STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of EDWARD JOSEPH MCCORMICK.

ERIC A. BRAVERMAN, Personal Representative of the Estate of EDWARD JOSEPH MCCORMICK,

Appellee,

v

LINDA MCCORMICK,

Appellant.

UNPUBLISHED
July19, 2011

No. 296547
Wayne Probate Court
LC No. 1992-513517-DE

In re Estate of EDWARD JOSEPH MCCORMICK.

ERIC A. BRAVERMAN, Personal Representative of the Estate of EDWARD JOSEPH MCCORMICK,

Petitioner-Appellee,

v

MARY MCCORMICK,

Respondent-Appellant.

No. 296551
Wayne Probate Court
LC No. 1992-513517-DE

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

PER CURIAM.

In these consolidated appeals, appellants Linda McCormick and Mary McCormick each appeal as of right from the probate court's February 1, 2010, opinion and order approving the 12th, 13th, and 14th and final accounts of appellee Eric Braverman, as personal representative of

the estate of Edward J. McCormick, following a prior remand order from our Supreme Court. We affirm.

This probate court case has a long procedural history that includes several prior appeals, as well as prior appeals in a related circuit court divorce action. Appellant Mary McCormick is the ex-wife of the decedent, Edward McCormick, and appellant Linda McCormick is Edward's daughter. Mary and Edward were divorced pursuant to a judgment of divorce that was issued in August 1987, which they both appealed. On appeal, this Court affirmed the judgment in part, reversed in part, and remanded for further proceedings related to the property division and alimony provisions of the judgment. *McCormick v McCormick*, unpublished opinion per curiam of the Court of Appeals (Docket No. 102806, issued September 9, 1991). Edward McCormick died in 1992, before the remand proceedings were concluded.

An ongoing dispute in the circuit court divorce case involved the ownership and distribution of the marital home located at 8995 Henry Ruff Road in Livonia ("Henry Ruff property"). That property was ultimately awarded to Edward's estate. In December 2003, while the circuit court proceedings were pending, the property was damaged by fire. In January 2004, the circuit court appointed a receiver to collect the insurance proceeds, oversee completion of necessary repairs, and sell the property. The property was sold in October 2005 for $118,000. After payment of the broker's commission, closing fees, unpaid taxes, and other expenses, the net sales proceeds of $105,156 were paid to the receiver for distribution as directed by the circuit court.

In January 2006, the circuit court awarded appellee Braverman attorney fees of $41,485.16 in the circuit court case. A separate order provided that those fees were to be paid by the circuit court receiver, who paid them on June 20, 2006. On January 26, 2007, the circuit court entered an order approving the receiver's actions and discharging the receiver upon payment of the balance of the funds in the receiver's account ($5,018.87) to appellee Braverman, for distribution as part of Edward's estate. No appeal was filed from these circuit court orders.

Appellee Braverman thereafter filed a petition in the probate court requesting approval of his 12th, 13th, and 14th and final accounts. The 12th account did not list any receipts or disbursements. The only receipt and disbursement listed in the 13th account pertained to the sale of the Henry Ruff property and the distribution of the sale proceeds to the circuit court receiver. The 14th and final account listed as the only receipt the $5,018.87 account balance from the receiver, and listed expenses of $7,564.50 for attorney fees, an inventory fee of $385, and administrative costs of $60, leaving a deficit of $2,900.63. The probate court approved the accounts in an order dated April 2, 2007.

Appellants appealed the probate court's April 2, 2007, order to this Court, which affirmed the order in *In re McCormick Estate*, unpublished opinion per curiam of the Court of Appeals, issued December 11, 2008 (Docket No 277558). Thereafter, however, our Supreme Court vacated this Court's decision, reversed the probate court's order, and remanded the case to the probate court for further proceedings. *In re McCormick Estate*, 485 Mich 881; 772 NW2d 337 (2009). The Supreme Court's remand order provided:

> We DIRECT the probate court to require the petitioner to provide an itemized accounting that establishes his and the receiver's entitlement to the specific amounts they received from the estate as compensation. See MCR 5.310(C)(2)(c). In particular, the probate court shall require the petitioner to provide an itemization of the $41,485 payment to himself from the estate, and the $105,156 payment to the receiver from the proceeds of the sale of real property. [*Id.*]

On remand, the probate court again approved the accounts without requiring further itemization. The court clarified that "[t]he fees referred to by the Supreme Court were actually fees approved and paid by order of the circuit court in the divorce action," and none were paid from the probate estate. The court also noted that neither Linda nor Mary had filed any written objection for the January 25, 2010 hearing. In addition, the court expressed that neither Mary nor Linda had standing to object to the accountings because Mary was not a surviving spouse and Linda was not an heir with a property right in the estate. The probate court concluded:

> This court, pursuant to the remand order from the Michigan Supreme Court, finds that the fees referenced in the Supreme Court's remand order were ordered paid by the Wayne County Circuit Court. It appears that those orders were not appealed and are now final. This court does not have the power to review decisions of the Circuit Court or the Court of Appeals. Therefore, this court does not award any of the fees referenced in the Supreme Court's remand order.
>
> Finally, Mary McCormick and Linda McCormick are not interested persons in the probate estate and therefore have no standing to object to the accounts. None of the interested persons in these proceedings have objected to the 12th, 13th, and 14th and final accounts or to the petition for complete estate settlement.
>
> It is hereby ordered that the 12th, 13[th], 14th and final accounts are allowed as stated.

On appeal, appellants argue that the probate court violated the Supreme Court's remand order by failing to require an itemization of the $41,485 payment to appellee Braverman and the $105,156 payment to the receiver. We disagree.

A lower court "may not take action on remand that is inconsistent with the judgment of the appellate court." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). The trial court is bound to strictly comply with the law of the case, as established by the appellate court, "according to its true intent and meaning." *People v Blue*, 178 Mich App 537, 539, 444 NW2d 226 (1989).

On remand, the probate court addressed the Supreme Court's remand order by clarifying the nature of the contested payments, explaining that they did not involve funds received from the estate as compensation. Instead, they involved payments that were previously authorized and approved by the circuit court in the divorce case. The record supports the probate court's finding

that the payments at issue were authorized by the circuit court and were not awarded by the probate court.

First, the record clearly indicates that the $105,156 "payment" to the receiver was not awarded to the receiver by the probate court, nor did these funds even constitute "compensation" for his services. Rather, the funds represented the net proceeds from the sale of the Henry Ruff property and were collected by the receiver for distribution in accordance with his appointment as receiver in the circuit court divorce case. The circuit court's February 20, 2004, amended order appointing the receiver specifically authorized him to collect all insurance proceeds, ensure the repair of the property, effectuate a sale of the property, and to apply any sales proceeds in the manner directed by the circuit court. We also note that all necessary itemization for the $105,156 payment, as well as the receiver's receipts and disbursements, was included with appellee Braverman's 13th annual account. The account listed total receipts of $118,763.51 and total expenses and disbursements of $118,763.51 in connection with the sale of the Henry Ruff property, and a copy of the closing statement itemizing all expenses associated with the closing was attached to the account. The closing statement reflected the purchase price of $118,000 and credits for prorated taxes of $763.51, for total receipts of $118,763.51. In addition, it listed total disbursements of $118,763.51, consisting of various itemized costs and other closing charges, resulting in net sales proceeds of $105,156, which were transferred to the receiver. On remand, the probate court correctly observed that "[a]fter payment of the expenses reflected in the closing statement, the balance of $105,156 was paid to the receiver for distribution in accordance with the order of the circuit court." Also attached to the 13th account was an itemized listing of all of the circuit court receiver's receipts and disbursements, including his receipt of the $105,156 net sales proceeds from the sale of the Henry Ruff property and a listing of all subsequent expenses to which those proceeds were applied.

On January 26, 2007, the circuit court entered an order adjudicating "that the Receiver's actions were reasonable and necessary, and that he has discharged his duties in good faith[,]" and directing that the "balance of the funds in the Receiver's account for this matter will be forwarded to the Estate of Edward McCormick, c/o Eric Braverman, Personal Representative." The receiver's itemized account shows that, after satisfaction of all expenses, a balance of $5,108.87 remained in the account, which was then transferred to the estate as accurately shown on appellee Braverman's 14th and final accounting.

In sum, the probate court complied with the Supreme Court's remand order with respect to the $105,156 payment to the receiver by addressing the nature of that payment and clarifying that the receiver's transactions with respect to the Henry Ruff proceeds were conducted under the auspices of the circuit court. Further, the record reflects that all necessary itemization pertaining to the $105,156 payment was included with appellee Braverman's 13th account. The probate court also correctly observed that, because the receiver had been appointed by the circuit court and his transactions were all approved by that court, those transactions were outside the scope of the probate court's purview.

The Supreme Court's remand order also directed that the probate court

> require the petitioner to provide an itemized accounting that establishes his . . . entitlement to the specific amounts . . . received *from the estate as compensation*.

> . . . . In particular, the probate court shall require the petitioner provide an itemization of the $41,485 payment to himself *from the estate*[.]

We acknowledge that, on remand, the probate court did not require appellee Braverman to provide an itemization of the $41,485 payment that he previously received. However, the probate court responded to the Supreme Court's directive by clarifying that the $41,485 payment did not involve a payment that was requested from, or awarded by, the probate court and did not involve a payment by "petitioner" to himself from the estate. Instead, the $41,485 payment was received by appellee Braverman from the circuit court receiver from funds in the receiver's account after having been awarded and approved by the circuit court in the circuit court divorce case. The circuit court's February 20, 2004, amended order appointing the receiver specifically authorized the receiver to effectuate a sale of the property and to apply any sales proceeds "[t]o pay the fees and costs of [appellee] Eric Braverman[.]" In an order dated January 6, 2006, the circuit court approved an award of attorney fees and costs to Braverman in the amount of $41,485.16, and the $41,485.16 payment to Braverman is listed in the circuit court receiver's itemized account. Thus, the record clearly establishes that the $41,485 payment was received from the receiver in the circuit court case, pursuant to the circuit court's order.

The Supreme Court cited MCR 5.310(C)(2)(c) as authority for the itemization specified in the Supreme Court's remand order. That rule provides that "[a]ll accountings must be itemized, showing in detail receipts and disbursements during the accounting period," and that "a written description of services performed must be included or appended regarding compensation sought by a personal representative." Here, however, the contested $41,485.16 amount had previously been approved and awarded by the circuit court. It was not sought by appellee Braverman as part of his 12th, 13th, or 14th and final accounts. Accordingly, itemization was not required by MCR 5.310(C)(2)(c) in connection with those accounts. We believe that the probate court complied with the Supreme Court's remand order by clarifying the nature of the $41,485.16 payment on remand and accurately explaining that it did not involve any fees awarded by the probate court or sought by petitioner in his 12th, 13th, or 14th and final accounts.

We further agree that it was not necessary for the probate court on remand to hold an evidentiary hearing on appellants' other objections to the accountings. The probate court cited two reasons for refusing to consider appellants' objections: (1) because appellants failed to file written objections to the accountings, and (2) because appellants lacked standing because they were not interested persons in the estate. Although we question appellants' standing, because the Supreme Court previously granted appellants relief in connection with their objections to the 12th, 13th, and 14th and final accounts, we are reluctant to affirm on that basis. However, we find no error with respect to the probate court's other reasons for not considering appellants' objections. MCR 5.310(C)(2)(c) provides that all accountings "must include notice that (*i*) objections concerning the accounting must be brought to the court's attention by an interested person because the court does not normally review the accounting without an objection." Appellee Braverman's accountings contained this notice. Appellants did not file any objections to the accountings on remand. Accordingly, the probate court did not err by declining to further consider appellants' other objections.

Appellants also raise other issues pertaining to the circuit court case and to earlier proceedings in the probate court. However, this appeal is limited to appellee Braverman's 12th,

13th, and 14th and final accounts. Issues unrelated to those accounts are beyond the scope of this appeal.

For the foregoing reasons, we conclude that the probate court satisfactorily discharged its duty to comply with the Supreme Court's remand order and we affirm the probate court's order. Appellants also argue that this case should be assigned to a different judge on remand. In light of our decision to affirm, however, it is unnecessary to address that argument.

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro