

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of:
The Estate of Andre L. Sneed

Court of Appeals No. L-09-1111

Trial Court No. ES96-2586

DECISION AND JUDGMENT

Decided: December 31, 2009

* * * * *

Jessie J. Fitzgerald, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an accelerated appeal from the March 25, 2009 judgment of the Lucas County Court of Common Pleas, Probate Division, which granted the motion of Sarah McHugh, Administrator of the Estate of Andre L. Sneed, to surcharge appellant, Jessie Fitzgerald, Sr., the prior administrator of the estate, and his surety Auto-Owners Insurance Company. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} This case has a long and turbulent history. We will refer only to those facts necessary to resolve the issues on appeal. On November 12, 1996, Andre L. Sneed died

intestate. Appellant, as putative father of the decedent, opened the estate and was appointed the administrator. On September 30, 2005, in a separate heirship case, following a paternity finding in juvenile court the decedent's minor child was determined to be the decedent's heir. On January 18, 2006, following a hearing, appellant was removed as fiduciary of the estate. The court found that the minor child was the sole beneficiary of the estate. Due to the child's minor status, Attorney Sarah McHugh was appointed to serve as the administrator de bonis non. Appellant appealed this ruling. In *In the Matter of the Estate of Andre L. Sneed*, 6th Dist. No. L-06-1054, 2007-Ohio-1190, we affirmed the probate court's judgment.

{¶ 3} On July 15, 2008, the administrator of the estate filed a motion to surcharge appellant and his surety, Auto Owners Insurance Company, for amounts allegedly removed from the estate by appellant and converted for his personal use. On July 28, 2008, appellant opposed the motion. Appellant disputed any inappropriate use of the estate's assets. On August 27, 2008, a hearing was held on the motion.

{¶ 4} On March 25, 2009, the court found that appellant "did little" to administer the estate. The court noted that appellant failed to invest the funds in an interest bearing account, failed to provide income by renting the real property owned by the estate, and failed to collect and sell the estate's personal property. The court then granted judgment in favor of the administrator of the estate in the sum of \$148,029.76. The amount was derived as follows: 90 percent of the attorney fees expended by appellant as administrator, \$68,957.50; the fees incurred by the current administrator, \$38,260.51; and

90 percent of the fees incurred by the beneficiary in prosecuting her claim, \$40,811.75.

This appeal followed.

{¶ 5} Appellant, pro se, has raised the following three assignments of error for our review:

{¶ 6} "A. First Assignment of Error: Jessie J. Fitzgerald, Sr., was removed by Probate Court for failing to follow the court's order to distribute Estate proceeds to rightful heir of the decedent, Andre Sneed.

{¶ 7} "B. Second Assignment of Error: Did the trial court abuse its discretion or err when stating Fitzgerald failed to prove that he was the biological or adoptive father of Andre Sneed.

{¶ 8} "C. Third Assignment of Error: Whether Fitzgerald kept open the Estate for personal benefit in pursuing his claim to Estate assets. Did counsels represent the Estate within the bounds of the law, jurisdiction and constitution?"

{¶ 9} In appellant's first assignment of error, he disputes the trial court's determination that the decedent's child was the rightful heir to his estate. As we stated in our March 16, 2007 decision, because appellant did not appeal this finding made in the separate heirship case (case No. 2001 ADV 1925), any error in such case is not subject to review in the instant appeal. *In the Matter of the Estate of Andre L. Sneed* at ¶ 17.

Appellant's first assignment of error is not well-taken.

{¶ 10} Appellant's second assignment of error disputes the trial court's finding that appellant failed to establish that he is the biological father of the decedent. In its March

25, 2009 judgment entry, the probate court noted that appellant "failed to prove that he was the biological or adoptive father of Andre Sneed and should not have been appointed as administrator." In our March 16, 2007 decision, the court noted that the record in the probate proceedings contained no evidence of a court proceeding establishing appellant's paternity. It appears that this issue was determined in the heirship case. As referenced in appellant's first assignment of error, any determinations made in that case were not appealed to this court; thus, any arguments related thereto are not properly before us in the present appeal. Appellant's second assignment of error is not well-taken.

{¶ 11} In appellant's third and final assignment of error, it appears that appellant is arguing that the attorneys hired by him when he was the administrator of the estate failed to represent the estate "zealously within the bounds of the law." Appellant again alludes to the heirship proceedings and claims that counsel of the estate failed to properly oppose the action. Again, the determinations made in that case are not properly before this court. Regarding any other alleged instances of counsel's ineffective representation, appellant appears to make the arguments in order to divert the court's findings that he was an ineffective and improper administrator. We note that we have reviewed the March 25, 2009 judgment of the trial court and find no abuse of its discretion.¹ Appellant's third assignment of error is not well-taken.

¹Moreover, a hearing was held on the administrator's motion to surcharge appellant. Because we do not have the transcript of the hearing, we must presume the regularity of the proceedings below with respect to the trial court's determination. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199; App.R. 9(B).

{¶ 12} On consideration whereof, this court finds that substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas, Probate Division, is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
