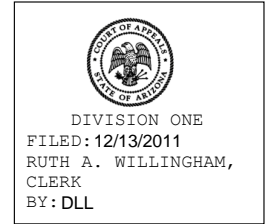


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**



In the Matter of the Estate of:  
  
NORA C. HILLEMAYER aka NORA CARR  
HILLEMAYER, aka NORA M.  
HILLEMAYER,  
  
Deceased.

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CLYDE H. MEANS,

Petitioner/Appellant,

v.

CLOYCE BROWN, As Successor  
Trustee of the John F.  
Hillemeier and Nora M.  
Hillemeier Revocable Trust dated  
October 14, 1994,

Respondent/Appellee.

Court of Appeals  
Division One  
No. 1 CA-CV 10-0836

DEPARTMENT A

Mohave County  
Superior Court  
No. PB-2008-8114

**DECISION ORDER**

The court, Judges Ann A. Scott Timmer, Daniel A. Barker and Patrick Irvine, participating, has considered the opening brief, answering brief, reply brief and probate court record. Petitioner Clyde H. Means timely appeals from the probate court's denial of his petition to reopen the estate of Nora Hillemeier ("the estate") and the motion for reconsideration. For the following reasons, we affirm.

Shortly before the decedent's death, Means gave her \$46,500 ("the funds") for safekeeping. The decedent appears to have deposited the funds into a savings account that named Means as the beneficiary upon her death. Means never received the funds and alleged that the estate ignored several of his letters demanding repayment.

In July 2008, the clerk of the court informed Means that no probate action had been filed, but that the successor trustee of the decedent's trust, Cloyce Brown had filed an affidavit stating that he transferred title of the decedent's home to the trust. The next month, Brown's attorney sent Means a letter stating the clerk's information was incomplete in that no probate was currently pending, so Means could not file a claim.<sup>1</sup> The letter also informed Means that J.O., someone to whom Means gave power of attorney, made withdrawals and distributed all the funds. The letter included a list of the payees and the amount each was paid, and suggested that Means contact them or the bank for further information.

Means filed a civil action against Brown and his attorney alleging fraud, negligence and breach of trustee duties. See

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<sup>1</sup> The answering brief asserts that formal probate was never opened, so Means' petition to reopen was legally improper. Means' reply brief points out that probate fees had been paid in May 2008. The trial court appears to assume that probate had been previously opened but closed. Because such an assumption has no effect on the outcome of this case, we do the same.

Mohave County Superior Court No. CV 2009-1624. In August 2010, Means also filed a petition to reopen the estate alleging similar claims of fraud and negligence against them. Means then filed a motion to compel production of all documents related to the estate. The probate court ruled:

The Petition to reopen is based on an alleged fraud that the Petitioner is alleging in a civil lawsuit. The Court finds that the Petitioner's request to reopen is premature as no finding of fraud or negligence has been made.

It is not definite the Court would find the fraud and negligence alleged in the civil lawsuit would lead to reopening this probate even if proven. However, without a finding of fraud or negligence there is no reason to reopen this probate on the request of a non-heir.

Accordingly, it denied Means' motions to reopen and to compel production of documents. The motion for reconsideration was also denied.

On appeal, Means argues that the probate court was biased or appeared to be biased in denying his petition and the related motions. Means argues this violated ethical rules, thereby depriving him of due process rights. We find no merit in these claims.

Means merely asserts in the motion to reconsider that "there possibly exists a situation where the Court is acting in concert with [the Appellees]," simply because it ruled against him. Means

provides no evidence that the trial court was biased. Nor was there any appearance of bias in the record. Because the allegations of negligence and fraud had not been proven in the underlying civil action, which raised the same allegations, the trial court did not err in denying the petition to reopen as premature. See *Funk v. Superior Court (Funk)*, 104 Ariz. 370, 373, 453 P.2d 516, 519 (1969) (noting that allegations of fraud or concealment by an executor may be sufficient grounds to reopen an estate, "if the allegations are true."). The motion to compel documents was therefore unnecessary, particularly in light of the fact that the same documents were discoverable in the underlying civil case. Therefore,

**IT IS ORDERED** affirming the rulings of the probate court.

**IT IS FURTHER ORDERED** granting costs on appeal to Brown upon his compliance with Arizona Rule of Civil Appellate Procedure 21.

  /s/    
PATRICK IRVINE, JUDGE