

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In the Matter of the Estate of James M. Langford, *Deceased*.

JOSEPH O. LANGFORD, *Appellant*,

v.

WILLIAM LEE BRICKHILL, II, *Appellee*.

No. 1 CA-CV 13-0035

FILED 11-5-2013

Appeal from the Superior Court in Yavapai County

No. V1300PB201280012

The Honorable Patricia A. Trebesch, Judge

AFFIRMED

COUNSEL

Joseph O. Langford, Cottonwood

Appellant in propria persona

William Lee Brickhill, II, Bartlett, Tennessee

Appellee in propria persona

LANGFORD v. BRICKHILL
Decision of the Court

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Michael J. Brown joined.

K E S S L E R, Judge:

¶1 Joseph Langford (“Langford”) appeals from the trial court’s order confirming the closing statement filed by William Brickhill (“Brickhill”) in the matter of the estate of James Langford (“Decedent”). For the following reasons, we affirm.

BACKGROUND

¶2 Decedent died intestate in January 2012¹ and is survived by Langford, his biological adult son, and three adult stepchildren, including Brickhill, from a prior marriage.² Brickhill applied for informal appointment as personal representative and indicated on the application that he was entitled to appointment because he is an adult child of Decedent. Langford signed a waiver of bond in connection with the appointment, and in March the court appointed Brickhill as personal representative.

¶3 The following month, Langford filed an objection to Brickhill’s appointment. Langford argued that Brickhill was not entitled to appointment as personal representative because he is not biologically related to Decedent, nor was he adopted by him. Accordingly, Langford asked the court to terminate Brickhill’s appointment and enjoin him from taking any further action in connection with the estate.

¶4 In June, the court held a hearing on Langford’s objection. At the hearing, Langford expressed concerns over Brickhill’s handling of estate assets. According to Langford, Brickhill admitted to taking

¹ All relevant proceedings occurred in 2012. Accordingly, we hereafter will refer only to the relevant month or day.

² The other two stepchildren—Barbara Brickhill and Cynthia Burkhardt—took no part in the informal probate proceedings below and are not parties to this appeal.

LANGFORD v. BRICKHILL
Decision of the Court

Decedent's motorcycle "because he felt he was owed [it]." Langford requested that the motorcycle and all other estate property currently in Brickhill's possession be returned to him, and that the court remove Brickhill as personal representative.

¶5 Brickhill explained that, although he is not biologically related, he "maintained [a] close and constant relationship[]" with Decedent since Decedent and Brickhill's mother married. Brickhill said that he requested appointment as personal representative because of his continued relationship with Decedent, and because Langford maintained no relationship with Decedent from 1985 to 2009. He requested to continue as personal representative, noting that he already had paid many bills, including funeral expenses, and that he was "very close to resolving the closing of the estate."

¶6 Subsequently, the court issued an order scheduling an evidentiary hearing but refused to stay the disposition of the estate. The court instructed Langford that he needed to file a demand for notice and a motion requesting appointment as successor personal representative within twenty days of the order. Langford thereafter filed a motion to remove Brickhill as personal representative, a motion for his appointment as successor personal representative, and a demand for notice.

¶7 On July 10 the matter was referred to the probate registrar for informal probate proceedings. The court ordered Langford to submit a formal application for appointment as personal representative by July 29, and explained that Brickhill would be removed and Langford substituted as personal representative upon written determination from the probate registrar that Langford is entitled to appointment. Consequently, the court vacated the upcoming evidentiary hearing.

¶8 Afterward, Langford paradoxically filed an application for appointment as personal representative *and* a waiver of his right to appointment. Accordingly, on July 31 the probate registrar denied Langford's application for appointment because it was "unable to determine with certainty if [Langford was] requesting to be appointed or waiving his right to the appointment." Langford took no further action until September, when he filed a motion to remove his waiver of right to appointment. He did not certify, however, that the motion had been served on Brickhill. Therefore, the court denied Langford's motion without prejudice because it was unable to determine whether it complied with Arizona Rule of Civil Procedure 5(a).

LANGFORD v. BRICKHILL

Decision of the Court

¶9 The following month, Brickhill finished administering and distributing the estate and filed a closing statement with the court. Langford filed an objection to the closing statement and a motion to strike it. The court confirmed the closing statement and denied Langford's motion.

¶10 Langford timely appealed the order confirming the closing statement and denying his motion to strike. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (Supp. 2012).

DISCUSSION

¶11 Langford challenges the court order confirming the closing statement on three grounds: (1) Brickhill was not eligible for appointment as personal representative; (2) Brickhill fraudulently obtained appointment as personal representative; and (3) Brickhill breached his fiduciary duty by improperly retaining Decedent's motorcycle. We address each argument in turn, viewing the record in the light most favorable to sustaining the decision below. *See Nitrini v. Feinbaum*, 18 Ariz. App. 307, 309, 501 P.2d 576, 578 (1972); *Blake's Estate v. Benza*, 120 Ariz. 552, 553, 587 P.2d 271, 272 (App. 1978).

I. Eligibility and Priority for Appointment

¶12 Langford first argues that Brickhill was not entitled to appointment as personal representative because he is not biologically related to Decedent, nor was he adopted by him. Brickhill was eligible for appointment, however, because he was a creditor of the estate. Pursuant to A.R.S. § 14-3203(A)(7) (2012), a creditor of an estate qualifies for appointment as personal representative forty-five days after the death of the decedent. Here, Brickhill was a creditor of the estate because he paid \$1,460.03 in funeral expenses. The probate registrar appointed Brickhill on March 7—over forty-five days after Decedent's death. Thus, Brickhill was eligible for appointment despite the absence of a biological or adoptive relation.

¶13 Although Langford correctly asserts that he has priority for appointment because he is an heir of Decedent, Langford failed to timely and properly apply for appointment. The court ordered Langford to properly file a formal application for appointment as personal representative with the probate registrar by July 29. Further, the court instructed that Brickhill immediately would be removed as personal representative upon written determination by the probate registrar that

LANGFORD v. BRICKHILL
Decision of the Court

Langford was entitled to appointment. In response, Langford filed two contradictory forms – one seeking appointment and the other waiving his right to appointment – which required the probate registrar to deny his application without prejudice. Langford made no efforts to cure the defect in his application until September – well after the court-ordered deadline. Even then, his motion to withdraw his waiver of the right to appointment had to be denied because he had not timely served Brickhill with the motion and did not inform the court of such service until after the closing statement was filed. Accordingly, Langford waived his priority to appointment.

II. Fraud

¶14 Langford next argues that Brickhill defrauded the court by indicating on his application for appointment that he is an adult child of Decedent.

A claim for fraud requires proof of nine elements by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker’s knowledge of its falsity or ignorance of its truth; (5) the speaker’s intent that it be acted upon by the recipient in the manner reasonably contemplated; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely on it; [and] (9) the hearer’s consequent and proximate injury.

Comerica Bank v. Mahmoodi, 224 Ariz. 289, 291-92, ¶ 14, 229 P.3d 1031, 1033-34 (App. 2010). Here, the record does not support a finding of fraud.

¶15 Significantly, Brickhill did not make a false representation to the court. Although Brickhill checked the box on the application form indicating that he is an adult child of Decedent, he explained to the court in the same application that he is Decedent’s stepson. The term “stepson” does not signify a biological or adoptive relationship. Thus, although Brickhill arguably checked the wrong box on the application form, he corrected the defect by clarifying to the court that he is Decedent’s stepson, rather than Decedent’s biological or adopted son. Without a false representation, none of the other elements of fraud can be shown.

¶16 Furthermore, even if Brickhill erroneously represented that he is an adult child of Decedent, the fact that Brickhill checked the wrong box on the application form ultimately caused no injury. As we explained above, Brickhill was eligible for appointment despite the absence of a biological or adoptive relation to Decedent because he was a creditor of

LANGFORD v. BRICKHILL
Decision of the Court

the estate. We also note that Langford initially consented to Brickhill's appointment. Thus, in the absence of a truly false representation or proximate injury there is no fraud.

III. Breach of Fiduciary Duty

¶17 Finally, Langford argues that the court erred in confirming Brickhill's closing statement because Brickhill improperly retained Decedent's motorcycle. As Decedent's stepson, Brickhill is not a legal heir and therefore is not entitled to inherit through intestacy. *See* A.R.S. § 14-2103 (2012).

¶18 However, a personal representative has authority to pay estate creditors. A.R.S. § 14-3711 (2012). Furthermore, administration costs and funeral expenses take priority over other debts. A.R.S. § 14-3805 (2012). Here, the record shows that Brickhill was a creditor of the estate and incurred significant expense while administering it. Brickhill personally paid \$1,460.03 for Decedent's funeral expenses, \$1,500 to HSBC Bank to settle a lien on the motorcycle, roughly \$400 for Decedent's residual utility bills, and various court fees relating to estate administration. Thus, the record shows that Brickhill personally incurred over \$3,000 in expenses from the time of Decedent's death to the time he filed his closing statement. Brickhill appraised the motorcycle at approximately \$3,000—representing seventy-five per cent of the estimated Kelly Blue Book value. Accordingly, viewing the record in the light most favorable to sustaining the order below, the court reasonably could have confirmed the closing statement after considering Brickhill's receipt of the motorcycle as satisfaction of the debts owed to him as an estate creditor and for the administration costs he incurred.

IV. Costs on Appeal

¶19 Brickhill requests reimbursement for costs incurred in this appeal and for other expenses allegedly incurred during estate administration. We do not address Brickhill's request for other alleged administration expenses because that issue is not the subject of this

LANGFORD v. BRICKHILL
Decision of the Court

appeal. However, pursuant to A.R.S. § 12-342(A) (2003) Brickhill is entitled to his costs on appeal upon timely compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶20 For the foregoing reasons, we affirm.



Ruth A. Willingham · Clerk of the Court
FILED: mjt