

[Cite as *In re Estate of Wearn*, 2023-Ohio-3152.]

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE ESTATE OF MARTHA DEANE :
MCNEAL WEARN

[Appeal by Franklin Wearn] : No. 112146

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 7, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Probate Court Division
Case No. 2002EST68238

Appearances:

The Gareau Law Firm Co., L.P.A., and David M. Gareau,
for appellee.

Franklin Wearn, *pro se.*

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} Appellant, Franklin Wearn, appeals from decisions by the probate court denying and “refus[ing] to take up” his “various [requests and] forms of relief” during the administration of his mother’s estate. After a thorough review of the record, we affirm the probate court’s decisions.

I. Factual History and Procedural Background

{¶ 2} Martha Deane McNeal Wearn (“the decedent”) passed away on October 29, 2001. In October 2002, the decedent’s daughter, Alexandra LaFlamme (“Alexandra”), filed an Application for Citation to Produce Will, alleging that her brother, Wearn, possessed their mother’s last will and testament. The application was dismissed approximately six weeks later. In 2004, Wearn filed with the probate court a Certificate of Estate Tax.

{¶ 3} In 2018, attorney James A. Dunson, Jr. (hereinafter, “Dunson” or “administrator”) filed an application to administer the decedent’s estate. As part of the application, Dunson submitted an unexecuted copy of the decedent’s purported last will and testament, and other documentation relating to Alexandra’s 2002 application. His application provided that Alexandra and Wearn were the decedent’s next of kin, both of whom live out of state, and that Alexandra waived her right to administer the estate. On January 3, 2019, Dunson was appointed as administrator of the decedent’s estate after posting a \$760,000 bond. The record is silent regarding whether Wearn was notified of Dunson’s application prior to his appointment.

{¶ 4} In June 2019, Dunson filed a motion to obtain unclaimed funds owed to the decedent from the state of Ohio, Division of Unclaimed Funds (“the division”). Pursuant to the motion, Dunson claimed that he had submitted the appropriate documentation to the division to receive funds on behalf of the estate, but a representative of the division advised him that Wearn had contested the estate’s

claim to the funds and sought payment of the funds to him directly as an heir of the estate. Dunson attached to his motion email correspondence with the division and with Alexandra's attorney supporting that the funds should be paid directly to the estate. The probate court granted Dunson's motion, directing the division to pay the unclaimed funds to the decedent's estate and ordering that Dunson report the receipt of those funds on his estate inventory.

{¶ 5} On July 5, 2019, Wearn filed a notice of appearance, pro se. He subsequently filed a combined motion asking the probate court to (1) remove Dunson as administrator, contending that Dunson's appointment as administrator occurred without notice to the parties or a hearing, and (2) reconsider its order directing the division to release the unclaimed funds to the decedent's estate. He alleged that Dunson had acted negligently in his administration of the estate, specifically by not addressing issues pertaining to the decedent's real property, including property tax claims. According to Wearn, Dunson had acted deceptively, and his actions or inactions were detrimental to the estate beneficiaries by not protecting and preserving the estate's assets. As such, he alleged that Dunson breached his fiduciary duty and requested that he be removed as administrator. Wearn alleged that he had been handling his mother's estate, paying debts out of his own pocket, and thus, should be reimbursed. In his motion, he proposed that he would forgo reimbursement in exchange for his sister's 50 percent interest in their mother's real property.

{¶ 6} Regarding his request for reconsideration of the court's order releasing the unclaimed funds to the estate, Wearn claimed that the order occurred ex parte, without notice to the parties. Additionally, he alleged that Dunson's application to administer the estate was only precipitated by Mark Hard, an Ohio registered finder who notifies individuals of unclaimed funds and seeks a finder's fee. According to Wearn, Dunson's "contractual" relationship with the finder was detrimental to the estate, only expending unnecessary funds from the estate beneficiaries.

{¶ 7} In support of his combined motion, Wearn submitted estimates for repairs to the decedent's real property, correspondence with the division regarding Dunson's request for payment of the unclaimed funds to the estate, and email correspondence between Wearn and Dunson concerning the request and receipt of unclaimed funds, tax consequences on the decedent's real property, and a proposal to Alexandra regarding her interest in their mother's real property.

{¶ 8} The court scheduled Wearn's motion for a hearing on September 11, 2019. On July 17, 2019, Wearn sought an emergency hearing for the immediate removal of Dunson as administrator. He alleged that the estate would sustain irreparable harm if the court did not reconsider and reverse its order requiring the division to pay the funds to the estate because Dunson planned on paying himself and the finder a portion of the funds. Additionally, he claimed that the decedent's real property was in danger of foreclosure due to unpaid taxes on the property. In response to Wearn's emergency motion, the court advanced the previously

scheduled hearing to August 1, 2019. No transcript of the hearing has been provided to this court, but the record reflects that following the hearing, Dunson continued to administer the estate.

{¶ 9} During the course of the probate proceedings, Wearn filed multiple motions, often consisting of hundreds of pages, challenging every aspect of Dunson's administration of his mother's estate. Of significance, he claimed that the court deprived him of notice of hearings or deprived him of requested "in person" hearings, sought removal of Dunson on multiple occasions, disagreed with every accounting Dunson provided, demanded reimbursement for pre-administration expenses and expenses incurred as part of maintaining his mother's home, which was in foreclosure, filed a police report against Alexandra who allegedly removed items from their mother's home without notice, objected to Dunson's administrator's fees, and declined to accept distributions from the estate.

{¶ 10} On March 1, 2021, the probate court issued a comprehensive judgment entry addressing Wearn's motions and motions filed by Dunson. This judgment entry (1) clarified that hearings were conducted remotely, the parties were notified, and Wearn either failed to participate or unmute his telephone; (2) denied Dunson's request to enter into a contract with Mark Hard for a finder fee because Alexandra had previously entered into an agreement with Hard; (3) found Wearn's motion regarding real estate moot because the tax foreclosure action occurred seven months prior to Dunson's appointment as administrator; (4) denied Wearn's request to reconsider its decision ordering the unclaimed funds be paid to the estate

instead of him directly; (5) denied Wearn's various requests to remove Dunson as administrator; and (6) ordered Dunson to file the estate's final accounting within thirty days.

{¶ 11} Despite the court's order to wrap up the estate, Wearn continued filing motions, again consisting of hundreds of pages, reasserting the same claims the court had previously considered. Again, the probate court denied Wearn's request to vacate the entire administration of his mother's estate and return all distributions and payments. The court once again ordered Dunson to make all final distributions and file his final accounting to close the estate. In order to facilitate closing the estate, the probate court granted Dunson's request to deposit Wearn's entire distribution of the estate with the Cuyahoga County treasurer because Wearn previously denied acceptance of the partial distribution. On September 7, 2022, Dunson filed his final accounting, which the court approved on October 26, 2022.

II. The Appeal

{¶ 12} Wearn now appeals, raising the following assignment of error:

The Cuyahoga County Probate Court erred and abused its discretion in subjecting one party in this case (Franklin Wearn) to unrelenting abuse, hostility, prejudice, and unequal treatment, and in continuously violating that party's fundamental rights, and in extorting and defrauding that party of fees to which the Court was not entitled, and in refusing to take up basic issues submitted to it which it is obligated to take up and adjudicate as they are standard issues the adjudication of which is central to the very purpose for which the Probate Court exists.

{¶ 13} Under the umbrella of this assignment of error, Wearn raises the following eight issues:

1. Did the Probate Court abuse its discretion in subjecting appellant Franklin Wearn to unrelenting abuse, hostility, prejudice, and unequal treatment, and continuously violating his fundamental rights, as documented in Franklin Wearn's filings in the record, to wit: In allowing James Dunson to take up the administration of the Martha Wearn estate without ever notifying Martha's son, Franklin Wearn, a known heir to the estate? In denying Franklin Wearn's fundamental rights to due process and equal treatment in nearly every one of the sequence[s] of more than fifty actions by the Court? In telling the local police not to take appropriate action on a criminal investigation of the theft by Alexandra LaFlamme of items belonging to Franklin Wearn? In granting access only to James Dunson and not to Franklin Wearn to inspect the existing Ohio Estate Tax filing and related documents in this matter? In allowing James Dunson to take improper fees from the estate while refusing to provide documentation as required? In continuously engaging in unequal treatment wherein the Court consistently ruled on filings by other parties within 24 to 48 hours while denying Franklin Wearn's right to receive appropriate notice and opportunity to respond? In refusing to take up and adjudicate Franklin Wearn's filings and let them be ruled on in a timely manner, and instead leaving them ignored and unanswered as months and years went by, in direct opposition to the Court's swift rulings on other parties' filings within 24 to 48 hours? In carrying out a fraudulent scheme to generate improper fees and in extorting and defrauding Franklin Wearn out of improper fees? In using its claim of improper fees as a pretext to summarily dismiss all of Franklin Wearn's filings and ignoring the response Franklin Wearn submitted? In refusing to hold administrator James Dunson accountable for his abuses of his fiduciary position as administrator? In improperly holding a video hearing on 2021/02/25 for action on a non-existent "Motion To Dismiss" and denying Franklin Wearn access, and then using that hearing to issue a Judgment Entry ruling against Franklin Wearn? In repeatedly denying Franklin Wearn's requests for a full in-person hearing before the Court? In refusing to take up basic issues presented by Franklin Wearn over the course of the estate's administration? In refusing to correct its errors at every step of the way?

2. Did the Probate Court abuse its discretion in denying Franklin Wearn's request to have access to inspect the existing Ohio Estate Tax filing and related documents in this matter?

3. Did the Probate Court abuse its discretion in interfering and suppressing a local police criminal investigation, as documented in Franklin Wearn's filings in the record?

4. Did the Probate Court abuse its discretion in extorting and defrauding Franklin Wearn out of improper fees, as documented in Franklin Wearn's filings in the record?

5. Did the Probate Court abuse its discretion in refusing to grant Franklin Wearn's requests for a full in-person hearing, consistent with his Constitutional rights?

6. Did the Probate Court abuse its discretion in refusing to take up the issue of Franklin Wearn's compensation from the estate for work he did and expenses he paid on behalf of the estate, after having instructed the heirs to send documentation to the administrator to present to the Court, thereby denying Franklin Wearn his rightful compensation from the estate?

7. Did the Probate Court abuse its discretion in transferring Franklin Wearn's share of the estate to the County Treasurer's "unclaimed funds," and in altering his name to create an additional barrier against receiving what he is owed?

8. Given the totality of the Probate Court's abuses and its refusal to comply with basic principles of due process, equal treatment, fairness, and ethics, is it realistic for the Court of Appeals to merely remand this matter to the Probate Court and expect it to render justice, or should not the Court of Appeals instead issue express orders to the Probate Court for correcting its errors, such as ordering the return of fees taken by James Dunson and the return of estate funds distributed to Alexandra LaFlamme, ordering reversal of improper Judgment Entries by the Court, and awarding to Franklin Wearn the amount of his requested compensation and a full refund of his improperly extorted filing fees?

{¶ 14} In support of the issues raised, he cites to only two legal authorities — the Ohio Code of Judicial Conduct and R.C. 2101.24 (jurisdiction of the probate court).

{¶ 15} To the extent that Wearn claims that the probate court violated or failed to adhere to the canons of judicial conduct, this court cannot offer him any relief. This court has no authority to enforce the code of judicial conduct — that is

exclusively the province of the Ohio Supreme Court. Section 5(C), Article IV, Ohio Constitution; R.C. 2701.03; *see also In re T.D.J.*, 8th Dist. Cuyahoga No. 100972, 2014-Ohio-5684, ¶ 6. “[A] violation of the Judicial Code does not permit this court to reverse the trial court’s adjudication determination * * * any allegation that the trial judge violated the Code of Judicial Conduct * * * [is] not properly brought before the court of appeals.” *In re J.J.M.*, 7th Dist. Harrison No. 12 HA 2, 2012-Ohio-5605, ¶ 23, citing *Wilburn v. Wilburn*, 169 Ohio App.3d 415, 2006-Ohio-5820, 863 N.E.2d 204, ¶ 10 (9th Dist.). Our review of the record reveals that Wearn never attempted to disqualify the probate judge with the Ohio Supreme Court from presiding over the proceedings. Accordingly, any argument challenging the probate court’s alleged abuse, prejudice, bias or hostility toward Wearn, dereliction of its duties, fraudulent conduct, or unfair and unequal treatment, is beyond this court’s jurisdiction.

{¶ 16} Additionally, Wearn has not alleged that he sought relief from this court by filing any type of original action, i.e. writs of procedendo, mandamus, or prohibition, which could have compelled or prohibited the probate court in its administration of this matter. *See* R.C. Chapter 2731 or Article IV, Section 3(B) of the Ohio Constitution. A majority of the allegations Wearn makes and the relief he now requests could have been addressed by this court in a special proceeding. For example, Wearn contends that the probate court deprived him of due process and access to the court by failing to schedule hearings or denying him access to video hearings, failed to timely rule on motions, and deprived him of opportunities to

review documents filed in this matter. Wearn could have raised these issues in an original action with this court.

{¶ 17} Wearn also challenges the trial court's denial of his motion to remove Dunson as administrator of the estate. The trial court denied his motion on March 1, 2021. This court cannot afford him relief under this argument because it was arguably a final appealable order at that time. *See, e.g., In re Estate of Shanley*, 7th Dist. Jefferson No. 22 JE 0018, 2023-Ohio-2614; *North v. Smith*, 73 Ohio St. 247, 249, 76 N.E. 619 (1906). (An order removing or refusing to remove a fiduciary is a final appealable order.)

{¶ 18} Accordingly, this court finds that Wearn did not avail himself of the process of addressing allegations of judicial bias as set forth in R.C. 2701.03(A), seeking a special remedy under either R.C. Chapter 2731 or Article IV, Section 3(B) of the Ohio Constitution, or initiating procedural remedies that would have allowed him to timely challenge the probate court's decisions.¹

¹ Wearn claimed in his motion to remove Dunson as administrator that he did not receive notice of Dunson's application to administer the estate or that a hearing was actually conducted prior to Dunson's appointment. Our review of the record reveals that Wearn is correct. R.C. 2113.07 provides that before being appointed administrator of an estate, the person shall file an application that includes the names of the next of kin and their addresses. Unless a person who has priority to administer the estate waives their right to administer the estate, the applicant shall serve notice to those persons with priority. *Id.* Although Dunson filed a waiver of administration signed by Alexandra, he did not file a waiver from Wearn. Moreover, the record does not reflect that a hearing notice on Dunson's application was sent to Wearn. Nevertheless, because Wearn could have appealed the trial court's denial of his motion to remove Dunson, he has now waived this issue in this appeal.

{¶ 19} Moreover, Wearn’s appeal to this court is deficient because he fails to cite to any relevant legal authority in support of his contention that the probate court disregarded relevant law, abused its discretion when it denied his various requests for relief, or failed to adequately consider each issue raised.

{¶ 20} App.R. 16(A)(7) requires an appellant to include within his brief “[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.” *Walsh v. Walsh*, 8th Dist. Cuyahoga No. 112341, 2023-Ohio-1675, ¶ 9-11 citing *Giannini v. Maston*, 7th Dist. Mahoning No. 02 CA 107, 2003-Ohio-1237, ¶ 9 (assignment of error that attempted to incorporate unrelated issues and cited irrelevant authority failed to comply with App.R. 16(A)).

{¶ 21} According to App.R. 12(A)(2), an appellate court may decline to address an assignment of error if an appellant fails to cite any legal authority to support his argument. *Walsh at id.*, citing *Thornhill v. Thornhill*, 8th Dist. Cuyahoga No. 92913, 2009-Ohio-5569, ¶ 11 (court declined to address assignments of error when appellant failed to cite any supporting case law or statute); *Capital One Bank USA, N.A. v. DeRisse*, 7th Dist. Mahoning No. 14 MA 75, 2016-Ohio-648, ¶ 10 (the absence of relevant Ohio case law was grounds to disregard assignment of error).

{¶ 22} “Appellate courts are not advocates.” *Walsh at ¶ 10*, quoting *Taylor-Stephens v. Rite Aid of Ohio*, 8th Dist. Cuyahoga No. 106324, 2018-Ohio-4714, ¶ 121.

The appellant, rather than the appellate court, bears the burden to construct the necessary legal arguments that support the designated assignments of error. *Id.*, citing *Doe v. Cuyahoga Cty. Community College*, 8th Dist. Cuyahoga No. 110590, 2022-Ohio-527, ¶ 26, citing *Taylor-Stephens*. Further, “[p]ro se litigants are presumed to have knowledge of the law and legal procedures, and are held to the same standard as litigants who are represented by counsel.” *Saeed v. Greater Cleveland Regional Transit Auth.*, 8th Dist. Cuyahoga No. 104617, 2017-Ohio-935, ¶ 7, citing *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173, ¶ 22.

{¶ 23} Based on the foregoing, this court could summarily overrule Wearn’s assignment of error and affirm the probate court’s judgment because he does not support his other arguments with any relevant legal authority as required under App.R. 12 and 16. Despite these deficiencies, we will address the arguments that are timely and properly before this court.

A. Request for Reimbursement

{¶ 24} Wearn claims that the probate court failed to consider his request for reimbursement of expenses that he incurred in the management of his mother’s affairs prior to and after Dunson’s appointment.

{¶ 25} The record reveals that in emails exchanged between the parties, Dunson advised Wearn to submit documentation supporting his request for reimbursement from the estate. On November 5, 2020, Wearn submitted a letter requesting “reimbursement for compensation” in the amount of “\$512,888.64 plus

interest,” for managing his mother’s estate following her death. In support, he submitted a letter dated July 22, 2002 from Alexandra waiving her right to be executor of their mother’s estate, and an itemization of his time and expenses with supporting documentation and letters sent to Alexandra apprising her of the expenses. Wearn submitted to Dunson additional requests dated January 10, 2021 (requesting \$17,150) and February 21, 2021 (requesting \$18,500). On February 25, 2021, Wearn submitted a revised letter seeking reimbursement in the amount of \$523,138.54. In support he attached the same July 2002 letter from Alexandra, itemization of time and expenses, and supporting documentation.

{¶ 26} In an email dated March 15, 2021, Dunson advised Wearn that “[a]t the hearing on February 25, 2021, the Magistrate instructed me not to submit a request for reimbursement from either heir of the estate.” (Wearn pleading dated August 2, 2022, p. 199).² In his “Comprehensive Brief” filed with the probate court on August 15, 2022, Wearn questioned Dunson’s statement, contending that it was contrary to the magistrate’s prior statement made at a hearing in October 2019, when the magistrate instructed the parties to submit reimbursements for pre-administration expenses. On appeal, Wearn contends that the probate court failed to consider his reimbursement requests, and thus the administration of the estate is incomplete.

² A review of the record reveals that Wearn was notified of this hearing, and based on the emails, Wearn was apprised of the court’s instruction.

{¶ 27} Based on the record before this court, Dunson did present Wearn's reimbursement request to the probate court for consideration, but was advised not to submit any reimbursement requests from either heir. This court is unable to determine whether this instruction from the magistrate is contrary to a prior instruction because no transcript of any proceedings have been provided to this court. "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because the appellant bears the burden of showing error by reference to matters in the record." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). When Wearn filed his notice of appeal, praecipe, and docketing statement, he requested an App.R. 9(A) record, acknowledging that no transcript would be prepared in his appeal. Instead, he noted that he would file a statement of the evidence or proceedings under App.R. 9(C). When Wearn did not file an App.R. 9(C) statement, this court converted the record to an App.R. 9(A) record. Accordingly, without a statement of the evidence or transcript of the proceedings this court is unable to evaluate the allegations Wearn makes, resolve the magistrate's purported reconsideration, or determine whether the probate court's justification to decline reimbursement requests was an abuse of discretion.

{¶ 28} If Wearn believed that either Dunson or the court were ignoring his requests for reimbursement, he could have filed a formal claim against the estate pursuant to R.C. 2117.06 or sought a special remedy with this court. Accordingly, we find no merit to Wearn's claim that the probate court failed to consider his reimbursement request.

B. Distribution to Cuyahoga County Treasurer

{¶ 29} Next, Wearn claims that the probate court acted maliciously by transferring his distribution from the estate to the Cuyahoga County Division of Unclaimed Funds. He supports this assertion by stating that “he was not declining to receive his distribution * * * but did not want to be shortchanged due to the many unresolved issues in the estate.” (Wearn’s appellate brief, page 18.)

{¶ 30} The record demonstrates that in June 2022, Dunson filed a motion with the court seeking to deposit Wearn’s final distribution from the estate with the Cuyahoga County treasurer because Wearn (1) failed to cash the partial distribution check that was issued in July 2021, and (2) failed to provide instruction on how the final distribution should be paid to him because of the uncashed check in 2021. Wearn opposed Dunson’s request with a 448-page opposition contending that unresolved issues remained with his mother’s estate, and thus the estate was not fully administered or ready for closure. Specifically, Wearn raised the same issues as he previously raised, i.e. his claims for reimbursement from the estate remained unresolved, and uncollected items existed that should have been made part of the estate. The probate court granted Dunson’s request, ordering him to deposit Wearn’s full distribution with the Cuyahoga County Treasurer’s division of unclaimed funds.

{¶ 31} We find no error. R.C. 2113.64 permits the probate court to order any money that remains unclaimed by heirs to be deposited with the county treasury prior to filing a final account. Because Wearn did not accept the July 2021 partial

distribution, and Dunson was prepared to submit his final accounting and close the estate, the probate court did not commit error, let alone act “maliciously,” in ordering the unclaimed funds be deposited pursuant to R.C. 2113.64.

{¶ 32} Wearn also alleges that the court “improperly altered the name under which his share would be held.” (Wearn’s appellate brief, page 18.) The record provides that a notice from the county’s division of unclaimed funds was filed on September 7, 2022, acknowledging receipt of “unclaimed funds due to: Franklin Wearn III in the amount of \$251,973.57.”

{¶ 33} Wearn does not identify how the probate court improperly altered his name when it ordered the deposit of funds or why it is detrimental to his ability to claim the funds. In its August 8, 2022 judgment entry granting Dunson’s request, the court identified Wearn as “Franklin Wearn III.” The record reflects that at no time prior to Dunson making the actual deposit with the county did Wearn file a motion or notice to correct the order to reflect that the deposit should be made in any other name.

{¶ 34} Although this court recognizes that Wearn has identified himself as “Franklin Wearn” throughout the proceedings, the unexecuted copy of the decedent’s last will and testament identified Wearn as “Franklin Stafford Wearn, III.” Moreover, the Surviving Spouse, Next of Kin and Legatees and Devisees form (Probate Form 1.0) filed with Dunson’s application to administer identifies Wearn in the same manner as his mother identified him in her purported will — Franklin

Stafford Wearn, III. Accordingly, we find no error in the probate court's identification of Wearn when it ordered the deposit of funds.

III. Conclusion

{¶ 35} Based on the foregoing, we find no error in the probate court's oversight of Dunson's administration of the decedent's estate. Wearn's assignment of error is overruled.

{¶ 36} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
SEAN C. GALLAGHER, J., CONCUR