[Cite as *In re Estate of Shanley*, 2023-Ohio-2614.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

IN RE: THE ESTATE OF

WILLIAM J. SHANLEY, DECEASED

OPINION AND JUDGMENT ENTRY
Case No. 22 JE 0018

Civil Appeal from the
Court of Common Pleas, Probate Division of Jefferson County, Ohio
Case No. 22 ES 201

BEFORE:
Mark A. Hanni, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Edward L. Littlejohn, Jr. and *Atty. Jeffrey D. Menoski*, 325 Frank P. Layman Boulevard, Wintersville, Ohio 43953, for Appellant Jeffrey J. Shanley and

Atty. Michael D. Dortch, Kravitz, Brown & Dortch, LLC, 65 East State Street, Suite 200, Columbus, Ohio 43125 and *Atty. Jeffrey Orr Brown*, 2017 Sunset Boulevard, Steubenville, Ohio 43952, for Appellee Stacey Shanley.

Dated: July 26, 2023

HANNI, J.

{¶1} Appellant, Jeffrey J. Shanley, appeals from a Jefferson County Probate Court judgment vacating the court's previous order that had discharged Appellant as fiduciary of his father's estate and terminated the administration of that estate.

{¶2} William J. Shanley died intestate on September 27, 2021. Appellant is William's son. Appellant filed an application for authority to administer William's estate on May 10, 2022. Appellant listed himself as William's only next of kin. The probate court appointed Appellant as the administrator of William's estate (the Estate).

{¶3} Appellant filed an inventory and appraisal listing real estate valued at $214,240.00 and personal property (four motor vehicles and a trailer) valued at $38,750.00. The probate court approved the transfer of title of all property to Appellant. On July 5, 2022 the probate court approved a certificate of termination and discharged Appellant as administrator.

{¶4} On July 26, 2022 Appellee, Stacey Shanley, filed a motion to reopen the Estate and appoint a new administrator. Appellee asserted that she was William's daughter. Appellee stated that she had contacted Appellant's counsel on June 17, 2022, and advised counsel that she was William's daughter. Yet Appellant moved on with the administration of the Estate after informing Appellee he did not believe Appellee was William's biological daughter. Appellee asked the probate court to reopen the Estate based on Civ.R. 60(B)(1)(2) and (3). She claimed the Estate's assets were improperly transferred and asked the court to determine if other assets were concealed. Appellee attached to her motion: a copy of her birth certificate listing William as her father; a copy of William's obituary listing her as his daughter; and a copy of the 1993 divorce decree between William and Jodi Shanley stating that they were the natural parents of both Appellant and Appellee.

{¶5} Appellant filed a response in opposition. Appellant claimed Appellee's motion was essentially a motion to establish parentage and was therefore barred by the five-year statute of limitations that began when Appellee turned 18.

{¶6} The probate court held a hearing on Appellee's motion on August 16, 2022, where it heard arguments from both counsel. The court determined that Appellee met her burden under Civ.R. 60(B)(1) and (3). Consequently, the court vacated its July 5, 2022 judgment entry discharging Appellant as fiduciary and terminating the administration of the Estate. It also appointed a successor administrator and ordered Appellant to file an interim account.

{¶7} Appellant filed a timely notice of appeal on September 23, 2022. He now raises two assignments of error for our review.

{¶8} Before reaching the merits of this appeal, however, we must address Appellee's contention that the order appealed from is not a final appealable order.

{¶9} If an order is not a final appealable order, then an appellate court has no jurisdiction to review the matter and the appeal must be dismissed. *Davison v. Rini*, 115 Ohio App.3d 688, 692, 686 N.E.2d 278 (4th Dist.1996).

{¶10} R.C. 2505.02 sets forth five categories of final orders:

> (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
>
> (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
>
> (3) An order that vacates or sets aside a judgment or grants a new trial;
>
> (4) An order that grants or denies a provisional remedy and to which both of the following apply:
>
> (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

> (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.
>
> (5) An order that determines that an action may or may not be maintained as a class action.

{¶11} Regarding R.C. 2505.02(B)(2), a special proceeding is "an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity." R.C. 2505.02(A)(2).

{¶12} The probate court's judgment entry in this case removed Appellant as administrator of the Estate and vacated its previous judgment that had approved the inventory and appraisal and terminated administration of the Estate.

{¶13} This court has determined that an order granting or denying a motion to remove an executor of an estate is a final appealable order under R.C. 2505.02(B)(4). *In re Estate of Geanangel*, 147 Ohio App.3d 131, 137, 768 N.E.2d 1235 (7th Dist. 2002). In so finding, we relied on the Tenth District's reasoning that the removal of an executor falls within the category of provisional remedies for which no meaningful or effective remedy could be granted upon an appeal by the executor following final resolution of the estate, since there would no longer be any opportunity for the executor to undertake his duties and functions as executor. *Id*. at 137, citing *In re Estate of Nardiello*, 10th Dist. Franklin No. 01AP-281, 2001-Ohio-4080. *See also Matter of Estate of Depugh v. Depugh*, 2d Dist. Miami No. 94 CA 43, 1995 WL 136996 (March 31, 1995), *3 (Appellant would not be able to challenge her removal on appeal after approval of the final account because the issue would be moot at that point; thus, the trial court's removal of appellant as administrator affected a substantial right and was a final appealable order.)

{¶14} Thus, because the probate court's judgment removed Appellant as the administrator of the Estate, it is a final appealable order.

{¶15} Moreover, other courts have addressed the issue where the probate court granted a Civ.R. 60(B) motion to vacate an order that approved the inventory and appraisal of an estate. Although not addressing the final appealable order question, in similar cases the appellate courts addressed the merits of the appeal, thus leading to the

presumption that the order appealed from was in fact a final appealable order. *See Estate of Heffner v. Cornwall*, 3d Dist. Mercer No. 10-03-06, 2003-Ohio-6318; *In re Horton*, 9th Dist. Summit No. 19818, 2000 WL 1073011 (Aug. 2, 2000).

{¶16} Therefore, the judgment appealed from is a final appealable order. We now move on to consider the merits of the appeal.

{¶17} Appellant's first assignment of error states:

> THE PROBATE COURT ERRED BY FINDING THAT THE APPELLEE ESTABLISHED A MERITORIOUS DEFENSE.

{¶18} Appellant argues that Appellee failed to meet the "meritorious claim or defense" element required to gain relief under Civ.R. 60(B). He asserts that Appellee cannot prove that she is William's biological daughter and, therefore, she has no claim. Appellant asserts that William's name on Appellee's birth certificate, standing alone, does not establish paternity. He claims Appellee has known for years that William was not her biological father. Appellant goes on to argue that Appellee's motion to reopen the Estate is time-barred by the five-year statute of limitations set out in R.C. 3111.05 to establish paternity. Because Appellee is well past the statute of limitations, Appellant argues her Civ.R. 60(B) motion was untimely.

{¶19} The standard of review used to evaluate a trial court's decision to deny or grant a Civ.R. 60(B) motion is abuse of discretion. *Preferred Capital, Inc. v. Rock N Horse, Inc*., 9th Dist. Summit No. 21703, 2004-Ohio-2122, at ¶ 9. Abuse of discretion connotes more than an error of judgment; it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶20} The Ohio Supreme Court set out the controlling test for Civ.R. 60(B) motions in *GTE Automatic Elec., Inc. v. Arc Industries, Inc*., 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), where the court stated:

> To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a

> reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken.

Id. at paragraph two of the syllabus.

{¶21} As to the first *GTE* requirement, a party requesting Civ.R. 60(B) relief from judgment is only required to allege a meritorious defense or claim, not to prove that he will prevail on that claim or defense. *State Farm Ins. Co. v. Valentino*, 7th Dist. Mahoning No. 02-CA-119, 2003-Ohio-3487, at ¶ 18. But the movant must allege operative facts with enough specificity to allow the trial court to decide whether he or she has met that test. *Syphard v. Vrable*, 141 Ohio App.3d 460, 463, 751 N.E.2d 564 (7th Dist.2001).

{¶22} In this case, Appellee alleged operative facts that she has a potentially meritorious claim to present. Appellee asserted in her motion that she is William's daughter and, as such, is entitled to inherit as an heir under the laws of intestate succession. In support of her claim, Appellee attached copies of three documents to her motion: (1) a copy of her birth certificate naming William as her father; (2) copies of William's obituaries listing Appellee as his daughter; and (3) a copy of the 1993 divorce decree between William and Jodi Shanley, stating that they were married on November 1, 1991, and are the "natural parents" of two children, Appellee (age nine at the time) and Appellant (age eight at the time), and naming William as Appellee's and Appellant's residential parent.

{¶23} Appellant argues that Appellee's claim is time-barred by the five-year statute of limitations set out in R.C. 3111.05: "An action to determine the existence or nonexistence of the father and child relationship may not be brought later than five years after the child reaches the age of eighteen." But at this point in the litigation, we are simply to determine if Appellee has a meritorious claim to present. We are not tasked with determining whether Appellee will actually prevail on her claim, nor was Appellee required to prove that she would prevail. She simply had to allege operative facts of a meritorious claim. Thus, Appellee satisfied the first *GTE* requirement.

{¶24} The second *GTE* element requires that the moving party be entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5). The grounds for relief under Civ.R. 60(B) are: (1) mistake, inadvertence, surprise or excusable neglect; (2)

newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment.

{¶25} The trial court found Appellee was entitled to relief under Civ.R. 60(B)(1) and (3). Appellant does not assert that Appellee failed to meet this element. Given the facts of the case, it is likely that Appellant either mistakenly or inadvertently failed to inform Appellee of the administration of the Estate or that he acted with misrepresentation/misconduct in not informing the probate court of the possibility of Appellee being an heir. Thus, Appellee satisfied the second *GTE* requirement.

{¶26} As to the third *GTE* element, Appellee had to demonstrate that she timely filed her motion. When the grounds for relief in a motion to vacate are based on Civ.R. 60(B)(1), (2), or (3), the motion must not be filed more than one year after the judgment was entered. *GTE*, 47 Ohio St.2d at paragraph two of the syllabus. The trial court filed its judgment on July 5, 2022. Appellee filed her Civ.R. 60(B) motion on July 26, 2022, just 21 days later. Thus, Appellee's motion was timely and she met the third *GTE* element.

{¶27} Because Appellee satisfied each of the three *GTE* elements required for relief under Civ.R. 60(B), the trial court did not abuse its discretion in granting her motion.

{¶28} Accordingly, Appellant's first assignment of error is without merit and is overruled.

{¶29} Appellant's second assignment of error states:

> THE PROBATE COURT ERRED BY REMOVING THE RESPONDENT AS ADMINISTRATOR AND APPOINTING A SUCCESSOR ADMINISTRATOR.

{¶30} Here, Appellant contends the probate court abused its discretion by removing him as administrator of the Estate and appointing a successor administrator. He claims he did not take any actions that would warrant his removal.

{¶31} An appellate court reviews a probate court's decision to remove or not to remove the administrator of an estate for an abuse of discretion. *Estate of Millstein*, 8th Dist. Cuyahoga No. 110546, 2021-Ohio-4610, ¶ 63.

{¶32} "It is the duty of a fiduciary of an estate to serve as representative of the entire estate. Such fiduciary, in the administration of an estate, owes a duty to beneficiaries to act in a manner which protects the beneficiaries' interests." *Elam v. Hyatt Legal Services*, 44 Ohio St.3d 175, 176, 541 N.E.2d 616 (1989). Pursuant to R.C. 2109.24, the probate court may remove any fiduciary "for habitual drunkenness, neglect of duty, incompetency, or fraudulent conduct, 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."

{¶33} In addressing whether to remove Appellant as administrator of the Estate and appoint a successor administrator, the probate court stated at the hearing:

> As to the administrator, I believe that all parties will be best served by the appointment of a neutral administrator, because I believe that that [sic.] administrator can set aside - - because that individual will be neutral, will set aside any biases one way or the other, any ill feelings that one may have against the other, and be able to administer the estate the best.

(Tr. 23-24).

{¶34} The probate court did not act unreasonably, arbitrarily, or unconscionably in removing Appellant as administrator and appointing a successor. While acting in his capacity as administrator, Appellant did not disclose the possibility of Appellee being a beneficiary of the Estate to the court. And now, his interest is in conflict with Appellee's interest. Thus, the interest of the Estate, and all of its beneficiaries whomever they may be, would be best served by a neutral, third-party administrator.

{¶35} Accordingly, Appellant's second assignment of error is without merit and is overruled.

{¶36} For the reasons stated above, the trial court's judgment is hereby affirmed.

Robb, J., concurs.

D'Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Probate Division, of Jefferson County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.