

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY**

ESTATE OF:

MOLLY ANN JONES

CASE NO. 2022-G-0051

Civil Appeal from the
Court of Common Pleas,
Probate Division

Trial Court No. 2022 PE 000389

OPINION

Decided: August 14, 2023

Judgment: Affirmed

James R. O’Leary, Baker & Hackenberg, Co., LPA, 77 North St. Clair Street, Suite 100, Painesville, OH 44077 (For Appellee, Estate of Molly Ann Jones).

Robin L. Stanley, Ibold & O’Brien, 401 South Street, Chardon, OH 44024 (For Appellee, Heidi O’Neill).

Kelley R. Tauring, *Nicole A. Cruz*, and *Joseph G. Stafford*, Stafford Law Co., L.P.A., North Point Tower, 1001 Lakeside Avenue, Suite 1300, Cleveland, OH 44114 (For Appellant, Jeremy Jones).

MARY JANE TRAPP, J.

{¶1} Underlying the instant appeal is the tragic and untimely passing of Molly Jones (“Mrs. Jones”) during her divorce proceedings with appellant, Jeremy J. Jones (“Mr. Jones”). Both Mr. Jones and Mrs. Jones’ mother, appellee Heidi O’Neill (“Mrs. O’Neill”), filed applications for authority to administer Mrs. Jones’ estate. After a hearing, the Geauga County Court of Common Pleas, Probate Division, denied both motions and appointed a third-party administrator, James O’Leary (“Administrator O’Leary”).

Subsequently, Mr. Jones filed a “Motion for Removal of Administrator O’Leary.” Mr. Jones appeals the trial court’s judgment entry denying that motion.

{¶2} Mr. Jones raises two assignments of error for our review, contending the trial court erred as a matter of law and abused its discretion by (1) denying his motion for removal of administrator since there was no evidence he was unsuitable to serve as the administrator of Mrs. Jones’ estate as her next of kin, and (2) terminating his presentation of evidence at the hearing and denying his request to proffer.

{¶3} After a thorough review of the record and pertinent law, we find Mr. Jones’ assignments of error to be without merit. Firstly, we cannot find the trial court abused its discretion in denying Mr. Jones’ motion to remove Administrator O’Leary. Mr. Jones did not present any testimony or evidence as to Administrator O’Leary’s unsuitability and failed to demonstrate his own suitability given the hostility between Mr. Jones and Mrs. O’Neill and their conflicting claims.

{¶4} Secondly, while we note proffers should be freely permitted outside the presence of the trier-of-fact when some or all of a witness’ direct examination is excluded, we cannot find the trial court abused its discretion in refusing Mr. Jones’ motion to orally proffer on the record. Mr. Jones, who filed the motion to remove Administrator O’Leary, informed the court at the beginning of the hearing it was not his burden to present any witnesses or evidence in support of his motion. Further, he did not challenge Mr. O’Leary’s suitability and instead argued the trial court should not have found him unsuitable to be the administrator, while simultaneously attacking Mrs. O’Neill’s claims against him. In addition, the purported proffer is disingenuous and fails to show the trial court’s denial to proffer affected a “substantial right.”

{¶5} The judgment of the Geauga County Court of Common Pleas, Probate Division, is affirmed.

Substantive and Procedural History

{¶6} Mrs. Jones passed away on July 2, 2022. Several weeks later, Mrs. O'Neill filed an application for authority to administer her estate. Mr. Jones filed his application to administer Mrs. Jones' estate shortly after. Accordingly, the trial court held a hearing to appoint an administrator for the estate.

Appointment of the Administrator

{¶7} In a September 2022 judgment entry following the hearing to appoint an administrator, the court noted Mr. Jones and Mrs. Jones were in the midst of divorce proceedings when she passed away; thus, the divorce was never finalized. In addition, Mrs. O'Neill had filed a complaint for grandparent visitation for Mr. and Mrs. Jones' minor son in the Geauga County Court of Common Pleas. Both parties discussed Mrs. Jones' assets, which included real property encumbered by a mortgage (jointly owned with Mr. Jones) and a motor vehicle with a lien, and claims against the estate, which included both Mrs. O'Neill and Mr. Jones alleging wrongful death claims against the other on behalf of Mrs. Jones for events arising from the divorce case and a promissory note from Mrs. Jones to Mrs. O'Neill for funds loaned for the divorce proceedings.

{¶8} The trial court concluded a third-party independent administrator would be appropriate under these circumstances and appointed James O'Leary as the administrator of Mrs. Jones' estate.

Motion to Remove the Administrator

{¶9} Subsequently, Mr. Jones filed a "Motion for Removal of Administrator, James O'Leary," in which he contended the trial court erroneously found he, as her next

of kin, is unsuitable to be appointed administrator of the estate without holding a hearing and issuing findings of fact pursuant to R.C. 2113.06.

{¶10} Mrs. O'Neill, in turn, filed a response, contending the trial court found there are competing interests to be administrator and a third-party is appropriate; Mr. Jones provided no reasons why the administrator should be removed; Mr. Jones had the opportunity to present testimony, evidence, and witnesses at the hearing to appoint an administrator; and Mr. Jones failed to meet his burden to show that the administrator should be removed pursuant to R.C. 2109.24.

{¶11} The trial court held a hearing, at which Mrs. O'Neill, her counsel, Mr. O'Leary, Mr. Jones, and his counsel were present. At the beginning of the hearing, the court explained, "As I recall from reviewing that hearing [to appoint an administrator], Miss O'Neill had made some allegations that Mr. Jones's actions, partly through counsel, contributed to her death, at least in Miss O'Neill's opinion. And Miss O'Neill had some substantial claims pending. The Court's feeling at the time was that rendered both Mr. Jones unsuitable because of the issues raised by Miss O'Neill, and the fact that of the divorce pending, and then Miss O'Neill was unsuitable because she had a large claim pending against the estate. And the Court elected to go with Mr. O'Leary because it's always the Court's policy when there are people who are fighting each other that have no trust for each other yet they have major interest in the Estate, that we get an independent person to solve the matter."

{¶12} Mr. Jones' counsel contended the trial court did not allow him to present necessary evidence and testimony to find Mr. Jones suitable, as the surviving spouse, to be the administrator of the estate at the prior hearing. The court reminded Mr. Jones of its finding of unsuitability due to the pending divorce proceedings at the time of Mrs.

Jones' death. Mr. Jones' counsel declined to call Mr. Jones as a witness because it was not his "burden to show that my client has priority as a matter of law." He also refused to call any witnesses, noting it was not "Mr. Jones' burden" to do so.

{¶13} The court called Mrs. O'Neill to testify. Mrs. O'Neill reiterated her allegation against Mr. Jones from the previous hearing that he contributed to Mrs. Jones' death due to the tortured divorce proceedings, her claims against Mrs. Jones' estate for, in large part, the legal fees of those proceedings, as well as the potential she will call Mr. Jones and his counsel as witnesses with respect to her claims.

{¶14} On cross-examination by Mr. Jones' counsel, Mrs. O'Neill agreed Mr. Jones and Mrs. Jones had a troubled relationship that led to the divorce case. Mr. Jones requested the court take judicial notice of a juvenile court case in which he filed for a protection order against Mrs. Jones to prevent visitation with their minor son. Mr. Jones entered the docket from that case into evidence.

{¶15} The court inquired whether there was any evidence that Mr. O'Leary is not suitable to be the administrator of Mrs. Jones' estate. Mr. Jones objected, noting that was not the issue before the court. Mr. Jones requested the opportunity to proffer on the record, outside of the court's presence, which the court "took under advisement."

{¶16} In December 2022, the court issued a judgment entry denying Mr. Jones' motion for removal of Administrator O'Leary. The court supplemented its previous judgment entry, noting:

{¶17} "When rendering its decision on September 6, 2022, the Court considered the conflicting interests between Jeremy Jones and Heidi O'Neill regarding the Claims Against the Estate, what the appropriate action might be, and who could impartially and without bias oversee the administration of the Estate. Further, due to the high conflict

divorce between Decedent and Jeremy Jones, which is now spilling into these proceedings between Jeremy Jones and Heidi O'Neill, having an independent third-party Administrator is in the best interest of the estate. Therefore, Jeremy Jones was not suitable to administer the Estate, and an independent fiduciary was warranted.”

{¶18} The court further denied Mr. Jones’ oral motions for transcripts and to proffer outside of the court’s presence.

{¶19} Mr. Jones raises two assignments of error for our review on appeal:

{¶20} “[1.] The trial court erred as a matter of law and abused its discretion in denying the appellant’s motion for removal of administrator absent any evidence that the appellant is unsuitable to serve as the administrator of his wife’s estate.

{¶21} “[2.] The trial court erred as a matter of law and abused its discretion in terminating the appellant’s presentation of evidence and denying the appellant’s request to proffer.”

Removal of Administrator

{¶22} In his first assignment of error, Mr. Jones contends the trial court erred as a matter of law and abused its discretion in denying his motion to remove Administrator O’Leary. More specifically, Mr. Jones contends a third-party administrator should not have been appointed because there was no evidence he was unsuitable to serve as the administrator.

{¶23} Probate courts are courts of limited jurisdiction and are permitted to exercise only the authority granted to them by statute and by the Ohio Constitution. *Progressive Macedonia, LLC v. Shepherd*, 11th Dist. Trumbull No. 2020-T-0036, 2021-Ohio-792, ¶ 62, citing *In re Guardianship of Spangler*, 126 Ohio St.3d 339, 2010-Ohio-2471, 933 N.E.2d 1067, ¶ 46.

{¶24} Pursuant to R.C. 2101.24(A)(1)(b), the probate court has exclusive jurisdiction to grant and revoke letters testamentary and of administration.

{¶25} R.C. 2101.24(C) further provides “[t]he probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.”

{¶26} R.C. 2101.24(C) confers broad authority to the probate court to address collateral matters. *In re Cletus P. McCauley & Mary A. McCauley Irrevocable Trust*, 5th Dist. Stark No. 2013CA00237, 2014-Ohio-3489, ¶ 43. This plenary power authorizes the probate court to exercise complete jurisdiction over the subject matter to the fullest extent necessary. *Id.*

{¶27} The removal of an administrator is within the sound discretion of the probate court and a reviewing court will not reverse the trial court’s order unless it appears that the lower court abused its discretion. *In re Estate of Meloni*, 11th Dist. Trumbull No. 2003-T-0096, 2004-Ohio-7224, ¶ 32. An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62, quoting *Black’s Law Dictionary* 11 (8th Ed.2004). “When a pure issue of law is involved in appellate review, the mere fact that the reviewing court would decide the issue differently is enough to find error.” *Id.* at ¶ 67. “By contrast, where the issue on review has been confided to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.” *Id.*

{¶28} R.C. 2109.24 authorizes a trial court to remove a fiduciary “for habitual drunkenness, neglect of duty, incompetency, or fraudulent conduct, because the interest

of the * * * estate that the fiduciary is responsible for administering demands it, or for any other cause authorized by law.”

{¶29} In addition, R.C. 2113.18(A) provides that a court may remove an executor if there are unsettled claims existing between the executor and the estate which the court believes may be the subject of controversy or litigation between the executor and the estate or other interested parties. The language of R.C. 2113.18(A) demonstrates that it is within the probate court’s discretion to determine whether an unsettled claim between parties may be the subject of controversy or litigation. *Meloni* at ¶ 39.

{¶30} While Mr. Jones contends the trial court should have removed Administrator O’Leary, he submitted no evidence at the hearing pursuant to R.C. 2109.24 as to Mr. O’Leary or his alleged unsuitability, thus, misapprehending the limited nature of a motion to remove an administrator. The purpose of a hearing pursuant to R.C. 2109.24 is to allow the fiduciary to respond to the motion for removal and to present evidence in his or her defense. *In re Estate of Hoppes*, 12th Dist. Fayette No. CA2014-04-007, 2014-Ohio-5749, ¶ 15. Mr. Jones’ sole contention is that he should have been named administrator as the next of kin pursuant to R.C. 2113.06(A)(1). That issue, however, is not properly before us. Mr. Jones is conflating the trial court’s judgment finding him unsuitable and appointing a third-party administrator with the trial court’s judgment denying his motion to remove the administrator, which is the subject—i.e., the judgment entry—he is appealing.

{¶31} As our review of the hearings reveal, at both hearings, Mr. Jones’ counsel was argumentative with the court and contentiously cross-examined Mrs. O’Neill on Mrs. Jones’ drug/medication history as well as events surrounding the divorce—highlighting Mr. Jones’ unsuitability to administer Mrs. Jones’ estate due to the conflicts of interest between himself, Mrs. O’Neill, and Mrs. Jones’ estate. At the hearing on the motion to

remove Administrator O'Leary, Mr. Jones' counsel informed the court it was not his burden to present any witnesses or evidence (nor did Mr. Jones request to put forth any evidence of his suitability to serve as administrator at the first hearing). Mr. Jones' only exhibit was the docket from the juvenile court case he filed against Mrs. Jones. Administrator O'Leary was not called as a witness. In addition, Mrs. O'Neill testified at both hearings regarding her claims against Mrs. Jones' estate due, in large part, to a promissory note from Mrs. Jones in exchange for funds to litigate her divorce with Mr. Jones.

{¶32} As we aptly stated in *Meloni*, "We can safely conclude that the probate court held the evidentiary hearing to provide appellant with a forum to lay an evidential base for his speculative claims. He failed to take advantage of the opportunity to do so. Why should he be given a second bite at the apple?" *Id.* at ¶ 40.

{¶33} In support, Mr. Jones cites *In re Guardianships of J.C., D.C., and A.C., and Estate of M.A.R.C.*, 5th Dist. Perry Nos. 18-CA-00009 et al., 2018-Ohio-4833. In that case, the mother-appellant's four children were injured in a terrible motor vehicle accident. One of the children, M.A.R.C., passed away as a result of his injuries. *Id.* at ¶ 2. Without holding a hearing, the trial court appointed the children's paternal grandmother as the administrator of the estate of M.A.R.C. and the guardian of the estates of the other three children. *Id.* at ¶ 5. In relevant part, the trial court denied the appellant's motion to vacate the appointment of the grandmother of M.A.R.C.'s estate. *Id.*

{¶34} The Fifth District determined the trial court erred by failing to conduct a hearing regarding the appointment of the administrator. *Id.* at ¶ 21. The court further held that even if it considered the trial court's judgment entry regarding the appointment of the administrator, it lacked the necessary findings to exclude the appellant from serving

as administrator of the estate because it did not include any finding that the appellant or the father were unsuitable. *Id.* Thus, the trial court failed to fulfill the requirement of R.C. 2113.06, i.e., a finding that the next of kin was not suitable to serve as administrator, before appointing another party. *Id.*

{¶35} *In re J.C.* is inapposite to the present case. A review of the trial court's September 2022 judgment entry appointing Administrator O'Leary reveals the trial court found Mrs. O'Neill and Mr. Jones presented background regarding Mrs. Jones' estate and the tumultuous divorce that was terminated upon Mrs. Jones' passing. Given the information as to Mrs. Jones' assets and the claims against the estate, the court found a third-party administrator appropriate. In the December 2022 judgment entry denying Mr. Jones' motion to remove the administrator, the trial court supplemented its previous entry, clarifying Mr. Jones was unsuitable. Of note, Mr. Jones offered no testimony or evidence of his suitability to serve as administrator. The only evidence he submitted, the juvenile court case docket, reflects how contentious and strained his relationship was with Mrs. Jones, which supports the trial court's appointment of a third-party administrator.

{¶36} Third-party administrators are often found appropriate in cases where there is conflict and hostility between the parties. For example, in *In re Estate of Fields*, 6th Dist. Wood No. WD-15-019, 2016-Ohio-5358, the decedent named her sons to act as co-executors. *Id.* at ¶ 20. Based on their demonstrated contempt for, and refusal to cooperate with, one another, the probate court removed them pursuant to its authority under R.C. 2109.24 and 2113.18. *Id.* at ¶ 20.

{¶37} Likewise, in *In re Musial*, 8th Dist. Cuyahoga No. 64825, 1993 WL 204643 (June 10, 1993), the Eighth District determined the trial court did not err in appointing a disinterested third party to administer the estate of the appellant's son after finding both

parents unsuitable due to extreme communication problems and emotional conflicts. *Id.* at *2. Either parent could prejudice the other by pursuing and presenting the wrongful death action, i.e., the only claim in the son's estate, in a biased light. *Id.*

{¶38} In a similar fashion, in *In re Estate of Price*, 2d Dist. Montgomery No. 25791, 2014-Ohio-537, the Second District determined the trial court did not abuse its discretion in finding the conflicts between the mother of her deceased son who sought appointment as administrator, the deceased's father, as well as the deceased's partner, were relevant to a finding of unsuitability. *Id.* at ¶ 15. There was evidence in the record to support the trial court's finding of conflict and hostility, and it was of sufficient magnitude to render the mother unsuitable. *Id.*

{¶39} Thus, we cannot find the trial court abused its discretion in denying Mr. Jones' motion to remove Administrator O'Leary. Mr. Jones did not present any testimony or evidence as to Mr. O'Leary's unsuitability and failed to demonstrate his own suitability given the hostility between Mr. Jones and Mrs. O'Neill and their potentially conflicting claims.

{¶40} Mr. Jones' first assignment is without merit.

Trial Court's Denial of Mr. Jones' Proffer

{¶41} In his second assignment of error, Mr. Jones contends the trial court erred as a matter of law and abused its discretion in terminating his presentation of evidence and denying his request to proffer. More specifically, Mr. Jones contends the trial court terminated his cross-examination of Mrs. O'Neill and his proffer was necessary to demonstrate his suitability to serve as the administrator as Mrs. Jones' next of kin.

{¶42} A trial court’s ruling on the exclusion of evidence is reviewed for an abuse of discretion. *DiVincenzo v. DiVincenzo*, 11th Dist. Lake No. 2021-L-093, 2022-Ohio-434, ¶ 14.

{¶43} “[A]s a general rule, a refusal to permit a proffer when direct examination evidence is excluded is error.” *In re Byerly*, 11th Dist. Portage Nos. 2001-P-0158 and 2001-P-0159, 2004-Ohio-523, ¶ 24, quoting *Fireman’s Fund Ins. Co. v. Mitchell-Peterson, Inc.*, 63 Ohio App.3d 319, 329, 578 N.E.2d 851 (12th Dist.1989). Counsel must be permitted to proffer excluded evidence since it is a prerequisite for appellate review. *Fireman’s Fund* at 329. An offer of proof serves the salutary purpose of assisting an appellate court in determining whether the lower court’s exclusion of certain evidence was prejudicial to a “substantial right” of the complaining party. *Id.* In order to establish a substantial right has been affected, one must show the alleged error affected the final determination of the case. *Campbell v. Johnson*, 87 Ohio App.3d 543, 551, 622 N.E.2d 717 (2d. Dist.1993).

{¶44} At the outset, we note proffers should be freely permitted outside the presence of the trier-of-fact when some or all of a witness’ direct examination is excluded. *Fireman’s Fund* at 329; see Evid.R. 103(A)(2).

{¶45} Notwithstanding this general rule regarding proffers, we cannot find the trial court abused its discretion in refusing Mr. Jones’ oral motion to proffer on the record. Firstly, Mr. Jones, who filed the motion to remove Administrator O’Leary, informed the court at the beginning of the hearing that it was not his burden to present any witnesses or evidence in support of his motion. Secondly, he did not challenge Mr. O’Leary’s suitability and instead argued the trial court should not have found him unsuitable. Thirdly,

the purported proffer is disingenuous, and he fails to demonstrate the trial court's denial to proffer affected a "substantial right."

{¶46} In his brief, without any specificity, Mr. Jones argues his "testimony and evidence is necessary to accurately determine whether he is unsuitable to serve as the administrator of his wife's estate." He further contends he would have shown Mrs. O'Neill's claims "were simply inaccurate, untrue, misleading, and only serve as litigation tactics intended to deprive the Appellant of his personal property" and "Mrs. O'Neill's patterns of gamesmanship and abuse of the judicial process have demonstrated that there are no grounds to preclude the Appellant from administering his wife's estate."

{¶47} We fail to see how a further cross-examination of Mrs. O'Neill would (1) demonstrate Mr. O'Leary is unsuitable to serve as the administrator and/or (2) the trial court erred by finding Mr. Jones unsuitable. Indeed, Mr. Jones' attempted proffer bolsters the trial court's determination that a third-party administrator is warranted given the conflicting interests and hostility between Mr. Jones and Mrs. O'Neill and their competing interests and claims surrounding Mrs. Jones' estate. For Mr. Jones to argue he would have testified belies the record, which revealed he declined the opportunity to do so at the beginning of the hearing, as the following colloquy demonstrates:

{¶48} The Court: "Do you have any other argument that you wish to offer? Do you want him [Mr. Jones] to testify? You're welcome to call him if you wish."

{¶49} [Mr. Jones' counsel]: "Well, your Honor, unfortunately, it's not our burden to show that my client has priority as a matter of law."

{¶50} The Court: "So you're not going to call any witnesses?"

{¶51} [Mr. Jones' counsel]: "No, your Honor. It's not our burden."

{¶52} As the Second District fittingly remarked in *Wayne Lakes v. Midwest United Industries, Inc.*, 2d Dist. Darke No. 1275, 1991 WL 96310 (May 24, 1991), “[t]he testimony and exhibits sought to be admitted by proffer were not evidentiary in nature. The calculations of [the witness] were not designed to make a fact in issue more probable than not, the test for relevance contemplated in Evid.R. 401. Rather, the calculations amounted to argumentative recounts of matters already established in the record and reserved for the court’s determination. The trial court is invested with broad discretion in determining evidentiary matters, and we will not reverse absent a clear demonstration that the trial court abused that discretion.” *Id.* at *4. See also *In re S.B.*, 2d Dist. Champaign No. 2012-CA-39, 2013-Ohio-3178, ¶ 10 (in order to establish a substantial right has been affected, the appellant must demonstrate that the alleged error affected the final determination of the case).

{¶53} Mr. Jones has failed to demonstrate the “excluded evidence” would have affected the trial court’s findings as to Administrator O’Leary’s suitability.

{¶54} Because we find the trial court did not abuse its discretion in denying Mr. Jones’ motion to proffer, Mr. Jones’ second assignment of error is without merit.

{¶55} The judgment of the Geauga County Court of Common Pleas, Probate Division, is affirmed.

JOHN J. EKLUND, P.J.,

MATT LYNCH, J.,

concur.