

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

IN RE:	:	PER CURIAM OPINION
THE ESTATE OF	:	
RICK FRANK ELERSIC	:	CASE NO. 2008-L-181
	:	
	:	
	:	

Civil Appeal from the Lake County Court of Common Pleas, Probate Division, Case No. 08 ES 0384.

Judgment: Affirmed.

Jeffrey B. Elersic, pro se, 5807 South Ridge, West, Harpersfield, OH 44041 (Appellant).

Deborah M. Elersic, pro se, 13092 Girdled Road, Painesville, OH 44077 (Appellee).

PER CURIAM

{¶1} The instant pro se appeal, filed by appellant, Jeffery B. Elersic, was taken from the final judgment of the Lake County Court of Common Pleas, Probate Division, overruling a document captioned “Public Corruption and Motion to Correct Inventory.” For the reasons herein, we affirm.

{¶2} The decedent, Rick Frank Elersic, brother of appellant, passed away on April 13, 2008. On June 25, 2008, appellant filed an application to administer his brother’s estate. Included within the application was a claim against the estate for

\$1,000,000. Appellant subsequently filed a “Notice of Claim on Estate” in which he set forth the grounds for his proposed \$1,000,000 claim.

{¶3} Appellant’s monetary claim rested upon certain real estate located in Pennsylvania which, he alleged, was formerly owned by his deceased mother, Gloria June Elersic, but was, somehow, illicitly transferred to the decedent and/or his wife, Deborah Elersic. Specifically, appellant alleged that the decedent and/or Deborah had “adversely possessed” the property via a forged “Land Installment Contract.” Through this transaction and the “alleged interloping of Deeds[,]” appellant maintained, as a true heir to his mother’s estate, the decedent’s estate owed him \$1,000,000.

{¶4} Appellant provided the trial court with a large, bound attachment to his motion, which primarily consisted of documents relating to the 1994 probate estate of his mother in Pennsylvania. The documents indicated that the estate was insolvent at the time of Gloria’s death, and that two parcels of Pennsylvania real property were transferred to two of Gloria’s children prior to her death.

{¶5} Coincidentally, appellant’s motion and notice of claim set forth additional bizarre and disconcerting allegations completely unrelated to the administration of the decedent’s estate and his monetary claim. Referring to himself regularly as “Ohio State Notary Public Servant Jeffery B. Elersic,” appellant asserted: (1) his belief that Frank James Elersic, a separate brother who passed away in 2001, had been a victim of “murdrum,” i.e., he was secretly killed; (2) “[p]ursuant to [his] voluntary[,] courtesy investigation” appellant claimed he discovered a conspiracy involving “political people,” including Judge Klammer, those who “operate under the color of law,” including the Lake County Sheriff’s Department, and various members of the Elersic family, including

Deborah and his brother Leo, to cover up the homicide; and (3) the alleged “cover up” occurred so the conspirators could “pirate the Estate of Frank James Elersic.”

{¶6} Appellant further communicated his concerns regarding what he felt were the “suspicious circumstances” surrounding the death of the decedent. In appellant’s view, the alleged plot to kill and/or deprive the rightful heirs of the “Elersic family estate” was still active and continuing. As a basis for his theory, he alleged there was some confusion relating to the cause of the decedent’s death. However, appellant was evidently unable to conduct his own investigation because Deborah, the Painesville Police Department, and Lake County Sheriff Department prevented him from viewing the decedent’s body both at the morgue and the funeral parlor. He asserted he possessed “actual knowledge” of this particular conspiracy.

{¶7} Appellant also took aim at Deborah’s attorneys. Appellant first claimed that Deborah’s counsel accused him of a “frivolous claim.” Although appellant did not elaborate on the nature of the accusation, he described it as “perjury”, “repulsive”, and “defamatory to the integrity of a[n] Ohio State Notary Public Servant.” Appellant further alleged counsel had previously refused him discovery of “material evidence, administrative evidence[,] and scientific evidence” relating to, inter alia, the estate of his brother, Frank James Elersic. Finally, appellant asserted counsel had been engaging in the “concealment of Deborah M. Elersic’s criminal activities *** since September 28, 1992 ***.” Appellant demanded that counsel be “put under oath for questioning” for their attempts to “deliberately corrupt court processes.” To this end, and in interest of formally addressing the other “evidence” which led him to the foregoing allegations, he demanded an evidentiary hearing, before a jury, “Pursuant to Civ.R. 56(C).”

{¶8} The trial court originally scheduled a hearing on appellant's application for August 27, 2008. However, upon motion, the court continued the matter and scheduled the hearing for October 2, 2008. The hearing proceeded on that date, but was not recorded. However, the trial court, in its judgment entry, highlighted the salient issues and the evidence which was taken. The entry pointed out that Deborah Elersic, the decedent's wife, testified the Estate of Rick Frank Elersic had no probate assets to administer. Deborah further indicated that even though she did not wish to be administrator, if any probate assets were discovered, she would prefer to serve as administrator rather than have appellant appointed. In its judgment entry, the court pointed out that appellant's application for authority to administer the estate did not list any assets belonging to the decedent's estate. The entry further reflected that the theme of the evidence appellant sought to admit followed the same desultory course as the allegations in his motion.

{¶9} After the hearing, on October 3, 2008, the trial court denied appellant's motion to administer. The court first pointed out that the Lake County Probate Court is a tribunal of limited, statutory jurisdiction and, as such, it did not have jurisdiction over Pennsylvania probate estates, whether open or closed, nor questions relating to the status of title of Pennsylvania real property. Further, because appellant's \$1,000,000 claim was grounded solely on claims against the alleged Pennsylvania assets, the court concluded it also lacked jurisdiction over this issue. The court determined appellant was unsuitable for the appointment as he cannot be considered "reasonably disinterested and in a position to reasonably fulfill the obligations of a fiduciary." The court reasoned that appellant's claim against the estate created a financial conflict and,

moreover, profound distrust and hostility exists between appellant and Deborah. The court dismissed the matter concluding “[s]hould probate assets later be discovered, the Court will appoint a disinterested third party to serve as administrator.” Appellant did not appeal this determination.

{¶10} Completely unsatisfied with the probate court’s ruling, appellant filed, on October 16, 2008, a document captioned “Public Corruption and Motion to Correct Inventory.” Even though the pleading was not captioned properly, there was never an inventory filed in the estate, *and* the case had been closed by virtue of the court’s October 3, 2008 judgment entry, the court nevertheless treated the document as a motion to reopen the estate.

{¶11} The document was similar in tone to appellant’s application for authority to administer and contained many of the same disconnected and unsubstantiated allegations. Included in this pleading, however, were both new requests and new allegations; to wit, appellant sought copies of the video or audio tapes of the October 2, 2008 hearing and moved the judge, who he characterized as a “fool,” to recuse himself. He also claimed that he had not promptly received certain mailings from the court and was therefore a victim of mail tampering, a “Federal Offense to the best of [his] knowledge.” Appellant additionally alleged that his brother Leo Elersic was assisting Deborah in covering up the alleged fraud she committed against the estate of the brothers’ mother and deceased brother, Frank.

{¶12} Appellant concluded by admitting he “has been relentless in the last eight years” in his “quest for truth, Justice[,] and Peace” as well as his quest “to expose the Chained Conspiracy of Public Corruption in which [sic] involves Fraud, Forgery, Perjury

of the June G. Elersic estate, Frank James Elersic estate, Rick Frank Elersic estate, Murdrum of Frank James Elersic, and the suspicious death of [his] beloved brother Rick Frank Elersic ***.” He conceded that he now fears for his life, but will nevertheless “continue [his] Quest.”

{¶13} On October 28, 2008, Deborah moved the court to strike appellant’s motion; moved the court for attorney fees; and sought an order declaring appellant a vexatious litigator.

{¶14} On November 21, 2008, the trial court issued its judgment, ruling appellant was not entitled to correct an inventory that did not exist. The court observed that it had informed appellant on the date of the October 2, 2008 hearing that no tapes of the proceedings were taken and thus no transcripts were available. The court determined that an award of attorney fees was not appropriate “at this time.” However, the court underscored it was “becoming irritated by Mr. Elersic’s abrasive, meritless, and defamatory conduct and may consider sanctions or contempt against Mr. Elersic for future meritless filings.” Regardless of this caveat, the court ruled that it could not declare appellant a vexatious litigator in the underlying proceedings because a separate, civil complaint is a necessary precondition for such a declaration.

{¶15} Finally, the court emphasized, again, it did not have jurisdiction to consider many of appellant’s allegations. The court observed: “Regardless of the earnestness of Mr. Elersic’s feelings surrounding his mother’s estate, the real property in Pennsylvania, *** and Mr. Elersic’s obsession with investigating his brothers’ deaths, the Lake County Probate Court simply has no jurisdiction to hear those matters.”

{¶16} Appellant appeals and asserts five assignments of error. His first assigned error reads:

{¶17} “The probate court erred to the prejudice of the appellant-claimant in denying or failure to respond to the motion for a evidentiary hearing, prior to the appointment of the administrator of decedents estate.” (Sic.)

{¶18} Appellant’s argument asserts he was not permitted to defend the alleged accusation that his claims were frivolous. He further contends he was unable to present the “best evidence” that the decedent “owned real property in Lake County, Ohio ***.” There are several problems with appellant’s position.

{¶19} First, appellant wrongly asserts that he did not receive a hearing. The record indicates a hearing took place on October 2, 2008 pursuant to appellant’s Application for Authority to Administer Estate. The court also addressed appellant’s \$1,000,000 claim against the decedent’s estate during that hearing. Appellant’s application and his claim were denied and, in fact, the case was closed without an appointment of an administrator. If appellant wished to take issue with the matters litigated, including his irritation with the alleged accusation that his claims were frivolous, he was required to file a notice of appeal within 30 days of that judgment. He did not and is now barred from raising this issue in the current matter.

{¶20} Further, nothing in appellant’s “Public Corruption and Motion to Correct Inventory” references the Lake County property to which he refers. The only property discussed in that document is that located in Pennsylvania, matters over which the trial court previously ruled it did not have jurisdiction.

{¶21} Finally, appellant indicates the record shows the decedent owned property in Lake County; however, he fails to provide a citation to the record as to where this court might find such evidence, in violation of App.R.16(A)(7). In any event, appellant's blank allegation that the decedent "owned" property in Lake County does not indicate the court erred in overruling his motion(s). Mere documentation of ownership proves little; after all, a party may hold title to real property jointly with another with a right of survivorship. Under such circumstances, the property will pass without probate to the surviving owner. Appellant's argument is therefore unsubstantiated.

{¶22} Appellant's first assignment of error lacks merit.

{¶23} His second assignment of error provides:

{¶24} "The probate court erred to the prejudice of the decedents family of falsified probate court records claiming the Appellee is a biological sibling and spouse of decedent with no explanation of the fraudulent court records. The missing deed, mortgage fraud, the murdrum, is a predicate act." (Sic.)

{¶25} Although appellant's assigned error, as styled, makes no sense, his argument appears to allege a deed in his possession establishes Deborah and/or the trial court are somehow guilty of engaging in a pattern of corrupt activity and tampering with records. Appellant provides no intelligible, supportive reasoning for this claim and there is nothing in the record to support his allegations.

{¶26} Appellant's second assignment of error is overruled.

{¶27} His third assigned error reads:

{¶28} "The probate court erred to the prejudice of the estate of decedent, lost will is claimed by appellee. Real property was concealed by appellee and attorney.

Lake County, Ohio resident since 11/6/89. The probate court has jurisdiction to probate and closed the case under false presumption and causing unjustifiable costs to appellant-claimant. Prejudicial denial to correct.” (Sic.)

{¶29} Appellant’s third assignment of error indicates the trial court erred in overruling his latest motion because he possessed evidence that the decedent purchased the residence “he died in” prior to his marriage to Deborah. He seems to argue, consequently, that this property should have been a probate asset.

{¶30} Once again, it is unclear what property to which appellant refers. He merely asserts the decedent was a Lake County resident since 1989. However, the only real property appellant discusses under this assignment of error (and the pleading which was the basis of the judgment on appeal) is real property in Pennsylvania. The probate court has repeatedly stated it does not have jurisdiction over Pennsylvania property. Further, nothing in the record indicates that, as of the November 21, 2008 judgment entry, any probate assets had been discovered. Without some objective, record evidence to the contrary, the trial court’s determination must be affirmed.

{¶31} Appellant’s third assignment of error is overruled.

{¶32} Appellant’s fourth assignment of error provides:

{¶33} “The probate court erred with prejudice in denying a continuance to respond to the vexatious litigator filing by appellee’s attorney. Pursuant to the fact appellant only received one continuance granted and showed just cause to respond to frivolous claim of appellee’s attorney.” (Sic.)

{¶34} An appellate court will not reverse a trial court's decision denying a motion for continuance unless the trial court abuses its discretion. *In re Kangas*, 11th Dist. No.

2006-A-0010, 2006-Ohio-3433, at ¶24. An abuse of discretion indicates more than an error of law or judgment; rather, a court abuses its discretion when its judgment can be characterized as unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶35} Here, the trial court overruled appellee's motion to have appellant declared a vexatious litigator. Accordingly, the court did not act arbitrarily or unreasonably in denying appellant's motion for continuance; i.e., the act of denying appellee's motion rendered the need for additional time to respond moot.

{¶36} Appellant's fourth assignment of error is overruled.

{¶37} Appellant's final assignment of error asserts:

{¶38} "The probate courts continuous prejudicial error of granting three summary judgments, without the justification and/or agreement of the biological family. The only law applying to this repugnant behavior in the Ohio Revised Code, Title 29, 2929.32 Appellee is the known benefactor of fraud on the court, Appellant and biological members of decedent are seeking the truth of decedents estate, and a investigation pending on deceased suspicious drug overdose and the summary judgments stonewalled our actions for closure of the decedents estate." (Sic.)

{¶39} We first point out that the probate court, at no point, awarded appellee summary judgment. The probate court overruled appellant's application for appointment to administrate and subsequently dismissed the matter. Appellant did not appeal that final judgment. As the time for appeal of the issues addressed in that judgment has passed, they have been waived. Next, the probate court considered and overruled appellant's document captioned "Public Corruption and Motion to Correct

Inventory,” which it treated as a “motion to reopen the estate.” It is that judgment entry which is the subject of the instant appeal. However, at no point was a Civ.R. 56 motion filed or considered in the lower court.

{¶40} Regardless, the record supports the trial court’s November 21, 2008 judgment entry. Appellant submitted no credible evidence that Deborah, the court, the Lake County Sheriff, nor any other individuals, were engaged in any conspiracies, attempts to defraud the decedent’s estate, nor any other criminal conduct. Further, appellant’s unsupported theories relating to the circumstances surrounding the decedent’s death (as well as the death of his other brother in 2001 and the probate of his mother’s estate in Pennsylvania in 1994) do not bear on the issue that was before the probate court, viz., whether any probate assets have been discovered so as to reopen the case. Because appellant has failed to offer any plausible evidence relating to the discovery of assets which could potentially trigger a reopening, his assertions are without merit.

{¶41} Appellant’s final assignment of error is overruled.

{¶42} For the reasons discussed above, appellant’s five assignments of error are overruled and the judgment of the Lake County Court of Common Pleas, Probate Division, is affirmed.

CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J., TIMOTHY P. CANNON, J.,
concur.