COURT OF APPEALS
DECISION
DATED AND FILED

February 1, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2015AP1859
2016AP146

Cir. Ct. No. 2015PR24

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

IN RE THE ESTATE OF JEAN V. HOLTZ:

LAURA V. HOLTZ,

APPELLANT,

V.

DEBORAH H. STEINER, SPECIAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE, AND MARCIA S. HOLTZ,

RESPONDENTS.

APPEALS from orders of the circuit court for Waukesha County: MICHAEL O. BOHREN, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 PER CURIAM. Laura V. Holtz appeals from circuit court orders granting summary judgment to Deborah Steiner and Marcia Holtz (Respondents), on Laura's objection to probate of the Last Will and Testament of Jean Holtz, objection to the validity of the Carl Holtz and Jean Holtz Living and Devolution Trust (the Trust), and two claims against Jean's Estate (the Estate). Laura claims that she was denied due process of law and that summary judgment was inappropriate. We disagree and affirm.

BACKGROUND

¶2 Carl and Jean Holtz were married for fifty-seven years and had five children—Deborah, Laura, Marcia, Mary, and Andrew. In 1997, Carl and Jean retained Attorney David Keating to assist them with their estate planning. During Keating's representation, Carl and Jean each drafted a will and created the Trust. Keating submitted an affidavit indicating that Carl and Jean intended to omit Laura as a beneficiary of the Trust. On July 8, 2006, Carl passed away. Carl's Will was never probated as all his assets passed either through beneficiary designation or were included in the Trust. Jean died on August 27, 2014. Jean's Will provided that the residue of her assets should be placed in the Trust.[1]

¶3 Deborah filed an application for informal administration, requesting that Jean's Will and a codicil be admitted to probate and that she be appointed as personal representative. Laura objected to probate of Jean's Will, alleging that Carl and Jean lacked capacity; that Jean unduly influenced Carl, who was in the early stages of Alzheimer's Disease; and that the Trust is contrary to public policy

[1] It was necessary to probate Jean's Will as some of her assets needed to be transferred through probate to the Trust.

as it is based on primogeniture.[2] Laura also filed two claims against the Estate. The first sought one million dollars for "[c]ompensation for decades of cruel and inhuman treatment, including but not limited to abuse, exploitation, humiliation, defamation, slander, indignity, alienation of family, and denial of home visitation rights." Laura claims "[s]uch treatment culminated in symbolic adult infanticide." The second sought $250,000 in compensation for "malicious destruction of [Laura's] portrait, 'Laurie, September 1964.'"

¶4 The circuit court set a trial date for the Will/Trust contest on August 19, 2015. Respondents filed a motion for summary judgment, which the court set for hearing on the same date as the trial. The day before the hearing, Laura filed an emergency petition for supervisory writ with the Wisconsin Supreme Court. On August 19, Laura, who resides in Montana, initially appeared by telephone at the hearing, but she informed the circuit court that her emergency petition "was in circulation with the justices" and she was told to "sit tight, they would contact me." She expressed her concern that the court would call while she was in the hearing, so she "would like to keep [her] phone clear to receive a call from the Supreme Court." The circuit court explained that "today's proceedings set for trial and motion hearings will go forward. If you wish … to proceed and participate you will have to either be here physically or you will have to appear by telephone." The court was clear that it was Laura's choice to participate or not, but the case would go on. After receiving assurance that she could always choose to call in again, Laura hung up and did not return during the duration of the

[2] Primogeniture is defined as "[t]he common-law right of the firstborn son to inherit his ancestor's estate." *Primogeniture*, BLACK'S LAW DICTIONARY (10th ed. 2014).

hearing. The circuit court granted summary judgment to Respondents, dismissing Laura's objection to probate.[3]

¶5 The case then proceeded on Laura's claims against the Estate.[4] Laura failed to respond to discovery requests, and Respondents moved for summary judgment on the claims. On November 25, 2015, the court held a hearing on the motion, and Laura appeared telephonically. After a protracted argument, the court granted Respondents' motion, finding that there was no "credible evidence" and subsequently no issue of material fact involving either of the claims. Laura appeals.[5]

DISCUSSION

Standard of Review

¶6 We review summary judgment decisions independently from the circuit court, while applying the same methodology. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). "When a motion for summary judgment is made and supported … an adverse party may not rest upon

[3] In granting the Respondents' motion, the court also granted several other motions filed by Respondents. On appeal, Laura challenges the circuit court's decision to grant Respondents' motion to file documents under seal, including Laura's discovery responses, briefs, and transcripts based on allegations contained in the documents relating to sexual assaults, genitals, and sexual orientation, among other things. Laura does not develop an argument on appeal as to why the circuit court erred, except to make conclusory statements. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address undeveloped arguments). We uphold the discretionary decision of the circuit court.

[4] While the claims against the Estate were pending, Laura appealed the circuit court's summary judgment decision to this court. We denied Laura's motion for relief pending the appeal.

[5] We ordered the appeals consolidated for the purposes of briefing and disposition.

the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial." WIS. STAT. § 802.08(3). We uphold summary judgment where the evidence presented demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Sec. 802.08(2).

Objection to Probate

¶7 Laura's primary argument is that she was denied due process of law when she was not provided an opportunity to make an argument at the August 19 hearing on summary judgment. We disagree. "The fundamental requirements of procedural due process are notice and an opportunity to be heard." ***Sweet v. Berge***, 113 Wis. 2d 61, 64, 334 N.W.2d 559 (Ct. App. 1983). Where an individual's rights or interests are impacted by a judicial decree, due process requires certain procedures tailored to protect those rights. ***Guelig v. Guelig***, 2005 WI App 212, ¶32, 287 Wis. 2d 472, 704 N.W.2d 916. "At the very least, due process mandates that a party has notice, actual or constructive, that is reasonably calculated to inform him or her of the pending decision as well as an opportunity to appear and be heard with respect to the defense of his or her rights." ***Id.***

¶8 In this case, Laura had notice of Respondents' motion for summary judgment and notice of the hearing on the motion. Laura, however, failed to respond to Respondents' motion or to provide any evidence presenting a material question of fact regarding the validity of her parents' wills or the Trust. *See* ***Sports Ctr., Inc. v. Marine***, 63 F.3d 649, 652 (7th Cir. 1995) (a party who failed to file a response brief "cannot now be heard to complain that it was deprived of due process"). Laura also initially appeared at the hearing, but *voluntarily* chose to

leave without presenting an argument on summary judgment or any evidence in support of her objection to probate. Laura was provided an appropriate warning by the court that the hearing would continue without her should she choose to disconnect. It was Laura's choice to not respond to the motion, to not appear in person, and to disconnect from the call with the court. Laura was not denied due process. By failing to appear at the hearing, Laura waived any complaint she had to the court granting summary judgment to Respondents. *See* ***O'Neill v. Buchanan***, 186 Wis. 2d 229, 234, 519 N.W.2d 750 (Ct. App. 1994). Based on an independent review of the record, we conclude that the court properly granted Respondents' motion for summary judgment.

Claims Against the Estate

¶9 Laura next argues that the court improperly granted summary judgment on her claims against the Estate. We again disagree. As the circuit court found, Laura's first claim, for compensation for "decades of cruel and inhuman treatment," is time-barred. Under WIS. STAT. § 893.57, "[a]n action to recover damages for libel, slander, assault, battery, invasion of privacy, false imprisonment or other intentional tort to the person" must be "commenced within 3 years." Laura's allegations, claiming predominantly emotional injuries, would be considered a "tort to the person." *See* ***Turner v. Sanoski***, 2010 WI App 92, ¶12, 327 Wis. 2d 503, 787 N.W.2d 429. Laura filed her claim on April 17, 2015. By her own admission, she had not spoken to Jean since the mid-1990s, and the last time she had returned home and was in Jean's presence was in 1997. Laura submits unsettling stories from her childhood, but no evidence that would bring her claim within the statute of limitations.

¶10 Laura's second claim, for "compensation for malicious destruction of my portrait," also fails on summary judgment. It is not clear to this court what type of claim Laura is making—whether it be wrongful conversion of the painting, intentional infliction of emotional distress resulting from the destruction of the painting, or something else entirely. If Laura is claiming wrongful conversion, Laura must demonstrate that the portrait belonged to her. *See* ***Bruner v. Heritage Cos.***, 225 Wis. 2d 728, 736, 593 N.W.2d 814 (Ct. App. 1999) (noting that the elements of a tortious conversion include "controlling/taking property belonging to another"); WIS JI—CIVIL 2200. Laura presented no admissible evidence that the painting belonged to her; instead, she admits in affidavits that the painting was never in her possession and that it always resided with her parents until it disappeared.

¶11 If, instead, Laura is claiming intentional infliction of emotional distress from the destruction of the painting, then her claim also fails. Laura admitted that she knew the painting had "disappeared from the storage room" sometime prior to the mid-1990s when she returned home for Christmas and was "terrified." Laura claims that she first confirmed that the painting was destroyed in a letter from Attorney Keating in October 2014, and she suggests that the painting was destroyed sometime in the last five years. There is no evidence in the record that the painting was destroyed in the last five years, and Laura has no direct knowledge of that fact. Laura was on notice that the painting had disappeared well before 2014, and through reasonable diligence could and should have discovered the status of the painting prior to that time. *See* ***Meracle v. Children's Serv. Soc'y***, 149 Wis. 2d 19, 25-26, 437 N.W.2d 532 (1989) ("[A] cause of action will not accrue until the plaintiff discovers, or in the exercise of

reasonable diligence should have discovered … the fact of injury.") (citation omitted).

¶12 Further, the record does not support the elements of a claim for intentional infliction of emotional distress. *See* WIS JI—CIVIL 2725 (allowing recovery only where "the person acted for the purpose of causing emotional distress" and that conduct was "gross and extreme and not merely in the field of carelessness or bad manners"). We conclude, as did the circuit court, that there is no legal basis for the claims presented by Laura and that even taking all the facts presented by Laura as true, these facts are not material to the controversy at hand. Summary judgment was proper under the circumstances.

By the Court.—Orders affirmed.

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