STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF EUGENE C. NIERZWICK.

BRUCE ERIC NIERZWICK,

Appellant,

V

KAREN J. NIERZWICK,

Appellee,

and

THOMAS K. NIERZWICK, ALEC NIERZWICK, SUSAN M NIERZWICK BUSH, DAVID J. NIERZWICK, DEANNE CHANNER, CHRISTINE CHANNER, BRIAN R. NIERZWICK, JAMES A. NIERZWICK, and CAROL A. NIERZWICK,

Other Parties.

UNPUBLISHED
October 22, 2020

No. 349604
Macomb Probate Court
LC No. 2017-225322-DE

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Appellant appeals as of right the probate court's order, which among other issues, denied a request to remove appellant as personal representative of the estate, denied appellant's request for fiduciary fees, and ordered the distribution of the personal property of the decedent's estate. For the reasons provided below, we affirm.

This case arises from disputes related to the unsupervised administration of the estate of Eugene C. Nierzwick after his death on September 29, 2017. Because the decedent had taken steps to transfer all of his real property and bank accounts before his death, the only remaining assets in his estate were some personal property items, purportedly valued at $5,270. The decedent's will

nominated appellant as the personal representative of the estate and called for the liquidation of the decedent's property, with the proceeds being disbursed among eight devisees, including the decedent's daughter Karen J. Nierzwick. In October 2017, appellant filed a petition to be appointed personal representative, and the court subsequently ordered his appointment.

As of January 2019, appellant had not distributed any of the property, and Karen filed a request with the probate court to require appellant to distribute the property. Appellant maintained that he was entitled to keep the entirety of the personal property because his $11,145.33 in administrative costs and fees exceeded the $5,270 value of the estate. Karen also filed a separate request to have appellant removed as personal representative.

The probate court ultimately denied Karen's request to remove appellant as personal representative and denied appellant's request for any fiduciary fees. The court also ordered appellant to distribute the personal property to the named devisees.

I. COURT "ALLOWING" PETITIONS TO BE FILED

Appellant argues that the probate court erred when it "allowed" Karen, a named devisee under the will, to file intentionally fraudulent materials with the court. We disagree.

Because appellant did not argue below that the probate court should have prohibited Karen from filing documents or should have struck the documents she filed, this issue is unpreserved. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). We review unpreserved issues for plain error affecting substantial rights. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008). Thus, in order to succeed, appellant must demonstrate that an error was clear or obvious and that it affected the outcome of the proceedings. *Richard v Schneiderman & Sherman, PC (On Remand)*, 297 Mich App 271, 273; 824 NW2d 573 (2012).

Appellant claims that in Karen's January 3, 2019 petition to require appellant to distribute the decedent's personal property, she falsely stated that appellant "refused family tapes and Pictures, Sweaters, Rosary, and All dad personal items to be shared." Appellant asserts that this statement was patently false because Karen acknowledged at the hearing that appellant had offered to distribute the eight-millimeter tapes. However, appellant ignores the last part of Karen's statement at the hearing, in which she stated that she and appellant had exchanged text messages on the subject, but "[the tapes] never were given to me." Viewed in context, this "admission" at the hearing does not establish that appellant did not refuse to hand over the tapes.[1]

Appellant's argument also is wanting in legal authority. While appellant cites criminal statutes regarding perjury and oath or affirmation on filed documents, he cites no authority that requires a lower court to prevent an interested party from *filing* documents that purportedly contain false statements. Appellant does not explain how a court could *prevent* such filings from

[1] We also observe that Karen filed her petition on January 3, 2019, and the hearing was held on January 30. Her statement at the hearing did not identify when these text messages about the tapes had occurred. If they had occurred after January 3, then her January 3 petition could still have been totally truthful at the time the petition was filed.

happening. Indeed, a party would have to file the document first *before* the court could even see it. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Movie Mania Metro, Inc v GZ DVD's, Inc*, 306 Mich App 594, 605-606; 857 NW2d 677 (2014) (quotation marks and citation omitted). Appellant has failed to show how the probate court erred by "allowing" Karen to file her documents with the court.

To the extent that appellant avers that the probate court's involvement was improper because this was an unsupervised administration, that argument is without merit. MCL 700.3415 states:

> Unless supervised administration is sought and ordered, each person interested in an estate, including a personal representative, . . . may make 1 or more independent requests to the court so that a question or assumption relating to the estate, including the status of an estate as testate or intestate, a matter relating to 1 or more claims, a disputed title, an account of a personal representative, and *distribution*, may be resolved or established by adjudication after notice without necessarily subjecting the estate to the necessity of a judicial order in regard to other or further questions or assumptions. [Emphasis added.]

In this instance, in her January 3, 2018 petition, Karen requested that the court address the distribution of the estate, which is expressly permitted.

Moreover, Karen's allegedly false statements did not affect the outcome of the proceedings. For one, the probate court denied Karen's petition to remove appellant as personal representative, so any purportedly false statements contained in the petition to remove appellant obviously did not adversely affect him. Second, any false statement in Karen's petition to have appellant distribute the decedent's personal property had no bearing on any outcome. Karen's statement in her petition that appellant "refused" to hand over family tapes had no practical effect because appellant admitted at the hearing that he had not distributed any of the personal property from the $5,270 estate. Whether appellant defiantly "refused" to do so or passively had not done so for other reasons is immaterial because all that was salient was whether any distribution had yet occurred. And when the probate court questioned appellant at the January 30, 2019 hearing about why no distribution had happened, appellant justified his decision because, according to him, the expenses to administer the estate exceeded the amount of the estate. In light of this justification, the probate court adjourned the matter so a guardian ad litem could investigate and report back to the court. In sum, appellant has failed to establish the existence of any error, let alone a plain error that affected the outcome of the proceedings.

II. DENIAL OF FIDUCIARY FEES

Appellant argues that the probate court erred when it denied his request to be paid $11,145.33 in fiduciary fees. We disagree.

This Court reviews a probate's findings of fact for clear error and its dispositional rulings for an abuse of discretion. *In re Tchakarova*, 328 Mich App 172, 182; 936 NW2d 863 (2019). A court clearly errs when the reviewing court is left with a definite and firm conviction that a mistake

has been made, and a court abuses its discretion when it chooses an outcome that falls outside the range of reasonable and principled outcomes. *Id*. Further, to the extent this issue requires the interpretation of a statute, the interpretation is reviewed de novo. *Id*.

Regarding a personal representative's compensation, MCL 700.3719(1) provides:

> A personal representative is entitled to *reasonable* compensation for services performed. A personal representative may pay the personal representative's own compensation periodically as earned without prior court approval. [Emphasis added.]

And MCL 700.3720 allows for reimbursement of "*necessary* expenses" incurred while "defend[ing] or prosecut[ing] a proceeding in good faith, whether successful or not." (Emphasis added.)

After mediation failed between appellant and Karen, the probate court on June 21, 2019, ordered appellant to distribute the items as directed by the court. The court also denied appellant's request for fees. Although the probate court did not use the words "reasonable," "unreasonable," "necessary," or "unnecessary" for denying the requested fees, it is apparent from the court's rationale that it determined that appellant's fees were not compensable because they were not reasonable or necessary.

Appellant does not put forth any persuasive arguments in support of his view that the probate court erred. Most of his argument is dedicated to unfocused discussions involving alleged fraud and crimes committed by an attorney he hired, William Cashen; the probate judge; appellant's brother James; and James's attorney. None of this is pertinent for determining whether the court properly disallowed any fiduciary fees. Appellant also fails to address the basis for the probate court's ruling, i.e., he does not explain how his requested compensation was reasonable or, more pertinently, how it was reasonable for him to pursue a formal probate proceeding when the decedent's estate was only worth $5,270.[2] He also does not explain how any of his requested expenses were necessary. Therefore, appellant has not demonstrated that the probate court abused its discretion, and we decline to address appellant's argument. See *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004) (stating that "[w]hen an appellant fails to dispute the basis of the trial court's ruling, this Court . . . need not even consider granting" the relief the appellant seeks) (citation omitted).

III. DISQUALIFICATION OF PROBATE JUDGE

In his brief on appeal, appellant lists a litany of perceived instances that the probate judge discriminated against him. Although not explicitly stated in his brief, we treat appellant's

[2] MCL 700.3982 allows for summary administrative proceedings for small estates valued at $15,000 or less, adjusted for cost of living. And the alternate procedure described in MCL 700.3983 would have been applicable as well because of the size of the estate and because the estate consisted entirely of personal property.

arguments as a challenge to the probate court's decision to deny appellant's motion to disqualify the probate judge. We disagree with appellant's position.

"When this Court reviews a motion to disqualify a judge, the trial court's findings of fact are reviewed for an abuse of discretion; however, the applicability of the facts to relevant law is reviewed de novo." *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008).

Appellant moved to disqualify the probate judge under MCR 2.003(C)(1)(a) and (b), which provide that a judge should be disqualified if

> (a) The judge is biased or prejudiced for or against a party or attorney[; or]
>
> (b) The judge, based on objective and reasonable perceptions, had either (i) a serious risk of actual bias impacting the due process right of a party as enunciated in *Caperton v Massey*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Judicial Conduct.

To the extent that appellant attempted to invoke MCR 2.003(C)(1)(b)(ii), that attempt was unsuccessful. Although appellant cited Canon 1 of the Michigan Code of Judicial Conduct in his motion to disqualify, and cites Canon 3 in his brief on appeal, he notably never cited the pertinent Canon 2. Canon 2 addresses how a judge should avoid impropriety and the appearance of impropriety in all activities. See Code of Judicial Conduct, Canon 2(A) ("A judge must avoid all impropriety and appearance of impropriety."). Therefore, appellant has failed to carry his burden with respect to how disqualification was warranted under MCR 2.003(C)(1)(b)(ii).

Instead, in his motion to disqualify, appellant alleged that the probate judge made many errors, including "allowing" Karen's petition for appellant to distribute the items to go forward and denying appellant's request to orally raise a new motion at a motion hearing.[3] Essentially, appellant claims that these alleged errors exhibit bias against appellant. Appellant's position is without merit. It is well established that "judicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible and overcomes a heavy presumption of judicial impartiality." *Armstrong*, 248 Mich App at 597 (quotation marks and citation omitted). Indeed, "[r]epeated rulings against a litigant, even if erroneous, are not grounds for disqualification. The court must form an opinion as to the merits of the matters before it. This opinion, whether pro or con, cannot constitute bias or prejudice." *Band v Livonia Assoc*, 176 Mich App 95, 118; 439 NW2d 285 (1989), citing *Mahlen Land Corp v Kurtz*, 355 Mich 340, 350; 94 NW2d 888 (1959).

In his motion to disqualify, appellant further cited several excerpts from the transcripts, in which the trial court said something adverse to appellant. Contrary to appellant's contentions,

[3] This hearing was in a separate civil action.

none of these instances demonstrates that the court was biased against appellant because he was representing himself.

The first comment appellant takes issue with is when the probate judge stated that she had seen appellant in court "no less than six times." First, appellant does not dispute the truthfulness or accuracy of that statement. Second, based on "objective and reasonable perceptions," this comment does not demonstrate impermissible bias. Instead, it merely shows how the judge was questioning why such a small estate was resulting in so much litigation—it does not show that the judge was biased or impartial against appellant.

Appellant also notes that at one point, the judge told him that "you're not an attorney and I'm afraid you don't understand . . . the law like you think . . . that you do." This comment was in response to appellant's position that the probate judge had failed to initiate disciplinary proceedings against his attorney, Cashen. The judge stated that in her view, she had seen nothing that would lead to a conclusion that Cashen had violated the Code of Professional Responsibility. The judge's comment that appellant does not understand the law does not exhibit bias; it instead was an attempt to explain why the probate court came to a different conclusion than appellant regarding the need to refer Cashen for disciplinary proceedings. In other words, the judge merely was saying that, although appellant held a different view, in her view no referral was needed. Thus, this comment and ruling fall under the adverse-ruling discussion from above. See *Armstrong*, 248 Mich App at 597; *Band*, 176 Mich App at 118.

In sum, appellant has not shown how disqualification of the probate judge was warranted. Appellant primarily relies on many of the judge's ruling that were adverse to appellant, but those types of rulings are inadequate to demonstrate bias. Accordingly, the probate judge and the chief judge did not err by denying appellant's motion to disqualify the probate judge.

IV. AUTOMATIC STAY OF PROCEEDINGS

Appellant argues that there was an automatic stay that prevented the probate court from conducting any further proceedings after it had entered the June 21, 2019 final order. However, this Court lacks subject-matter jurisdiction to review this issue.

The issue of subject-matter jurisdiction can be raised sua sponte. *O'Connell v Dir of Elections*, 316 Mich App 91, 100; 891 NW2d 240 (2016); *Clohset v No Name Corp (On Remand)*, 302 Mich App 550, 561; 840 NW2d 375 (2013). This Court reviews questions of law, such as the proper interpretation of a statute or court rule and whether a court has subject-matter jurisdiction, de novo. *Derderian*, 263 Mich App at 374.

The issue appellant raises on appeal deals with events that transpired *after* appellant filed his July 1, 2019 claim of appeal with this Court. Specifically, appellant challenges the probate court's August 2, 2019 ruling that there was no active automatic stay of proceedings. Although a party who files an appeal of right from a final order may raise issues related to other orders in the case, *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992), the party may not challenge subsequent orders entered after the claim of appeal has been filed, *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 197; 452 NW2d 471 (1989). Accordingly, this Court lacks subject-matter jurisdiction to review any issues that took place after appellant filed his

July 1, 2019 claim of appeal, which includes the probate court's August 2, 2019 rulings. As a result, we are prohibited from addressing this issue.

V. MICHIGAN JUDICIAL SYSTEM CONSPIRACY

In his final issue, appellant alleges that many individuals and entities, including the Judicial Tenure Commission, the Attorney Grievance Commission, the chief judge of the Macomb Probate Court, the probate judge in this matter, and this Court as a whole[4] of improper behavior. But with these allegations, appellant does not identify anything new for this Court to review that has not been considered and addressed elsewhere in this opinion in relation to appellant's other issues on appeal. He references 18 USC 242, but that is a federal criminal statue, which does not authorize civil suits or create private causes of action. *Cok v Cosentino*, 876 F2d 1, 2 (CA 1, 1989); *Henry v Albuquerque Police Dep't*, 49 Fed Appx 272, 273 (CA 10, 2002); *Anderson v Dunbar Armored, Inc*, 678 F Supp 2d 1280, 1327 (ND Ga, 2009). Consequently, with no identification of anything for this Court to review or correct, there is no basis for appellate relief.

Affirmed.

/s/ Patrick M. Meter
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan

[4] Appellant also specifically alleges that the Court of Appeals judge who signed the order denying his motion for a stay, as well as a member of this Court's Clerk staff, also have violated his rights.