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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE THE ESTATE OF WILLIAM BATES.	2 CA-CV 2011-0063 DEPARTMENT B
DAVID G. SANFORD, Plaintiff/Appellant, v. ROBERT STEINER, Defendant/Appellee.	MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. PB20080216

Honorable Charles V. Harrington, Judge

AFFIRMED

David G. Sanford — Sarahsville, Ohio
In Propria Persona

Aaron & Rogers
By Michael Aaron — Tucson
Attorneys for Defendant/Appellee

E S P I N O S A, Judge.

¶1 Appellant David Sanford (Sanford), appearing pro se, appeals the probate court's dismissal of his objection to the closing statement filed in connection with the estate of his uncle, William Bates (Bates). For the following reasons, we affirm.

Factual Background and Procedural History

¶2 The relevant facts in this case are undisputed. Bates died on December 10, 2007. His wife previously had passed away, and he had no children. Sanford, Bates's nephew, filed a Petition for Formal Probate of Will and Appointment of Personal Representative, which stated he was acting on behalf of his mother, Lora Sanford, and his uncle, Donald Bates, two of Bates's siblings.[1] Although the record concerning the proceedings below is unclear, it appears Sanford maintained either that Bates had died intestate or that his will was invalid; he was thereafter appointed as personal representative of Bates's estate.

¶3 Several months later, Robert Steiner, another of Bates's nephews, filed a Notice of Filing of Original Will. The will listed three devisees: Cassidy Steiner, Kristen Steiner, and Nazarene Compassionate Ministries. In the filing, Steiner claimed he had received no notice of the prior proceedings and requested that he be appointed as personal representative.

[1]Sanford, who is not an attorney, indicated his representation of his mother was pursuant to a power of attorney. Later filings indicate Sanford was purporting to act only on behalf of his mother, as Donald Bates was no longer mentioned.

¶4 A hearing was scheduled, but Sanford was unable to attend due to an injury, and the hearing was rescheduled to accommodate him.[2] In the meantime, Sanford sent a number of documents to the probate court that he wished "to have on file" for the upcoming hearing. He alleged these documents demonstrated Bates's assets had been misappropriated and his will "obviously also [was] obtained fraudulently." Sanford, however, failed to appear at the rescheduled hearing and the court ordered Steiner to file a petition to admit the will to probate by August 15, 2008, with any objections to be filed by August 29, 2008. The minute entry for this hearing, which included the deadline for filing objections, indicates a copy was forwarded to Sanford.

¶5 On August 25, 2008, Steiner filed a petition for formal probate of the will, and Sanford did not file an objection. On September 22, 2008, the probate court held a hearing on the petition, and Sanford participated telephonically. The court's minute entry indicates it refused to consider the documents Sanford had sent because Steiner's counsel had not received a copy. The court then informed Sanford it could not "give him standing in this court to argue unless he has filed a proper objection and paid a filing fee," and noted that "[n]o objection has been technically filed" and the court's deadline for objections to the petition had passed.[3] After the hearing, the court signed an order

[2]In addition, the case was transferred to a different division because the matter was now contested.

[3]Because Sanford had paid a filing fee to initiate the matter, the probate court's determination that an additional filing fee was owed was likely incorrect. However, this issue is not relevant to our decision.

admitting the will to probate and appointing Steiner as personal representative. Sanford did not file an objection to this order.

¶6 After no action had been taken on the case for two years, Steiner filed a closing statement for Bates's estate in October 2010. Sanford filed an objection, contending the statement failed to account for several of Bates's assets, and the probate court set the matter for trial. At the outset of the trial, Steiner's counsel moved to dismiss Sanford's objection, alleging it was untimely and Sanford lacked standing to contest the closing statement. After reviewing the file, the court granted the motion and dismissed Sanford's objection. This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1).

Discussion

¶7 As a threshold issue, not raised by either party below or on appeal, we must first consider whether Sanford, a non-attorney, could represent his mother or his uncle Donald, as he purported to do, even under a power of attorney from his mother. We are guided by our supreme court's rules identifying who may engage in the practice of law. Rule 31(b), Ariz. R. Sup. Ct., provides "no person shall practice law in this state . . . unless the person is an active member of the state bar." It is axiomatic that "representation of another in court proceedings constitutes the 'practice of law.'" *See Byers-Watts v. Parker*, 199 Ariz. 466, ¶ 13, 18 P.3d 1265, 1268 (App. 2001). Moreover, "although the supreme court authorizes certain non-attorneys to represent others in specified judicial and administrative proceedings, the court does not include general

guardians, guardians ad litem, next friends, or similar fiduciaries within these exceptions." *Id.*; *see also* Ariz. R. Sup. Ct. 31(d) (listing exceptions). Importantly, there is no exemption made for those acting under a power of attorney on behalf of another. *See* Ariz. R. Sup. Ct. 31(d). Accordingly, Sanford was unable to represent his mother or his uncle either below or on appeal. *See*, *e.g.*, *Encinas v. Mangum*, 203 Ariz. 357, ¶¶ 8-10, 54 P.3d 826, 828 (App. 2002) (non-attorney son unable to represent mother in court proceedings; mother needed to either represent herself or hire attorney).

¶8 To the extent Sanford also may have been representing himself and his own interests separate from those of his mother or uncle, we address the merits of his appeal. Although his arguments are difficult to discern, his primary contention appears to be that the probate court improperly precluded him from presenting evidence that Steiner and his wife had fraudulently induced Bates to sign the will and had thereafter misappropriated his assets.[4] As set forth above, although the court had scheduled an evidentiary hearing on Sanford's objection to the closing statement, it then granted Steiner's motion to dismiss the objection. In so ruling, the court found Sanford's objection to the will untimely pursuant to A.R.S. § 14-3412, which provides that objections to the validity of a will must be made within sixty days after the entry of a formal testacy order probating a will. *See* § 14-3412(A)(1).

[4]Although Sanford includes a large amount of information in his appeal, we can consider only evidence that was presented to the probate court in rendering our decision. *See Linder v. Brown & Herrick*, 189 Ariz. 398, 409, 943 P.2d 758, 769 (App. 1997) ("This court cannot consider on appeal evidence that was not before the trial court.").

¶9 We review the probate court's application of the law to the facts de novo. *See In re Estate of Headstream*, 214 Ariz. 530, ¶ 9, 155 P.3d 1054, 1056 (App. 2007). The undisputed record demonstrates that the order admitting Bates's will to probate was entered on September 22, 2008, and that no objection or other motion concerning the will's validity was filed within the next sixty days. *See* § 14-3412(A) (formal testacy order "is final as to all persons with respect to all issues . . . relevant to the question of whether the decedent left a valid will" unless petition to vacate and reopen is filed within sixty days). Moreover, Sanford was on notice that the court did not consider the documents he previously had filed to be an objection and that a proper objection had yet to be filed. *See* § 14-3412(A)(1) (sixty-day exception applies to "any interested person who did not oppose the probate of the will . . . at the original hearing"). Thus, the court correctly determined Sanford's objection was untimely and therefore barred.

¶10 Sanford's subsequent attempt to challenge the validity of the will through an objection to the closing statement was clearly outside the time limit imposed by § 14-3412(A)(1) and therefore barred. *See In re Estate of Ivester*, 168 Ariz. 323, 328, 812 P.2d 1141, 1146 (App. 1991) (order finding decedent intestate final under § 14-3412 and not subject to collateral attack in subsequent proceeding). Accordingly, the probate court did not err in dismissing Sanford's objection to the closing statement.[5]

[5]To the extent Sanford may have wished to object to the contents of the closing statement itself, apart from his challenge to the validity of the will, he has not provided any argument or authority demonstrating he had standing to file such an objection, nor are we aware of any, especially considering he was not a devisee under the will. Accordingly, we do not reach the merits of the probate court's dismissal on this basis.

Disposition

¶11 For the foregoing reasons, the probate court's dismissal of Sanford's objection to the closing statement is affirmed. In our discretion, we deny Steiner's request for attorney fees on appeal but award his costs subject to his compliance with Rule 21, Ariz. R. Civ. App. P.

PHILIP G. ESPINOSA, Judge

CONCURRING:

GARYE L. VÁSQUEZ, Presiding Judge

VIRGINIA C. KELLY, Judge

See Ariz. R. Civ. App. P. 13(a)(6) (brief shall contain arguments with citations to authority); *Cullum v. Cullum*, 215 Ariz. 352, n.5, 160 P.3d 231, 234 n.5 (App. 2007) (appellate courts "will not consider arguments posited without authority"). This standard applies even though Sanford was appearing pro se. *See Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, ¶ 16, 17 P.3d 790, 793 (App. 2000) (unrepresented party "entitled to no more consideration from the court than a party represented by counsel, and is held to the same standards expected of a lawyer").