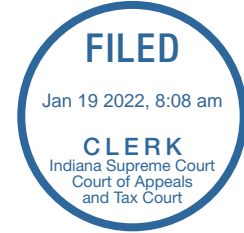


MEMORANDUM DECISION

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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IN THE COURT OF APPEALS OF INDIANA

Ivory Williams and Henry
Strong,
Appellants-Petitioners,

v.

Craig Strong and the Supervised
Estate of Ernestine Williams,
Deceased,
Appellees-Respondents.

January 19, 2022

Court of Appeals Case No.
21A-ES-1860

Appeal from the Lake Circuit Court

The Honorable Marissa McDermott,
Judge

Jewell Harris, Jr., Probate
Commissioner

Trial Court Cause No.
45C01-1307-ES-72

Kirsch, Senior Judge.

Statement of the Case

- [1] Ivory Williams and Henry Strong appeal the trial court’s denial of their petition to reopen their mother Ernestine Williams’ estate proceedings, in which their brother, Craig Strong, had served as administrator of the estate. We affirm.

Issue

- [2] Ivory and Henry¹ raise four issues, which we consolidate and restate as: Whether the trial court erred in denying Ivory’s and Henry’s petition to reopen the estate proceedings.

Facts and Procedural History

- [3] Ivory, Henry, and Craig are the adult sons of Ernestine Williams. She died intestate on November 5, 2011, at the age of seventy-seven. Craig had lived with his mother since 1992, after injuries he had sustained in an auto accident left him unable to work.
- [4] In July 2013, Craig began this case by filing a petition with the trial court to appoint him as administrator of Ernestine’s estate for the sole purpose of pursuing a wrongful death case against Ernestine’s health care providers (“the providers”). Craig stated that he would file suit under Indiana’s medical malpractice statutes or Indiana Code section 34-23-1-1 (1998), also known as the General Wrongful Death Statute (“GWDS”). Finally, Craig informed the

¹ We refer to the parties by their first names because several of them share last names.

trial court that he, Ivory, and Henry were Ernestine’s surviving “heirs at law” because all three persons are her children. Appellants’ App. Vol. 2, p. 18. The trial court granted Craig’s petition and ordered the trial court clerk to issue letters of administration to Craig.

[5] Craig, as personal representative of Ernestine’s estate, filed a medical malpractice case against the providers. In June 2019, Craig filed another petition in the estate case, asking for the court’s permission to approve a settlement with the providers. Craig informed the court that he would also seek additional damages from the Indiana Patient’s Compensation Fund (“PCF”), and, if additional damages are paid, he would then ask the court in the malpractice case to determine whether he is Ernestine’s dependent beneficiary. The court granted Craig’s petition, authorizing him to settle the estate’s claims against the providers.

[6] In May 2020, Craig filed a third petition in this case. On that occasion, Craig asked the court to grant him permission to execute a settlement agreement with the PCF under the GWDS. He further stated that the court in the malpractice case had not explicitly determined that he was Ernestine’s dependent at the time of her death, but that the amount of the settlement demonstrated that the case had been settled under the GWDS. For that reason, Craig asked the court to award him all of the settlement funds from the providers and the PCF, minus attorneys’ fees and litigation costs.

- [7] On May 28, 2020, the trial court issued an order: (1) granting Craig permission to execute the settlement agreement with the PCF; (2) allowing the PCF settlement funds to be distributed to Craig in their entirety, minus attorney's fees and litigation costs; and (3) authorizing the disbursement to Craig of all remaining settlement funds from the providers. On March 4, 2021, the court closed the estate case after Craig filed a closing statement.
- [8] On May 7, 2021, Ivory and Henry filed a petition to reopen Ernestine's estate case, arguing that: (1) they were entitled to notice of the proceedings but did not receive any from Craig; (2) Craig did not fulfill his fiduciary duties to his co-heirs; and (3) he engaged in self-dealing by distributing to himself all of the funds recovered through the estate's lawsuits against the providers and the PCF. Ivory and Henry further acknowledged that Craig had pursued wrongful death claims against the providers and the PCF under the GWDS, but they claimed there had never been "a judicial determination" that Craig was Ernestine's dependent at the time of her death. Appellants' App. Vol. 2, p. 86.
- [9] Craig filed a response in opposition to the petition, claiming that his brothers had no valid interest in Ernestine's estate. The trial court held a hearing. On July 29, 2021, the trial court issued an order denying Ivory and Henry's petition to reopen the estate, concluding they could not have recovered from Ernestine's estate because the proceeds were distributed to Craig "as required by law." Appellants' App. Vol. 2, p. 103. This appeal followed.

Discussion and Decision

[10] The trial court issued an order which contained sua sponte findings of fact.

Under these circumstances, our standard of review is as follows:

We therefore apply the following two-tier standard of review: whether the evidence supports the findings, and whether the findings support the judgment. Findings and conclusions of law will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will neither reweigh the evidence nor assess witness credibility. Sua sponte findings control only as to the issues they cover, and a general judgment standard of review controls as to the issues upon which there are no findings. A general judgment will be affirmed if it can be sustained on any legal theory supported by the evidence.

Butler Univ. v. Estate of Verdak, 815 N.E.2d 185, 190-91 (Ind. Ct. App. 2004)

(citations and quotations omitted).

[11] Ivory and Henry first dispute the trial court's determination that they lacked standing to file their petition to reopen the estate case. Under common law, to have standing a party must demonstrate a personal stake in the outcome of the proceeding and that he or she has sustained, or is in danger of sustaining, some direct injury as a result of the conduct at issue. *Id.* at 191. Furthermore, after an estate case has been closed, Indiana Code section 29-1-17-14 (2017) provides that "any person interested in the estate" may petition to reopen the proceedings.

[12] “Interested persons’ means heirs, devisees, spouses, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular purpose and matter involved.” Ind. Code 29-1-1-3 (2013). In addition, “[h]eirs” is defined as: “those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.” *Id.*

[13] Craig conceded in his petition to the probate court that Ivory and Henry are heirs at law. There is no dispute that if Craig were not a dependent child of Ernestine, then Ivory and Henry would also be entitled to a share of her estate under the statutes of intestate succession. As a result, Ivory and Henry had a personal stake in the estate case and a risk of direct injury. We conclude they had standing to file their petition to reopen the estate. *See First Farmers Bank & Trust Co. v. Whorley*, 891 N.E.2d 604, 612 (Ind. Ct. App. 2008) (a beneficiary of an estate had standing to pursue an estate administrator’s alleged breach of fiduciary duty), *trans. denied*.

[14] Even though Ivory and Henry had standing to file their petition to reopen the case, we may not reverse the trial court’s judgment if the probable impact of an error, “in light of all of the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.” Ind. Appellate Rule 66(A). We thus turn to their other claims.

[15] In addition to challenging the trial court’s ruling on standing, Ivory and Henry argue the probate court should have reopened the estate proceedings because Craig failed to give them notice. They cite Indiana Code section 29-1-7-7 (2009), which sets forth the circumstances under which notice to heirs and others must be provided after an estate case is opened. But Ivory and Henry did not present this argument to the trial court in their petition to reopen the estate. They instead argued that Craig was required to give them notice under Indiana Code section 29-1-9-3 (2019) of the proposed settlement agreements with the providers and the PCF. Generally, a party may not raise an issue on appeal that was not raised to the trial court. *McGill v. Ling*, 801 N.E.2d 678, 687 (Ind. Ct. App. 2004), *trans. denied*. We need not address this claim further.

[16] Before we turn to the merits of Ivory and Henry’s remaining two claims, it is helpful to briefly review Indiana’s relevant wrongful death statutes. The GWDS, Indiana Code section 34-23-1-1, authorizes an estate’s personal representative to file suit when “the death of one is caused by the wrongful act or omission of another” Any amounts recovered in the lawsuit shall first be used to pay medical and funeral expenses, if any, with the remainder going to a surviving spouse, dependent children, or other dependent next of kin. *Id.*

[17] The adult wrongful death statute (“AWDS”), Indiana Code section 34-23-1-2 (1999), also authorizes an estate’s personal representative to file suit against a “person whose wrongful act or omission caused the death of the adult person.” But, in contrast to an action under the GWDS, the decedent in an action under the AWDS does not have any dependents. *Id.* Further, damages obtained

under the act go to the decedent's nondependent parent or children (after payment of hospital, funeral, and burial expenses), if any. *Id.* Finally, damages obtained under the AWDS are capped at \$300,000.

[18] With that in mind, we address Ivory and Henry's next claim: that the trial court in this case failed to determine that Craig was Ernestine's dependent. Ivory and Henry are incorrect. In its order approving Craig's settlement with the PCF, the court stated, "[t]he settlement with the [PCF] was under [the GWDS] therefore the Administrator is authorized to release the remaining 2/3 balance of the settlement funds . . . to the *dependent of the decedent*, Craig Strong." Appellants' App. Vol. 2, p. 61 (emphasis added).

[19] Clearly, the trial court concluded Craig was Ernestine's dependent. The key question is whether Ivory and Henry provided proper cause under Indiana Code section 29-1-17-14 for the court to revisit that determination and potentially determine that Ernestine's estate should be divided among all three sons instead. In their petition to reopen the estate, Ivory and Henry failed to claim Craig was not Ernestine's dependent, choosing to instead argue incorrectly that the issue had not been decided. Under these circumstances, they failed to provide proper cause for the trial court to revisit the question of dependency.

[20] Ivory and Henry's final claim is that the trial court should have reopened the case because Craig breached his fiduciary duties as the administrator of Ernestine's estate by not giving them notice and by putting "the entire proceeds

of the wrongful death action into his pocket.” Appellants’ Br. p. 21. But the trial court determined Craig was entitled by law to the entire proceeds of the estate under the GWDS as Ernestine’s dependent child. Ivory and Henry should have at least alleged in their petition that Craig was not Ernestine’s dependent, but they failed to do so. They provided no reason to believe that receiving notice from Craig would have changed the outcome of the estate case. Under these circumstances, they have failed to demonstrate that the trial court committed reversible error in denying their petition. *See Clark v. Schindler*, 43 Ind. App. 269, 274, 87 N.E. 44, 46 (1909) (affirming denial of county official’s petition to reopen an estate to investigate potential hidden assets for purposes of taxation; official had failed to allege in the petition whether the assets were subject to taxation or whether the executor of the estate had engaged in fraud).

Conclusion

[21] For the reasons stated above, we affirm the judgment of the trial court.

[22] Affirmed.

Bradford, C.J., and Mathias, J., concur.