DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Estate of:	1 CA-CV 11-0186
JAMES S. BLACKFORD,	DEPARTMENT A
Deceased.	**MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)
JOAN BEETS,	
Petitioner/Appellant,	
v.	
ROBIN MICHAELSON, as Personal Representative of the Estate of James S. Blackford, Deceased,	
Respondent/Appellee.	

Appeal from the Superior Court in Maricopa County

Cause No. PB2009-000137 and PB2009-000410 (Consolidated)

The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

REVERSED AND REMANDED

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G O U L D, Judge

¶1 Appellant, Joan Beets, appeals from the superior court orders granting summary judgment to Appellee, Robin Michaelson, and declaring that James S. Blackford's ("Decedent's") May 28, 2008 Last Will and Testament is a valid, legal and binding document. For the following reasons we reverse and remand.

Factual and Procedural Background

¶2 Beets is Decedent's only surviving child. Until May 28, 2008, Beets was the personal representative and sole beneficiary of Decedent's Will dated March 17, 2003 ("2003 Will"). However, on May 28, 2008, Decedent executed a Last Will and Testament ("2008 Will") disinheriting Beets in favor of her son, Decedent's grandson, C. Beets. The 2008 Will also named Michaelson, Decedent's conservator, to be the personal representative of the Will and successor trustee of a revocable trust into which Decedent's residuary estate would pass.

¶3 In 2004, D. Holland, Decedent's nephew, was appointed as Decedent's limited guardian, and Michaelson was appointed as Decedent's conservator and as trustee of Decedent's revocable trust. Because Holland's health had deteriorated to the point that he could not continue as Decedent's guardian, the court held a hearing on May 28, 2008 to determine whether a

replacement guardian should be appointed.[1] Both Beets and Michaelson agreed that a guardianship was necessary; Decedent, however, opposed the guardianship, arguing he was self-sufficient.

¶4 At the conclusion of the guardianship hearing, the court found that Decedent was in continued need of a guardian and appointed Michaelson to serve in the place of Holland. The court found that the Decedent "remains impaired by a mental disorder to the extent that he lacks sufficient understanding or capacity to make responsible decisions regarding his person," and further found that Decedent was "an incapacitated person pursuant to A.R.S. Section 14-5101(1)."

¶5 Decedent died on January 1, 2009. On February 6, Michaelson applied for informal probate of the 2008 Will and appointment as personal representative. On February 13, Beets filed a petition for formal probate of the 2003 Will and appointment as personal representative. Despite Beets' objections to the appointment of Michaelson as personal representative, the court consolidated both matters and proceeded with informal probate of the 2008 Will, appointing Michaelson as personal representative.

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[1] Although the same judge who granted Michaelson's motion for summary judgment also presided over the remaining informal probate hearings held in this case, a different judge presided over the May 28, 2008 guardianship hearing.

¶6 As of November 7, 2009, the estate — consisting of various personalty items with an estimated value of $3,695 — had been distributed between Beets and Beets' son. The vast majority of Decedent's estate had passed into the trust pursuant to the 2008 Will. On January 22, 2010, Michaelson filed a closing statement indicating that the estate had been fully administered and all assets had been distributed to the persons entitled thereto. Michaelson asked the court to issue a ruling closing the estate. Michaelson also moved the court to strike all references to the Blackford Revocable Trust in Beets' pleadings and to rule that the validity of the trust instrument was not before the court. The court initially granted Michaelson's motion to strike in November. Beets moved the court to reconsider; and after again considering Michaelson's motion and arguments presented by both parties, the court granted the motion to strike references to the trust on December 30, 2010.

¶7 In November 2010, Michaelson filed a motion for summary judgment arguing that Beets failed to prove her claim contesting the 2008 Will. Michaelson claimed that Decedent had testamentary capacity and that the resulting Will reflected Decedent's well-known and expressed intentions to disinherit Beets in favor of Beets' son. Beets did not file an objection; the court granted Michaelson's motion for summary judgment and

ordered that the 2008 Will was a valid, legal and binding document. Beets timely appealed.

Jurisdiction

¶8 At the outset, Michaelson argues we do not have jurisdiction. Beets' amended notice of appeal indicates that Beets is appealing from the court's signed order, filed on January 26, 2011, granting Michaelson's motion for summary judgment and declaring the 2008 Will a valid, legal and binding document. In an unsupervised administration, an order terminating a formal proceeding is an appealable order under Arizona Revised Statutes ("A.R.S.") section 12-2101(J). *See In re Estate of McGarthy*, 226 Ariz. 277, 280, ¶ 17, 246 P.3d 628, 631 (2010) (holding that a court's order that finally resolves the proceeding is appealable). Here, the court's signed order finding the 2008 Will to be valid terminated the proceedings, and thus was an appealable order.

Discussion

¶9 Beets argues the court improperly granted summary judgment because a dispute existed as to whether Decedent had testamentary capacity when he executed the 2008 Will. "Summary judgment is appropriate when the record shows that there is no real dispute as to any material facts and the moving party is entitled to judgment as a matter of law." *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 194-95, 805 P.2d 1012, 1015-16 (App.

1990); Ariz. R. Civ. P. 56(c). When reviewing a grant of summary judgment we "determine *de novo* whether there are any genuine issues of material fact." *Prince v. City of Apache Junction*, 185 Ariz. 43, 45, 912 P.2d 47, 49 (App. 1996). We view the facts in the light most favorable to the party against whom judgment was entered. *Id.*

¶10 We hold that the court's grant of summary judgment was improper. Although Beets did not file any responsive pleading to Michaelson's motion for summary judgment, the record presented to the court[2] revealed a genuine factual dispute as to Decedent's capacity – namely that the court found Decedent incompetent and appointed a guardian on the same day Decedent executed the 2008 Will. *See Allyn*, 167 Ariz. at 196, 805 P.2d at 1017 (stating that a court has an independent duty to review the record presented by the parties to ensure that summary judgment is appropriate even when the non-moving party fails to respond to the motion).

¶11 We do not decide that the guardianship proceedings conclusively determined the issue of Decedent's testamentary

[2] When the court granted summary judgment in favor of Michaelson, in addition to a number of prior hearings where the issue of Decedent's competency had been discussed, the court's file contained a minute entry from the guardianship hearing stating that as of May 28, 2008 - the same day Decedent executed the 2008 Will - a court had already determined that Decedent was impaired by a mental disorder.

capacity. As the court stated in *In re Thomas' Estate*, 105 Ariz. 186, 189, 461 P.2d 484, 487 (1969), "[a]n adjudication of incompetency under the guardianship statute does not of necessity indicate a lack of mental capacity to execute a will."[3] *See also*, *In re Teel's Estate*, 14 Ariz. App. 371, 373, 483 P.2d 603, 605 (1971) (stating that a testator that had a guardian appointed ten months after he executed the Will did not automatically lack capacity); *In re Silva's Estate*, 105 Ariz. 243, 247, 462 P.2d 792, 796 (1969) (stating that presumption of testamentary capacity can continue after testator is adjudicated incompetent because of possibility of lucid intervals). Rather, we hold only that the court's grant of summary judgment was not warranted because the findings from the guardianship hearing created a material fact dispute as to Decedent's testamentary capacity.

[3] For the same reason, Beets' argument that the guardianship hearing "collaterally estops" Michaelson from claiming Decedent was competent to execute the 2008 Will fails. "Collateral estoppel, or issue preclusion, binds a party to a decision on an issue litigated in a previous lawsuit"; Decedent's testamentary capacity was not litigated at the guardianship hearing. *See Campbell v. SZL Props., Ltd.*, 204 Ariz. 221, 223, ¶ 9, 62 P.3d 966, 968 (App. 2003).

Conclusion

¶12 For the reasons above, we reverse the grant of summary judgment against Beets and remand for further proceedings.

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ANDREW W. GOULD, Judge

CONCURRING:

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MAURICE PORTLEY, Presiding Judge

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ANN A. SCOTT TIMMER, Judge