SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2147-15T4

IN THE MATTER OF THE ESTATE OF
RICHARD D. EHRLICH (deceased)

Argued December 20, 2017 – Decided May 3, 2018

Before Judges Alvarez, Nugent, and Geiger.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Mercer County, Docket No. 14-01137.

Jonathan Ehrlich, appellant, argued the cause pro se.

Sandford F. Schmidt argued the cause for respondent Dennis P. McInerney (McInerney and Schmidt, LLC, attorneys; Sandford F. Schmidt, on the brief).

Jordan R. Irwin argued the cause for respondents Paul R. Melletz and Begelman, Orlow & Melletz, PC (Begelman, Orlow & Melletz, attorneys; Paul R. Melletz, on the brief).

Saul Ewing Arnstein & Lehr, LLP, attorneys for respondent Ronald P. Colicchio (Ronald P. Colicchio, on the brief).

PER CURIAM

On January 19, 2016, Jonathan Ehrlich, the principal beneficiary of the Estate of his uncle, the late Richard Ehrlich, filed a notice of appeal from a December 1, 2015 post-judgment order. In his civil case information statement (CIS), Ehrlich refers to that order as the "final order disposing of the entire case," and adds that he also "seeks to appeal from order of July 25, 2014." Attached to the CIS is a third order, dated January 20, 2015, which denied him reconsideration of the July 25, 2014 decision. In actuality, the July order was the final judgment entered regarding the probate of his uncle's estate.

Rule 2:4-1(a) provides that "[a]ppeals from final judgments of courts . . . shall be taken within [forty-five] days of their entry." We conclude the only order from which appeal is proper is the December 1, 2015 order listed on the CIS, although strictly speaking, even that notice was filed four days out of time. The order, which allocated funds unexpectedly received by the estate to attorneys for fees, distributed the remainder to be paid over to Ehrlich. We affirm.

I.

The Chancery judge authored a cogent and comprehensive fifty-eight-page opinion setting forth her reasons for the July 25, 2014 final judgment, summarizing the facts and relevant case law. She reviewed the extensive litigation and appellate history of the

matter in detail, which included one published and one unpublished decision. In re Estate of Ehrlich, 427 N.J. Super. 64 (App. Div. 2012); In re Estate of Ehrlich, No. A-4714-11 (App. Div. June 11, 2013). She dismissed Ehrlich's exceptions to the formal account of the temporary administrator, Dennis P. McInerney, Esquire. The judge also denied Ehrlich's application to dismiss McInerney as administrator, and she approved McInerney's formal account. The court allowed McInerney additional fees and commissions. The court also allowed fees to Paul R. Melletz, Esquire, for his prior representation of Ehrlich on a successful appeal.

The judge alluded to Ehrlich's view of the result of that appeal as a costly failure, although he prevailed. The will he sought to have admitted to probate gave his siblings relatively modest bequests but made him the estate's principal beneficiary. In re Ehrlich, 427 N.J. Super. at 75-76. Since a dissent was filed in the matter, however, he decided to settle with his siblings in order to avoid an appeal of right to the Supreme Court. During the negotiation of the agreement, Ehrlich was represented by Ronald Colicchio, Esquire.

Ehrlich had taken the position, which he still maintains, that Melletz should have pursued probate under the lost will theory mentioned in the dissent, and not under the authority of In re Probate of Will & Codicil of Macool, 416 N.J. Super. 298 (App.

Div. 2010), under which theory Melletz won the appeal. Macool addressed the question of when, under N.J.S.A. 3B:3-3, unexecuted copies of wills warrant probate. Id. at 310. Ehrlich's uncle's will was admitted under that statute.

Ehrlich subsequently terminated Colicchio's services and retained Peter Ouda, Esquire. Ehrlich is self-represented in this appeal.

The judge rejected Ehrlich's argument that Saffer v. Willoughby, 143 N.J. 256 (1996), meant Melletz could not be paid fees until the legal malpractice litigation Ehrlich filed against him was resolved. She concluded the case was inapposite——a conclusion with which we agree——because it relates to sensitive timing issues when a parallel fee arbitration and a malpractice action is pending.

In the final judgment, the judge also ordered Ehrlich to execute a refunding bond and release. At that juncture, having settled with his siblings, he was the sole beneficiary of the estate.

Appellate review of trial court decisions is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). The factual findings of the trial court are binding on us, especially when those findings involve credibility determinations. Id. at 412. We "do not disturb the factual findings and legal conclusions of the trial

judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." In re Tr. Created By Agreement Dated Dec. 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)).

Were we to apply that standard to the July 25, 2014 final judgment, we would affirm. The court's factual findings and legal conclusions were consistent with the "competent, relevant and reasonably credible evidence." Ibid.

Curiously, following entry of that decision, Ehrlich timely appealed——but then withdrew. Contemporaneously with that filing or afterwards, he filed a motion under Rule 4:49-2 for reconsideration. Reconsideration was denied on January 16, 2015; the order was entered January 20. That is the third order attached to Ehrlich's CIS.

The judge denied the motion for reconsideration because it did not meet the well-established Cummings v. Bahr standard. 295 N.J. Super. 374, 383 (App. Div. 1996). Reconsideration is granted at the discretion of the court, to be exercised in the interests of justice. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Such discretion should only be exercised where a court has decided the matter on a palpably incorrect or irrational

basis, or without considering probative competent evidence. Cummings, 295 N.J. Super. at 384.

As the judge observed, Ehrlich's reconsideration motion was no more than an expression of his disagreement with the findings of fact and the outcome set forth in the July 25, 2014 decision. Thus, there was no basis to set it aside.

In any event, Ehrlich is also out of time to appeal that order pursuant to the rules. Therefore, we turn to the only order we can consider.

The December 1, 2015 decision disposed of $29,563.48 unexpectedly refunded to the estate by the New Jersey Division of Taxation. The judge granted McInerney fees at the rate of $225 per hour for a total of $8617.50, of which $2000 had already been paid, plus costs of $560.68. She also directed payment of $5828.50 to be paid to Melletz, that sum representing unpaid fees allowed by our court. The refund balance was paid over to Ehrlich.

We set forth Ehrlich's points on appeal for the sake of completeness. Ehrlich seeks to reopen all of the accountings by McInerney, including the interim accounting already addressed on appeal. Ehrlich, slip op. at 5-6. He demands a plenary hearing on all of the attorney's fees which have been awarded, and generally, the opportunity to revisit every issue that has been litigated since his uncle's death in 2009:

POINT I — THE COURT ERRED AS A MATTER OF LAW IN FINDING THAT SAFFER V. WILLOUGHBY IS LIMITED TO FEE ARBITRATION AWARDS

POINT II — THE COURT ERRED AS A MATTER OF LAW IN FAILING TO APPLY THE DOCTRINES OF EQUITABLE ESTOPPEL AND UNCLEAN HANDS; AND RECOGNIZE THE CHILLING IMPACT OF CTA DENNIS P. MCINERNEY'S ACTIONS, INACTIONS, ABUSE OF PROCESS, CONTEMPT OF COURT, AND FALSE TESTIMONY (not argued below)

POINT III — THE COURT ERRED AS A MATTER OF LAW IN EXPOSING APPELLANT TO THE BEGELMAN, ORLOW AND MELLETZ FIRM'S FAILURE TO PROTECT THEIR CLIENT WITH REQUIRED MALPRACTICE INSURANCE

POINT IV — THE COURT ERRED IN AWARDING RONALD COLICCHIO/THE SAUL EWING FIRM AND THE BEGELMAN FIRM THE ENTIRETY OF THEIR FEES IN LIGHT OF THEIR NEGLECTFUL REPRESENTATION AND LIMITED SUCCESS

POINT V — ERROR OCCURRED IN THE COURT ALLOWING ITS FAILURE TO REVIEW THE RECORD AND PREDISPOSITIONS TO DICTATE THE OUTCOME OF THE LITIGATION (not argued below)

The only issue arguably within the scope of the December 1, 2015 order is point one. We first briefly address Ehrlich's claim that the court was inclined to rule against him. The remaining alleged errors merely restate facts found in the July decision, in addition to facts that may or may not be in the record at all. Ehrlich urges us to consider these so we might reach "a much different conclusion than that of the lower court."

II.

As the judge was rendering her decision from the bench, Ehrlich, who was represented at the hearing, spoke out because he disagreed. She told Ehrlich that he would be removed from the courtroom if he interrupted her again. Although we can understand that Ehrlich may have been troubled by the judge's strong reaction, her statement came at the end of years of litigation and exacting work. Her reaction was ultimately of no consequence. He did not interrupt again; he was not removed, and the judge continued to make her findings, seemingly unaffected by the incident.

One of Ehrlich's major complaints about McInerney was that he did not investigate a particular asset, his uncle's condominium in the Bahamas. The judge found, to the contrary, that Ehrlich knew about the potential asset by 2010 based on emails he sent to Melletz, and wanted to keep the existence of the asset quiet until after he reached a settlement with his siblings. Some of his emails, according to the judge, "suggest[ed] that [] Ehrlich deliberately decided not to press [] McInerney to pursue the [Bahama property] because it might be advantageous to him in the litigation with his siblings if they were not aware of this asset."

The judge also stated:

> N.J.S.A. 3B:17-8 provides that a judgment allowing an account after due notice shall be res adjudicata as to all exceptions which

> could or might have been taken to the account and shall constitute, exonerate and discharge the fiduciary from all claims of all interested parties. . . . [T]he statute was relied upon by the Appellate Division in the earlier estate litigation in refusing to allow [] Ehrlich to raise issues as to [] McInerney's performance that could have been raised in the first accounting but were not and that is In Re Estate of Ehrlich[,] 213 N.J. Super. [Unpublished Lexis] 1415 an Appellate Division case from 2013.

Because Ehrlich's challenges to McInerney's performance as temporary administrator had long since been decided with finality, the judge declined to revisit them and limited her decision to only the issue of outstanding fees. Thus the unpaid balance due to McInerney was to be paid from the refund.

The court also directed that Melletz be paid the fees we had allowed him long before, $5828.50. No appeal had been taken from that award. A directive that long-standing judgments be paid from available funds is unobjectionable. The judge further ordered distribution of the remaining balance to Ehrlich.

Accordingly, we affirm the December 1, 2015 order. Complaints regarding McInerney's performance were long before rejected with finality. Payment to Melletz was also an issue that could not be revisited.

Affirmed.