

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

ESTATE OF: DOLORES M. YEAGER,
DECEASED.

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O P I N I O N

**CASE NOS. 2014-T-0107
and 2014-T-0108**

Appeals from the Trumbull County Court of Common Pleas, Probate Division, Case Nos. 2014 EST 0176 and 2014 CVA 0009.

Judgment: Affirmed.

W.E. Gerstenslager, Gerstenslager & Obert Co., 6500 Creekside Trail, Solon, OH 44139 (For Appellants – Jeanette J. Sickie and Barbara L. Yeager).

Randil J. Rudloff, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Appellees – Howard A. Yeager, Jr., and Theresa M. Fox).

CYNTHIA WESTCOTT RICE, J.

{¶1} This appeal is taken from two separate judgments of the Trumbull County Court of Common Pleas, Probate Division. Appellants, Jeanette J. Sickie, et al., first challenge the probate court's judgment denying their Civ.R. 60(B) motion without a hearing; they also challenge the probate court's judgment denying their attempt to file exceptions to the underlying estate's inventory as well as their motion to disqualify counsel. For the reasons discussed in this opinion, the probate court's judgment is affirmed.

{¶2} This matter arises out of consolidated appeals from two cases that were commenced in the Trumbull County Court of Common Pleas, Probate Division. On March 7, 2014, Dolores M. Yeager's ("the decedent") will was admitted to probate. On March 17, 2014, in Case No. 2014 CVA 009, captioned *Yeager, et al. v. Sickie, et al.*, appellants, the decedent's disinherited children, filed a complaint to contest the decedent's will against appellees, Howard A. Yeager, the executor of the decedent's estate, and Theresa M. Fox. Both appellees are children of the decedent who stood to inherit under the contested will.

{¶3} Appellees filed an answer and discovery commenced. In June 2014, the probate court held a pretrial conference after which an order was issued setting a trial date of October 20, 2014. The parties had several discovery disputes, which eventuated in appellants filing two motions to compel discovery. The first motion was resolved by agreement; a hearing was held on the second motion, but appellants were unable to produce sufficient evidence for the court to enter a ruling. The court consequently dismissed the motion without prejudice, granting appellants leave to re-file "should they obtain evidence in support of the motion."

{¶4} On October 16, 2014, appellees filed a motion in limine seeking to exclude the testimony of appellants' expert witness for failure to timely identify the expert. On the same day, appellants voluntarily dismissed their complaint pursuant to Civ.R. 41(A)(1). The dismissal expressly stated appellants' intention to re-file the complaint, pursuant to R.C. 2305.19, Ohio's savings statute. A subsequent attempt to re-file the complaint was dismissed, however, pursuant to R.C. 2107.76, which requires a suit contesting a will to be filed within three months of the filing of a certificate of notice of

the admission of the will to probate. In response, appellants moved the court for relief from the original voluntary dismissal of their first complaint, pursuant to Civ.R. 60(B). The trial court denied appellants' motion and this appeal followed.

{¶5} In the concurrent estate proceedings, Case No. 2014 EST 0176, captioned *In re Estate of Dolores Yeager, Deceased*, appellants moved for leave to file objections to the estate's inventory and sought to disqualify Attorney Thomas H. Palmer as Attorney for the Estate's executor, appellee-Howard A. Yeager. Because the time for filing a will contest action had lapsed and because appellants were not beneficiaries under the will, the trial court determined appellants lacked standing to proceed with the motions. Both pleadings were accordingly denied.

{¶6} The cases were consolidated on appeal and appellants now assign two errors for this court's review. For their first assignment of error, appellants allege:

{¶7} "The trial court erred and abused its discretion when it failed to consider the operative facts cited in appellants' motion for relief from judgment without a hearing on the issues presented therein."

{¶8} In Ohio, relief from a prior judgment can only be granted when the moving party has demonstrated she is entitled to relief under one of the five possible grounds stated in Civ.R. 60(B), she has a meritorious claim or defense, and the motion was filed in a timely manner. See *e.g. Fouts v. Weiss-Carson*, 77 Ohio App.3d 563, 565 (1991). Moreover, the disposition of a 60(B) motion rests within the sound discretion of the trial court; accordingly, the ruling on such a motion will not be reversed on appeal absent an abuse of discretion. *Nat'l City Bank v. Graham*, 11th Dist. Lake No. 2010-L-047, 2011-Ohio-2584, ¶15.

{¶9} In this case, appellants' voluntary dismissal was filed pursuant to Civ.R. 41(A)(1). Generally, a voluntary dismissal under Civ.R. 41(A)(1) constitutes a "failure otherwise than upon the merits" under R.C. 2305.19, Ohio's savings statute. Such a dismissal becomes effective upon the filing of the notice and requires no action by the court; upon filing of the notice, the one-year savings statute begins to run. See *e.g. Peyton v. Rehberg*, 119 Ohio App.3d 183, 191 (8th Dist.1997).

{¶10} In this case, appellants' Civ.R. 41(A)(1) notice of dismissal stated their intention to re-file the complaint pursuant to R.C. 2305.19. The savings statute, however, expressly provides it does not apply to actions contesting a will. See R.C. 2305.19(C). Under R.C. 2107.76, such actions must be filed within three months of the filing of a certificate of notice of the admission of the will to probate, as described R.C. 2107.19(A)(3). Appellants do not contest that their attempt to file the second complaint, after their voluntary dismissal, was outside the limitations period set forth in R.C. 2107.76. Moreover, they did not seek relief from the trial court's dismissal of the second complaint. Instead, their Civ.R. 60(B) motion was directed at their voluntary dismissal. To this end, they argue the trial court erred, at the very least, in failing to hold a hearing to consider the operative facts upon which their motion was premised. Appellants' argument is flawed.

{¶11} Civ.R. 60(B) is limited in scope in that it permits a trial court to grant relief *only* from "final judgment[s], order[s], or proceeding[s]." Civ.R. 60(B); see *also Hensley v. Henry*, 61 Ohio St.2d 277, 279. Dismissals filed pursuant to Civ.R. 41(A)(1), however, are self-executing, requiring no action, judgment, or order of the trial court. See *e.g. Holschuh v. Newcomb*, 11th Dist. Trumbull No. 2010-T-0129, 2011-Ohio-6205,

¶14. Further, a party's notice of dismissal, pursuant to Civ.R. 41(A)(1), does not operate as an "adjudication upon the merits." *Hensley, supra*. Accordingly, such a dismissal is not a final judicial determination from which a party can obtain relief under Civ.R. 60(B).

{¶12} Because appellants' voluntary dismissal was filed pursuant to Civ.R. 41(A)(1), it was not a final order operating to adjudicate the matter on the merits. Even assuming, *arguendo*, their Civ.R. 60(B) motion set forth operative facts that might otherwise entitle appellants to a hearing, they cannot, as a matter of law, revive the voluntarily dismissed proceedings by way of such a vehicle. Although the law favors resolving matters on their merits, it also favors compliance with the civil rules as well as an adherence to procedures codified under statute.

{¶13} Under the circumstances, appellants, after filing their voluntary dismissal, were barred by the applicable statute of limitations from filing a second complaint to contest the will. And, because their Civ.R. 41(A) dismissal was not a "judgment" upon which Civ.R. 60(B) relief may be premised, the case was, for all practical purposes, closed upon the filing of the voluntary dismissal. We recognize that these circumstances are unfortunate; nevertheless, appellants, who were represented by counsel, had notice of the procedural rules at play in this matter and even cited the statute which operated to foreclose the filing of a second complaint in their dismissal. We therefore hold the trial court did not err in denying appellants relief from judgment without a hearing.

{¶14} Appellants' first assignment of error is without merit.

{¶15} For their second assignment of error, appellants assert:

{¶16} “The trial court committed prejudicial error when it dismissed plaintiffs-appellants’ objection to inventory and motion to disqualify counsel in the estate case for lack of standing.”

{¶17} R.C. 2115.16 permits anyone to file exceptions to an inventory who has an interest in the estate or in any property listed in the inventory. It is well established that, before a court can consider the merits of a legal claim, the person seeking relief must establish standing to sue. *Ohio Contractors Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994).

{¶18} The question of standing depends upon whether a party has alleged such a personal stake in the outcome of the controversy that the litigation will be pursued in an adversary context and in a form historically viewed as capable of judicial resolution. *In re Estate of Sacco*, 7th Dist. Columbiana No. 03 CO 39, 2004-Ohio-3196, ¶18, citing *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 178-179 (1973). “When determining whether a party has standing, Ohio courts have applied the Civ.R. 17(A) requirement that a party must be a ‘real party in interest.’” *In re Estate of Sacco, supra*, quoting *State ex rel. Sinay v. Sadders*, 80 Ohio St.3d 224, 226 (1997).

{¶19} In this case, appellants claim they have an interest in certain property that should have been included in the inventory, but was not. Because, however, appellants do not stand to inherit anything through the decedent’s will, it is unclear how they have a personal stake even if the items were included in the inventory. Moreover, if the property in which they claim to have an interest was excluded from the inventory, it follows that appellants may indeed have an independent interest in that property that would place the property outside decedent’s estate. In any event, given their

allegations, we hold appellants have failed to establish such a stake in the controversy as to be deemed a real party in interest. The trial court, therefore, did not err in concluding appellants lacked standing to file exceptions to the inventory at issue.

{¶20} Appellants also claim the trial court erred in dismissing their motion to disqualify counsel. Appellants fail to provide any argumentation in support of this allegation, however. Thus, we need not specifically address the contention.

{¶21} Appellants' second assignment of error is without merit.

{¶22} For the reasons discussed above, the judgment of the Trumbull County Court of Common Pleas, Probate Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.