sole inheritors of the decedent's estate. A cousin challenged the trail court's decision to appoint of one of the uncles as administrator, asserting that he also qualified as next of kin. The court held that, in the context of appointing an administrator, next of kin means only those relatives who, at the time of appointment, would inherit in case of intestacy. The court reconciled its decision with the holding in *Golembiewski* with the following:

{¶17} "Counsel for the appellant relies upon the case of *In re Estate of Golembiewski* * * * which provides: 'The right of priority of such next of kin is not dependent upon the extent of his interest in the assets of the estate.'

However, we are of the opinion that the facts in the cited case are distinguishable from the facts in the case at bar in that *Golembiewski's* father, whose appointment as administrator was ordered to be considered, did have an interest in the estate because he inherited a portion of the same. The Supreme Court held that the extent of his interest made no difference, but it did not hold that if he had no interest he would be entitled to priority in the appointment. In the case at bar the appellant has no interest whatsoever in the estate and he inherits nothing. Counsel for the appellee also urge, and we think properly so, that, since the appellant has no interest in the estate whatever, he is a complete stranger and consequently has no capacity to attack the appointment * * *." Id. at 520.

{¶18} The holding in *Kelly*, that priority of appointment as next of kin requires a present interest in the estate, has been reaffirmed in subsequent cases. *In re Estate of Robertson* (1985), 26 Ohio App.3d 64, 498 N.E.2d 206, 26 O.B.R. 238, dealt with a fact pattern remarkably similar to the case sub judice. In that case, the decedent, killed in an automobile accident, was survived by four minor children and an ex-husband who was the father of the children. The appointment of the ex-husband as administrator was challenged by the decedent's brother who had received waivers in his favor from the decedent's other siblings and parents. The

court first noted that the four minor children were the only persons entitled to inherit. "Since none of the children by reason of his minority could serve as administrator, the administration of the estate should be committed to a 'suitable person,' pursuant to R.C. 2113.06." Id. at 66. In *Robertson*, the court found that the decedent's ex-spouse was such a suitable person. Thus, the court determined that, even though the minor children were unable to administer the estate, the brother of the decedent did not get priority of appointment because he would inherit nothing under the estate.

{¶19} In a fact pattern that was, once again, very similar to the case sub judice, the court in *In re Blevins v. Fueston* (June 14, 1976), 1st Dist. No. 102, also adopted this rationale. "* * * [W]e adopt the rule * * * announced in *In re Estate of Kelly*, * * *, that the term 'next of kin' as used in R. C. 2113.06 refers to those persons who are entitled to inherit all or some portion of the estate of the deceased, and that a person who is entitled to inherit nothing from the estate has no priority in appointment as administrator of the estate nor, for that matter, capacity to attack the appointment of another person. * * * The principle which lies at the foundation of the preferences in the statute is that administration should be granted to those who eventually will be entitled to the property - those who are most interested in the estate." Id. at *1. Thus, the court held that neither

the ex-spouse, who was the mother of the decedent's children, nor the brother of the decedent was entitled to priority of appointment. Further, the court determined that, though no one was entitled to priority under the statute, the appointment of the ex-spouse as a 'suitable person' was not contrary to R. C. 2113.06.

{¶20} See, also, *In re Williams' Estate* (1958), 153 N.E.2d 727, 728, 79 Ohio Law Abs. 592, quoting *Shannon v. Hendrixson* (1935), Ohio App., 32 N.E.2d 431, 20 Ohio Law Abst. 316 ("Where the priority as a matter of right * * * is exhausted for lack of eligible persons, the Probate Court in committing administration 'to some suitable person' resident in the county, is not compelled to appoint the nearest relative in the direct line of inheritance."); *In re Cassell's Estate* (1948), 83 N.E.2d 72, 76, 53 Ohio Law Abs. 65 (Where the decedent's only relatives entitled to inherit were minor grandchildren, decedent's nephew, nieces and cousins were not next of kin and not entitled to priority of appointment).

{¶21} The cases cited above are directly applicable to the case sub judice. Appellants' children are the only parties entitled to inherit the decedent's estate and, as such, are the only next of kin for purposes of R.C. 2113.06. Because neither Appellant nor Appellee are entitled to inherent anything under the estate, neither are entitled to priority of appointment.

Thus, the trial court's conclusion that Appellee had priority of appointment, as next of kin under R.C. 2113.06, was erroneous. However, because Appellant lacks standing to appeal the trial court's decision, we are unable to sustain her assignments of error and must dismiss this appeal.

{¶22} The doctrine of standing holds that only those parties who can demonstrate a present interest in the subject matter of the litigation and who have been prejudiced by the decision of the lower court possess the right to appeal. *Willoughby Hills v. C.C. Bar's Sahara* (1992), 64 Ohio St.3d 24, 26, 591 N.E.2d 1203; citing *Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.* (1942), 140 Ohio St. 160, 161, 42 N.E.2d 758. "The question of standing is whether a litigant is entitled to have a court determine the merits of the issues presented." *Ohio Contractors Association v. Bicking* (1994), 71 Ohio St.3d 318, 320, 1994-Ohio-183, 643 N.E.2d 1088.

{¶23} Here, Appellant was not entitled to challenge the trial court's decision. Under *Kelly*, because Appellant has no personal interest in the decedent's estate, she consequently has no capacity to attack Appellee's appointment as administrator. Because she inherits nothing from the estate, Appellant cannot demonstrate a present interest in the subject matter of the appeal and cannot show that she was prejudiced by the decision of the trial

court. As such, she has no right to appeal. Accordingly, we dismiss the instant appeal for lack of standing.

IV. Conclusion

{¶24} The trial court's determination that Appellee was entitled to priority of appointment under R.C. 2113.06 was incorrect. Because neither Appellee nor Appellant has an interest in the estate, neither has priority of appointment under the statute. However, because Appellant is not a beneficiary of her ex-spouse's estate, she does not have a personal stake in who is appointed administrator. Accordingly, Appellant lacks standing to challenge the trial court's decision and we dismiss the current appeal.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and that the Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Common Pleas Court, Probate Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

Harsha, J.: Concurs in Judgment and Opinion.
Abele, J.: Concurs in Judgment Only.

For the Court,

BY: _____
Judge Matthew W. McFarland

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.