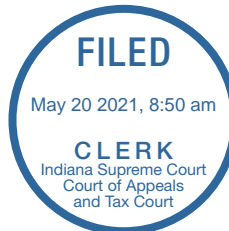


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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ATTORNEY FOR APPELLANT

Thomas R. Hamilton  
Elkhart, Indiana

ATTORNEY FOR APPELLEES

Elizabeth A. Bellin  
Elkhart, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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In Re the Matter of the  
Unsupervised Estate of Ray E.  
Smeltzer;

Jamie L. Smeltzer,  
*Appellant,*

v.

Estate of Ray E. Smeltzer and  
Thomas Smeltzer, Personal  
Representative,  
*Appellees.*

May 20, 2021

Court of Appeals Case No.  
20A-EU-2159

Appeal from the LaGrange Circuit  
Court

The Honorable William R. Walz,  
IV, Judge

Trial Court Cause No.  
44C01-1611-EU-23

**Brown, Judge.**

- [1] Jamie L. Smeltzer appeals the entry of judgment against her and in favor of the estate of Ray E. Smeltzer. We reverse and remand.

### *Facts and Procedural History*

- [2] On November 2, 2016, Thomas Smeltzer filed a petition for probate of will stating that Ray E. Smeltzer died in October 2016 leaving a last will and testament. The petition stated that “the name . . . of each known legatee and devisee of such decedent’s estate are the beneficiaries of” a certain trust agreement which “divided the assets of the decedent in equal shares, by right of representation, among his children” and that the beneficiaries of the trust included, among others, Thomas Smeltzer and Jamie Smeltzer. Appellant’s Appendix Volume II at 13. On November 3, 2016, the court issued an order authorizing the probate of the will and appointing Thomas as the personal representative of the estate.
- [3] On May 14, 2020, Thomas as the personal representative filed an “Executor’s Verified Petition to Secure Judgement [sic] of Delinquent Rent Against Tenant and Enforcement of Rent pursuant to I.C. 29-1-13-17” (the “Petition”).<sup>1</sup> *Id.* at 26. The Petition alleged that, at the time of his death, Ray owned certain real property in Shipshewana, Indiana (“Lot 79”), Jamie lived at the property and

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<sup>1</sup> On July 2, 2020, Thomas filed an Affidavit of Service stating that he had personally served the Petition on Jamie on May 31, 2020. Ind. Code § 29-1-13-17 provides in part that, “[i]f a person fails to comply with a personal representative’s written demand or instruction that is consistent with this article regarding the property of the decedent, the personal representative may bring an enforcement proceeding to compel compliance with the written demand or instruction.”

failed to pay rent, Thomas “determined that a low-end fair market value of rent for the real property rental is Six hundred dollars U.S. (\$600) per month excluding utilities, payable in advance,” and Jamie owed rent in the estimated amount of \$21,000. *Id.* An entry in the chronological case summary (“CCS”) dated June 4, 2020, states: “PROPOSED Order filed.” *Id.* at 6. The trial court issued an order dated June 8, 2020, which provided:

### ORDER

The Court having reviewed the Executor’s Petition to Secure Judgement [sic] for Delinquent Rent Against Tenant and Enforcement of Rent pursuant to I.C. 29-1-13-17, and considering the same, now sets this matter for hearing on \_\_\_\_\_, 2020 at \_\_\_\_\_ AM/PM.

This matter shall also be set for telephonic Status Conference on \_\_\_\_\_ July 14 \_\_\_\_\_, 2020 at \_\_\_ 9:30 \_\_\_ AM/█. The parties shall call into the Court at the following number: . . . . [Thomas’s] Counsel shall initiate the telephone conference.

IT IS SO ORDERED.

Dated: \_\_ 06/08/2020\_\_

\* \* \* \* \*

Distribution:

[] Attorney for Executor  
Jamie Smeltzer

*Id.* at 32.<sup>2</sup> Also, an entry in the CCS dated June 9, 2020, states: “Order entered 6/8/20. The Court now sets this matter for a telephonic status conference on July 14, 2020 at 9:30 a.m. [Thomas’s] counsel shall initiate the telephone conference. (Copies to [Thomas’s counsel]).”<sup>3</sup> *Id.* at 6.

[4] On July 14, 2020, the court held the scheduled conference.<sup>4</sup> An entry in the CCS on July 14, 2020, states: “[Thomas’s counsel] files Affidavit in Support of Attorney’s Fees on 7/14/20 and PROPOSED Order following hearing.” *Id.* A July 15, 2020 CCS entry states: “PROPOSED Amended Order filed (after hearing).” *Id.*

[5] On July 24, 2020, the trial court issued an order stating that it had held a hearing, Thomas appeared by counsel and Jamie failed to appear, and it had heard arguments. The court ordered that Thomas or his designee was granted authority to enter Lot 79 and initiate repairs as needed; Jamie pay the estate \$21,000 for past due rental amounts from November 1, 2016 through May 1, 2020; any other past due rent shall remain an issue to be brought before the court at either party’s request; Jamie pay the estate \$600 per month beginning June 1, 2020, until she removed herself from Lot 79 or further court order;

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<sup>2</sup> Jamie states in her affidavit that “[t]he Clerk of the Court never provided her with a notice of hearing regarding the” Petition. Appellant’s Appendix Volume II at 69.

<sup>3</sup> The CCS entry also indicates: “Notice Sent: Yes.” Appellant’s Appendix Volume II at 6.

<sup>4</sup> The record does not include a transcript of the conference.

Jamie relinquish a lawn mower belonging to the estate and provide a listing of estate assets in her possession; and that Jamie pay attorney fees of \$2,123.30.

[6] On August 23, 2020, counsel for Jamie filed an appearance and a “Motion to Correct Error and to Vacate July 24, 2020 Judgment.” *Id.* at 37. She argued that she did not receive notice of any hearing on the Petition and was deprived of the opportunity to be heard, Ind. Code § 29-1-13-17 was improperly applied, the court did not have personal jurisdiction over her, and the claims for past due rent were barred by the statute of frauds.

[7] In her attached affidavit, Jamie stated that she had resided at Lot 79 for over fifteen years, she entered an agreement in 2005 to purchase Lot 79 from Ray, she made payments from 2005 through 2016 totaling \$97,998, in September 2016 Ray agreed that she had paid in full for Lot 79, and Ray and his wife signed an agreement to indicate she had paid in full. She further stated that she received a letter from Thomas’s counsel shortly after June 17, 2019, demanding proof of ownership of Lot 79 and that her attorney responded in writing on July 15, 2019.<sup>5</sup> Further, Jamie’s affidavit stated that Thomas gave her a copy of his Petition on May 31, 2020, but that neither Thomas, Thomas’s counsel, nor the Clerk of the Court provided her with a notice of hearing regarding the Petition.

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<sup>5</sup> Jamie’s affidavit included as attachments: a document reflecting the claimed purchase agreement, purported receipts of payment, the June 17, 2019 letter from Thomas’s counsel, and the July 15, 2019 response letter by Jamie’s counsel.

- [8] Jamie’s counsel filed an affidavit stating that, on May 14, 2020, he received an email from the office of Thomas’s counsel forwarding a copy of the Petition. Jamie’s counsel further stated that Thomas’s counsel failed to attach the July 15, 2019 letter to the Petition and never provided him with any notice of hearing on the Petition or notice that she would ask the court to consider the Petition at the status conference. He stated Thomas’s counsel never provided him with a copy of the June 8, 2020 order scheduling the status conference and he was not otherwise provided notice of the status conference or that the court would consider the Petition at the status conference.<sup>6</sup>
- [9] Thomas filed a “Personal Representative’s Opposition to Respondent’s Motion To Correct Error” stating Jamie “received notice of the filing on or about May 31, 2020; her attorney received a courtesy notice of the filing on or about May 14, 2020; the court records indicate that she received notice of the hearing date, yet no one appeared on her behalf.” *Id.* at 187, 195.
- [10] On September 22, 2020, the court held a hearing on Jamie’s motion to correct error at which the parties’ counsel presented argument and the court took the matter under advisement. Jamie’s motion to correct error was deemed denied.

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<sup>6</sup> The affidavit of Jamie’s counsel included as attachments: a July 23, 2019 letter from Thomas’s counsel stating that the receipts provided were not in Ray’s script, the purported signature indicating the balance was paid in full was unverified, and Thomas still needed verification of the payments; and an October 10, 2019 letter from Thomas’s counsel stating the family “came across many of the ‘missing’ receipts from the receipt book that purports to show Jamie paid substantial cash sums to Ray. . . . The interesting thing about the ‘missing’ receipts, is that they are from more recent years than the receipts that Jamie alleges were written for her. As an example, I am enclosing copies of the receipts . . . . This just adds to the incredibility of the cash ‘receipts’ for Jamie.” Appellant’s Appendix Volume II at 174.

## *Discussion*

- [11] Jamie argues that she did not receive notice regarding when the hearing would take place on Thomas's May 14, 2020 Petition. She states that, while Thomas gave her a copy of the Petition on May 31, 2020, the hearing was not scheduled until June 8, 2020, the hearing which was scheduled for July 14, 2020, was not a hearing on the Petition but a status conference, and the part of the court's June 8th order related to setting a hearing on the Petition had been left blank. She argues that she was denied an opportunity to appear, be heard, and dispute Thomas's claims and she was denied due process.
- [12] Thomas asserts that Jamie was given sufficient notice and an opportunity to be heard, she received notice of the filing of the Petition, her counsel received a courtesy copy of the Petition by email, the order setting the matter for telephonic hearing indicated distribution was made to Jamie, and the court heard evidence related to Jamie's position at the September 22, 2020 hearing.
- [13] Due process includes notice and an opportunity to be heard, and a party is denied due process when the party is denied the opportunity to argue the party's case to the trial court after that court has determined it would hear argument. *Bruno v. Wells Fargo Bank, N.A.*, 850 N.E.2d 940, 948 (Ind. Ct. App. 2006). Due process applies to the initial stages of a lawsuit and also to the proceedings within the lawsuit. *See id.*
- [14] The record reveals that Thomas filed his Petition to Secure Judgment of Delinquent Rent on May 14, 2020, and personally served a copy of the Petition

on Jamie on May 31, 2020. At that point, the court had not scheduled any hearing or evidentiary proceeding related to the Petition. According to the CCS, a proposed order was filed on June 4, 2020. On June 8, 2020, the court issued an order containing two paragraphs, the first of which related to scheduling a hearing on the Petition, and the second of which related to setting a telephonic status conference for July 14, 2020. However, the spaces for a date and time in the first paragraph of the order were not completed. Even if the June 8, 2020 order was distributed to Jamie, the order did not set a hearing on Thomas's Petition or provide notice that an evidentiary proceeding would be held on July 14, 2020. The court held the status conference on July 14, 2020,<sup>7</sup> and the CCS indicates that Thomas's counsel filed a proposed order following the hearing and a proposed amended order was filed the following day. On July 24, 2020, the court issued an order and findings addressing the merits of the allegations in Thomas's Petition and entering a monetary judgment in favor of the estate and against Jamie. While the court may have heard arguments on September 22, 2020, regarding the issue of notice and the entry of the court's July 24, 2020 order, the parties did not present evidence and testimony related to the claims in Thomas's Petition.

[15] The record reveals that Jamie was not given notice that an evidentiary hearing or a hearing on the merits of the allegations in Thomas's Petition to Secure

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<sup>7</sup> The record does not include a transcript of the July 14, 2020 status conference and thus does not reveal whether the court admitted evidence. The court's July 24, 2020 order states the court, "after hearing arguments," entered findings. *See* Appellant's Appendix Volume II at 11.



Judgment of Delinquent Rent would be held on July 14, 2020, and was not provided an opportunity to present evidence or challenge Thomas's evidence related to the claims in the Petition. Accordingly, we reverse the trial court's July 24, 2020 order and remand for further proceedings.<sup>8</sup>

[16] Reversed and remanded.

Bradford, C.J., and Vaidik, J., concur.

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<sup>8</sup> As we remand for further proceedings on due process grounds, we do not address Jamie's other arguments.