

STATE OF MICHIGAN
COURT OF APPEALS

In Re the Estate of VIVIAN MARIE ROSS,
Deceased.

JOSEPH P. KLEINSMITH,

Petitioner-Appellee,

v

DIANE M. KONDRATEK, as Personal
Representative of the Estate of VIVIAN MARIE
ROSS, Deceased,

Respondent-Appellant,

and

LEVON KING,

Appellant.

UNPUBLISHED

July 31, 1998

No. 202779

Oakland Probate Court

LC No. 95-239742 SE

Before: Griffin, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Diane Kondratek and her attorney, Levon King, appeal as of right from a probate court order imposing sanctions. We affirm.

Vivian Marie Ross died on March 6, 1994. On January 11, 1995, her niece, Kondratek, filed a petition to commence proceedings in the probate court. Kondratek was appointed personal representative of the estate on January 23, 1995. At the time, it was believed that Ross had died intestate. On March 9, 1995, Joseph Kleinsmith, who lived with Ross before her death, submitted Ross' will to the probate court along with a separate petition to commence proceedings. Ross' will

appointed Kleinsmith as personal representative and left her entire estate to him. Kleinsmith sought to admit the will to probate and to remove Kondratek as personal representative. At a hearing on March 28, 1995, the probate court admitted the 1982 will and determined that no property remained in the probate estate. The probate court ruled that the real property shared by Ross and Kleinsmith prior to Ross' death had passed directly to Kleinsmith upon Ross' death. The probate court's ruling was based, in part, on Kleinsmith's presentation of a deed and his explanation that he and Ross had owned the property as joint tenants with full rights of survivorship. Subsequently, on May 15, 1995, the probate court entered an order dismissing both petitions to commence proceedings on the basis of the absence of any assets requiring probate.

Kondratek appealed from the probate court's order and this Court affirmed in an unpublished order, holding that Kondratek lacked standing to initiate probate proceedings. While her first appeal was pending, King filed a notice of lis pendens stating that Kondratek was the "duly appointed personal representative" of Ross' estate, and that, as such, she had a right to challenge the validity of a "quit claim deed" by which Kleinsmith allegedly obtained ownership of the property he shared with Ross before her death. Kondratek also filed estate tax returns for Ross' estate in which she stated that the subject property was owned solely by Ross at the time of Ross' death.

On December 9, 1996, Kleinsmith filed a petition for removal of the lis pendens and for the imposition of sanctions against Kondratek and King. After a hearing held on January 14, 1997, the probate court issued an order removing the lis pendens and holding Kleinsmith's request for sanctions in abeyance. Kleinsmith filed an additional petition for sanctions on March 21, 1997. On April 8, 1997, the probate court held another hearing and issued an order granting Kleinsmith's petition for sanctions pursuant to MCR 2.114 and MCR 2.625. The probate awarded costs and attorneys fees totaling \$4,233 to petitioner against Kondratek and King, jointly and severally.

On appeal, Kondratek and King characterize the probate court's order of sanctions as having been based on the estate tax returns as well as the notice of lis pendens. Although Kleinsmith added a claim for sanctions based on the estate tax returns to his second petition for sanctions, and argued at the final hearing that sanctions could be imposed based on the estate tax returns, the probate court's order imposing sanctions specifically stated that it was granting Kleinsmith's petition pursuant to the "order dated January 14, 1997." This refers to the order removing the lis pendens and holding in abeyance Kleinsmith's request for sanctions. In that order, the probate court characterized Kleinsmith's petition for sanctions as being based only on their role in "authorizing, signing, and filing an improper lis pendens." Accordingly, the probate court's imposition of sanctions was not based on Kondratek's filing of the estate tax returns.

Kondratek and King raise only two issues on appeal. First, appellants argue that the probate court erred in imposing sanctions without holding an evidentiary hearing and in the absence of any evidence of falsity. We disagree. We review a trial court's decision regarding the imposition of sanctions under for clear error. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

We conclude that the probate court did not clearly err in imposing sanctions on appellants. After the March 28, 1995, hearing and the May 15, 1995, order dismissing both petitions to commence

proceedings, appellants could not have had any reasonable basis for believing that Kondratek was still acting as the “duly appointed personal representative” of Ross’ estate. Although there was no order officially discharging Kondratek, reason and common sense dictate that she could not act as personal representative in the absence of an active estate. Accordingly, the assertion to that effect in the notice of lis pendens was not “well grounded in fact” as required by MCR 2.114(D)(2). The only evidence necessary to establish the falsity of the information contained in the lis pendens was the order dismissing the petitions to commence proceedings. Because this Court had not yet ruled on Kondratek’s first appeal, appellants were bound by the judgment of the probate court. Cf. *St. Clair Prosecutor v AFSCME*, 425 Mich 204, 215; 388 NW2d 231 (1986). Moreover, Kondratek and King had ample opportunity to “know and respond” to the petition for sanctions and the evidence against them at the hearings conducted on January 14, 1997, and April 8, 1997. See *KLCO v Dynamic Training Corp*, 192 Mich App 39, 42; 480 NW2d 596 (1991).

Second, appellants argue that the probate court erred in imposing sanctions based on her mistaken understanding that Kondratek, as personal representative, had no right or duty to be concerned about non-probate property in the estate tax returns. We disagree. This argument is without merit because (1) the probate court’s imposition of sanctions was not based on Kondratek’s filing of the estate tax returns, and (2) Kondratek was not the personal representative of Ross’ estate when she filed the tax returns. Accordingly, Kondratek and King are not entitled to relief on appeal.

Affirmed. Kleinsmith being the prevailing party, he may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin

/s/ Roman S. Gribbs

/s/ Michael J. Talbot