MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Bobbie McClatchey-Scott,
Appellant-Petitioner

v.

Glindia Barley,
Appellee-Respondent

June 20, 2025

Court of Appeals Case No.
24A-EM-2890

Appeal from the Lake Superior Court

The Honorable Mary Beth Bonaventura, Senior Judge

Trial Court Cause No.
45D05-2402-EM-000052

Memorandum Decision by Judge Felix
Judges Vaidik and Tavitas concur.

Felix, Judge.

Statement of the Case

[1] After Dorothy McClatchey ("Decedent") died, her sisters Glindia Barley and Bobbie McClatchey-Scott filed dueling petitions to open an estate for her. Barley believed Decedent died intestate, so she petitioned to open a supervised estate (the "Intestate Cause"). McClatchey-Scott believed Decedent died testate, so she petitioned to probate Decedent's will (the "Testate Cause"). Barley later filed a motion in the Testate Cause to contest Decedent's will. McClatchey-Scott filed a motion to dismiss Barley's will contest, which the trial court denied. After an evidentiary hearing, the trial court determined Decedent's will was invalid. McClatchey-Scott now appeals and raises two issues for our review:

1. Whether the trial court erred by denying McClatchey-Scott's motion to dismiss Barley's motion to contest Decedent's will; and
2. Whether the trial court clearly erred by invalidating Decedent's will for lack of capacity.

[2] Because we determine the evidentiary hearing regarding Decedent's capacity to make the will should have never happened—that is, because the trial court should have granted McClatchey-Scott's motion to dismiss the will contest—we reverse and remand.

Facts and Procedural History

[3] In August 2023, Decedent was hospitalized; during this time, she was "bedridden," Tr. Vol. II at 30; was having trouble seeing and communicating;

and was generally confused. In late August, while in the hospital, Decedent spoke telephonically with an attorney about her estate plan. Thereafter, on August 23, the attorney visited Decedent at the hospital, and Decedent executed her will. The attorney believed Decedent "was in a competent state" during the phone call and visit. Tr. Vol. II at 87.

[4] On February 1, 2024, Decedent died. On February 14, believing Decedent died intestate, Barley filed a petition to open the Intestate Cause.[1] On February 29, in the Testate Cause,[2] McClatchey-Scott filed a petition to probate Decedent's will without administration, which was granted on March 13.

[5] On June 10, Barley, while unrepresented, filed a verified handwritten document titled "Motion" in the Testate Cause to contest Decedent's will. McClatchey-Scott filed a motion to dismiss Barley's will contest,[3] which the trial court

[1] Cause 45C01-2402-ES-000023. Barley provides the cause number for the Intestate Cause in her briefing, but neither party includes any documentation related to the Intestate Cause in their Appendices, *see* Ind. Appellate Rule 50(A)(2), 50(A)(3). However, in taking judicial notice of the parties' briefing on McClatchey-Scott's motion to dismiss Barley's will contest—because McClatchey-Scott failed to include in her Appendix all the filings related to her motion to dismiss, *see* App. R. 50(A)(2), *infra* n.3—we discovered that Barley included in her motion to dismiss briefing her February 14 petition and the Chronological Case Summary for the Intestate Cause. Pursuant to Indiana Appellate Rule 27, we have taken judicial notice of the contents of the February 14 petition and the CCS for the Intestate Cause.

[2] Cause 45D05-2402-EM-000052.

[3] McClatchey-Scott does not include her motion to dismiss and related filings in her Appendix. *See* App. R. 50(A)(2). We have taken judicial notice of the contents of this filing pursuant to Appellate Rule 27.

denied. After an evidentiary hearing, the trial court invalidated Decedent's will. McClatchey-Scott now appeals.[4]

Discussion and Decision

The Trial Court Erred by Denying McClatchey-Scott's Motion to Dismiss Barley's Will Contest

[6] McClatchey-Scott contends the trial court erred by denying her motion to dismiss Barley's motion to contest Decedent's will because Barley failed to properly institute a will contest action. "An action to set aside the probate of an alleged will is purely statutory and can only be brought and successfully maintained in the manner and within the limitations prescribed by statute." *In re Est. of Yeley*, 959 N.E.2d 888, 894 (Ind. Ct. App. 2011) (quoting *Johnson v. Morgan*, 871 N.E.2d 1050, 1052 (Ind. Ct. App. 2007)). Accordingly, we review de novo Barley's compliance or lack thereof with the statutory requirements for instituting a will contest action. *See Bojko v. Anonymous Physician*, 232 N.E.3d

[4] McClatchey-Scott fails to support with citations to the record numerous statements of fact in her Statement of Case, Statement of Facts, and Argument, as required by Appellate Rules 46(A)(5), 46(A)(6)(a), and 46(A)(8)(a), respectively. Similarly, Barley fails to support with citations to the record numerous statements of fact in her Argument, as required by Appellate Rule 46(A)(8)(a). We remind counsel for both parties that we should not have to search the record to find a basis for a party's argument. *See Carter ex rel. CNO Fin. Grp., Inc. v. Hilliard*, 970 N.E.2d 735, 755 (Ind. Ct. App. 2012) (citing *Nealy v. Am. Family Mut. Ins.*, 910 N.E.2d 842, 845 n.2 (Ind. Ct. App. 2009), *trans. denied*). We also remind counsel for both parties that "pleadings and other documents from the Clerk's Record . . . that are necessary for resolution of the issues raised on appeal" must be included in the Appendix. App. R. 50(A)(2), (3); *see supra* n.1, 3. The parties' failure to include in their Appendices documentation necessary for the resolution of this case hindered and substantially delayed our review.

1155, 1158 (Ind. 2024) (citing *Cmty. Health Network, Inc. v. McKenzie*, 185 N.E.3d 368, 375 (Ind. 2022)).

[7] Indiana Code section 29-1-7-17 requires a person to file in a separate cause of action a will contest action within three months after the date of the order admitting the will to probate. Importantly, "a will contest action is separate and distinct from the probate of a will, and . . . it is governed by the Indiana Trial Rules regarding commencement of a civil action; it is not treated merely as a pleading within the probate action." *Blackman v. Gholson*, 46 N.E.3d 975, 980 (Ind. Ct. App. 2015) (citing *Avery v. Avery*, 953 N.E.2d 470, 472 (Ind. 2011)). So in addition to filing the will contest action in a separate cause, the person must also tender summonses and a filing fee. *Id.* at 979.

[8] Pursuant to Indiana Code section 29-1-7-17, Barley had until approximately June 13—three months after the probate court admitted Decedent's will to probate on March 13—to file a will contest action. Thus, Barley's June 10 motion was filed within the three-month deadline; however, she did not file it in a separate cause of action, nor was it accompanied by summonses or a filing fee, *see Blackman*, 46 N.E.3d at 980 (concluding failure to tender summonses and pay filing fee were fatal defects in will contest action). Seemingly recognizing these deficiencies, Barley contends that her petition in the Intestate Cause is the functional equivalent of a will contest and should be deemed sufficient to satisfy the requirements of Indiana Code section 29-1-7-17 and the Indiana Trial Rules. At the hearing on the motion to dismiss, Barley's counsel represented to the probate court that "all the heirs to the estate . . . were served"

in the Intestate Cause, Tr. Vol. II at 9, but there is no indication in the record that such service occurred.[5] Barley's counsel also represented to the probate court that the Intestate Cause "was closed with all pending matters to proceed under" the Testate Cause, but there is no indication in either the Testate Cause record or the Intestate Cause record that this occurred. Consequently, even if we allowed Barley to use the Intestate Cause as a substitute for a proper will contest action, the filings in that cause are insufficient to do so.

[9] Under these circumstances, neither the Intestate Cause nor Barley's June 10 motion were a proper will contest action, so the trial court should have granted McClatchey-Scott's motion to dismiss the June 10 motion. We therefore reverse the trial court's decisions to (1) deny McClatchey-Scott's motion to dismiss Barley's motion to contest Decedent's will and (2) invalidate Decedent's will. We remand for further proceedings not inconsistent with this opinion.

[10] Reversed and remanded.

[11] Vaidik, J., and Tavitas, J., concur.

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[5] In the instant appeal, Barley's brief uses "served" and "noticed" as though the terms are interchangeable. *See* Appellee's Brief at 4 (" . . . [Barley] named and served [all potential heirs]."); *id.* at 10 (" . . . Barley paid filing fees and issued notice in the [Intestate Cause]."). "Service" generally refers to service as contemplated by Indiana Trial Rules 4 through 4.17, which is service of a complaint or equivalent pleading via summonses; "notice" generally refers to service as contemplated by Trial Rules 5 and 5.1, which occurs after the court has obtained personal jurisdiction and is service of filings other than a complaint or equivalent pleading, documents, orders, and scheduling of events.

ATTORNEY FOR APPELLANT

Lemuel Stigler
The Region Lawyers, Inc.
Merrillville, Indiana

ATTORNEY FOR APPELLEE

Adam M. Sworden
Sworden Law, P.C.
Valparaiso, Indiana