

[Cite as *In re Estate of Jordan*, 2024-Ohio-5.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE: ESTATE OF ANN KATHLEEN : APPEAL NO. C-220500
JORDAN : TRIAL NO. 2019001308

:

OPINION.

Appeal From: Hamilton County Court of Common Pleas, Probate Division

Judgment Appealed From Is: Affirmed and Cause Remanded

Date of Judgment Entry on Appeal: January 3, 2024

The Sauter Law Firm and Thomas Sauter, for Appellee Matthew Jordan

Adam Jordan, pro se.

KINSLEY, Judge.

{¶1} Appellant Adam Jordan (“Adam”) appeals the judgment of the Probate Division of the Hamilton County Court of Common Pleas (“the probate court”) awarding his mother’s estate monetary damages against him as a result of Adam’s improper use of estate funds during the period of time when he served as the estate’s executor. For the reasons that follow, we affirm the judgment of the probate court and remand the cause to the probate court in accordance with Loc.R. 75.1(F) of the Court of Common Pleas of Hamilton County, Probate Division, for the limited purpose of removing all unredacted bank records that currently remain in the trial court’s record.

Factual and Procedural Background

The Will

{¶2} On March 19, 2019, Ann Kathleen Jordan passed away, leaving behind two sons, Adam and Matthew Jordan. At the time of Ann’s death, Adam lived in Hamilton County, Ohio.

{¶3} Ann’s estate was opened in probate court on March 28, 2019. There were two competing wills: (1) a 2016 will, which appointed Adam as the executor of the estate; and (2) a 1999 will, drafted by attorney John Mulvey. The 2016 will surfaced in April 2019 after Ann’s brothers, Michael and Mark, wrote the probate court to raise concerns about the 2016 will’s legitimacy. Unlike the 1999 will, the 2016 will was not witnessed by an attorney but was instead signed by two lay witnesses, Ann’s deceased mother and the mother of Adam’s children, Samantha Schuler (“Samantha”). The 1999 will named Ann’s brothers and Matthew as executors, rather than Adam.

{¶4} On May 14, 2019, the probate court determined that the 2016 will was valid and named Adam as the executor.

{¶5} In October 2019, Adam submitted an inventory of the estate assets. Matthew filed an objection, which he ultimately withdrew. The probate court then approved the inventory.

The Mulvey Civil Suit

{¶6} On December 12, 2019, Adam was named, individually and as the executor of the estate, in a defamation and tortious-interference lawsuit filed by John Mulvey. Specifically, Mulvey alleged that Adam left false reviews on the internet because Mulvey refused to represent Adam as executor of the estate. Adam hired Tabitha Hochscheid (“Hochscheid”) to defend him in the Mulvey civil suit, but she later withdrew.

The Probate Process

{¶7} In January 2021, Adam submitted the first final and distributive account for the estate, and the probate court scheduled a hearing to finalize the account for March 12, 2021.

{¶8} On March 5, 2021, a week before the final hearing, Thomas Sauter entered his appearance on behalf of Matthew.

{¶9} On March 8, 2021, Matthew filed exceptions to the account. The exceptions alleged that: (1) Adam improperly used \$21,681.50 in estate funds to pay Hochscheid for representing him in the Mulvey civil suit; (2) Adam comingled interests in the sale of Ann’s home and his personal home; (3) Adam sold Ann’s car to Samantha for personal gain; (4) Adam improperly sold personal property; and (5) Adam and Samantha owed Ann money for previous loans she had given them.

Matthew also filed a “Suggestion of Change of Address of the Executor,” claiming that Adam no longer resided in Hamilton County, but had moved to Florida.

{¶10} On March 9, 2021, Adam wrote a letter to the probate court denying that he resided in Florida and arguing that the exceptions should have been filed five days prior to the hearing, which they were not. The probate court continued the hearing on the account until July 30, 2021.

{¶11} Following the filing of the exceptions, Matthew initiated discovery, through Sauter, in an attempt to uncover what was believed to be theft from the estate by Adam. In April 2021, a subpoena was issued to a Florida address for Adam and Samantha to appear for a May 6, 2021 deposition. Matthew also successfully moved the probate court to appoint a process server in Florida to serve Adam and engaged in further records discovery in an effort to obtain bank records related to Adam’s personal finances and his disposition of estate assets.

{¶12} On May 13, 2021, Matthew filed a motion to remove Adam as fiduciary of the estate, alleging misconduct by Adam in his administration of estate assets. Among the improprieties alleged by Matthew were: (1) Adam comingled estate and personal assets in his personal checking account; (2) Adam improperly paid Hochscheid for representing him in the Mulvey civil suit using estate funds; (3) Adam acted out of a conflict of interest during the sale of Ann’s house; and (4) Adam possessed fraudulently obtained funds in his personal checking account at PNC Bank. Attached to the motion were approximately 133 pages of documents supporting Matthew’s motion, including bank records, emails between Sauter and Hochscheid, appraisals, and various real estate documents. The original bank records that were filed by Matthew contained full account numbers.

{¶13} On June 3, 2021, Gary Lewis entered his appearance on behalf of Adam, but shortly thereafter moved to withdraw. A hearing was set for August 23, 2021, to address all pending motions, including Lewis’s motion to withdraw. That motion was ultimately granted.

{¶14} On July 30, 2021, Matthew filed a “Motion to Compel Discovery,” alleging that he had not received a response from Adam to the pending discovery requests. After conversations with all three of Adam’s prior attorneys, Matthew believed it was “abundantly clear that the Executor ha[d] no intention of complying with any lawful discovery request from the Exceptor or his counsel.”

{¶15} On August 9, 2021, Michael Brandabur entered his notice of appearance on behalf of Adam. The next day, the probate court entered an agreed magistrate’s order granting Matthew’s motion to compel. The order required Adam to respond to discovery by August 23, 2021, the same day as the hearing on all pending motions. On September 10, 2021, Brandabur filed a motion to withdraw. In his motion, he indicated that he appeared at the August 23 hearing, but that Adam’s “response to the discovery request failed to comply with the Court’s order.” His motion to withdraw was granted.

{¶16} Matthew then filed a motion for additional discovery sanctions, arguing that, because Adam had failed to comply with the order compelling discovery, the probate court should grant a default judgment on Matthew’s exceptions and the motion to remove Adam as the executor of the estate.

{¶17} On October 1, 2021, the magistrate agreed and issued an order awarding a default judgment to Matthew on his exceptions to the account and his motion to remove Adam as the executor of Ann’s estate. The order noted that Adam had failed

to comply with the August 23 discovery deadline. The trial date for the exceptions to the final account was accordingly vacated.

{¶18} On October 29, 2021, after the magistrate’s order had already been issued, Adam filed a response in opposition to Matthew’s request for a default judgment. In his response, Adam contended that he had answered the interrogatories to the best of his ability and that he missed the August 23 hearing because he was “incapacitated.” The same day, he filed a notice of appeal to this court, which was later dismissed because Adam failed to submit the required docket statement. *See In Re Estate of Ann Kathleen Jordan*, 1st Dist. Hamilton No. C-210545 (Jan. 12, 2022).

{¶19} In February 2022, following Adam’s unsuccessful attempt to appeal, the probate court officially removed Adam as executor of the estate and appointed Matthew in his place.

{¶20} In March 2022, Adam filed several motions: (1) a motion to suppress the unredacted bank records that were attached to Matthew’s May 13, 2021 motion, filed nearly one year earlier; (2) a motion to disqualify counsel; (3) a motion for a continuance; (4) a motion to dismiss for failure to state a claim and ineffective assistance of counsel and unclean hands; (5) a motion to compel; (6) a motion for sanctions for failure to follow court orders; and (7) a motion for reconsideration. Adam’s motion for reconsideration was denied on March 15, 2022, and the other motions were continued until April. On April 22, 2022, the magistrate denied the remaining motions.

{¶21} On May 6, 2022, the magistrate issued a decision on the final account. First, the magistrate determined that there was \$55,125.40 missing from the General Electric Credit Union (“GE”) account that Adam had opened in his own name to hold

cash for the estate. This represented \$11,207.63 in funds missing from a Kemba Credit Union check and \$43,917.77 in funds missing from a Fidelity and Guarantee Life Insurance check.

{¶22} Next, regarding the attorney fees paid to Hochscheid, the magistrate found it dispositive that Hochscheid never made an appearance in the probate case and further emphasized that payment to attorneys for representing an estate are normally paid at the conclusion of the estate administration. For these reasons, the magistrate found that the \$21,681.50 Adam paid to Hochscheid from estate funds was not related to the administration of the estate and was therefore improper.

{¶23} Regarding the sale of Ann's house, the magistrate found that Matthew failed to prove that the sale of the house for \$86,000 had damaged him and denied Matthew's exception as to this allegation.

{¶24} In conclusion, taking into account the improperly accounted for funds and the improper payment to Hochscheid, the magistrate found as follows:

the total amount not properly accounted for by Adam Jordan in his fiduciary account equals \$76,806.90. * * * However, Matthew is not entitled to the total amount. The decedent's will leaves her estate to both Adam and Matthew Jordan in equal shares. Hence, Matthew Jordan is only entitled to receive one-half of the above amount with the other half belonging to Adam Jordan. Hence, Matthew is entitled to receive \$38,403.45 on his exceptions to the account plus interest at the rate of 3 percent from March 8, 2021.

{¶25} Following the magistrate’s decision, Adam filed three additional motions: (1) a motion for reconsideration of the April 22 decision; (2) a motion to strike; and (3) a motion for an order of contempt and an order to show cause. On May 9, 2022, the magistrate denied the motions. On May 18, 2022, Adam filed a notice of appeal, which this court dismissed due to the lack of a final appealable order. *See In Re Estate of Ann Kathleen Jordan*, 1st Dist. Hamilton No. C-220227 (June 29, 2022). On July 8, 2022, Adam filed objections to the magistrate’s May 6, 2022 decision.

{¶26} On September 8, 2022, the probate court denied Adam’s objections and adopted the decision of the magistrate. In conducting an independent review of the record, the probate court found that: (1) Adam’s argument that he had not received exhibits from opposing counsel prior to the hearing was disingenuous; (2) Adam failed to alert the court or opposing counsel of his address change; (3) Adam failed to respond to pending discovery requests; (4) Adam failed to appear for his deposition; and (5) Adam’s argument that Matthew should not be afforded relief because he had “unclean hands” was disingenuous. The probate court accordingly adopted the magistrate’s decision on May 6, 2022.

{¶27} Adam appealed again to this court.

Analysis

{¶28} Acting pro se on appeal, Adam raises nine assignments of error. Adam asserts that: (1) the probate court erred in the publication of his personal information, specifically the exhibits attached to Matthew’s May 13, 2021 motion; (2) the probate court erred in permitting a final accounting when the Mulvey civil suit was still pending and by finding that attorney’s fees paid to Hochscheid were improper; (3) the probate court erred in not addressing the alleged misconduct of Sauter and Mulvey;

(4) the probate court erred in failing to address alleged ineffective assistance of counsel; (5) the probate court abused its discretion by refusing to hold a hearing on various motions; (6) the probate court erred by obstructing filings resulting in discrimination; (7) the probate court erred in refusing to redact, remove, or seal privileged information; (8) the probate court erred by disregarding the clear language of the will; and (9) the probate court erred and abused its discretion by entering a judgment based on insufficient evidence.

Bank Records and Personal Information

{¶29} In his first assignment of error, Adam raises two issues for review. First, Adam argues that his bank records were illegally obtained, that he did not receive notice of the subpoenas sent to his banks, and that the publication of his unredacted bank records on the probate court’s website was improper. Specifically, he asserts that Sauter, on behalf of Matthew, illegally obtained his bank records, which were attached to the motion to remove him as executor, and that he never received notice the subpoenas were sent to his bank. Second, Adam argues that his bank records were filed with the probate court in an unredacted state, and that they contained personally identifying information in violation of Loc.R. 75.1(F) of the Court of Common Pleas of Hamilton County, Probate Division. Adam raises these same issues under his seventh assignment of error. Therefore, we will address his first and seventh assignments of error together.

A. Bank Records

{¶30} The standard of review that an appellate court must employ in the review of the trial court’s handling of discovery matters is whether the trial court abused its discretion. *Evans v. Vonder Ahe*, 1st Dist. Hamilton No. C-940611, 1995

Ohio App. LEXIS 4186, 5 (Sept. 27, 1995). “An abuse of discretion suggests that a decision is unreasonable, arbitrary, or unconscionable.” *Effective Shareholder Solutions, Inc. v. Natl. City Bank*, 1st Dist. Hamilton Nos. C-080451 and C-090117, 2009-Ohio-6200, ¶ 9.

{¶31} Under Civ.R. 45(A)(3), a party issuing a subpoena to a nonparty must serve a copy of the subpoena on all other parties. The purpose of this requirement is to afford the other parties an opportunity to either object to the subpoena or to issue their own seeking a broader range of documents. *See Schultz v. Mayfield Neurological Inst.*, 1st Dist. Hamilton No. C-120764, 2013-Ohio-4146, ¶ 21 (citing Staff Notes to 2005 amendment to Civ.R. 45).

{¶32} Though Adam’s arguments are not fully developed, he essentially complains that the probate court abused its discretion in not striking from the record documents obtained pursuant to third-party subpoenas with which he was not served under Civ.R. 45(A)(3). We see several problems with Adam’s argument. For one, as this court has previously noted, the rule does not contain a remedy for violations of the service requirement. *Schultz* at ¶ 21. For another, the probate court determined that Adam evaded service by failing to file a change of address as required by Loc.R. 60.1(G) of the Court of Common Pleas of Hamilton County, Probate Division, and we cannot say this finding was an abuse of discretion. *See Schultz* at ¶ 26 (holding that party was not unfairly surprised by discovery sought by third-party subpoena even in the absence of service under Civ.R. 45(A)(3)). Even more, Adam knew of the subpoenaed documents, at the very least, when they were filed along with Matthew’s May 13, 2021 motion to remove him as the executor. Yet Adam waited until March 2022 to seek relief from the probate court. Under these circumstances, Adam did not

preserve an issue for our review. *See U.S. Bank, Natl. Assn. v. Kasidonis*, 1st Dist. Hamilton No. C-190559, 2020-Ohio-6716. We therefore reject Adam’s claim that the probate court improperly considered bank records obtained by third-party subpoena. Therefore, we overrule this portion of Adam’s first and seventh assignments of error.

B. Personally Identifying Information

{¶33} Adam next complains that unredacted versions of his bank account statements remain in the probate court’s record attached to Matthew’s May 13, 2021 motion. We agree that Matthew violated both state and local rules in submitting these unredacted documents and maintaining them in the record following the submission of redacted versions of the account statements.

{¶34} Two separate rules prohibit the submission and public filing of documents that contain personally identifying information, like bank account and social security numbers. Sup.R. 45(D) requires parties submitting documents to a court for filing to “omit personal identifiers from the document.” Loc.R. 75.1(F)(2) of the Court of Common Pleas of Hamilton County, Probate Division (“Loc.R. 75.1(F)(2)”), also requires parties to omit personally identifying information from court filings, instead allowing “[t]he last four digits of social security number and the last three digits of financial account numbers.”

{¶35} Our review of the record makes clear that unredacted bank records were submitted by Matthew in violation of these two rules and that these unredacted records remain on the probate court’s public docket. While, at some point, Matthew submitted redacted versions of the unredacted records, the probate court refused to strike the offending documents from its record in its April 22, 2022 order. Therefore, the unredacted documents remain in the probate court’s record in violation of Sup.R.

45(D) and Loc.R. 75.1(F)(2). We therefore remand the matter to the probate court for the limited purpose of striking the unredacted documents attached to Matthew's May 13, 2021 motion from the official public record in this case.

{¶36} In addition, Adam complains that the redacted versions of the documents contain the last four digits of the account numbers, rather than the last three as contemplated by Loc.R. 75.1(F)(2). We find that substantial compliance with the local rule is sufficient and that the redacted documents substantially comply with the rule by covering up all but the last four digits of the account numbers from public view. We accordingly overrule this portion of Adam's first and seventh assignments of error.

Attorney's Fees and Final Accounting

{¶37} In his second assignment of error, Adam argues that (1) he should have been able to pay Hochscheid's attorney's fees from estate funds; and (2) the probate court could not consider a final accounting because Adam, as executor, was a party to a civil case, namely the Mulvey civil suit.

A. *Attorney's Fees*

{¶38} Regarding attorney's fees, "R.C. 2113.36 permits the payment of reasonable attorney fees for services rendered in the administration of an estate. The determination of what services are reasonable and the value of those services lies within the sound discretion of the probate court." *In re Estate of Rothert*, 1st Dist. Hamilton No. C-010604, 2002-Ohio-2150, ¶ 3. "In order to recover attorney fees under R.C. 2113.36, an executor or administrator must submit sufficient evidence of the legal services performed and the reasonable value of such services. The executor or administrator must also establish that the legal services rendered benefited the

estate, not the executor personally.” (Internal citations omitted.) *In re Estate of Hathaway*, 10th Dist. Franklin No. 13AP-152, 2014-Ohio-1065, ¶ 9. Our review of the probate court’s determination of the attorney’s fees is for an abuse of discretion. *Id.*

{¶39} Adam retained Hochscheid to represent him in the suit filed against him by Mulvey. Although Adam was named individually and in his role as executor of the estate, the allegations in the action relate to allegedly defamatory posts Adam made online about Mulvey. The facts of the Mulvey civil suit were therefore unrelated to the administration of the estate, raised no allegations against the estate, and did not place any estate resources at risk. Moreover, Hochscheid, in an email to Sauter, specifically disclaimed that she represented Adam in his capacity as executor of the estate, and she never filed a notice of appearance on Adam’s behalf in the probate court. Given Hochscheid’s limited representation of Adam in the Mulvey suit and its separate nature from the estate, the probate court did not abuse its discretion in finding that Adam’s use of estate funds to pay attorney’s fees to Hochscheid was improper.

B. Final Accounting

{¶40} Adam next asserts that the estate could not proceed to a final accounting since he was named as a party in a civil action. Because this issue questions whether the trial court properly applied a statute, we review this question of law de novo. *Dubose v. McCloud*, 1st Dist. Hamilton No. C-190690, 2020-Ohio-4972, ¶ 12.

{¶41} R.C. 2109.301(B)(1)(d) provides that “[e]very administrator and executor, within six months after appointment, shall render a final and distributive account of the administrator’s or executor’s administration of the estate unless * * * (d) The administrator or executor is a party in a civil action.” By its terms, the statute only applies to executors and administrators. Adam was removed as the executor of

Ann's estate on October 1, 2021, approximately six months before Matthew moved for a final accounting. The statute was therefore inapplicable to Adam, because Adam was no longer the executor at the time the final account was submitted. As a result, nothing prohibited Matthew, as the new executor of the estate, from finalizing the accounting; Matthew was not a party to the Mulvey civil suit.

{¶42} Therefore, we overrule Adam's second assignment of error.

Alleged Misconduct

{¶43} In his third assignment of error, Adam argues that the probate court erred in not addressing the alleged misconduct of Sauter and Mulvey. Specifically, Adam alleges that Sauter stole mail from his home and that Mulvey filed a frivolous suit against him.

{¶44} From our review of the record, Adam did not raise these issues below. "New arguments may not be raised for the first time on appeal. A party who fails to raise an argument in the court below waives his or her right to raise it here." (Internal quotation marks omitted.) *Effective Shareholder Solutions, Inc.*, 1st Dist. Hamilton Nos. C-080451 and C-090117, 2009-Ohio-6200, at ¶ 18. Therefore, Adam forfeited all but a claim of plain error, which he does not raise on appeal. "We do not analyze claims of plain error sua sponte." *U.S. Bank, Natl. Assn.*, 1st Dist. Hamilton No. C-190559, 2020-Ohio-6716, at ¶ 18.

{¶45} Therefore, Adam's third assignment of error is overruled.

Ineffective Assistance of Counsel

{¶46} In his fourth assignment of error, Adam argues that the probate court failed to address the alleged ineffectiveness of Lewis and Brandabur, who represented

him for short periods of time during the probate process. Adam asserts that both attorneys failed to communicate with him and abandoned his case.

{¶47} “[T]here is no generalized right to counsel in a civil action between individual litigants. Where there is no right to counsel, there can be no reversal based upon allegations of ineffective assistance of counsel. Any complaint of ineffective assistance of counsel may only be resolved in a malpractice action.” (Internal citations and quotation marks omitted.) *In re Estate of Perry*, 4th Dist. Scioto No. 04CA2972, 2005-Ohio-3462, ¶ 6-7.

{¶48} Because this is a probate case, Adam does not have a constitutionally-protected right to counsel and thus no claim for ineffective assistance of counsel.

{¶49} Adam’s fourth assignment of error is accordingly overruled.

Motions

{¶50} In Adam’s fifth assignment of error, he argues that the probate court abused its discretion by refusing to hear any motions. Specifically, Adam alleges that the action of the probate court to vacate the September 13, 2022 hearing date in its “Entry Denying Objections, Adopting Decision of Magistrate, and Entering Final Judgment” was improper.

{¶51} Civ.R. 53 states that when an objection is filed the court shall conduct an independent review and *may* hear additional evidence, but may also refuse to do so. Whether to hold a hearing at the independent-review stage is within the discretion of the trial court. *Id.* Because Adam was not entitled to a hearing under Civ.R. 53, we find no error in the probate court’s failure to hold one.

{¶52} Moreover, in attempting to explain his argument, Adam refers to hearings held in April 2022. But the record is devoid of transcripts from those

hearings, and we presume the regularity of the proceedings when the record lacks transcripts demonstrating otherwise. *See In re J.M.*, 1st Dist. Hamilton No. C-230169, 2023-Ohio-2785.

{¶53} Adam also relies on R.C. 2109.21 in arguing that the probate court erred by not holding a hearing on his motions, but that reliance is misplaced. R.C. 2109.21 is entitled “Residence Qualifications of Fiduciary” and contains no provisions that require a hearing to be scheduled when motions are filed. Quite simply, the statute does not apply here.

{¶54} Therefore, Adam’s fifth assignment of error is overruled.

Alleged Discrimination

{¶55} In his sixth assignment of error, Adam asserts that the probate court abused its discretion by obstructing and destroying filings, resulting in what Adam claims is discrimination against him.

{¶56} Although phrased in the assignment of error as relating to actions of the probate court, the argument Adam develops in his brief addresses motions that he filed before this court, specifically two separate filings entitled “Memorandum of Points and Authorities.” This court previously ruled on both motions on February 16, 2023, and May 18, 2023, respectively. To the extent that we can understand Adam’s argument, we construe this assignment of error as a request to reconsider the previous decisions of this court with regard to the “Memorandum of Points and Authorities.” We decline to do so and decide the merits of the case based on the certified record before us pursuant to App.R. 12(A).

{¶57} To the extent that Adam is raising any other argument, we cannot discern one. “The appellant bears the burden to show error by reference to the record.

To be considered on appeal, errors by a trial court must be separately argued and supported by legal authority and citation to the record. App.R. 16(A). If an argument exists that can support [an] assignment of error, it is not this court’s duty to root it out.” (Internal citations and quotation marks omitted.) *In re J.G.S.*, 1st Dist. Hamilton Nos. C-180611 and C-180619, 2019-Ohio-802, ¶ 31. While this court has made every effort to determine and address the merits of Adam’s position, we will not raise issues on Adam’s behalf.

{¶58} Therefore, for the reasons stated above Adam’s sixth assignment of error is overruled.

Abuse of Discretion and Insufficient Evidence

{¶59} In Adam’s eighth assignment of error, he argues that the probate court erred by disregarding the clear language of the will. In his ninth assignment of error, Adam argues that the probate court erred and abused its discretion by entering a judgment based on insufficient evidence. Essentially, we construe Adam’s arguments under both assignments as a challenge to the probate court’s discovery sanctions. We address these assignments of error together.

{¶60} We first address the evidence supporting the entry of a default judgment. This court has previously held that, under Civ.R. 37, trial courts have broad discretion to impose sanctions for discovery violations. *See Lyons v. Kindell*, 2015-Ohio-1709, 35 N.E.3d 7, ¶ 23 (1st Dist.). We must not substitute our judgment for that of the trial court’s, “but must consider the circumstances under which the sanction was imposed and determine whether the sanction was proportionate to the seriousness of the infraction.” *Id.* at ¶ 24. “We have held that a trial court does not abuse its

discretion by entering a default judgment against a defendant who fails to comply with its discovery orders.” *Id.* at ¶ 25.

{¶61} In this case, Adam failed to respond to discovery, despite being given numerous opportunities. The record reflects that both Matthew and the probate court made various attempts to contact Adam, but continuously received returned mail. In addition, Matthew’s counsel emailed Adam, hired an out-of-state process server, and contacted all of Adam’s attorneys. Moreover, the probate court granted Adam several continuances, including a continuance before the motion to compel discovery was granted, but Adam still failed to comply.

{¶62} With regard to the requested discovery, the record further reflects that Adam submitted incomplete responses to the interrogatories he was sent. When notified that the responses were incomplete, Adam did not correct his responses.

{¶63} Given Adam’s failure to meaningfully participate in the discovery process despite being given opportunities over time, we cannot say that the probate court abused its discretion in granting a default judgment as a discovery sanction. *Lyons* at ¶ 25.

{¶64} With regard to the probate court’s decision to remove Adam as executor, we find this argument waived. *See U.S. Bank, Natl. Assn.*, 1st Dist. Hamilton No. C-190559, 2020-Ohio-6716. Adam did not advance an insufficiency argument below with regard to his removal from the executor position, and we will not address one for the first time on appeal.

{¶65} Adam’s eighth and ninth assignments of error are accordingly overruled.

Conclusion

{¶66} For the reasons set forth above, we affirm the probate court's judgment and remand the cause to the probate court for the limited purpose of striking unredacted bank records submitted to the probate court as attachments to Matthew's May 13, 2021 motion pursuant to Loc.R. 75.1(F) of the Court of Common Pleas of Hamilton County, Probate Division,

Judgment affirmed and cause remanded.

ZAYAS, P.J., and BERGERON, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.