

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of GARY VERNON SCOTT,
Deceased.

DAVID J. SCOTT,

Petitioner-Appellant,

v

BARBARA SCOTT,

Respondent-Appellee.

UNPUBLISHED

December 26, 2000

No. 210082

Macomb Probate Court

LC No. 97-154167-IE

Before: Owens, P.J., and Jansen and R. B. Burns*, JJ.

PER CURIAM.

This case is on remand from the Supreme Court for consideration of petitioner David J. Scott's claim of appeal. *In re Scott Estate*, 461 Mich 896 (1999). Petitioner appeals from various orders of the probate court denying his motion for an extension of time to file a civil action, denying his motion to conduct hearing by telephone, denying his motions for stay, and allowing the estate to be closed. We affirm.

This case arises out of petitioner's assertion that certain assets were unlawfully removed from the estate of his brother Kenneth Scott, of which petitioner was the sole beneficiary, and transferred to the estate of another brother, Gary Scott, of which petitioner was not a beneficiary or heir. Kenneth Scott died in 1992 and had been residing in Florida; his estate was subsequently established in Broward County, Florida and the personal representative was William Yahn. Gary Scott died on February 22, 1997, intestate, and Barbara Scott, his wife, is the personal representative of his estate. Petitioner filed his claim against the estate of Gary Scott on September 18, 1997. Respondent disallowed the claim on October 11, 1997, and the notice was mailed on October 16, 1997. Petitioner then moved for extension of time to start civil action, dated December 11, 1991, and stamped as "filed" by the probate court on December 17, 1997.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The probate court, in an order entered February 12, 1998, denied petitioner's motion for extension of time to start civil action and denied another motion for a hearing by telephone conference. The crux of the probate court's ruling was that petitioner did not have standing because he is not a beneficiary of Gary Scott's estate. The probate court also ruled that there are no legal provisions permitting a telephone conference for a person who is incarcerated, such as petitioner.

On March 1, 1998, petitioner moved for rehearing of the probate court's order denying his motion for extension of time to start civil action and moved for a stay pending appeal. On March 4, 1998, he filed a claim of appeal in this Court.¹ The probate court denied petitioner's motion for rehearing and motion for stay pending appeal in orders entered March 6, 1998. Petitioner then moved for relief from judgment, renewed his motion for a stay pending appeal, and petitioned for court supervision on May 28, 1998. In an order entered June 11, 1998, the probate court denied petitioner's request for oral argument on these motions and stated that the motions would be decided on the briefs alone. On July 1, 1998, the probate court filed a written opinion denying the motion for relief from judgment, again ruling that petitioner lacked standing and noted that Kenneth Scott's estate was never reopened and that the assets in question were never assigned to petitioner. Petitioner yet again moved for rehearing and for a stay pending appeal, which were ultimately denied by the probate court in an order entered November 30, 1998. In the meantime, respondent filed a closing statement regarding the estate on September 25, 1998.

Petitioner raises five issues on appeal. With respect to the first two issues raised by petitioner, relating to the probate court's decision to deny petitioner's motion to conduct the hearing by telephone and to allow opposing counsel to appear in petitioner's absence at the hearing, we find no abuse of discretion on the part of the probate court. MCR 2.402(B) provides that a court *may* direct that communication equipment, such as a telephone, be used for a motion hearing. The plain language of the court rule clearly leaves this ruling to the court's discretion. In the present case, petitioner is an incarcerated prisoner and the probate court clearly made its decision based on the motions and briefs filed. Since a telephone conference would not have aided the probate court in its decision, we find no abuse of discretion. Similarly, MCR 2.119(E)(3) provides that a court *may, within its discretion*, dispense with or limit oral arguments on motions. We can discern no abuse of discretion on the part of the probate court based on the record before us.

Further, we note that the probate court's decision to deny petitioner's motion for extension of time to start civil action was based on a narrow legal principle: that petitioner lacked standing to bring the claim. Therefore, oral arguments would not have added any substance to the issues before the probate court. Thus, we also find that the probate court did not

¹ This Court, in an unpublished order dated September 2, 1998, dismissed petitioner's claim of appeal on a jurisdictional basis that the claim of appeal was not timely. On November 16, 1998, this Court denied petitioner's motion for rehearing. However, our Supreme Court vacated the September 2, 1998, order, noting that the order being appealed was entered on February 12, 1998, and thus petitioner's claim of appeal was timely filed.

err in denying petitioner's motion for extension of time to start civil action because petitioner lacked standing²; he was not a beneficiary, heir-at-law, or creditor of the estate.³ See MCL 700.105; MSA 27.5105 (intestate share of surviving spouse); MCL 700.106; MSA 27.5106 (intestate share not passing to the surviving spouse); MCL 700.703 *et seq.*; MSA 27.5703 *et seq.* (claims against the estate). Moreover, as noted below, petitioner's claim should have been brought against the estate of Kenneth Scott because petitioner's allegations are that assets were wrongfully removed from the estate of Kenneth Scott; assets that otherwise belonged to petitioner as the sole beneficiary of the estate of Kenneth Scott.

Further, the probate court did not err in denying petitioner's motions for stay pending appeal. There was a great deal of confusion surrounding whether petitioner had filed a claim of appeal in this Court because petitioner had failed to file his claim of appeal with the probate court.⁴ Additionally, the probate court's ruling that petitioner lacked standing to bring a claim against the estate is a correct one; therefore, the question of a stay pending appeal is essentially moot.

Lastly, the probate court did not err in closing decedent's estate. Contrary to petitioner's assertion, there is ample evidence in the lower court record that respondent gave notice to all known creditors and, in any event, petitioner is not a creditor of the estate. Consequently, the probate court did not err in allowing the estate to be closed.

Affirmed.

/s/ Kathleen Jansen
/s/ Robert B. Burns

I concur in result only.

/s/ Donald S. Owens

² Petitioner's reliance on MCL 700.712(2); MSA 27.5712(2) is entirely misplaced because that provision relates to creditor's claims against an estate and petitioner is unquestionably not a creditor and, in any event, the probate court did not base its ruling on this statutory provision.

³ We note that decedent Gary Scott was survived by his wife and his father and that he did not have any children.

⁴ The confusion was probably increased by an unpublished order of this Court, entered on May 28, 1998, which denied petitioner's motion to waive fees and returned the pleadings to petitioner for refileing.