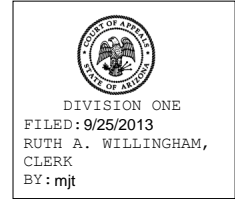


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Estate of:)	No. 1 CA-CV 12-0271
)	
KENNETH E. COOPER,)	DEPARTMENT E
)	
Deceased.)	Yavapai County
)	Superior Court
<hr/> RICHARD A. HENNESSEY, II, in)	Nos. P1300CV20080007
his capacity as Personal)	V1300CV200980690
Representative of THE ESTATE OF)	V1300PB20090095
MILDRED HENNESSEY,)	(Consolidated)
)	
Petitioner/Appellant,)	
)	
v.)	DECISION ORDER
)	
JOHN A. PRESTON,)	
)	
Respondent/Appellee.)	
)	
and)	
)	
WAYNE COOPER, in his capacity as)	
Special Administrator for the)	
ESTATE OF KENNETH COOPER,)	
)	
Plaintiff/Appellee.)	
<hr/>)	

Petitioner/Appellant, Richard A. Hennessey, II ("Hennessey"), has filed an appeal challenging the superior court's judgment finding valid the will of Kenneth E. Cooper ("Cooper"). Respondent/Appellee, John A. Preston ("Preston"), has filed a renewed motion to dismiss the appeal as moot. Given

the facts and current posture of the case, we grant Preston's renewed motion to dismiss the appeal.

Cooper died on November 23, 2007. Cooper's wife had predeceased him, and he had no children, but he had a sister (Mildred Hennessey) and a brother (Wayne Cooper). In the years before he died, Cooper had named Preston, his former attorney and close friend, as a joint account holder on his accounts. Cooper's will, executed on March 2, 2004, named Preston as the sole beneficiary and the personal representative of Cooper's estate.

In January 2008, Mildred Hennessey filed civil lawsuits in La Paz and Yavapai Counties, alleging common law causes of action against Preston on behalf of Cooper's estate in an effort to challenge the transfer of the assets to Preston and seek damages in her own right. For the next year and a half, Mildred Hennessey pursued the civil claims against Preston, despite not filing a probate action and recognizing that her relationship with Cooper was such that Cooper would have devised her and her heirs nothing. In September 2009, Preston filed an application for informal probate of the will and appointment of a personal representative. Mildred Hennessey then filed a petition challenging the validity of the will and seeking revocation of probate and an adjudication of intestacy. The court ultimately

consolidated the two civil matters and then consolidated the civil matters with the probate matter.

Mildred Hennessey died in June 2010, and her son (Hennessey) began functioning in her stead as the personal representative of her estate. In November 2010, the superior court appointed Wayne Cooper to serve as special administrator of the Cooper estate.

In April 2011, Preston moved for partial summary judgment, arguing that although Hennessey was entitled to challenge the validity of the will, Hennessey lacked standing to pursue the separate civil causes of action, which could only have been brought by Cooper before his death or by his estate after his death. In an unsigned minute entry filed on October 10, 2011, the superior court granted Preston's motion for partial summary judgment, ruling that Hennessey lacked standing to bring the separate civil causes of action, but Hennessey could challenge the validity of the will by raising the issues of lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.

In November 2011, the court held a trial on the validity of the will in the probate matter and took the matter under advisement.

In a detailed eighteen-page judgment signed and filed on

March 5, 2012, the superior court overruled Hennessey's objections to the will, found the will valid, and admitted it to probate. On April 4, 2012, Hennessey filed a timely notice of appeal from the court's March 5 judgment admitting the will to probate.

Meanwhile, on March 19, 2012, Wayne Cooper, as the special administrator of the Cooper estate, filed a motion to amend the caption of the civil case (substituting himself for Hennessey as the plaintiff) and to voluntarily dismiss the civil claims given that "the evidence overwhelmingly supported the conclusion that Ken Cooper intended for John Preston to inherit his estate and was not defrauded or unduly influenced by Mr. Preston." On April 23, 2012, the superior court granted the motion to dismiss the civil case with prejudice, and in a signed order dated and filed that day, the court also amended the caption to reflect Wayne Cooper as the special administrator for the estate.

In May 2012, Preston moved to dismiss the appeal of the probate action as moot, arguing that because the civil action was dismissed in a final order and the estate owned no other assets, no purpose existed in continuing to litigate the validity of the will.

On May 15, 2012, Hennessey filed an amended notice of appeal from the court's April 23 order dismissing the civil

action with prejudice, while Preston's application for attorneys' fees was pending. Hennessey then responded to the motion to dismiss the appeal, arguing that he had appealed the dismissal of the civil action, and reversal of both the final civil order and the probate judgment could result in him benefitting as an intestate heir of Cooper.

On June 19, 2012, this court issued an order denying Preston's motion to dismiss the appeal. In that order, this court also ruled that the superior court's April 23 order was not a final appealable order and that Hennessey's May 15 amended notice of appeal was therefore premature and a nullity. Consequently, this court suspended Hennessey's appeal of the April 23 order through August 20, 2012, and revested jurisdiction in the superior court for the purpose of permitting that court to consider the pending application for attorneys' fees. Further, this court explicitly directed Hennessey to file a timely amended notice of appeal after entry of a signed order ruling on the fee application.

On August 20, 2012, the superior court entered a signed order ruling on Preston's application for attorneys' fees. Hennessey did not, however, file an amended notice of appeal of the final order dismissing the civil action as directed.

Preston moved to dismiss the appeal of the civil action due

to Hennessey's failure to file an amended notice of appeal and renewed his motion to dismiss the appeal in the probate action as moot.

On November 27, 2012, this court issued an order dismissing the appeal of the civil action for lack of jurisdiction. Nevertheless, this court denied Preston's renewed motion to dismiss the appeal of the probate action, reasoning that although it appeared undisputed the only asset of the estate was the civil action, the appeal of the probate action was not moot due to the possibility of subsequently discovered assets. This court also ordered that Hennessey file a substitute opening brief in the appeal of the probate matter raising issues pertaining to the probate action only.

Hennessey filed a petition for review of the November 27, 2012 order. On April 24, 2013, the Arizona Supreme Court denied Hennessey's petition for review.

During pendency of the appeal of the probate judgment, Preston filed a renewed motion to dismiss the appeal for mootness, reasoning as follows: It is undisputed that the only asset of Cooper's estate was the civil action against Preston. The superior court dismissed that civil action, and this court dismissed the appeal of that order for lack of jurisdiction after Hennessey failed to file a timely notice of appeal. Our

supreme court dismissed Hennessey's petition for review regarding the civil action. Consequently, the civil action has been fully and finally adjudicated. Moreover, after this court denied Preston's request to dismiss the remaining probate appeal due to the possibility of subsequently discovered assets, Preston filed with the superior court a formal disclaimer of any and all rights he might have to unadministered assets of the Cooper estate, including any subsequently discovered assets. See Ariz. Rev. Stat. §§ 14-3938, -10005 (governing formal disclaimers). Because it appears that, without the civil action, Cooper's estate had no assets, and Preston has now disclaimed any right to take assets under the will, the appeal is moot and should be dismissed. See *Sedona Private Prop. Owners Ass'n v. City of Sedona*, 192 Ariz. 126, 127, 961 P.2d 1074, 1075 (App. 1998) (noting that "[a] case becomes moot when an event occurs which would cause the outcome of the appeal to have no practical effect on the parties" (citation omitted)). The record fully supports Preston's reasoning. Accordingly,

IT IS ORDERED granting Preston's renewed motion to dismiss the appeal.

IT IS FURTHER ORDERED vacating oral argument scheduled before this court on October 2, 2013.

IT IS FURTHER ORDERED granting Preston his costs, contingent on his compliance with Rule 21, ARCAP.

IT IS FURTHER ORDERED that the clerk of this court provide a copy of this Decision Order to the Honorable David L. Mackey, a Judge of the Superior Court, and to each party appearing herein.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
MARGARET H. DOWNIE, Judge

_____/S/_____
JON W. THOMPSON, Judge