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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In the Matter of the Estate of:

EDWARD B. WOOTTON, *Deceased.*

JEFFREY WOOTTON, *Petitioner/Appellee,*

v.

JOHN WOOTTON, *Respondent/Appellant.*

No. 1 CA-CV 17-0468
FILED 8-14-2018

Appeal from the Superior Court in Maricopa County
No. PB2013-050522
The Honorable Andrew J. Russell, Judge *Pro Tempore*

REVERSED AND REMANDED

COUNSEL

Clarke Law Firm, PLC, Scottsdale
By Marilee Miller Clarke
Counsel for Petitioner/Appellee

John Wootton, Rolling Meadows, IL
Respondent/Appellant

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MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Lawrence F. Winthrop joined.

C A T T A N I, Judge:

¶1 John Wootton appeals from the superior court's judgment approving personal representative Jeffrey Wootton's final accounting for their father's estate and ordering that John pay the estate's attorney's fees and personal representative's fees incurred after a specified date. For reasons that follow, we reverse the judgment and remand for limited proceedings consistent with this decision.

FACTS AND PROCEDURAL BACKGROUND

¶2 Edward Wootton died in November 2012. He was survived by two adult sons, Jeffrey and John. As relevant here, Edward's will directed distribution of his estate (after expenses) to his two surviving sons and designated Jeffrey to be his personal representative. In August 2013, Jeffrey was appointed as personal representative for informal proceedings.

¶3 In December 2014, Jeffrey offered John a proposal for distribution of the roughly \$320,000 in estate assets. John subsequently filed a motion to enforce the proposed distribution, which the superior court granted after several months of litigation. In September 2015, the court entered an order for distribution as follows:

- John received title to Edward's house (valued between \$153,000 and \$165,000) as well as all household contents, subject to a \$3,000 equalization payment to Jeffrey.
- Jeffrey received the estate's financial assets (roughly \$157,000) in the form of four Chase bank accounts (joint checking -9193, joint savings -8233, savings -2162, and IRA -7154).
- John received the proceeds from sale of Edward's motorcycle (\$1,050).

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- John received a 50% share of the proceeds from sale of Edward's gun collection (\$532.50).

In response to further motions from Jeffrey, the court noted that additional claims—including John's agreement to bear reasonable expenses related to the home incurred by the estate after January 2015—could be resolved at the time of final accounting.

¶4 In November 2015, Jeffrey filed a petition for approval of final accounting covering the period after the proposed distribution offer; the accounting included the assets distributed pursuant to the court's order as well as estate expenses for repair and upkeep of the house and attorney's fees. John objected, arguing that the accounting addressed an inadequate timeframe (beginning January 2015, whereas probate was opened in August 2013); failed to account for known personal property including firearms, coins, and jewelry; failed to include (and reflected inadequate investigation of) several financial accounts owned by Edward before his death; failed to adequately detail funds spent from the four bank accounts identified; and improperly claimed attorney's fees without the required substantiation. John further asked for an order that Jeffrey provide Edward's tax returns for several years to investigate any additional assets.

¶5 In February 2017—over a year later—the superior court held an evidentiary hearing on the matter at which John, Jeffrey, and one of Edward's neighbors testified. The court thereafter approved the final accounting, finding that “[a]fter more than a year of litigation surrounding [John]'s disagreement with [Jeffrey]'s final accounting, [John] was unable to provide evidence that [Edward] owned guns, financial accounts, jewelry, or any other items that were not included in [Jeffrey]'s final accounting.” The court further found that although John's objection may have been reasonable initially, his continued opposition without grounds was not. Finding “that the estate ha[d] incurred professional fees or expenses resulting from [John's] unreasonable conduct,” the court ordered that John pay the estate's attorney's fees and costs incurred from February 10, 2016 forward.

¶6 The court entered judgment in favor of Jeffrey and against John for over \$16,000 in attorney's fees and costs, and John timely appealed. We have jurisdiction under Arizona Revised Statutes (“A.R.S.”) § 12-2101(A)(1).

DISCUSSION

¶7 John challenges the superior court's approval of the final accounting and its attorney's fees award. We defer to the superior court's factual findings unless clearly erroneous, although we review its legal conclusions de novo. *In re Estate of Zaritsky*, 198 Ariz. 599, 601, ¶ 5 (App. 2000).

I. Jurisdiction.

¶8 Preliminarily, Jeffrey asserts that the superior court's approval of the final accounting is not within the scope of the judgment (awarding attorney's fees) from which John appealed. The scope of review on appeal from a final judgment includes review of "any intermediate orders involving the merits of the action and necessarily affecting the judgment, and all orders and rulings assigned as error." A.R.S. § 12-2102(A). Here, the formal judgment referenced the evidentiary hearing concerning the final accounting and expressly relied on the superior court's findings and orders in the merits ruling set forth in a minute entry. And the court's merits ruling approving the final accounting—the basis for the attorney's fees award—was not otherwise signed or reduced to final judgment. Under these circumstances, the merits ruling is within the scope of the judgment and subject to appellate review.

II. Estate Assets and Final Accounting.

¶9 John argues that Jeffrey failed to fulfill his duties as personal representative and urges that the superior court thus erred by approving Jeffrey's final accounting. He argues in particular that there was evidence of a Deutsche Bank investment account that was part of the estate and never distributed.

¶10 John presented evidence of a Deutsche Bank investment account consisting of three funds: two owned by their mother (which Edward had not cashed out as beneficiary after her death) and one owned by their mother and Edward as joint tenants. In late 2016, Jeffrey acknowledged that he had received payment for the funds owned by their mother—\$2,316.88 and \$8,588.45—in early 2013, and he agreed that the proceeds would be part of the estate. But Jeffrey never updated the accounting to include these previously-existing but newly-acknowledged funds, or to explain if the money had previously been deposited into one of the four estate bank accounts. And Jeffrey never disclosed whether he had received payment from the third fund (valued at over \$7,000 a year before

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Edward's death), which, as an asset held in joint tenancy, would have belonged to Edward after their mother's death.

¶11 Moreover, at least one of the Chase accounts (-2162) that formed the bulk of the estate's liquid assets (and that passed to Jeffrey in the 2015 distribution) was an interest-bearing account, and Jeffrey never accounted for any interest payments received. (There is some indication that these funds were previously transferred from Edward's accounts into accounts owned by Jeffrey, but the 2015 distribution order contemplated that the funds remained in Edward's interest-bearing account -2162; this discrepancy may be addressed on remand.) In light of these unexplained omissions, we reverse the court's approval of the final accounting.

¶12 Although the omissions noted above warrant reversal, John's other arguments are without merit. John asserts that Jeffrey improperly failed to investigate, discover, and account for other assets—firearms, household assets, and financial accounts—that Edward was known to have owned before his death. *See* A.R.S. §§ 14-3706 (initial inventory and appraisal), -3708 (supplemental inventory), -3709 (marshalling assets and investigating potential assets). He further urges that Jeffrey's accounting improperly failed to delineate estate expenses throughout the proceedings. *See* A.R.S. § 14-3933(A)(3).

¶13 Regarding these allegations, the record supports the superior court's conclusion that John did not demonstrate the existence of assets beyond those reflected in the prior distribution, which Jeffrey maintained had disposed of all estate assets. For instance, John claimed that the estate should have included their mother's diamonds and jewelry. But his claim was based only on knowledge that the jewelry existed in 2007 (five years before Edward died), and Jeffrey testified that no such assets remained among Edward's possessions at the time of his death.

¶14 John further claimed that Edward had owned multiple firearms that were not included in the estate, and Jeffrey acknowledged that Edward (at some point) owned 62 firearms, of which only 22 had been located and sold (proceeds from which became part of the 2015 distribution). But Jeffrey testified that he had disclosed all available information about assets existing at the time of Edward's death and posited that any firearms that remained hidden in the house (which had been deeded to John) would be in John's possession.

¶15 John also asserted that Edward owned additional financial accounts that Jeffrey had failed to investigate or acquire. But John's claim

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was based on tax returns and account statements from a year or more before Edward's death, and Jeffrey testified that Edward paid substantial medical expenses in the final year of his life and that Edward himself had closed and consolidated several accounts before his death. Jeffrey testified that he had investigated the pre-death financial accounts and (with the exception of the Deutsche Bank account described above) found no further assets. At best, John's assertions on these matters reflect a factual dispute, and we defer to the superior court's resolution of such conflicts in the evidence. *See Zaritsky*, 198 Ariz. at 601, ¶ 5.

¶16 Accordingly, we reverse the superior court's approval of the final accounting and remand for further proceedings to resolve the limited issues reflected in ¶¶ 10-11 above.

III. Attorney's Fees and Personal Representative's Fees.

¶17 The superior court ordered that John pay a portion of the estate's attorney's fees and costs incurred in litigating the final accounting. Although such expenses (compensation for the personal representative as well as litigation expenses) are generally to be borne by the estate, *see* A.R.S. §§ 14-3719, -3720, the court appears to have assessed fees against John under A.R.S. § 12-349(A)(3) for unreasonably expanding the proceeding. Because we reverse the superior court's approval of the final accounting, we vacate the attorney's fees award without prejudice to reconsideration in light of the proceedings on remand.

¶18 John requests an award of attorney's fees and costs expended in superior court. Without expressing any position on the merits of the request, any such request must be directed to the superior court in the first instance.

IV. Attorney's Fees and Costs on Appeal.

¶19 Jeffrey requests an award of attorney's fees on appeal, but cites only ARCAP 21 without stating a substantive basis for the award. We therefore decline his request. *See* ARCAP 21(a)(2). To the extent John requests an award of attorney's fees on appeal, he is not represented on appeal and he has not stated a substantive basis for an award. We therefore decline his request. *See* ARCAP 21(a)(2). And because neither side has prevailed completely, each side shall bear its own costs.

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CONCLUSION

¶20 For the foregoing reasons, we reverse the superior court's approval of the final accounting, vacate the award of attorney's fees, and remand for further proceedings to resolve the limited remaining issues described above.



AMY M. WOOD • Clerk of the Court
FILED: AA