

DA 19-0082

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 278N

IN THE MATTER OF THE ESTATE OF:

JACK G. BATES,

Deceased.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DP 2018-42
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

William M. Gilbert, High Plains Law, PLLC, Billings, Montana

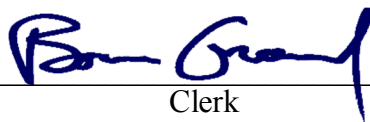
For Appellee:

William Nels Swandal, Swandal Law, PLLC, Livingston, Montana

Submitted on Briefs: September 25, 2019

Decided: November 26, 2019

Filed:


Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Appellant John Miller (Miller) appeals the order of the Montana Sixth Judicial District Court, Park County, requiring First Interstate Bank and Opportunity Bank to release the funds of bank accounts owned by the Decedent, Jack G. Bates (Bates), to his estate. We affirm in part, reverse in part, and remand for further proceedings.

¶3 Bates died on November 16, 2018, at the age of 95. As alleged in the proceedings, in June of 2018, a physician concluded Bates' mental and physical condition had deteriorated to the point that he was no longer capable of making competent, cognitive financial decisions for himself. Shortly thereafter, Miller, Bates' grandson, took Bates to Opportunity Bank, where Bates made Miller a beneficiary on several accounts; Miller also took Bates to First Interstate Bank so Bates could add Miller as a signatory on several accounts held there. Bates previously had executed a power of attorney naming Miller as his attorney-in-fact.

¶4 On November 27, 2018, Rebecca Swandal initiated an informal probate of Bates' Estate and was named Personal Representative. On November 29, Swandal filed an emergency motion to freeze Bates' bank accounts. The motion alleged that Miller

withdrew over \$7,000 from Bates' accounts the day after Bates' death, utilizing the power of attorney, which was then expired and invalid. The motion also asserted that Miller had withdrawn over \$80,000 from Bates' bank accounts since April of 2018, and made over \$14,000 in credit card payments from the accounts during that time. The motion expressed alarm that, without court intervention, "Miller will liquidate all of the other bank accounts and the heirs will never be able to recover that money, if the Court determines it is rightfully theirs." The District Court signed an emergency order freezing the accounts. On January 3, in response to Swandal's motion citing the physician's report and alleging that Bates had gained control over the accounts by undue influence, the District Court entered an order requiring the banks to release the money in Bates' accounts to the Estate. The District Court did not make any determination regarding the allegations of undue influence. Miller appeals, arguing that the District Court lacked subject matter jurisdiction to enter these orders regarding his personal property.

¶5 Lack of subject matter jurisdiction cannot be waived and may be raised at any stage of a judicial proceeding by the parties or by the court *sua sponte*. *Alto Jake Holdings, LLC v. Donham*, 2017 MT 297, ¶ 28, 389 Mont. 435, 406 P.3d 937 (citations omitted). Therefore, this Court has an independent duty to determine whether subject matter jurisdiction exists. *Alto Jake Holdings, LLC*, ¶ 28 (citing *Stanley v. Lemire*, 2006 MT 304, ¶¶ 31-32, 334 Mont. 489, 148 P.3d 643).

¶6 A district court sitting in probate has limited, not general, jurisdiction, as set forth in § 72-1-202, MCA:

Subject matter jurisdiction. (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to:

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

“A district court sitting in probate has only the special and limited powers conferred by statute, and has no power to hear and determine any matters other than those which come within the purview of the statute or which are implied as necessary to a complete exercise of those expressly conferred.” *Haugen v. Haugen*, 2008 MT 304, ¶ 9, 346 Mont. 1, 192 P.3d 1132 (quoting *In re Graff's Estate*, 119 Mont. 311, 316-17, 174 P.2d 216, 218 (1946)).

¶7 This Court has held in several cases that the subject matter jurisdiction of a district court sitting in probate does not include the power to decide title to real property. *In re Estate of Thomas*, 216 Mont. 87, 89, 699 P.2d 1046, 1048 (1985) (citing *Matter of the Estate of Swandal*, 179 Mont. 429, 587 P.2d 368 (1978); *Christian v. A.A. Oil Corp.*, 161 Mont. 420, 506 P.2d 1369 (1973); *McReynolds v. McReynolds*, 147 Mont. 476, 414 P.2d 531 (1966); *In re Jennings Estate*, 74 Mont. 449, 241 P. 648 (1925); *In re Dolenty's Estate*, 53 Mont. 33, 161 P. 524 (1916); *State ex rel. Barker v. District Court*, 26 Mont. 369, 69 P. 856 (1902)). However, contrary to Miller's contention, this jurisdictional limitation does not prevent a probate court from making determinations regarding personal property. Although Miller correctly points out that *In re Estate of Thomas* cited two cases involving personal property, the holding in *In re Estate of Thomas* was specifically confined to real

property: “[w]e have consistently answered the question in the negative, whether the [d]istrict [c]ourt, sitting in probate, has jurisdiction to decide title to *real property*.” 216 Mont. at 89, 699 P.2d at 1048 (emphasis added). Further, the two cases cited in *In re Estate of Thomas*, and the other cases Miller uses to support his position, were decided long before Montana’s adoption of the probate code, including § 72-1-202, MCA.

¶8 Consistent therewith, this Court has previously upheld probate court determinations regarding personal property. In *In re Estate of Silver*, 2000 MT 127, ¶ 31, 299 Mont. 506, 1 P.3d 358, this Court upheld the district court’s conclusion that property within a safety deposit box belonged to the decedent’s estate. In *In re Estate of Bradshaw*, 2001 MT 92, ¶ 27, 305 Mont. 178, 24 P.3d 211, this Court held the district court had not erred in its determination of whom was the properly named beneficiary of an annuity contract. Implicit in those decisions was the conclusion that the probate courts possessed jurisdiction over the personal property issues. Indeed, although not challenged on appeal, the District Court here has issued additional orders related to Bates’ personal property, including an order requiring Miller to return Bates’ gold bars and coin collection, and authorizing Swandal to access Bates’ personal property inside his home, and to remove personal property items therefrom.

¶9 Miller also argues he was “divested of his property” without due process, as he was not properly served, given appropriate time to answer, and permitted to conduct discovery. According to the record, Miller was served with the motions related to personal property, and although he may not have had time to respond prior to the entry of the emergency

orders, he had time thereafter to respond and seek relief from the District Court. Nonetheless, his argument regarding the handling of the personal property has some merit. Although the District Court had jurisdiction to act regarding Bates' personal property, it was error to order transfer of the funds directly to the Estate without a determination that Miller was not entitled to the funds because he had obtained them by exerting undue influence over Bates. An estate's personal representative "may maintain an action to recover possession of property or to determine the title to the property." Section 72-3-606, MCA. In such an action, if the district court determines an individual exerted undue influence over the decedent in order to acquire property, the estate may recover that property. *See, e.g., Estate of Bradshaw*, ¶¶ 12-27. To find undue influence, a district court must conclude each statutory element in § 28-2-407, MCA, was present. *In re Estate of Bradshaw*, ¶¶ 13-16. Here, the District Court has not yet made any findings or conclusions regarding the Estate's undue influence claims. While an emergency order protecting the property was appropriate (a probate court "has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it[.]" § 72-1-202(2), MCA), the funds in the Opportunity Bank and First Interstate Bank accounts have not yet been determined to be the property of the Estate, and therefore must be delivered to and held by the District Court pending a determination of Swandal's undue influence claims.

¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents

no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶11 Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

/S/ JIM RICE

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON