MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Wayne Clark,
Appellant-Respondent,

v.

Elisa Clark Mrozinski, Personal Representative of the Supervised Estate of James L. Clark, Deceased,
Appellee-Petitioner.

October 19, 2022

Court of Appeals Case No. 22A-ES-531

Appeal from the LaPorte Circuit Court

The Honorable Thomas J. Alevizos, Judge

Trial Court Cause No. 46C01-2109-ES-236

Bailey, Judge.

Case Summary

[1] Michael Clark ("Michael") appeals the trial court's denial of his expedited petition to remove Elisa Clark Mrozinski ("Elisa") as the personal representative of the Estate of James L. Clark (the "Estate"). In this interlocutory appeal, Michael raises two issues, which we revise and restate as whether the court abused its discretion when it denied his petition. We affirm.

Facts and Procedural History

[2] James Clark ("James") died on September 9, 2021, without a will. During his life, James fathered three children: Michael, who was born in wedlock, and Elisa and Christina Clark ("Christina"), who were born out of wedlock. On September 17, Elisa filed a petition to be appointed the personal representative of the Estate. In that petition, Elisa listed herself, Michael, and Christina as the "known heirs at law" of James. Appellant's App. Vol. 2 at 14. The trial court granted Elisa's petition on September 22. On September 25, Michael, having been unaware of Elisa's petition, also filed a petition to be appointed the personal representative of the Estate. In his motion, Michael also named himself, Elisa, and Christina as "heirs at law" of James. *Id*. at 20. The court denied Michael's petition.

[3] On October 10, Michael filed an expedited petition to remove Elisa as the personal representative and to appoint him the successor personal representative. In that motion, Michael asserted that Elisa was not an heir to

James' estate because she had been born out of wedlock and had not demonstrated any basis to show that James had properly established his paternity over Elisa. And Michael maintained that, because Elisa is not an heir at law, "she is not entitled to be appointed" as the personal representative of the Estate. *Id*. at 26. In addition, Michael also filed a counter-petition to be appointed the personal representative of the Estate in which he asserted that he is the "only heir at law" of James. *Id*. at 38.

[4] The court held a hearing on Michael's motion on January 4, 2022. During that hearing, the parties reiterated their arguments regarding Elisa's status as an heir to James' estate. In addition, Elisa submitted as evidence a copy of her birth certificate listing James as her father. *See* Ex. at 22. Elisa also submitted a power of attorney that James had executed in 2019 in which James named his "daughter," Elisa, his attorney-in fact. *Id*. at 24.

[5] Following the hearing, Elisa filed a memorandum of law in opposition to Michael's expedited petition. In that memorandum, Elisa asserted that she was a proper heir of James because her birth certificate, which "was prepared in accord[ance] with the Illinois Vital Records Act . . . lists her father as [James]." *Id*. at 55-56. And she contended that, under Illinois law, the father's name for a child born out of wedlock "cannot be listed on the birth certificate without the consent of the mother and the father." *Id*. at 56. Thus, she asserted that Illinois had made a determination of paternity, which was entitled to "Full Faith and Credit" in Indiana such that she is an heir and that Michael's petition should be denied. *Id*.

[6] Thereafter, Michael filed his response to Elisa's memorandum in opposition to his motion and asserted that Elisa's Illinois birth certificate did not establish that she is as an heir because Illinois law requires the written consent of the person to be named as father in order for the father's name to be included on the birth certificate and because Elisa "never produced the required written consent" of James. *Id*. at 88. And Michael asserted that the birth certificate is not entitled to full faith and credit because it was not a "judgment[] entered in a foreign state[.]" *Id*. at 90. In the alternative, Michael asserted that the court should remove Elisa as the personal representative of the Estate because of her "unsuitability." *Id*. at 91. In particular, Michael alleged that a court had entered an order finding that Elisa had "wrongfully withheld relevant information and accounting critical to her actions while serving as the sole attorney-in-fact" of James and because she had a conflict of interest.[1] *Id*.

[7] On February 11, the court denied Michael's petition to remove Elisa as the personal representative. Michael then asked the court to direct entry of its February 11 order as a final judgment or to certify it for interlocutory appeal. Michael also asserted that the court had failed "to state any reason for its ruling[.]" Appellant's App. Vol. 2 at 121. On March 3, the court issued an order in which it stated that its previous ruling was based on the fact that Michael had "filed an admission that [Elisa] was a rightful heir"; that there was

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[1] Elisa filed a motion to strike any argument by Michael regarding her unsuitability because he did not raise that issue in his initial petition to remove her as personal representative. The trial court never ruled on Elisa's motion.

"evidence of a continuing relationship" between James and Elisa; and, "[m]ost importantly," that James "is listed as father on [Elisa's] Illinois Birth Certificate, which under Illinois law could only have been placed on there with the consent of" James. *Id*. at 12. Accordingly, the court found that Elisa had established a prima facie case "of being an heir." *Id*. The court also found "no just reason for delay" and certified its order for interlocutory appeal. This appeal ensued.[2]

Discussion and Decision

[8] Michael appeals the trial's court denial of his expedited petition to remove Elisa as the personal representative of the Estate. "'A court with probate jurisdiction has great latitude and wide discretion in the appointment and removal of personal representatives and administrators.'" *In re Estate of Latek*, 960 N.E.2d 193, 204 (Ind. Ct. App. 2012) (quoting *Matter of Swank's Estate*, 375 N.E.2d 238, 240 (Ind. Ct. App. 1978)). "The burden of proof is on the party seeking to have the personal representative removed and we must only consider the evidence most favorable to the appellee." *Hauck v. Second Nat'l Bank of Richmond*, 286 N.E.2d 852, 865 (1972). Further, the party appealing from the trial court's denial of a petition to remove a personal representative appeals from a negative

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[2] Michael initially filed a notice of appeal on March 10, 2022. However, this Court dismissed the appeal without prejudice because Michael had not sought permission to file a discretionary interlocutory appeal from the Court and because the trial court's order was not a final judgment. Michael then filed a petition for rehearing, and this Court reinstated his appeal on June 9.

judgment. *See Buckland v. Reed*, 629 N.E.2d 1241, 1245 (Ind. Ct. App. 1994). Therefore, as the petitioner, Michael must establish that the evidence is without conflict and leads to but one conclusion that was not reached by the trial court. *See Massey v. St. Joseph Bank & Trust Co.*, 411 N.E.2d 751, 753 (Ind. Ct. App. 1980).

Whether Elisa is an Heir

[9] On appeal, Michael first contends that the court abused its discretion when it denied his petition to remove Elisa as the personal representative of the Estate because, unlike him, Elisa is not an heir. Michael is correct that "an heir" has priority over "any other qualified person" when granting domiciliary letters of general administration.[3] Ind. Code § 29-1-10-1(a)(5) and (6).

[10] Michael does not dispute that Elisa's birth certificate lists James as her father. Nonetheless, Michael contends that Elisa is not an heir because, at the time of Elisa's birth, Illinois law provided:

> "If the mother was not married to the father of the child either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as the father . . . ."

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[3] The statute gives priority to a named executor of a will, a surviving spouse who is a devisee in a will, a devisee in a will, and a surviving spouse before an heir or any other qualified person. *See* I.C. § 29-1-10-1(a)(1) through (4). There is no dispute that neither Michael nor Elisa qualifies as any of those persons.

People ex. rel. Ashford v. Ziemann, 441 N.E.2d 1255, 1257 (Ind. Ct. App. 1982) (quoting Ill. Rev. Stat. 1987, ch. 111 ½, par. 73-12(4)). And Michael maintains that Elisa "never produced the required written consent" of James such that the birth certificate did not establish James' paternity over Elisa. Appellant's Br. at 13. We cannot agree.

[11] The Illinois Court of Appeals has acknowledged that the Illinois Parentage Act of 1984 and the Vital Records Act "clearly state" that, if the mother of the child was not married to the father at the time of the child's birth, "then the father's name will only be entered on the birth certificate if both the mother and father sign an acknowledgement of parenting." *In re Reyes*, 860 N.E.2d 456, 458 (Ill. Ct. App. 2006). But the court also held that, when a man is listed as the father on a birth certificate, there is "sufficient evidence, albeit circumstantial," to find that that man had "signed a written acknowledgement of parentage[.]" *Id*. As in that case, the fact that James is listed as Elisa's father on her birth certificate infers that he signed the written acknowledgment of parentage as required by Illinois law.

[12] Still, Michael contends that the birth certificate is inadequate because, according to him, "the Illinois Parentage Act requires that, in the absence of a marriage between the mother and the father, the paternity of a child may only be established by the signing and witnessing of a voluntary acknowledgement[.]" Appellant's Br. at 14. However, Michael misreads the relevant portion of Illinois' Parentage Act. The statute simply provides that a "parent-child relationship may be established voluntarily by the signing and

witnessing of a voluntary acknowledgment[.]" 750 ILCS 46/301. Contrary to Michael's contention, the word "only" does not appear in the statute. Rather, that statute outlines one way in which the parent-child relationship may be established, not the only way. And, as discussed above, we may infer that James established a parent-child relationship when his name appears on Elisa's birth certificate. The evidence most favorable to the court's judgment shows that James properly executed a written acknowledgement of parentage and that Elisa's birth certificate establishes James' paternity over her.

[13] Michael next asserts that, even if the birth certificate establishes James' paternity over Elisa, the Illinois establishment of paternity is in "conflict with the express requirements of Indiana's inheritance statute" such that she is still not James' heir in Indiana. Appellant's Br. at 15. Indiana Code Section 29-1-2-7(b))(1) provides that, for the purpose of inheritance on the paternal side for a child born out of wedlock, the child shall be treated as if the father were married to the mother at the time of the child's birth if the paternity of the child "has been established by law in a cause of action that is filed during the father's lifetime." And Michael contends that "no cause of action was ever initiated in Indiana to prove parentage during [James'] lifetime, nor was any judgment of parentage ever entered under either Indiana law or Illinois law." Appellant's Br. at 15.

[14] However, the Illinois Court of Appeals has held that an acknowledgement of parentage "operates with the full force and effect of a judgment entered under the Illinois Parentage Act." *In re Parentage of G.E.M.*, 890 N.E.2d 944, 954. In

that case, a man "established a parent-child relationship" when he completed an electronic birth certificate worksheet, which "admission of paternity operated conclusively as a judicial determination based on evidence or a judgment establishing paternity[.]" *Id*. at 954-55.

[15] Similarly, here, the evidence indicates that James completed a written consent to be named as Elisa's father on her birth certificate, which admission of paternity operates with the full force and effect of a judgment. *See id*. at 954. As such, James' admission was equivalent to establishing paternity of Elisa by law in a cause of action that was filed during James' lifetime as required by Indiana Code Section 29-1-2-7(b). Further, a court "shall give full faith and credit to a paternity determination made by another state" regardless of whether the determination is made through a voluntary acknowledgment or a judicial or administrative process. I.C. § 31-14-9-1. Because James's admission of paternity operated with the full force and effect of a judgment, the trial court was required to give it full faith and credit. Contrary to James' assertions on appeal, relying on Elisa's properly executed Illinois birth certificate does not conflict with or override Indiana's inheritance statutes and is entitled to full faith and credit.

[16] The evidence most favorable to the trial court's judgment demonstrates that Elisa is an heir of James and that James' admission of paternity operated as a judgment entitled to full faith and credit by the trial court. Michael has not

demonstrated that the court abused its discretion when it denied his petition to remove Elisa as the personal representative of the Estate.[4]

Whether Elisa should be Disqualified

[17] Michael next contends that, even if we were to give full faith and credit to Elisa's birth certificate, her "unsuitability as Personal Representative supports her removal." Appellant's Br. at 16. Indiana Code Section 29-1-10-6 provides that the court may, after following certain procedures, remove a personal representative if the personal representative "becomes incapacitated . . . , disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana."

[18] In his expedited petition to remove Elisa as the personal representative, Michael only alleged that she should be removed because she is not an heir. *See* Appellant's App. Vol. 2 at 24-27. Then, following a hearing, Elisa filed a memorandum in opposition. Michael responded to that memorandum and, for the first time, alleged that Elisa was unsuitable to be the representative of the Estate. In particular, Michael alleged that the court in a different proceeding found that Elisa had "withheld relevant information and accountings critical to her actions while serving as the sole attorney-in-fact" for James, and she was

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[4] Because we hold that Elisa is an heir as a matter of law, we need not address Michael's argument that the court erred when it interpreted his statements in his initial petition for appointment as personal representative that Elisa was an heir at law to be a judicial admission.

"in a continuing conflict of interest while she remains the Personal Representative because she is the self-acknowledged Chief Operating Officer of [James'] company . . . while also remaining the co-owner and co-executive" of another company with Christina. Appellant's App. Vol. 2 at 91-92.

[19] The trial court never explicitly ruled on Michael's contentions regarding the suitability of Elisa to remain the personal representative. However, it appears that Michael's after-the-hearing reply—which asserted new grounds for Elisa's removal—was deemed untimely by the court. And Michael has not presented any argument supported by cogent reasoning and citations to authority to show that such a basis for denying his late allegations was an abuse of the trial court's discretion.

[20] In any event, while Michael asserts that a court on one occasion found that Elisa had failed to provide requested accounting information and that she worked at both James' company and another company with Christina, he does not explain why either of those factors would have required the court to remove her as the personal representative of the Estate. We therefore hold that Michael has not met his burden on appeal to demonstrate that the court abused its discretion on this issue.

Conclusion

[21] Elisa's birth certificate shows that she is James' heir. Michael has not demonstrated that the evidence leads only to a conclusion opposite that reached

by the trial court. And Michael has not met his burden to show that the court abused its discretion when it denied his late assertions that Elisa was unsuitable to be the personal representative. We affirm the trial court.

[22] Affirmed.

Riley, J., and Vaidik, J., concur.