FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE CONSERVATORSHIP OF FLORENCE E. WALKER

BENFORD WALKER, Executor of the Estate of Florence E. Walker, Plaintiff-Appellant,	)	Filed March 24, 1981
vs.	)	
CENTRAL NATIONAL BANK AND TRUST COMPANY OF DES MOINES, IOWA, Defendant-Appellee.	)	0-404 2-64580

Appeal from Polk District Court - A. V. Hass, Judge.

Plaintiff-executor appeals from trial court's ruling dismissing his petition to vacate judgment as to all orders relating to the conservatorship of his mother contending 1) that his petition was timely filed and 2) that trial court erred in dismissing his petition. AFFIRMED.

Benford Walker, pro se, Elkhart, Iowa.

Mary R. Ottoson of Gamble, Riepe, Burt, Webster & Davis, Des Moines, Iowa, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell and Johnson, JJ. Carter, J., takes no part.

PER CURIAM

Plaintiff-executor, Benford Walker, appeals from trial court's ruling dismissing his petition to vacate judgment as to all orders relating to the conservatorship of his mother, Florence E. Walker. Plaintiff contends that his petition was timely filed and that trial court erred in dismissing his petition. We affirm.

On April 16, 1979, Benford Walker, executor of the estate of Florence E. Walker, his mother, filed his petition to vacate the November 7, 1965 judgment implementing the original appointment of the conservator for his mother and to void all expenses, fees, contracts, and orders detrimental to the ward during the course of the conservatorship. The conservator, Central National Bank and Trust Company of Des Moines, defendant-appellee herein, filed a motion to dismiss on May 4, 1979. Plaintiff resisted this motion. On July 10, 1979, trial court sustained, in part, defendant's motion by dismissing the portion of the petition which sought vacation of any judgment rendered prior to April 16, 1978. Trial court reserved for hearing matters in the conservatorship that occurred on or after April 16, 1978.

On July 18, 1979, plaintiff filed a motion to reconsider the July 10th ruling; this motion was overruled on August 17, 1979. On August 30, 1979, plaintiff filed with the supreme court an application for permission to appeal in advance of final judgment. By order dated October 4, 1979, the supreme court held that trial court's order of July 10, 1979, was a final order and that plaintiff had failed to apply for an appeal within the required time. Plaintiff's petition for rehearing was denied by the supreme court on November 30, 1979.

In accordance with the July 10th order, hearing was held September 24, 1979, on the matters of the conservatorship that occurred on or after April 16, 1978 (one year prior to plaintiff's filing of his petition). Trial court ordered the petition dismissed on September 28, 1979, and overruled plaintiff's motion for new trial on November 21, 1979. Plaintiff filed his appeal on December 20, 1979.

I. **July 10, 1979 Ruling on Plaintiff's Petition to Vacate Judgment.** Plaintiff initially assigns as error trial court's ruling of July 10, 1979, that sustained, in part, defendant's motion to dismiss the petition on the grounds that the petition was not timely filed as to matters occurring prior to April 16, 1978. We find that this court has no jurisdiction to consider this issue on appeal.

We initially note that the supreme court's order of October 4, 1979, found that trial court's order of July 10, 1979, was a final order for appeal purposes and that the

plaintiff had failed to perfect a timely appeal. The court's order of November 30, 1979, denied plaintiff's petition for rehearing. Consequently, no issues regarding the conservatorship occurring prior to April 16, 1978 can be raised on this appeal. See Sauer v. Scott, 238 N.W.2d 339,342 (Iowa 1976); Sheldon v. Moyer, 210 N.W.2d 597, 599 (Iowa 1973).

II. September 28, 1979 Order Dismissing Plaintiff's Petition to Vacate Judgment and November 21, 1979 Order Overruling Plaintiff's Motion for New Trial. Plaintiff next contends that trial court erred in dismissing the petition for vacation of judgment on September 28, 1979, and in overruling his motion for new trial on November 21, 1979. We disagree and reiterate that following trial court's order of July 10, 1979, only matters in the conservatorship occurring within one year prior to April 16, 1979, remained for consideration. We will address trial court's September 28, 1979, order first.

A. September 28, 1979 Order. Trial court's order dismissing plaintiff's petition to vacate judgment related to the following orders:

(1) order following hearing on Second Annual Report (June 16, 1978);

(2) supplemental order following hearing on Second Annual Report (July 6, 1978);

(3) order approving the Third and Final Report of the Conservator (October 9, 1978);

(4) ruling on motion to reconsider (April 10, 1979).

We begin our analysis by determining our scope of review. A proceeding for vacation of judgment is tried as an ordinary action; therefore, appellate review is on error, not de novo. Cook v. Cook, 259 Iowa 825, 829, 146 N.W.2d 273, 275 (1966); Oldis v. John Deere Waterloo Tractor Works, Inc., 259 Iowa 1111, 1113, 147 N.W.2d 200, 201 (1966). Trial court's findings have the affect of a jury verdict and are binding on this court if supported by substantial evidence. Iowa R. App. P. 4. Trial court has considerable discretion in ruling on such a petition. Cook, 259 Iowa at 829, 146 N.W.2d at 275.

Trial court's order of September 28, 1979, details the court's finding with regard to each of the above orders. We have reviewed the evidence pertaining to the four orders and conclude that evidence supporting trial court's findings is substantial. Further repetition of the evidence here would add nothing to our jurisprudence. We find no error on this issue and conclude trial court correctly dismissed the plaintiff's petition on

the grounds that he failed to prove the allegations of his petition or to show any other grounds for relief under Iowa R. Civ. P. 252.

B. November 21, 1979 Order Overruling Petitioner's Motion for New Trial. Petitioner cited newly discovered evidence and inadequate consideration of factual material in the record as grounds for his motion for new trial. Trial court overruled the motion on both grounds.

We will interfere with trial court's ruling denying a motion for new trial only upon a clear showing of abuse of discretion. Thomas Trust & Castor Co. v. Buffalo Caster & Wheel Corp., 210 N.W.2d 532, 536 (Iowa 1973). Further, a new trial should not be granted due to newly discovered evidence unless a different result is reasonably probable. VanderBerg v. Wolfe, 196 N.W.2d 420, 422 (Iowa 1972).

We found no support in the record for plaintiff's allegations of newly discovered evidence based on the conservator's alleged illegal acceptance of a deed in its name to Florence Walker's property. After reviewing the record, we conclude trial court did not abuse its discretion in denying petitioner's motion for new trial and conclude no error occurred. Trial court's judgment is affirmed.

AFFIRMED.