

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN THE MATTER OF THE
ESTATE OF:
THOMAS R. NIPPER

C. A. No. 23125

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2004 ES 1007

DECISION AND JOURNAL ENTRY

Dated: December 20, 2006

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BOYLE, Judge.

{¶1} Appellant, Rose M. Ellis, appeals from the judgment of the Summit County Court of Common Pleas, Probate Division, denying her motion to remove Ronald J. Kohler as administrator of the estate of Thomas R. Nipper. We affirm.

I.

{¶2} Appellant, an elderly widow, has resided for more than 50 years on a 58 acre farm on Grove Road in Clinton, Ohio. In the year 2000, after the death of her husband, she executed and recorded a quitclaim deed, transferring the property

to the Rose M. Ellis Trust (“Trust”). Attorney Fred Deuber, now deceased, drafted the trust instrument and the deed.

{¶3} On July 12, 2002, Appellant executed an amendment to the Trust, which was prepared by Attorney Ronald Koehler. The amendment named a new successor trustee and also removed some restrictions on the transfer of the real estate in the Trust.

{¶4} Shortly thereafter, Appellant contacted Deuber, who drafted another quitclaim deed transferring the farm from the Trust to Thomas Nipper (“Decedent”), who resided across the street from Appellant’s farm. Appellant executed the deed on July 25, 2002. The deed purported to reserve a life estate for Appellant, although Decedent’s estate claims that due to a defect in the deed, no life estate was actually reserved.

{¶5} Decedent predeceased Appellant, on August 20, 2004. Decedent died intestate and was survived by his sister, two nephews, and a great nephew. Koehler was appointed administrator of the estate and also served as counsel for the estate, although he later withdrew as counsel and hired a different attorney. Koehler continues, however, to serve as administrator. An inventory of the estate, including the farm, was filed with the court. Appellant filed exceptions to the inventory, claiming that the transfer of the real estate to Decedent was a mistake resulting from undue influence and that in any case, Appellant acquired the entire title to the property because the holder of the only remainder interest predeceased

her. The parties agreed that Appellant should file a declaratory judgment action in the General Division of the Court of Common Pleas to resolve the dispute. Meanwhile, Appellant filed a motion in the Probate Division to remove Koehler as administrator of Decedent's estate pursuant to R.C. 2113.18. Appellant claimed that because Koehler drafted the amendment to Appellant's trust instrument and because Koehler could be a necessary witness in the proceedings, his position as administrator created a conflict of interest. A hearing was held before a magistrate, who denied the motion to remove Koehler from his position as administrator, and the trial judge adopted the magistrate's decision. Appellant timely appealed, asserting one assignment of error for our review.

II.

Assignment of Error

“THE PROBATE COURT ABUSED ITS DISCRETION IN ADOPTING THE MAGISTRATE’S [sic] RECOMMENDATIONS NOT TO DISQUALIFY ATTORNEY RONALD J. KOEHLER AS ADMINISTRATOR FOR THE ESTATE OF THOMAS R. NIPPER.”

{¶6} Initially, we must address Appellee's contention that Appellant lacks standing to move the trial court to remove Koehler as administrator of the estate. The trial court held that even if removal had been appropriate in this case, Appellant was a mere creditor of the Nipper estate. This Court has previously held that the creditors of a decedent's estate do not have standing to object to the appointment of an administrator. *In re Estate of Horton* (March 27, 2002), 9th

Dist. Nos. 20695, 20741, at *2. The *Horton* Court observed that an extensive statutory scheme expressly protects the rights of creditors in probate proceedings, but that nothing in the Revised Code allows creditors to file objections to the appointment of administrators. *Id.* at *3. The Court specifically noted that R.C. 2113.18 “authorizes the surviving spouse, children, or other next of kin to file a motion to remove the executor *after* appointment” but gives no such authority to creditors. *Id.* (Emphasis added.)

{¶7} We believe that Appellant is, at best, only a creditor. A creditor is one who has a claim against an estate, which has been presented to the estate and has not been rejected. R.C. 2117.06(H). A claim includes, but is not limited to, claims arising in tort or contract. R.C. 2117.06(A). Such claims must be presented in writing to the administrator or executor of the estate. R.C. 2117.06(A)(1)(a)-(c). Appellant is not a beneficiary of the estate; she is not one of Nipper’s intestate heirs. She is making a claim against the estate in the form of an undue influence action. At best, she is a creditor of the estate¹. Appellant therefore does not have standing to file a motion to remove an executor. The trial court properly denied Appellant’s motion. Appellant’s sole assignment of error is overruled.

¹ It is not clear whether Appellant’s exceptions to the inventory would constitute the presentment of claims required by R.C. 2117.06. If not, Appellant is only a *prospective* creditor and therefore a complete stranger to the action. In any case, Appellant’s status is nothing more than that of a creditor.

III

{¶8} Appellant's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas, Probate Division, is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EDNA J. BOYLE
FOR THE COURT

SLABY, P. J.
CARR, J.
CONCUR

APPEARANCES:

ARCHIE W. SKIDMORE and SPIROS VASILATOS, JR., Attorneys at Law, for Appellant.

MARK J. CAVANAUGH and MELISSA B. CARR, Attorneys at Law, for Appellee.