COURT OF APPEALS
DECISION
DATED AND FILED

May 29, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP762 **Cir. Ct. No. 2007PR2**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE ESTATE OF LOUISE SELENSKE:

RICHARD SELENSKE,

APPELLANT,

V.

THE ESTATE OF LOUISE SELENSKE, BY ROBERT SELENSKE AND WILLIAM SELENSKE, CO-PERSONAL REPRESENTATIVES,

RESPONDENT.

APPEAL from an order of the circuit court for Langlade County: LEON D. STENZ, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. This is the latest in a series of appeals filed by Richard Selenske related to the probate and distribution of assets from the estate of his mother, Louise Selenske.[1] In the instant appeal, Richard challenges a circuit court order determining that he is not entitled to any distribution from the Estate due to an offset for assets that he had already received from Louise or the Estate. Richard claims the circuit court erred in numerous respects. For the reasons explained below, we reject each of his arguments and affirm.

BACKGROUND

¶2 On June 24, 1999, Louise executed a will stating that at her death, one-half of her estate would be distributed to Richard, and the remaining half would be divided equally between four of her other children—William, Robert, Bette, and Jean.[2] However, Paragraph Three of the will provided: "If after this date and during my lifetime I give to my son, Richard, any of my assets, then the value of those assets shall be deducted from his fifty percent (50%) share."

¶3 As of the year 2003, Louise was the sole owner of Peter Selenske Farms, Inc., which owned eight parcels of real estate and an operational dairy farm. *See* ***Selenske v. Estate of Selenske***, Nos. 2012AP644, 2012AP1093 and 2012AP1829, unpublished slip op. ¶3 (WI App June 18, 2013). She also owned other parcels of nonfarm real estate, including rental properties in Langlade County. ***Id.*** In 2003 and 2004, Louise conveyed both her stock in Peter Selenske

[1] For ease of reading, we generally refer to members of the Selenske family by their first names throughout the remainder of this opinion. We refer to the Estate of Louise Selenske as "the Estate."

[2] Louise's will spells Bette's name "Betty." Based upon other documents in the record, it appears that "Bette" is the correct spelling.

Farms and her nonfarm real estate to Richard. ***Id.***, ¶4. Richard then transferred title to those assets to RnS Farms, LLC, an entity managed by Richard but owned by his then-fifteen-year-old son. ***Id.***

¶4 In 2006, a guardianship was established for Louise, and the guardian commenced an action seeking to set aside the 2003 and 2004 transfers of stock and real estate based on undue influence. ***Id.***, ¶6. Louise died in January 2007. ***Id.***, ¶2. At the time of her death, she possessed no property and had been the recipient of public assistance during the last several years of her life. ***Id.*** Following Louise's death, the action to set aside the 2003 and 2004 transfers was continued by William and Robert, who had been appointed special administrators of the Estate. ***Id.***, ¶6 n.2. A jury ultimately found that Richard had unduly influenced Louise, and the 2003 and 2004 transfers were set aside. ***Id.***, ¶6. Richard appealed, and we affirmed the judgment setting aside the transfers. ***Id.***

¶5 William and Robert were named co-personal representatives of the Estate. In October 2008, Richard filed a claim against the Estate for $760,000 in unpaid wages and management fees that he alleged he had earned while working for Peter Selenske Farms over a twenty-four-year period. ***Id.***, ¶7. The Estate moved for summary judgment, arguing Richard's claim was barred by the applicable statute of limitations. ***Id.*** The circuit court granted the Estate summary judgment, and we affirmed on appeal. ***Id.***

¶6 The Estate subsequently filed a small claims eviction action seeking to remove Richard from its real estate. ***Id.***, ¶8. The circuit court granted a judgment of eviction and dismissed Richard's counterclaim seeking a constructive trust in the Estate's property. ***Id.*** Richard filed an appeal from the small claims judgment, which we dismissed as untimely filed. ***Id.***

¶7 In April 2011, Richard filed an amended claim against the Estate seeking $720,000, based upon a "breach of constructive trust." ***Id.***, ¶10. Richard also objected to the Estate's proposed sale of a 212-acre property. ***Id.***, ¶11. The circuit court approved the sale over Richard's objection and granted the Estate summary judgment on Richard's amended claim. ***Id.***, ¶¶10-11. Richard appealed, and we affirmed the circuit court's rulings. ***Id.***, ¶1.

¶8 The Estate filed its final amended estate account on December 14, 2017. In essence, the Estate took the position that Richard was not entitled to any assets from the Estate because the assets he had previously received from Louise and the Estate exceeded his one-half share of the Estate. Richard filed multiple objections to the final amended estate account. Among other things, Richard challenged certain attorney fees that the Estate had paid without prior court approval. He also disputed the Estate's position that assets he had previously received from Louise should be offset against his share of the Estate. In addition, he demanded a jury trial regarding some of the offsets.

¶9 The circuit court denied Richard's objections to the final amended estate account, following a three-day hearing. On March 7, 2018, the court entered a written order approving the account, including the Estate's attorney fees. The court granted the offsets requested by Estate, which amounted to $605,094. Based on those offsets, the court ordered that Richard was "not entitled to anything from the Estate." The court also approved the sale of an approximately seventy-seven-acre parcel of real estate owned by the Estate. Finally, the court sanctioned Richard, requiring him to pay $75,000 of the Estate's attorney fees.

¶10 Richard now appeals from the circuit court's March 7, 2018 order. Additional facts are included below.[3]

DISCUSSION

I. Payment of attorney fees by the Estate

¶11 Richard contends that the Estate paid two law firms $249,492.83 in attorney fees before the circuit court approved the final amended estate account. He claims that $135,825.72 in fees were paid for services that did not fall within the scope of the Estate's written fee agreements with its attorneys. He therefore argues those fees were incurred in violation of SCR 20:1.5(b)(1), which provides:

> The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be $1000 or less, the communication may be oral or in

[3] Before addressing the substance of Richard's arguments, we pause to comment on certain deficiencies in the parties' appellate briefs. Many of the arguments in Richard's briefs are borderline incomprehensible. In particular, Richard frequently refers to evidence in the record that he claims supports his arguments, but he then fails to explain the significance of the evidence or to tie the evidence to the applicable legal standard. The Estate, in turn, repeatedly makes factual assertions without providing any record citations to support them, in violation of WIS. STAT. RULE 809.19(1)(d) and (e) (2017-18).

These deficiencies have significantly hampered our ability to address the issues raised in Richard's appeal. We remind the parties that the Wisconsin Court of Appeals is a fast-paced, high-volume court. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). As such, we will not develop arguments for the parties, *see* ***id.***, and we have no duty to scour the record in order to review arguments unaccompanied by adequate record citations, *see* ***Roy v. St. Lukes Med. Ctr.***, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256.

All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

> writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

Based on the Estate's attorneys' alleged violations of SCR 20:1.5(b)(1), and the public policy underlying that rule, Richard argues the court should have ordered $135,825.72 in attorney fees returned to the Estate for distribution to the beneficiaries.[4]

¶12 Richard's argument in this regard ignores the preamble to Chapter 20 of the Supreme Court Rules, which states, in relevant part:

> Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons.

SCR ch. 20, Preamble: A Lawyer's Responsibilities, [20]. Our supreme court has held that this language "clearly demonstrates that alleged violations are to be determined in disciplinary proceedings, not civil litigation." ***Sands v. Menard***, 2017 WI 110, ¶62, 379 Wis. 2d 1, 904 N.W.2d 789, *reconsideration denied*, 2018 WI 20, 380 Wis. 2d 107, 909 N.W.2d 176, *cert. denied*, 139 S. Ct. 101 (2018). "The Preamble demonstrates that the purpose of the rules is not to provide remedies outside the realm of professional discipline." ***Id.*** (citation omitted). It

[4] The net value of the Estate was $340,000. If the challenged attorney fees had been returned to the Estate, its net value would have increased to $475,825.72.

would therefore be improper in this probate action for either the circuit court or this court to determine that the Estate's attorneys violated SCR 20:1.5(b)(1) and to order them to refund a portion of their fees on that basis.

¶13 We also reject Richard's argument that the circuit court should have ordered the Estate's attorneys to refund a portion of their fees based on a violation of the public policy underlying SCR 20:1.5(b)(1). Even if we assume Richard's assertion as to the amount of fees incurred outside the attorneys' written fee agreements is correct, Richard has not shown that requiring the Estate's attorneys to refund those fees would comport with public policy. The circuit court found that the fees incurred by the Estate's attorneys in the course of their representation of the Estate were reasonable and necessary, and Richard does not develop any argument challenging those findings. Nor does Richard dispute that the relevant fees were actually incurred in the course of the attorneys' representation of the Estate. As the circuit court aptly stated, "Clearly, the work was done, fees were earned, and to deny those fees because there was no written contract, that in itself may be contrary to public policy." Under the circumstances, the court appropriately declined to order the fees refunded based on public policy considerations.

II. Denial of interest on attorney fees, personal representatives' fees, and advance distributions

¶14 Richard next argues the Estate is entitled to interest on attorney fees, personal representatives' fees, and advance distributions that it paid without prior

court approval.[5] The circuit court retroactively approved the attorney fees, personal representatives' fees, and advance distributions when it approved the final amended estate account. Richard asserts, however, that the court had no authority to retroactively approve those amounts.

¶15 We disagree. Richard relies on ***Huehne v. Huehne***, 175 Wis. 2d 33, 498 N.W.2d 870 (Ct. App. 1993), for the proposition that attorney fees and personal representatives' fees cannot be paid from estate funds without prior court approval, and that the recipients must pay interest on any payments made without such approval. However, ***Huehne*** is distinguishable. In that case, Robert Huehne was appointed personal representative of an estate, and he retained attorney Robert Block to represent the estate. ***Id.*** at 40. The estate ultimately filed a first supplemental final account, which showed that the estate had paid Huehne $11,195 in personal representative's fees during the pendency of the probate proceedings and had paid Block $25,896 in attorney fees. ***Id.*** at 40-41. James Huehne, a beneficiary, objected to the account, challenging the amount of attorney fees and personal representative's fees and the fact that they had already been disbursed. ***Id.*** at 41.

¶16 The circuit court found that Block's fees were reasonable and that Huehne's fees were appropriate under WIS. STAT. § 857.05(2). ***Huehne***, 175

[5] Richard contends that the Estate paid its attorneys $249,492.83 without prior court approval, and that the interest owing on that amount is $51,981.94, plus $1039.55 per month since September 1, 2017. Richard contends that the Estate paid personal representatives' fees of $5169 without prior court approval, and that the interest owing on that amount is $1505, plus $21.50 per month since February 1, 2018. Finally, Richard argues that the Estate made advance distributions totaling $340,000 to Robert, William, Bette, and Jean without prior court approval. He contends the interest owing on that amount equals $41,591.93, plus $1416.66 per month since September 1, 2017.

Wis. 2d at 41. However, the court reduced both Block's and Huehne's fees by twenty percent, based on its finding that Block and Huehne "failed to properly communicate the status of the estate to James." ***Id.*** at 41-42. The court further ordered Block and Huehne to pay the estate interest on the fees they had received before the court approved the final account. ***Id.*** at 42.

¶17 On appeal, Block and Huehne challenged the circuit court's reduction of their fees. ***Id.*** at 45. They also argued that, if this court reversed the fee reduction, it should also reverse the portion of the judgment requiring them to pay interest on fees already received. ***Id.*** at 47. Block and Huehne conceded, however, that if the fees were improperly received, the circuit court had "authority to require restitution and that [WIS. STAT. § 857.05] requires repayment of improperly received fees." ***Huehne***, 175 Wis. 2d at 47. Based on our conclusion that the circuit court correctly determined some of the fees were improperly received—i.e., because Block and Huehne failed to communicate with James—we concluded the court "also properly required payment of interest to the estate for the improperly received fees." ***Id.*** This case, unlike ***Huehne***, does not involve fees improperly paid to the personal representatives or to the Estate's attorneys.[6] As such, ***Huehne*** does not support Richard's argument that the circuit court should have required the co-personal representatives and the Estate's attorneys to pay interest on payments they received without prior court approval.

[6] We have already rejected Richard's argument that a portion of the attorney fees should have been refunded based upon a violation of SCR 20:1.5(b)(1). Richard does not argue the attorney fees and personal representatives' fees in this case were improper for any other reason, aside from his claim that they should not have been paid without prior court approval.

¶18 Richard also cites WIS. STAT. § 851.40 in support of his argument that the circuit court was required to preapprove any fees paid to the Estate's attorneys. However, that statute merely provides that: (1) an attorney performing services for an estate is entitled to "just and reasonable compensation" for his or her services; and (2) any personal representative, heir, beneficiary, or other interested party may petition the court to review the attorney's fee. Sec. 851.40(1)-(2). Nothing in § 851.40 states that a court must preapprove any fees paid to an estate's attorney. While Richard correctly notes that § 851.40(2) gave him the right to petition the court to review the fees charged by the Estate's attorneys, the statute does not provide that such review must occur before the fees are paid.

¶19 Richard also relies on WIS. STAT. § 857.05(2) to support his claim that personal representatives' fees may not be paid without prior court approval. The statute provides:

> Subject to the approval of the court the personal representative shall be allowed for his or her services commissions computed on the inventory value of the property for which the personal representative is accountable less any mortgages or liens plus net principal gains in the estate proceedings at a rate of 2 percent or a rate that the decedent and the personal representative, or the persons who receive the majority interest in the estate and the personal representative, agree to in writing; and such further sums in cases of unusual difficulty or extraordinary services as the court determines reasonable. If a personal representative is derelict in duty, his or her compensation for services may be reduced or denied.

Sec. 857.05(2). While § 857.05(2) states that personal representatives' fees shall be allowed "[s]ubject to the approval of the court," it does not state that such approval must be obtained before the fees are paid.

¶20 Here, the circuit court approved both the personal representatives' fees and the attorney fees when it approved the final amended estate account. The court also explained, in detail, why it had decided not to require advance approval of attorney fees and personal representatives' fees. Given Richard's contentious conduct during the probate proceedings, the court reasoned that requiring the Estate to seek preapproval of fees would have led to "additional conflicts" and "would have been used by [Richard] to have protracted litigation and motions and issues that would have simply gone on forever." Under the circumstances, the court did not erroneously exercise its discretion by declining to require preapproval for payments of attorney fees and personal representatives' fees. As explained above, neither WIS. STAT. § 851.40 nor WIS. STAT. § 857.05(2) required preapproval of those payments.

¶21 Richard also argues that preapproval of the advance distributions to William, Robert, Bette, and Jean was required. He cites WIS. STAT. § 863.01, which provides, in relevant part:

> Before final judgment has been rendered the personal representative may deliver to any distributee possession of any specific property to which the distributee is entitled under the terms of the will or any statute. The personal representative may make one or more partial distributions of the estate, provided that other distributees and claimants are not prejudiced thereby.

Once again, nothing in § 863.01 states that a court must preapprove advance distributions of estate assets. Moreover, in this case, the record conclusively shows that Richard was not prejudiced by the advance distributions to William, Robert, Bette, and Jean. As explained in greater detail below, Richard was not entitled to any distributions from the Estate because the circuit court properly offset the assets he had already received from Louise against his fifty-percent

share of the net estate. The advance distributions to William, Robert, Bette, and Jean therefore had no effect on his ultimate recovery.

¶22 For all of the reasons explained above, we conclude the circuit court was not required to preapprove the attorney fees, personal representatives' fees, and advance distributions paid by the Estate. We therefore reject Richard's argument that the Estate is entitled to recover interest on those payments.

III. Use of "offsets" against Richard's share of the Estate

¶23 As noted above, Louise's will provided that at her death, one-half of her estate would be distributed to Richard. However, Paragraph Three of the will stated that Richard's fifty-percent share would be reduced by the value of any assets that Louise had "give[n]" to Richard during her lifetime.

¶24 Based on these provisions, the circuit court offset certain assets Richard had previously received against his share of the Estate. Essentially, the offsets were for assets that Richard had received as a result of his undue influence of Louise and that he had never returned to Louise or the Estate. The court determined the applicable offsets totaled $605,094. The net value of the Estate was $340,000, making Richard's one-half share $170,000. Because the value of the offsets greatly exceeded Richard's share of the Estate's net value, the court determined Richard was not entitled to any additional distributions from the Estate.

¶25 Richard argues the circuit court erred by treating the assets he had already received as lifetime gifts under Paragraph Three of Louise's will. He contends those assets should instead be treated as debts that he owed to Louise and/or the Estate. Citing WIS. STAT. § 854.12(3), Richard argues those debts are

part of the residue of the Estate. Because Louise's will does not contain a residual clause, Richard contends the debts should be treated as intestate property and divided either: (1) equally between all eight of Louise's children; or (2) between only those five children who were named as beneficiaries in her will, in proportion to the shares granted to them by the will.

¶26 Probate proceedings occur in equity, *see* ***Richardson v. Richardson***, 223 Wis. 447, 459, 271 N.W. 56 (1937), and we review decisions in equity for an erroneous exercise of discretion, *see* ***Richards v. Land Star Group, Inc.***, 224 Wis. 2d 829, 847, 593 N.W.2d 103 (Ct. App. 1999). We will not reverse if the circuit court "applied the correct law to the relevant facts and reasoned its way to a reasonable conclusion." ***Estate of Wheeler v. Franco***, 2002 WI App 190, ¶6, 256 Wis. 2d 757, 649 N.W.2d 711.

¶27 The circuit court relied heavily on equitable considerations when it determined that the assets Richard had already received should be offset against his share of the Estate. The court acknowledged that Paragraph Three of Louise's will stated Richard's share would be reduced by any assets that Louise had "give[n]" to Richard during her lifetime, whereas the money and property for which the Estate sought offsets had instead been taken from Louise via undue influence. However, the court held that Paragraph Three of the will showed Louise "clearly" intended "that if Richard … [has] already gotten property from the Estate, that the remaining heirs get it all." The court stated it was "fair and equitable" to attempt to give effect to Louise's clear intent. Because the court concluded the assets Richard had already received should be disposed of according to Paragraph Three of Louise's will, the court held that they were not part of the Estate's residue and the court did not "have to worry about allocating a residual estate pursuant to intestacy."

¶28 The circuit court did not erroneously exercise its discretion in this regard. As an equitable matter, the court appropriately determined that, pursuant to Louise's clear intent, the assets Richard had already received should be disposed of according to Paragraph Three of Louise's will. We therefore reject Richard's argument that the court should have instead treated those assets as part of the Estate's residue. The court's analysis did not result in Richard being disinherited; rather, it simply recognized—consistent with Paragraph Three of the will—that Richard had already received his share of Louise's property.[7]

IV. Offset for cattle and machinery

¶29 In addition to challenging the circuit court's use of offsets as a general matter, Richard also challenges several of the specific offsets that the court applied. For instance, he contends the court improperly applied an offset of $100,000 for the value of cows and machinery that the court determined belonged to Louise and/or the Estate, rather than Richard. Richard argues, "The failure of the guardian/special administrator to pursue claims for possession of the cows and machinery [in the 2006 undue influence lawsuit], despite having a duty to do so, constitutes claim preclusion."[8]

[7] In fact, the record shows that Richard received more than his one-half share of Louise's property. However, the Estate has not made any claim against Richard for the value of the assets he received that exceeded his share.

[8] In his statement of the issues, Richard frames his claim preclusion argument as applying to "rents accruing prior to August 25, 2008," in addition to the "ownership of cows and machinery." However, in the argument section of his brief, Richard's discussion of claim preclusion pertains solely to the cows and machinery and does not even mention rental income. Any claim preclusion argument that Richard may have intended to make regarding rental income is therefore undeveloped, and we will not address it further. *See* ***Pettit***, 171 Wis. 2d at 646-47.

¶30 Richard's claim preclusion argument regarding the offset for cows and machinery is underdeveloped. He does not reference the elements of claim preclusion or explain why he believes those elements are satisfied here. While he argues that the ownership and value of the cows and machinery either were, or should have been, litigated in the 2006 undue influence lawsuit, he does not cite any evidence demonstrating that those issues actually were litigated in the prior lawsuit or were relevant to the issues litigated in that case. Richard's argument regarding claim preclusion is inadequately briefed, and we therefore decline to address it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶31 Richard also argues that the circuit court's findings regarding the ownership and value of the cows and machinery were clearly erroneous. *See* WIS. STAT. § 805.17(2). However, Richard's arguments as to the evidence regarding ownership and value are virtually incomprehensible. Moreover, Richard merely cites evidence that he believes supports his position, while ignoring all evidence supporting the court's findings. For instance, he fails to acknowledge that the court expressly found the testimony of the co-personal representatives, William and Robert, more credible than the testimony of Richard and of Andrew Selenske, another brother who offered testimony in support of Richard's position. Furthermore, as we observed in our prior opinion, when Richard petitioned for bankruptcy in April 2004, he represented that he had no assets. *See* ***Selenske***, Nos. 2012AP664, 2012AP1093 and 2012AP1829, ¶5. As the circuit court noted, Richard's position in the bankruptcy proceedings that he had no assets is inconsistent with his current claim that he—not Louise—owned the cows and machinery at issue here. On the whole, Richard has failed to show that the court's

findings regarding the ownership and value of the cows and machinery are clearly erroneous.

V. Offset for the net value of the Hitz House

¶32 Richard also challenges an offset that the circuit court applied for the net value of a property the parties refer to as the Hitz House. Louise owned the Hitz House, and during 2001 and 2002, she granted four mortgages on the property to Wisconsin Finance Corporation, the predecessor of Riverside Finance, Inc. In November 2003, Louise transferred the Hitz House to Richard. After Louise signed the deed transferring the Hitz House to Richard, she granted Riverside Finance two additional mortgages on the property. In 2006, Richard mortgaged the property to Deutsche Bank, which paid off the outstanding Riverside Finance mortgage. The 2003 transfer of the Hitz House to Richard was subsequently set aside after a jury found that Richard had unduly influenced Louise.

¶33 Deutsche Bank later foreclosed on Richard's mortgage. A dispute then arose between Deutsche Bank and the Estate regarding lien priority. The Estate and Deutsche Bank settled their dispute in late 2012 by execution of a "Settlement Agreement and Mutual Release." Under the terms of the agreement, Deutsche Bank paid the Estate $5000, and the Estate relinquished its interest in the Hitz House. The Estate and Deutsche Bank agreed to "release, dismiss and fully discharge each other from any claim … or from any affirmative defense, counterclaim or liability of any nature whatsoever relating to the facts and circumstances surrounding" the Hitz House.

¶34 Thereafter, in the probate proceedings, the Estate sought an offset of $37,500 for the Hitz House—representing the property's appraised value of

$42,500, minus the $5000 payment the Estate had received from Deutsche Bank. The circuit court granted that offset. The court found that Richard had received the money from the Riverside Finance mortgages, the last of which was paid off using funds from the Deutsche Bank mortgage. Because Richard received the funds from the Riverside Finance mortgages, and because the Estate later lost all but $5000 of the Hitz House's value when Deutsche Bank foreclosed on its mortgage, the court concluded it would be fair to offset the net value of the Hitz House against Richard's share of the Estate.

¶35 Richard argues the Estate was barred from seeking an offset for the net value of the Hitz House because the Estate did not reserve any claims against Richard in its settlement agreement with Deutsche Bank. We disagree. In the settlement agreement, the Estate and Deutsche Bank agreed to release "each other" from all claims related to the Hitz House. The settlement agreement did not release Richard from any claims related to that property. Richard cites no legal authority in support of his claim that the Estate was required to reserve any claims against Richard in its settlement agreement with Deutsche Bank.

¶36 Richard also argues the circuit court erred in finding that he received the money from the Riverside Finance mortgages. He contends that, because Louise was the named mortgagor, "[t]here is a presumption Louise, not Richard[,] got Riverside's money." He relies on ***Mortgage Associates, Inc. v. Hendricks***, 51 Wis. 2d 579, 584, 187 N.W.2d 313 (1971), for the proposition that the notarization of a real estate mortgage creates a presumption that the facts stated in the mortgage are true. Here, however, the mortgages merely state that the funds were "loaned or to be loaned to" Louise. While this may establish a presumption that Riverside Finance loaned the money to Louise, it does not address what happened to the money after Louise received it from Riverside Finance. The circuit court

found that Richard was the ultimate recipient of the money from Riverside Finance, and Richard has not established that the court's finding to that effect was clearly erroneous.

VI. Entitlement to a jury trial on an offset for the rental value of Estate property

¶37 The circuit court also applied an offset of $321,208 for the rental value of certain Estate property. Richard argues he was entitled to a jury trial on the issue of the rental value offset, pursuant to WIS. STAT. § 879.45. He therefore contends we must vacate that offset and remand for a jury trial.

¶38 We conclude that if there was any error in failing to hold a jury trial regarding the rental value offset, it was harmless and, consequently, does not warrant reversal. *See* WIS. STAT. § 805.18. An error is harmless when it does not affect the substantial rights of the party seeking reversal. ***State v. Harris***, 229 Wis. 2d 832, 840, 601 N.W.2d 682 (Ct. App. 1999). Here, even without the rental value offset, the remaining offsets against Richard's share of the Estate would have amounted to $283,886—which still far exceeds Richard's one-half share of the net estate. Thus, regardless of whether the circuit court held a jury trial regarding the rental value offset, Richard would not have been entitled to any additional distributions from the Estate. As such, any error in failing to hold a jury trial was harmless, in that it did not affect Richard's substantial rights.

VII. Approval of the sale of a seventy-seven-acre parcel owned by the Estate

¶39 Richard next argues that if this court reverses the circuit court's order approving the final amended estate account on any of the grounds discussed above, we must also reverse that portion of the order approving the sale of a seventy-seven-acre parcel owned by the Estate. That parcel was sold to a third

party for $235,000. Richard had offered to buy the property for $240,000, using "an advance distribution [from] his inheritance."

¶40 For the reasons explained above, we have rejected each of Richard's claimed errors regarding the circuit court's computation of his inheritance. The court correctly concluded that, because the applicable offsets far exceeded Richard's one-half share of the net estate, Richard was not entitled to any additional distributions. Thus, Richard would not have been able to purchase the seventy-seven-acre parcel using an advance distribution from the Estate. We therefore decline to reverse that portion of the court's order approving the sale of the seventy-seven-acre parcel.

VIII. Sanction against Richard

¶41 Finally, Richard challenges the circuit court's decision to sanction him by requiring him to pay $75,000 of the Estate's attorney fees. He argues, in the first place, that the sanction "cannot be sustained as based upon [WIS. STAT. §] 879.37." The court, however, did not rely on § 879.37 when imposing the sanction. Instead, the court relied on its inherent authority to sanction misconduct. The court concluded a sanction was warranted because Richard had engaged in overtrial and had filed frivolous motions that unnecessarily increased the cost of the litigation.

¶42 A court has inherent authority to award attorney fees as a sanction for a party's misconduct. ***Schultz v. Sykes***, 2001 WI App 255, ¶47, 248 Wis. 2d 746, 638 N.W.2d 604. While Richard acknowledges that courts have inherent authority to sanction misconduct, he asserts that "[s]anctions based upon inherent authority can exceed the compensatory level only when certain procedural safeguards have been satisfied." Richard then contends: "Should not all of the

conduct that was overtried be affirmed, by definition a portion of the $75,000 [attorney fee award] becomes punitive and not compensatory. The entire $75,000 award must be vacated." However, we have affirmed each aspect of the circuit court's decision that Richard has challenged on appeal. We therefore reject his argument that any portion of the $75,000 attorney fee award is necessarily punitive, rather than compensatory, and must therefore be reversed on that basis.[9]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[9] In a single sentence in the background section of his brief-in-chief, Richard asserts the amount of the attorney fee sanction "was arrived at without the court evaluating the actual billings." To the extent Richard means to argue that the sanction is punitive because it does not correspond to the amount of attorney fees actually incurred by the Estate as a result of his overtrial, he does not present a developed argument in that regard. Again, we need not address undeveloped arguments. *See* ***Pettit***, 171 Wis. 2d at 646-47.