

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: The Estate of Billie D. Vasko,	:	
	:	No. 13AP-175
[Michael P. Vasko,	:	(Prob. No. 470974)
	:	
Appellant].	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on September 19, 2013

Michael L. Miller, for appellees.

Michael P. Vasko, pro se.

APPEAL from the Franklin County Probate Court

TYACK, J.

{¶ 1} Michael P. Vasko is appealing from the refusal of the Franklin County Probate Court to vacate its judgment in a public records case. He assigns two errors for our consideration:

I. WHETHER THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE THE SETTLEMENT AGREEMENT AFTER FINDING THE PRINCIPLE CONSIDERATION FOR THE SETTLEMENT AGREEMENT, THE RESTRICTION ON PUBLIC ACCESS, WAS IMPERMISSIBLE AS A MATTER OF OHIO LAW.

II. WHETHER THE TRIAL COURT ERRED WHEN IT FOUND NO ERROR IN THE MAGISTRATE[']S DECISION WHEN THERE WAS NO SHOWING BY THE APPELLE[E]S OF NECESSITY TO VACATE THE RESTRICTION ON PUBLIC ACCESS IN ORDER TO ENFORCE THE AGREEMENT.

{¶ 2} The settlement agreement referenced above was an agreement among the parties to resolve contested issues. The parties included in the settlement agreement a

provision that the settlement agreement should not be considered a public document or record. The probate judge who heard the case initially agreed to this restriction. After Michael Vasko failed to pay money he promised to pay, a subsequent probate judge overturned the restriction. This judge found that the agreement was a public record because no exception allowed in R.C. 149.43 was applicable and that the private parties could not change the law of Ohio merely by making an agreement, which was inconsistent with the applicable public records law.

{¶ 3} A provision of the settlement agreement indicated that "the terms of this agreement shall remain confidential unless needed to enforce the settlement agreement." Settlement Agreement, at 5. The parties opposed to Michael Vasko's position in this case had filed a motion asking that the settlement agreement's restriction on public access be vacated because Michael Vasko had not paid funds due under the settlement agreement. A Probate Court magistrate, after finding Michael Vasko had not done what he promised to do, recommended the vacating of the restrictions. In reviewing the magistrate's decision, the judge of the Probate Court relied more heavily on R.C. 149.43 as opposed to the provision of the involved agreement, but also adopted the magistrate's decision in toto.

{¶ 4} Michael Vasko centers his argument on appeal on the idea that the Probate Court is somehow a party to a settlement agreement and therefore bound by its terms. A court is not a party to a settlement agreement, but may journalize the agreement as a court order. The court will then attempt to enforce its own orders. The court, as a non-party to the agreement or contract, cannot breach the alleged contract. This argument by Michael Vasko is not persuasive.

{¶ 5} Michael Vasko does not deny that he has failed to pay the money he agreed to pay. However, he argues that the agreement can be enforced without revealing its terms to the public at large. This argument also is unpersuasive. For other family members to pursue the funds owed in a court action in a different court, the reasons Michael Vasko owes the funds must be made known to entities other than the parties to the agreement. For instance, any attempt to certify a judgment against Michael Vasko would place the judgment in a public record. Further, the parties and the Probate Court judge were functioning under the provision of Sup.R. 45. Sup.R. 45(A) reads:

Obtaining access to a case document that has been granted restricted public access

(1) Any person, by written motion to the court, may request access to a case document or information in a case document that has been granted restricted public access pursuant to division (E) of this rule. The court shall give notice of the motion to all parties in the case and, where possible, to the non-party person who requested that public access be restricted. The court may schedule a hearing on the motion.

(2) A court may permit public access to a case document or information in a case document if it finds by clear and convincing evidence that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to division (E) of this rule no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.

{¶ 6} The Probate Court judge who unsealed the records followed Sup.R. 45 and noted that his predecessor should not have sealed the documents in the first place. This was one basis for unsealing the records here. However, as noted earlier, the judge also adopted the magistrate's decision in toto based upon the need to unseal the records due to Michael Vasko's nonpayment. Under the very terms of the settlement agreement, Michael Vasko had made it necessary to reveal the records to allow family members to collect the funds he owed.

{¶ 7} As a result of the above, the two assignments of error are overruled.

{¶ 8} The judgment of the Probate Court is affirmed.

Judgment affirmed.

KLATT, P.J., and CONNOR, J., concur.
