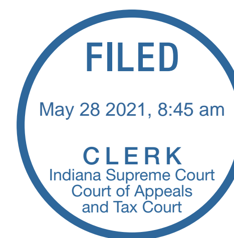
MEMORANDUM DECISION

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

In re Estate of Ray Thomas Wycoff,

Belinda Wycoff and John Manley,

Appellants,

v.

Brookville Mobile Estates, LLC,

Appellee.

May 28, 2021

Court of Appeals Case No. 20A-EU-2379

Appeal from the Marion Superior Court

The Honorable Steven R. Eichholtz, Judge

Trial Court Cause No. 49D08-1912-EU-53636

Brown, Judge.

[1] Belinda Wycoff and John Manley appeal the trial court's December 4, 2020 order. We reverse and remand.[1]

Facts and Procedural History

[2] This case involves a mobile home trailer (the "Trailer") which had belonged to Wycoff's father, Thomas Wycoff ("Thomas") prior to his death. Thomas as the tenant and Brookville Mobile Estates ("Brookville") as the landlord entered into a Month to Month Rental Agreement dated January 1, 2017 (the "Agreement") related to mobile home lot number 83 (the "Lot"). Appellant's Appendix Volume II at 90. The Agreement provided: "10. Landlord Liens. To secure the payment of rent and the other liabilities of the Tenant hereunder, the Landlord shall have a lien upon all of the Tenant's personal property . . . ," the lien "applies to the mobile home and other personal property left upon or around the Lot," and the "Landlord shall have the right to detain such mobile home or personal property until the amount of the unpaid rent, late charges, legal fees, the liquidated damages provision of Section 17 of this Lease, and any other fees or charges incurred by the Landlord or owed by the Tenant have been paid in full." *Id.* at 92. It indicated that if such rent, fees or charges were not paid, Brookville would have the right to sell the mobile home at public

[1] On April 7, 2021, Brookville Mobile Estates ("Brookville") filed a motion to strike the Statement of Facts section in Wycoff and Manley's brief pursuant to Ind. Appellate Rule 42 on the basis that they "do not once cite to the Transcript from the trial," but instead "cite to the unverified allegations in their complaint." April 7, 2021 Motion to Strike at 2. While the statement of facts section cites only the appendix and contains several scrivener's errors, it appears that several citations correctly reference the appendix and that the pagination numbers in several other citations relate to testimony appearing in the trial transcript that supports the proposition in the preceding sentence. Accordingly, we deny Brookville's motion to strike.

auction. The Agreement further provided in Section 17 for a "Landlord Right of First Refusal," stating that, if the "Tenant desires to sell his mobile home, Tenant shall advise Landlord in writing of this intent" and provide information about the prospective purchasers, the proposed purchase price, and the material terms and conditions of such sale. *Id.* at 94. It provided that, upon "actual receipt of the Notice by Landlord, Landlord shall have 72 hours thereafter . . . in which to notify Tenant of Landlord's intent to purchase based upon same terms and conditions in the Notice," and a rejection of the offer or failure to notify within the same 72-hour period would be construed as a rejection.[2] *Id.*

[3] Thomas died on July 5, 2018. On January 7, 2019, Brookville's property manager, Cindy Kingery, communicated with Wycoff and sent a text message asking if Wycoff could provide Thomas's power of attorney. In February 2019, Wycoff and her six siblings placed the Trailer on the market, and on February 22, 2019, Wycoff sent a message to Kingery asking if Brookville wanted to

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[2] Section 17 provided:

> If Landlord rejects that offer or fails to notify Tenant within said time, such shall be construed as a rejection and Tenant may sell the mobile home to the persons named in the Notice upon the terms and conditions set forth, so long as any prospective tenant also meets the other reasonable requirements of the Landlord. In the event Landlord rejects the offer and, if thereafter, any term or condition of the proposed sale is altered, modified or otherwise changed, then Tenant must submit an additional written notice to Landlord affording Landlord an opportunity with an additional 72 hours after actual receipt to accept or reject the purchase based upon the changed, altered, or modified terms. . . . If Tenant breaches this paragraph, Tenant shall pay $3,500 in liquidated damages to Landlord as the resulting damages of a breach of this paragraph would be uncertain, difficult, or impossible to ascertain. However, Tenant and Landlord agree and stipulate the amount of $3,500 is an amount that may fairly be allowed as compensation for such a breach. Nothing herein will release or terminate any other lien landlord may have for work done or as part of landlord's innkeeper lien rights.

Appellant's Appendix Volume II at 94 (capitalization omitted).

make an offer on the Trailer, and Kingery responded, "Yes we can." *Id.* at 76-78. Wycoff sent a response informing her the "current highest offers are $6900," "another's from a broker at $6500," "[h]ope to be getting another offer by the end of the day . . . . and several under $6500," stating that Kingery should let her know of Brookville's offer via phone, and providing a phone number at which to send the offer. *Id.* at 77-78. On or around March 4, 2019, Wycoff sent Kingery another message indicating she thought Brookville was going to make an offer, she had not heard back about one, and that a final offer had been made for $7,000 "which will be the one we are going with." *Id.* at 79. At some point, Wycoff's sister took Kingery to view the Trailer. Wycoff never received an offer from Brookville to purchase the Trailer, and in April 2019, Manley purchased it for $7,000.

[4] On July 12, 2019, counsel for Wycoff and Manley sent Brookville a letter seeking immediate cooperation and assistance in the retrieval of the Trailer. The letter referenced Brookville's interference with previous efforts to remove and/or sell the Trailer. It stated that Thomas's estate was classified as a "Small Estate" under Indiana law, and attached an Affidavit for Transfer of Assets Without Administration signed by Wycoff on July 8, 2019, and detailing that she and her six siblings were entitled to receive a "1984 Mobile Home." *Id.* at 85. The letter indicated that Manley planned to have his moving contractor remove the mobile home between July 19 and July 30, 2019.

[5] On August 9, 2019, Brookville's counsel sent a letter to Wycoff and Manley's counsel, which referred to paragraphs 10 and 17 of the Agreement, and asserted

that "at no time did anyone present them with the required First Refusal offer." *Id.* at 86. The letter stated that, in the "instance of a breach the parties agreed to a liquidated damage provision . . . including further notice of Brookville's on-going lien rights," that the Agreement allowed Brookville to detain, and even sell, the Trailer until the lien was satisfied, and that it requested full payment of the liquidated damages and reimbursement of legal expenses. It also stated that if Wycoff or Manley made any effort to remove the Trailer "in the meantime, they will treat this as a criminal trespass." *Id.* at 86-87.

[6] On December 27, 2019, Wycoff and Manley filed a complaint in the Probate Division of the Marion Superior Court under cause number 49D08-1912-EU-53636 alleging three counts – one count by Wycoff for refusal to surrender property, and counts by Wycoff and Manley for conversion. They cited provisions of Ind. Code §§ 29-1-8 and alleged that Brookville acted in bad faith in refusing to allow retrieval of the trailer. It further alleged that Manley applied for a ninety-day moving permit to transport the Trailer, which had since expired, causing him to suffer damages in the form of economic loss in applying for the permit. Wycoff and Manley attached Wycoff's affidavit, a title certificate for the Trailer indicating Manley purchased it on April 25, 2019, and Manley's moving permit.

[7] On January 28, 2020, Brookville filed an answer and asserted various affirmative defenses. It alleged it received rent payments from Wycoff after Thomas's death which had since ended, Wycoff and Manley refused to satisfy debts owed by Thomas "for rents, liens, liquidated damages and reasonable

attorneys' fees" provided for in the Agreement, and that it notified both Wycoff and Manley who "failed or refused to satisfy Brookville's liens." *Id.* at 22. It asserted a counterclaim for foreclosure of lien and that it had the right to sell the Trailer to satisfy the lien pursuant to the Agreement; a counterclaim against Wycoff for breach of contract and that she consented to and was successor to Thomas under the Agreement; and a counterclaim against Manley for tortious interference with a business contract.

[8] An entry in the chronological case summary for April 22, 2020, states that Brookville "asserts that it has a valid lien against the property," and indicates that Brookville was "to submit authority to the court which supports the existence of said lien." *Id.* at 5. In May 2020, Brookville filed a memorandum of law which pointed to paragraph 10 of the Agreement, and asserted that the lien rights included liquidated damages of $3,500 resulting from Wycoff's failure to honor the right of first refusal and that possession of the Trailer established and "perfect[ed] the lien as to the mobile home's owner." *Id.* at 44, 47. It also asserted that its "possessory lien achieves super-priority status over any other security interest." *Id.* at 49. In response, Wycoff and Manley argued that no security interest was ever created and asserted that they would produce evidence at trial that Wycoff attempted to sell the Trailer to Brookville for the amount offered by Manley.

[9] On November 16, 2020, the court held a hearing at which the parties stipulated to exhibits, including the correspondence between Wycoff and Kingery, the July 12 and August 9, 2019 letters, Wycoff's affidavit, an April 25, 2019 bill of

sale signed by Manley for the Trailer, and an Indiana Bureau of Motor Vehicles certificate of title for the Trailer made out to Manley with each of the lien spaces left blank. The court asked why an estate had not been opened, nor a personal representative appointed, and counsel for Wycoff and Manley indicated that it was a small estate, they did not have an obligation to open an estate and could dispense with administration, and that Brookville had nine months from Thomas's death to open an estate and had not done so. Transcript Volume II at 6.

[10] Wycoff testified that Brookville mentioned that it wanted a right of refusal, she asked Brookville to put in writing what the right of refusal meant to her family as heirs, she asked for a copy of the lease before Manley purchased the Trailer, and she never received anything. She testified that she kept paying rent after her father's death until the Trailer was sold, and that her sister took Kingery to see the Trailer. When shown an exhibit displaying a text message from April 1, 2019, which stated that her sister "told us you didn't want to make an offer on the trailer" and that, "[r]ight now, I have two offers that want to take it out of the park," Appellant's Appendix Volume II at 71, she indicated that her sister "informed [her] that [Kingery] did not want to make an offer on the trailer." Transcript Volume II at 11. She answered, "No, I did not," when asked if she ever received an offer from Brookville to buy the Trailer. *Id.* at 13. When asked if she attempted to determine whether there were any liens on file with the Bureau of Motor Vehicles, she answered affirmatively, and said: "Before I sold the trailer, I actually consulted with an online lawyer just to ask about, you

know, what my responsibilities were," she "checked with the BMV" and "made sure the taxes were paid up and paid over," and that she called "any l[ie]n place that could have a l[ie]n on a trailer and there were no liens that anyone could find on this trailer." *Id.* at 19. She also testified that Brookville "had said they were not interested on the last person that [she] had seen for seven thousand plus (inaudible) that they were not interested in the trailer and they would help us try to find somebody to buy it." *Id.* at 5.

[11] Before Manley testified, the court indicated the case "probably should have been filed as a separate civil action or as an estate miscellaneous cause number." *Id.* at 35. The court stated that it was "pretty much just a complaint" and "not really a probate issue," and: "But we are here and I am going to see it through." *Id.* at 37.

[12] Manley testified he purchased the Trailer and that, at the very end of May, he had paid for it. Upon questioning by the court on whether he wanted the Trailer, he answered affirmatively. When asked if he agreed that he was shown a "copy of this right of first refusal clause," he answered:

> I was shown a – yes, I was shown one page and a paragraph. I cannot remember if it was Lisa [sic] or not. I was show[n] a paragraph and . . . it was several papers. And I asked her if I could take this with me and she said, no, you cannot. So I said, would you mind if I take a picture of the paragraph? And she goes, yes, you can.

Id. at 46.

[13] Kingery testified that she asked Wycoff for the power of attorney. When asked whether Wycoff paid rent "[a]ny time you requested that she pay" it, Kingery answered affirmatively. *Id.* at 79. During recross-examination, she indicated that as of May 1, 2019, Brookville had not incurred any costs or expenses that were not already paid for with respect to the Lot, except for a water and sewer balance of $13.99 which she had not requested be reimbursed.

[14] Following post-trial briefing, the court ordered:

> 1. that Manley is the owner of the Trailer subject to Brookville's lien;
>
> 2. that Brookville's lien against the Trailer is in the amount of $3,500.00 in liquidated damages, plus $9,196.50 in attorneys' fees and costs for a total judgment of $12,696.50, together with post judgment interest at the rate of eight percent (8%) per annum;
>
> 3. that Brookville is entitled to an order authorizing it to sell the Trailer at public auction;
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> 4. that Brookville is entitled to an order authorizing it to credit bid the amount of its judgment at such sale; and
>
> 5. that Brookville is entitled to an in personam judgment in its favor and against Wycoff and Manley, jointly and severally, in the amount, $12,696.50, together with post judgment interest at the rate of eight percent (8%) per annum for having stepped into the shoes of the Decedent under the terms of the Lease and for having breached the same.

Appellant's Appendix Volume II at 9.

Discussion

[15] The Indiana Supreme Court has set out the standard of review when a trial court makes findings and conclusions on its own motion:

> Sua sponte findings control only as to the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence. When a court has made special findings of fact, an appellate court reviews sufficiency of the evidence using a two-step process. First, it must determine whether the evidence supports the trial court's findings of fact; second, it must determine whether those findings of fact support the trial court's conclusions of law. Findings will only be set aside if they are clearly erroneous. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made.

Bronnenberg v. Estate of Bronnenberg, 709 N.E.2d 330, 333 (Ind. Ct. App. 1999) (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)), *reh'g denied*.

[16] Wycoff and Manley argue the court erred in finding they stepped into Thomas's shoes as lessees under the Agreement given they never signed it and that they could not have breached a contract to which they were never parties. They argue the payment of rent was not so "active and instrumental" of an action to deem them as having stepped into the shoes of the contracting party and that something more is required. Appellants' Brief at 14 (quoting *Stafford v. Barnard*

Lumber, 531 N.E.2d 202, 204 (Ind. 1988)). They argue that the *de minimis* amount of $13.99 is easily calculable and nothing was owed at the time of the decedent's death. Brookville argues that it is irrelevant whether Wycoff and Manley signed the Lease and that Wycoff could not administer her father's asset and accept the benefits provided by Brookville under the Agreement while extinguishing liability for liquidated damages and profiting from the sale of the Trailer.

[17] The record reveals that Wycoff paid rent to Brookville from the time Thomas passed away until the Trailer was sold to Manley. Even assuming Wycoff stepped into Thomas's shoes under the Agreement, we note her messages to Kingery in February 2019 inquiring into whether Brookville wished to make an offer on the Trailer, listing the current offers, and informing her of a phone number at which to communicate Brookville's offer. We further note her March 2019 follow up message to Brookville that it had not made an offer and informing about a final offer for $7,000 "which will be the one we are going with." Appellant's Appendix Volume II at 79. Brookville did not present evidence demonstrating that it made an offer within seventy-two hours or that it otherwise expressed an intent to purchase, and thus, pursuant to the Agreement, Brookville did not timely exercise its right of first refusal and rejected the purchase offer presented by Wycoff.

[18] To the extent that Brookville argues a statutory lien was created, it does not point to any statutory authority or develop an argument. With respect to Brookville's argument that it created and perfected a lien on the Trailer under

the Agreement of which Wycoff should have been put on notice despite her due diligence, we note Kingery testified Brookville had not incurred any costs or expenses as of May 1, 2019, that were not already paid for with respect to the Lot. She further testified that, on May 1, 2019, Brookville incurred a small outstanding water and sewer balance of $13.99, and when asked if she communicated the water and sewer balance to Wycoff or Manley, she stated "I did not and it just kind of occurred through all this." Transcript Volume II at 82. When asked to clarify that she "did not even bring that to [] Wycoff's, or [] Manley's attention," she responded: "There was no need to." *Id.* at 83. Accordingly, we do not find, as implied by the trial court's order, that the "Tenant breache[d]" paragraph 17 of the Agreement, Appellant's Appendix Volume II at 94, and after review of the evidence, we are convinced that the court erred in ordering a lien of liquidated damages plus attorney fees.

[19] Additionally, we note that "one of the basic tenets of public policy governing our Probate Code is the uniform and expeditious distribution of property of a decedent." *Kuzma v. Peoples Tr. & Sav. Bank, Boonville*, 132 Ind. App. 176, 183, 176 N.E.2d 134, 138 (1961), *reh'g denied*. *See also Inlow v. Henderson, Daily, Withrow & DeVoe*, 787 N.E.2d 385, 395 (Ind. Ct. App. 2003), *reh'g denied*, *trans. denied*. Claims against an estate are controlled by the probate code time limits wherein all claims must be brought to the notice of the personal representative in a timely manner so distribution may occur. Ind. Code § 29-1-14-1 contains general time limitations related to claims against an estate. *Ind. Farmers Mut. Ins. Co. v. Richie*, 707 N.E.2d 992, 993 (Ind. 1999). As a general matter,

subsection (a) of the statute bars claims unless they are filed within three months after the first published notice to creditors. The Indiana Supreme Court in *Markey v. Estate of Markey* has held:

> There is an exception to this three-month limit, however, stemming from the personal representative's obligation to serve actual notice on a "creditor of the decedent . . . who is known or reasonably ascertainable." Ind. Code § 29-1-7-7(d) (Supp. 2014). If the personal representative fails to serve actual notice within one month of the first published notice, the reasonably ascertainable creditor gets an additional two months to file, once he finally receives actual notice. Ind. Code § 29-1-7-7(e). *But, no matter the notice date, all claims are barred nine months after the decedent's death. Id.*

38 N.E.3d 1003, 1007 (Ind. 2015) (italics added). Here, the record establishes Thomas's death occurred on July 5, 2018, and Brookville knew of his death, at the latest, in January 2019, when Kingery asked Wycoff for Thomas's power of attorney. Brookville did not make any claim within nine months after Thomas's death related to any amounts it was owed by Thomas.

[20] To the extent that Wycoff and Manley argue that the court erred in not awarding them treble damages for conversion, we note that generally, Indiana has consistently followed the American Rule in which both parties pay their own fees. *Loparex, LLC v. MPI Release Techs., LLC*, 964 N.E.2d 806, 815-816 (Ind. 2012). In the absence of statutory authority or an agreement between the parties to the contrary - or an equitable exception - a prevailing party has no right to recover attorney fees from the opposition. *Id.* at 816. They rely on Ind.

Code § 34-24-3-1,[3] which "is penal in nature and must be strictly construed." *Coleman v. Coleman*, 949 N.E.2d 860, 869 (Ind. Ct. App. 2011). A plaintiff must prove by a preponderance of the evidence that the defendant committed a criminal act, although a conviction is not a condition precedent to recovery. *Id.* This Court has plainly held that if a plaintiff suffers no pecuniary loss as the result of a defendant's actions, the plaintiff is not entitled to recover attorney fees under the Crime Victims Relief Act. *Id.* The trial court found that Manley is the owner of the Trailer, and the evidence supports this finding and reveals that Wycoff was paid in full. We cannot say that Wycoff or Manley has suffered a pecuniary loss under Crime Victims Relief Act.

[21] For the foregoing reasons, we reverse the order of the trial court and its monetary judgment against Wycoff and Manley, and remand for an order that Manley have immediate possession of and title to the Trailer.

[22] Reversed and remanded.

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

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[3] Ind. Code § 34-24-3-1, which is often referred to as the Crime Victims Relief Act and is titled "Pecuniary loss as result of property offenses," provides in part that a person, with "an unpaid claim on a liability that is covered by IC 24-4.6-5" or who "suffers a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3, IC 35-42-3-4, IC 35-45-9, or IC 35-46-10" may bring a civil action for: "[a]n amount not to exceed three (3) times . . . the actual damages of the person suffering the loss," "[t]he costs of the action," "[a] reasonable attorney's fee," and "[a]ll other reasonable costs of collection."