

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the matter of: The Estate of Vito W.
Chiaverini, Deceased

Court of Appeals No. L-10-1332

William J. Bingle, ADM, DBN, WWA
of the Estate of Vito W. Chiaverini

Trial Court No. 2003EST1983

Appellee

v.

Rita Chiaverini Nyitray, et al.

DECISION AND JUDGMENT

Appellants

Decided: December 2, 2011

* * * * *

William T. Maloney, for appellee.

George C. Rogers, for appellants.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Probate Division. The trial court ruled the estate of Vito W. Chiaverini closed and

ordered appellants to pay back a total of \$12,000 to the estate. For the forgoing reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellants set forth the following three assignments of error:

{¶ 3} "I. THE PROBATE COURT ERRED IN ITS JUDGMENT ENTRY AUTHORIZING PAYMENT OF THE REMAINING FUNDS IN THE ESTATE TO PAY ATTORNEY AND ADMINISTRATIVE FEES WHEN THERE WERE OUTSTANDING CLAIMS OF CHIAVERINI, INC., AND RITA NYITRAY PENDING AGAINST THE ESTATE.

{¶ 4} "II. THE PROBATE COURT ERRED IN ITS JUDGMENT ENTRY ORDERING CHIAVERINI, INC. TO PAY THE SUM OF \$10,000 TO THE ESTATE OF VITO CHIAVERINI.

{¶ 5} "III. THE PROBATE COURT ERRED IN ITS JUDGMENT ENTRY ORDERING RITA NYITRAY TO PAY THE SUM OF \$2000.00 TO THE ESTATE OF VITO CHIAVERINI."

{¶ 6} The following undisputed facts are relevant to the issues raised upon appeal. This case stems from disputes connected to the handling of the estate of Vito W. Chiaverini. The decedent passed away on August 5, 2003. The terms of his last will and testament left the entire estate to his daughters and his grandchildren. Notably, it included the specific instruction that no part of his estate be distributed to his son, Jascha Chiaverini.

{¶ 7} The assignments set forth in this case are rooted in events and disputes that transpired over a decade ago. Jascha obtained ownership of a longtime downtown Toledo pawn shop, Liberal Loan, pursuant to a divorce settlement. In 1985, Jascha reincorporated the business as Chiaverini, Inc. dba Liberal Loan & Jewelers. In the wake of an array of legal difficulties, Jascha's parents, Vito and Annette, stepped in and ran the business.

{¶ 8} On or around March 20, 2001, Jascha executed an agreement with his parents, in which all interest in the business Liberal Loan & Jewelers was assigned to Jascha. By the terms of this agreement, Jascha was the grantee of "any and all business equipment, inventory, tools, or other personal property, including, any assignable interest * * * associated with the operation of the business known as Liberal Jewelers and Antiques." Interestingly, on March 21, 2001, Jascha executed a release in connection to the business affirming that he had received all items to which he was entitled, contradicting his subsequent claims in connection to the violins.

{¶ 9} In April 2001, Annette underwent surgery and subsequently passed away. Several years later, in 2003, Vito passed away. Following Vito's death, an application to probate his will was filed in probate court. In October 2003, the court appointed attorney William J. Bingle to serve as administrator of the estate.

{¶ 10} On September 25, 2003, Jascha entered a motion to contest his father's will. On December 3, 2004, the final amendment to the inventory and appraisal and schedule of assets was entered by the trial court. As determinatively relevant to this case, the

merits of the 2004 inventory and assets determination of the trial court, the underlying subject of the first assignment of error, was not appealed. On the contrary, on August 27, 2005, the day of trial regarding the will contest action, the parties reached a universal settlement agreement encompassing appellants' entire claim. This agreement provided for the sale of the family residence on Glenwood Avenue in Toledo's Old West End. It called for a trust to be established in the amount of \$50,000 for the benefit of appellant's sister, Rita Chiaverini Nyitray, and \$26,000 to Chiaverini Inc. from the proceeds of the sale.

{¶ 11} Subsequently, pursuant to the above-described terms of the agreement, estate administrator Bingle distributed \$10,000 to the corporation and \$2,000 to Rita in partial settlement. On December 19, 2007, Jascha filed a motion for forensic accounting based upon an alleged failure of the administrator to comport with the August 27, 2005 will contest settlement agreement. On July 6, 2008, Chiaverini Inc. filed a motion for an injunction against Gail Little to prevent her from disposing of various assets of the estate, including a home on Glendale Avenue and thirty-eight violins, assorted violin cases, a violin cabinet and violin making equipment. The injunction was temporarily granted. A hearing upon the motion was conducted on July 11, 2008.

{¶ 12} On July 16, 2008, the trial court ordered that (1) the violin collection be returned to the estate administrator for public sale, (2) Chiaverini, Inc. return to the estate the sum of 10,000, reflecting the amount advanced and disbursed to it, (3) Rita Chiaverini

Nyitray likewise return to the estate the sum of \$2,000, reflecting the amount advanced and disbursed to her.

{¶ 13} On September 3, 2008, a judgment entry was issued affirming the July 16, 2008 orders and also authorizing the administrator to proceed with the sale of the subject real estate and violin collection. The judgment further directed the administrator to make payments of administration fees and expenses. Distributions and payments to the parties of the litigation would be determined by the court under a later date. As determinatively relevant to this case, this 2008 judgment, which substantively encompasses appellants' second and third assignments of error, was not appealed.

{¶ 14} On October 28, 2010, the trial court determined that the administrative expenses of this estate exceeded its remaining assets. Accordingly, the court once again ordered Chiaverini, Inc. and Rita Nyitray to return \$10,000 and \$2,000 respectively, to the estate, as previously ordered, and never appealed, in 2008. The trial court also ordered the administrator to pay administrative expenses of the estate, completing the administration of the estate by filing a final account.

{¶ 15} In their first assignment of error, appellants argue that the trial court erred by authorizing payment of administrative fees when there were outstanding claims of Chiaverini, Inc. and Rita Nyitray pending against the estate.

{¶ 16} The alleged "outstanding claims" center on appellants' long ago rejected claims on the now liquidated violin collection, pursuant to the never appealed July 2008 judgment of the trial court.

{¶ 17} Given the unique facts and circumstances of this exceptionally protracted estate case, we find that appellants are attempting to present an appeal of matters rooted in the 2004 inventory and asset judgment and the July 16, 2008 judgment pertaining to the ordered return to the estate of partial payments. These judgments were not timely appealed.

{¶ 18} App.R. 4 establishes the proper timeliness of an appeal. It clearly sets forth, "A party shall file the notice of appeal required by App. R. 3 within thirty days of the later of entry of the judgment or order appealed * * *." In conjunction with this, App.R. 4(B)(5) provides that in cases of arguable partial judgment scenarios, "If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under Civ. R. 54(B), a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims." See, also, *State ex rel. A & D P'ship v. Keefe* (1996), 77 Ohio St.3d 50, 57.

{¶ 19} Appellants are clearly attempting to present substantive arguments on appeal that not only were presented and rejected by the trial court during the many years that this case has been ongoing, but more importantly, the matters were never timely appealed. With respect to the disputed violin collection, the determination of assets and the filing of the inventory addressed this when the estate was first probated in 2003. The final inventory and assets filing covering all property was done in 2004. A voluntary settlement agreement was reached between the parties covering all claims in 2005.

Lastly, the disputed return to the estate of the subject partial payments was ordered via a 2008 judgment. These underlying judgments encompassing all three assignments of error were never timely appealed and are not properly before this court. They are clearly now barred by the doctrine of res judicata.

{¶ 20} A valid, final judgment rendered upon the merits of a case bars all subsequent actions based upon any claim arising out of the subject matter of the previous action. The doctrine thus bars the relitigation of issues that were raised on appeal or could have been raised on appeal. *In re Hoffman*, 5th Dist. Nos. 02-CA-419/422, 2003-Ohio-1241, citing *State v. Cole* (1982), 2 Ohio St.3d 112, 443 N.E.2d, 410. As applied to this case, all of these issues should and could have been raised timely on direct appeal pursuant to App.R. 4 given their origins in judgments dating back to 2003-2008. They are now barred by res judicata. Appellants' assignments of error are not well-taken.

{¶ 21} The judgment of the Lucas County Court of Common Pleas, Probate Division, is hereby affirmed. Pursuant to App.R. 24, the costs of this appeal are assessed to appellants.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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