

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: Estate of Barbara Bringman :
 :
 : No. 17AP-68
 : (Probate No. 581473)
 [William Paul Bringman, :
 : (REGULAR CALENDAR)
 Appellant]. :

D E C I S I O N

Rendered on June 27, 2017

On brief: *William Paul Bringman*, pro se

APPEAL from the Franklin County Court of Common Pleas,
Probate Division

DORRIAN, J.

{¶ 1} Appellant, William Paul Bringman ("William"), appeals from a judgment of the Franklin County Court of Common Pleas, Probate Division, denying his application to be appointed as executor of the estate of Barbara Bringman ("Barbara").

I. Assignments of Error

{¶ 2} William appeals and assigns the following three assignments of error for our review:

[I.] The trial court erred in finding that the trial court did not have jurisdiction to administer decedent's estate herein.

[II.] The trial court erred in finding that Appellant is not the surviving spouse of the decedent.

[III.] The trial court erred in not appointing Appellant as executor of the estate of the decedent herein.

II. Facts and Procedural History

{¶ 3} William and Barbara married in 1977 and began divorce proceedings in Knox County in 2013. The status of their marriage at the time of Barbara's death on March 24, 2016 is disputed in the present appeal, but ultimately without impact on the merits.

{¶ 4} The Knox County Court of Common Pleas, Domestic Relations Division, entered a decree of divorce in the case on April 17, 2014. Post-decree litigation over property and other matters continued, and the domestic relations court eventually granted Barbara's motion for reconsideration and to set aside the decree. William successfully appealed that decision to the Fifth District Court of Appeals. Before Barbara's death, and apparently after she had been declared incompetent, an order filed January 5, 2016 in the Knox County Court of Common Pleas substituted attorney Steven McGann, guardian of the person and estate for Barbara, as the defendant in the divorce post-decree proceedings.

{¶ 5} On September 13, 2016, attorney McGann filed an application in the Knox County Probate Court for authority to administer the estate of Barbara. Six weeks later, on October 24, 2016, William filed his own application for authority to administer the estate of Barbara in the Franklin County Probate Court. The application lists William as Barbara's surviving spouse and specified that her will designated him as executor. On October 24, 2016, the Franklin County Probate Court issued letters of authority to William. On November 24, 2016, the Franklin County Probate Court issued a nunc pro tunc entry vacating the appointment of William on the basis that the couple's divorce was final before Barbara's death.

{¶ 6} On November 28, 2016, William filed a second application in Franklin County Probate Court to administer Barbara's estate. This application again lists William as Barbara's surviving spouse. The application came before a visiting probate judge in Franklin County for a hearing on January 9, 2017. At the hearing, William testified that he was the surviving spouse of Barbara because the final decree of divorce was subject to an appeal as of right at the time of Barbara's death and that the divorce action, including the final decree, therefore "abated" for lack of finality at the time of Barbara's death. In addition to William's testimony, the Franklin County Probate Court also accepted the

pertinent documentary evidence for consideration, including various judgments and orders entered in the domestic and probate courts.

{¶ 7} The Franklin County Probate Court then denied William's second application to administer Barbara's estate, citing two grounds. First, the court concluded that Franklin County was not the proper venue for administration of Barbara's estate because Knox County had first-in-time jurisdiction over the matter. The Franklin County Probate Court therefore deferred to Knox County, which retained original jurisdiction over the estate. The court further found that the divorce action had not abated and the decree entered in the divorce was conclusive authority that William was not the decedent's surviving spouse.

III. Discussion

{¶ 8} William's three assignments of error on appeal can be discussed together, and a common standard of review applies. "R.C. 2113.05 vests authority in the Probate Court to exercise discretion in determining if an applicant for letters testamentary is a suitable person; an order granting or refusing letters of appointment is reversible only upon a finding of an abuse of discretion." *In re Estate of Henne*, 66 Ohio St.2d 232 (1981), paragraph one of the syllabus. Under this abuse of discretion standard, and based on the documentary evidence before the Franklin County Probate Court and the procedural posture of the case, we find that the Franklin County Probate Court did not err in denying William's application to administer the estate.

{¶ 9} To begin, we find that the probate court properly applied the jurisdictional-priority rule to defer jurisdiction in favor of the Knox County Probate Court. Under the jurisdictional-priority rule, when the same parties involved in the same cause of action appear before two courts of concurrent jurisdiction, the court that first obtained jurisdiction over the parties is the forum with priority over the dispute: "As between courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties." *State ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279 (1977), syllabus. "When a court of competent jurisdiction acquires jurisdiction of the subject matter of an action, its authority continues until the matter is completely and finally disposed of, and no court of co-ordinate

jurisdiction is at liberty to interfere with its proceedings." *John Weenink & Sons Co. v. Court of Common Pleas of Cuyahoga Cty.*, 150 Ohio St. 349 (1948), paragraph three of the syllabus; accord *State ex rel. Sellers v. Gerken*, 72 Ohio St.3d 115, 117 (1995).

{¶ 10} The Franklin County Probate Court therefore clearly did not err in declining to issue letters of authority to William because this would have entailed opening competing proceedings with the ongoing, first-in-time proceedings commenced in Knox County Probate Court. As noted previously, attorney McGann filed an application to administer the estate in Knox County on September 13, 2016. William filed his first application to administer the estate in Franklin County on October 24, 2016, and his second application on November 28, 2016.

{¶ 11} Our decision on this issue renders moot any discussion of the status of the divorce action at the time of Barbara's death, since the Franklin County Probate Court never assumed jurisdiction to dispose of that issue.

IV. Conclusion

{¶ 12} Based on the foregoing, we overrule the three assignments of error brought by William and affirm the judgment of the Franklin County Court of Common Pleas, Probate Division, denying his application to administer the estate of Barbara Bringman.

Judgment affirmed.

BROWN and LUPER SCHUSTER, JJ., concur.
