COURT OF APPEALS
DECISION
DATED AND FILED

February 27, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1965 **Cir. Ct. No. 01-PR-457**

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

IN RE THE ESTATE OF DOROTHY L. BALAS, DECEASED:

JEAN DIX, PERSONAL REPRESENTATIVE AND BENEFICIARY OF THE ESTATE,

APPELLANT,

V.

JOHN FORRETT, BENEFICIARY OF THE ESTATE,

RESPONDENT.

APPEAL from an order of the circuit court for Rock County: JAMES WELKER, Judge. *Affirmed*.

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 PER CURIAM. Jean Dix appeals from an order deciding an objection to the amended inventory. The issues relate to whether joint accounts

are properly part of the estate, whether the circuit court correctly ordered property returned to the estate, and other matters. We affirm.

¶2 John Forrett objected to the amended inventory of the estate of Dorothy Balas, prepared by Dix as personal representative. The court heard testimony and concluded that certain property belongs in the estate, and ordered Dix removed as personal representative and replaced by a bank. It is unclear whether the change of personal representative has been effectuated. On appeal Dix presents herself as appearing as both a beneficiary and the personal representative.

¶3 The first issue concerns three joint accounts held in the names of the decedent and Dix. These accounts were a significant portion of the estate, and the only significant cash asset. The statute covering joint accounts, WIS. STAT. § 705.04(1) (1999-2000),[1] provides in relevant part: "Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created." The circuit court found that the accounts were "set up as accounts of convenience, and I do not think that the decedent intended to set up these joint accounts as a means of disposing of her property." The parties agree that we affirm the court's finding unless it is clearly erroneous. *See* WIS. STAT. § 805.17 (2).

¶4 Dix argues that the court's finding is erroneous because there is no evidence of the decedent's intent at the time the accounts were created, other than

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

the fact that the decedent signed the signature cards making them joint accounts, and the cards clearly stated that upon the death of any of the account holders, the account would pass to the survivors. Forrett argues that the statutory presumption was overcome because Dix exercised undue influence over the decedent.

¶5 We agree that the statutory presumption was overcome, but not on the grounds of undue influence. Rather, we think the court's finding that these were accounts of convenience was a finding that the decedent had a different intention at the time the accounts were established. The court could reasonably conclude there was clear and convincing evidence for that finding in the provisions of the decedent's will that was executed after, but near, the time the accounts were established as joint accounts. The will gave Dix and Forrett equal portions of the residue of the estate. It is reasonable to infer the decedent also would have wanted them to be treated equally in regard to the funds held in the joint accounts. In addition, Forrett testified that the decedent had told him that she had over $100,000. Although she did not say whether he was or was not going to receive any of it, he inferred that she would not have told him that information unless he was going to receive some of the money. This was a reasonable inference that the court could also draw.

¶6 Dix next argues that the court erred by admitting evidence of actions she took after the death of the decedent. She argues that these actions were irrelevant to showing whether she unduly influenced the decedent in the creation of the joint accounts while the decedent was still alive. However, we have affirmed the circuit court's disposition of the joint accounts on a basis other than undue influence, and our analysis did not rely on any testimony or findings about Dix's conduct after the decedent's death. Therefore, any evidentiary error was

harmless, because it did not affect the resolution of the dispute over the joint accounts.

¶7 Dix argues that the court erred by making rulings about some of the decedent's tangible personal property, in addition to the ruling on the joint accounts. After hearing testimony, the court found that Dix gave some of decedent's jewelry and personal property to her children after the decedent's death, and, "in essence, looted assets of the estate." The court ordered that "all of the personal property transferred to the children must be returned forthwith under penalty of contempt." Dix argues that the Estate did not receive fair notice that issues about this other property would be heard, because Forrett's objection to the amended inventory objected only to the failure to include the joint accounts, in contrast to his objection to the original inventory, which objected to missing personal property in addition to the accounts. Accordingly, she argues, the court should not have ruled on issues about the other property. She asks us to remand for a "proper hearing" on those issues.

¶8 We reject the argument for three reasons. First, we question whether Dix or the Estate has standing to raise this issue, because neither is aggrieved by this part of the court's ruling. *See* WIS. STAT. § 879.27(1) and ***Knight v. Milwaukee County,*** 2002 WI 27, ¶16, 251 Wis. 2d 10, 640 N.W.2d 773 (to be aggrieved by a judgment or order, that judgment or order must operate on a person's rights of property or bear directly on some other interest; an "aggrieved party" is one having an interest recognized by law in the subject matter which is injuriously affected by the judgment). It does not appear that Dix is one of the grantees ordered to return property. It is not clear why the Estate would argue against having property returned to the Estate. The duties of the personal representative include collecting, inventorying, and possessing *all* the decedent's

estate, WIS. STAT. § 857.03(1) (emphasis added), and distributing the residue of the estate according to the will. ***Old Republic Surety Co. v. Erlien***, 190 Wis. 2d 400, 411, 527 N.W.2d 389 (Ct. App. 1994). The will in this case does not give the property in question to the children, and therefore it appears that if the Estate has any interest in this issue, it would be in defending the circuit court's order, rather than appealing from it.

¶9 Second, although Dix raised the issue of lack of notice in her motion for reconsideration, she did not make any objection at the hearing itself on this ground. Third, Forrett argues that, regardless of proper notice, the probate court has inherent authority to supervise the personal representative under WIS. STAT. § 857.09, and therefore the court could make orders about other missing property, once it heard evidence of improper actions by the personal representative. We agree.

¶10 Dix argues that the court's order directing the return of property to the Estate violated the due process rights of the persons to whom the property had been given. It did so, she argues, because those persons were not provided with any notice that the alleged gifts from the decedent were in question and might be taken from them. Again, we doubt Dix has standing to raise this issue on behalf of the grantees, either as a beneficiary or as personal representative. It is also not clear what additional information the grantees would have been able to provide if they had been at the hearing, in light of the restrictions of WIS. STAT. § 885.16.

¶11 Dix also argues, on behalf of the Estate, that the evidence was insufficient to support the order directing the return of "all personal property" to the Estate. Again, we doubt that either Dix or the Estate is aggrieved. Assuming without deciding that the issue is properly raised, we conclude the court's order is

supported by the evidence. Dix argues that the court could not properly order the return of "all" of the personal property transferred to the children, but only those specific items of property that were the subject of testimony on which the court could find that no intervivos gift occurred. Stated more bluntly, Dix's argument is that the court can order the return of only the specific property that she was caught giving away, and cannot make a broad order that would cover all property given away improperly, including property not yet specifically known to the court or objector.

¶12 We conclude the court's order was supported by the evidence. Based on Dix's own testimony, and the court's assessment of her credibility, the court could reasonably conclude that Dix had engaged in a pattern of activity that suggests there may be other such property, not known to the objector or court. The court could reasonably conclude that a broad order was necessary to correct the "looting" of the estate. Dix's argument, if accepted, would allow personal representatives to retain unlawfully taken property when no one could specifically prove all the items that were taken. Indeed, the fact that Dix is making this argument on appeal suggests that there may be other such property, because we see no practical benefit to be realized by prevailing on this argument except continued concealment of still-uninventoried property.

¶13 Dix argues that the court erred by allowing evidence that a will prepared later than the will being probated was destroyed, possibly with involvement by Dix. Her concern appears to be that this evidence was used to find undue influence. However, as with the issue of the joint accounts, we have not relied on any finding of undue influence in affirming the court's order, and therefore any error was harmless.

¶14 Finally, Dix argues that the circuit court applied an incorrect legal standard to her motion for reconsideration. We need not decide this issue. The issues in the reconsideration motion have also been raised in this appeal, and we have affirmed the circuit court on them. There would be little point in our remanding for the circuit court to reconsider issues we have affirmed.

By the Court.—Order affirmed.

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