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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

CURETON CLARK, P.C., Plaintiff–Respondent,
v.
William H. LEWIS, Administrator of the Estate of Irma B. Lewis, Defendant–Appellant.
Cureton Clark, P.C., Plaintiff–Appellant,
v.
William H. Lewis, Administrator of the Estate of Irma B. Lewis, Defendant–Respondent.

Argued June 1, 2016.
|
Decided Aug. 2, 2016.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Burlington County, Docket No. 2008–0644.

Attorneys and Law Firms

Andrew Siegeltuch argued the cause for appellant in Docket No. A–1072–14 and respondent in A–1568–14 (Sweeney & Sheehan, attorneys; Mr. Siegeltuch, of counsel and on the briefs).

Thomas J. Hagner argued the cause for respondent in Docket No. A–1072–14 and appellant in Docket No. A–1568–14 (Hagner & Zohlman, LLC, attorneys; Mr. Hagner and Andrew T. McGuire, on the briefs).

Before Judges HOFFMAN and WHIPPLE.

Opinion

PER CURIAM.

***1** In these consolidated appeals, defendant William H. Lewis appeals from the portion of an October 17, 2014 Probate Part order enforcing refunding bonds and maintaining a levy on his account following his administration of his deceased mother's estate (the Estate). Plaintiff Cureton Clark, P.C. ("plaintiff" or "the Cureton firm"), a now closed law firm, appeals from the portion of the same order holding defendant liable only as administrator of the Estate, but not individually. For the reasons that follow, we affirm the enforcement of the refunding bonds, and dismiss the plaintiff's appeal as moot.

I.

In April 1997, Irma Lewis (decedent) signed a deed purporting to transfer real property located in Washington Township to defendant; however, defendant delayed the recording of the deed until after his mother's death in September 1997. The decedent was survived by defendant and one other son, John Lewis. In March 2008, John Lewis retained Anthony LaRatta (Mr. LaRatta) and filed suit against defendant, apparently challenging the validity of the April 1997 deed, and also alleging that defendant possessed their mother's will, but refused to probate it. Defendant initially retained the law firm of Rabil, Kingett and Stewart, LLC (the Rabil firm) to defend him in the lawsuit, and signed an engagement letter on April 16, 2008; however, within weeks the Rabil firm transferred the matter to the Cureton firm, where the file was handled by partner Anthony Marchetti (Mr. Marchetti), and associate Eileen Siegeltuch (Ms. Siegeltuch). [1]

On June 12, 2008, the lawsuit between the brothers was settled on the record before Judge Ronald E. Bookbinder. Under the settlement agreement, John Lewis was to receive an additional $12,500 from the Estate for the real estate that had been transferred to defendant; defendant was to receive pro rata reimbursement for income taxes that he had paid on the property over a ten-year period. Moreover, defendant would serve as sole administrator of the Estate.

Thereafter, various complications arose while drafting the final settlement agreement. Defendant would eventually contend that Mr. LaRatta engaged in delaying tactics in finalizing the settlement agreement, which generated excessive legal fees. Defendant blamed Mr. Marchetti for allowing this to occur.

On November 10, 2008, the first invoice was sent to defendant, with fees totaling over $68,000, including $29,000 of fees generated after the settlement in June

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2008. Defendant made two payments to the Cureton firm, which were allegedly made in order to keep Ms. Siegeltuch working on the Estate aspect of the case: a $50,000 payment on December 19, 2008, and a $20,000 payment on October 22, 2009. By October 2009, only an informal accounting and final distribution remained to complete the administration of the Estate. After delays, in April 2010, defendant made the final distribution of stock in the Estate. In October 2010, Ms. Siegeltuch resigned from the Cureton firm, but took defendant's file with her. In November 2010, the Cureton firm ceased doing business, and Ms. Siegeltuch soon concluded the administration of the Estate, with the exception of the payment of the balance of the bill submitted by the Cureton firm. In January 2011, Ms. Siegeltuch completed an Informal Accounting for the Estate, from September 17, 1997, to December 31, 2010. The Accounting listed the gross estate as $600,359.43, and listed a “reserve” of $68,000 for expenses, including $60,000 for “Cureton Clark Legal Fees.” On January 31, 2011, John Lewis signed an Approval of Accounting and Refunding Bond and Release; defendant did as well, on February 13, 2011. Both documents were filed with the Burlington County Surrogate on February 22, 2011.

***2** On August 18, 2011, the Cureton firm filed an order to show cause and verified complaint against defendant seeking payment of its unpaid bill. The complaint claimed the firm was owed a balance of $56,550 in legal fees related to the administration of the Estate. In connection with the lawsuit, defendant hired Ms. Siegeltuch's husband, Andrew Siegeltuch (Mr. Siegeltuch), of Sweeny & Sheehan. In January 2012, defendant filed an amended answer and an eight-count counterclaim and third-party complaint against the Cureton firm and Mr. Marchetti. [2] The counterclaim and third-party complaint set forth a variety of causes of action; however, in July 2012, defendant withdrew all counts with prejudice, with the exception of count five, alleging fraud and misrepresentation.

Between January 16, 2013, and February 20, 2013, a four-day bench trial was held in the Probate Part on plaintiff's affirmative claim, as well as count five of defendant's counterclaim. Plaintiff sought “payment of $56,500 in this litigation consisting of $30,862.51 from the August 19, 2009 invoice and $25,687.79 from the October 2009 through December 2010 invoices.” Defendant, among other defenses and claims, requested “that plaintiff's claim for fees be denied; that any claim by [third-party] defendant to dismiss the fraud allegation be denied; that the court find for [defendant] and against [Mr. Marchetti] on the fraud claim; that [the Cureton firm] be ordered to return $70,000 in fees paid; and that defendants obtain an award of damages for fraud and misrepresentation, including attorney['s] fees.”

On October 18, 2013, the trial court issued a thorough written decision, by which it ultimately applied quantum meruit principles and awarded plaintiff $47,315 in additional attorney's fees “based upon its handling of the [Estate] and litigation.” The award “reduce[d] the fee to reasonable levels to reflect a deduction for excess conferencing and an overall reduction.” Additionally, the trial judge concluded that defendant had not shown by clear and convincing evidence any material misrepresentation, or any evidence of an illegal fee-sharing agreement, as alleged in his counterclaim. This decision was memorialized in an October 18, 2013 order, which found for plaintiff against defendant, and ruled that “defendant, Administrator of the Estate of Irma B. Lewis, shall pay the attorney fees of $47,315 and court costs to plaintiff within sixty (60) days of this order.”

Defendant did not pay the award nor did he appeal the judge's decision. On March 18, 2014, the Cureton firm obtained a writ of execution relative to the unsatisfied award, and on July 14, 2014, the Sheriff of Burlington County levied upon monies in a Fidelity Investments account of defendant. Plaintiff moved for a court order directing Fidelity Investments to turnover those funds to the court officer to be credited to the writ of execution and judgment in the matter. Defendant opposed the turnover application, asserting that the trial court's October 18, 2013 order did not enter a judgment against defendant individually, but only against the Estate; he also indicated that he had “only approximately $75.00 remaining in the Estate.”

***3** The Cureton firm disagreed that the October 18, 2013 order entered judgment against defendant only in his capacity as administrator, and not individually. Moreover, plaintiff pointed to the May 14, 2009 Refunding Bond and Release signed by defendant, which provided, in pertinent part:

> Now Therefore, in the event that the whole or any part of any legacy received hereunder shall at [any

> time] hereafter appear to be wanting to discharge *any debt or debts,* legacy or legacies, which the said Obligee may not have other assets to pay, the Obligor shall return said legacy or such part thereof as may be necessary for the payment of the said debts or for the payment of a proportional part of said legacies. (emphasis added).

On October 8, 2014, Mr. LaRatta wrote to the court, stating his position:

> [Defendant] individually owes the **Cureton** **Clark** firm. He retained the firm to represent him before he was ever appointed as administrator of the estate. Further, his decision to contest the **Cureton** **Clark** claim and maintain a frivolous defense to the claim is unjustifiable.... [Defendant] should be individually responsible for the judgment that ensued.

Mr. LaRatta also appeared at oral argument on October 17, 2014, where he conceded that both defendant and John **Lewis** can be liable on the refunding bonds for debts that the decedent did not incur during her lifetime:

> Mr. Siegeltuch's comment that R & R's refunding bond's releases only apply to debts that the decedent incurred during his lifetime is flat out wrong. That isn't the law.
>
> ....
>
> The statutes allow for R & Rs to be called when there are insufficient assets in the estate to satisfy judgments or debts. It doesn't limit it to debts of the decedent during the decedent's lifetime. I never heard of that.

Additionally, Mr. LaRatta reluctantly admitted that the refunding bond would be triggered “if there were no money in the estate here.” However, Mr. LaRatta argued that defendant should be solely liable, in this instance, for the unpaid fees of the **Cureton** firm:

> Your Honor, my position is that [defendant] individually is responsible for those fees.
>
> [W]e received an accounting ... through December 31, 2010, and there's a reserve for **Cureton** **Clark** legal fees of $60,000. We signed off on the accounting through December 30, 2010 for the $60,000 to be earmarked for **Cureton** **Clark**.
>
> Now we're told in the motion papers that there's only $75 left in the estate.

In response to Mr. LaRatta's arguments, the judge made clear that issues between his client and defendant, regarding claims that defendant wasted estate assets earmarked for the **Cureton** firm in a frivolous defense of the firm's lawsuit, were not before the court.

At the conclusion of oral argument, the trial judge ruled on both the motion for turnover of funds and the motion to enforce the refunding bond, which she memorialized in an order that day. Ultimately, the judge clarified her previous October 18, 2013 ruling, and ordered:

> ***4** (1) The motion to turn over funds is denied, but the court orders that the levied funds in the Fidelity Investment[s] account be and hereby shall remain levied until further order of the court.
>
> (2) The court clarifies that Paragraphs 1 and 3 of its October 18, 2013 Order Following Trial was entered against William H. **Lewis**, as Administrator of the Estate of Irma **Lewis**, not against him individually.
>
> (3) It is further ordered that if there are [i]nadequate monies in the Estate of Irma **Lewis** to satisfy the court's October 18, 2013 Order then, the refunding bonds and release in issue shall be specially enforced.

In her oral decision, the trial judge clarified she did not intend her original order to be enforceable against defendant individually: “[T]he Court intended to enter this against [defendant] as administrator of the estate just as it says .... [S]o in terms of the application to enforce against him individually, that's denied.” However, with regard to the refunding bonds, the judge ordered that they would be enforced, concluding that “the refunding bond is triggered here” based upon “the bond language itself.”

On October 30, 2014, defendant appealed Paragraph 3 of the October 17, 2014 order, which permitted plaintiff to enforce refunding bonds against the heirs of the Estate, as well as from the portion of Paragraph 1 of the October

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17, 2014 order, which maintained a levy on defendant's Fidelity account. On December 1, 2014, plaintiff filed an appeal, challenging Paragraph 2 of the October 17, 2014 order, which clarified that the October 18, 2013 order was entered against defendant in his appointed capacity as administrator of the Estate, but not individually.

On February 2, 2015, defendant filed a motion to dismiss plaintiff's appeal as untimely, or alternatively, as an impermissible appeal of the trial judge's clarification of her October 18, 2013 order. On February 24, 2015, we denied defendant's motion, and consolidated his appeal with plaintiff's appeal. On April 21, 2015, we considered defendant's motion for reconsideration, but reaffirmed our decision to deny the motion to dismiss the appeal.

On his appeal, defendant presents the following arguments for consideration:

> *POINT ONE*
>
> THE LOWER COURT'S ORDER PERMITTING ENFORCEMENT OF THE REFUNDING BONDS TO SATISFY PLAINTIFF'S JUDGMENT IS CONTRARY TO WELL–ESTABLISHED DECISIONAL AND STATUTORY AUTHORITY AND THE ORDER SHOULD BE REVERSED.
>
> A. In the Absence of Any Findings by the Trial Court, in the Interest of Justice and to Avoid Further Delay, this Court Should Decide the Legal Issues Raised in Defendant's Appeal.
>
> B. There Is No Statutory or Decisional Authority to Support Enforcement of the Refunding Bonds to Satisfy Plaintiff's Judgment and the Decision of the Lower Court Should Be Reversed.

II.

This appeal primarily presents legal challenges, which are subject to de novo review, *Estate of Hanges v. Metro. Prop. & Cas. Ins. Co.,* 202 *N.J.* 369, 382 (2010), as “[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan,* 140 *N.J.* 366, 378 (1995). To the extent any factual determinations are involved, “[t]he scope of appellate review of a trial court's fact-finding function is limited.” *Cesare v. Cesare,* 154 *N.J* . 394, 411 (1998). Generally, “findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence.” *Id.* at 411–12 (citing *Rova Farms Resort, Inc. v. Investors Ins. Co.,* 65 *N.J.* 474, 484 (1974)). Accordingly, we will 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.” *Rova Farms, supra,* 65 *N.J.* at 484 (citation omitted).

***5** We first address the trial court's ruling permitting enforcement of the refunding bonds to satisfy the award of counsel fees to the **Cureton** firm. Although not cited by either party, the Court of Errors and Appeals long ago addressed the purpose and effect of refunding bonds and releases in the case of *In re Estate of Carter,* 120 *N.J. Eq.* 578, 581–82 (E. & A.1936):

> [O]n closing an estate, each distributee is required by law to give a refunding bond, conditioned for a return of the share so distributed or a proportionate part thereof, “to discharge any debt [...] which the said executor or administrator may not have other assets to pay.” The bond, nominally to the executor, is for the benefit of the creditor, and suable by him in the name of the executor. The statute regards favorably the interest of creditors. If they fail to present claims before order barring creditors, they may not recover against the executor who has acted as required by law; but they still have a remedy against surplus assets before actual distribution ...; or against other assets found by the creditor after final settlement of the account ..., or against legatees who have given refunding bonds ... or even if they have not given them.... The very object of requiring a refunding bond is to enable a suit to be brought thereon.... It is said that a refunding bond is needless, because the creditor has a direct right of action against the legatee, as already noted. But that right exists independent of statute.... [A]nd the statute simply provides another remedy by suit on the refunding bond. It can hardly be argued even with plausibility that because there is an extra-statutory remedy, the remedy contemplated and provided by the legislature should be denied in the courts. The requirement of a refunding bond seems purely statutory, and apparently peculiar to the United States.... In New Jersey, the statute dates back to 1774.... The creditor may elect his remedy,

whether directly against the legatee independent of the statute, or on the bond under the statute....

[(citations omitted); *see also Phila. Home for Incurables v. Phila. Sav. Fund Soc.,* 126 *N.J. Eq.* 104, 109–10 (Ch.1939) (discussing the various remedies available to creditors), *aff'd,* 129 *N.J. Eq.* 243 (E. & A.1941).]

"A personal representative shall, on paying a devise or distributive share or on delivering an instrument of distribution to the person entitled, take a refunding bond therefor[.]" *N.J.S.A.* 3B:23–24. Interestingly, the relevant statutory sections regarding devises and distributive shares provide for different conditions of bonds of devisees and bonds of distributees. [3] Notably, *N.J.S.A.* 3B:23–26, which applies where the decedent left a will, does not limit the condition to decedent's debts, but extends the bond to "any debt or debts":

The bond of a devisee shall be conditioned substantially as follows: That if any part or the whole of the devise shall at any time thereafter be needed to discharge any debt or debts, devise or devises, which the personal representative may not have other assets to pay, he, the devisee, will return his devise or that part thereof as may be necessary for the payment of the debts, or for the payment of a proportional part of the devises.

***6** [*N.J.S.A.* 3B:23–26.]

In contrast, *N.J.S.A.* 3B:23–27, which applies in cases of intestacy, does limit the condition to "any debt or debts" of the decedent:

The bond of a distributee shall be conditioned substantially as follows: That if any debt or debts, truly owing by the intestate, shall be afterwards sued for and recovered or otherwise duly made to appear, and there shall be no other assets to pay, he shall refund and pay back to the administrator his ratable part of the debt or debts, out of the part and share so allotted to him.

[*N.J.S.A.* 3B:23–27.]

It appears that defendant proceeded in this matter on the incorrect assumption that the refunding bonds could insulate him from personal liability on the amounts owed to the Cureton firm. From our review, *Estate of Carter* remains good law, and is on point and controlling. Nevertheless, we address defendant's main argument on appeal—that his liability on the refunding bond is limited to decedent's debts, and does not extend to unpaid debts or expenses of administration. There might have been limited merit to defendant's argument if the language in the refunding bond and release he signed tracked the language of *N.J.S.A.* 3B:23–27. It does not. Instead, defendant's refunding bond and release closely tracks *N.J.S.A.* 3B:23–26, and obligates him to return his legacy if necessary to satisfy "any debt or debts," without any limitation to debts of the decedent. The trial court correctly focused upon the language contained in defendant's refunding bond and release in rejecting defendant's attempt to limit his exposure under the refunding bond.

In essence, defendant's argument before the trial court and this court is that an executor or administrator can incur substantial legal fees in administering an otherwise solvent estate, refuse to pay the legal fees, prepare an accounting that sets forth a reserve for the legal fees, utilize the accounting to induce the remaining heir or heirs of the estate to sign off on the administration of the estate, and then utilize and exhaust the reserved funds to pay an attorney to fight the estate's initial attorney, with ultimate result being that the estate's initial attorney ends up with a large unsatisfied judgment and the heirs get to keep their inheritances free and clear from any obligation regarding the unsatisfied judgement. We find defendant's argument lacks sufficient merit to warrant discussion in a written opinion. *R.* 2:11–3(e)(1)(E).

In light of our conclusion that the trial court correctly determined that the Cureton firm could enforce the refunding bonds to satisfy its unpaid counsel fee award, we are satisfied that the issue presented in the appeal of the Cureton firm is moot. We therefore dismiss plaintiff's appeal as moot. *R.* 2:8–2. [4]

We remand this matter to the Probate Part for the entry of appropriate orders consistent with this opinion. We note the trial court provided for a stay, in an order entered on November 14, 2014, if defendant posted "a supersedeas bond in the amount of $65,000 (the $48,195.18 Judgment, plus anticipated interest, and $15,000 in anticipated attorney's fees)," or satisfied one of two other conditions. Pending the trial court making a determination as to the final amount due to the Cureton firm, the levy upon the levied funds in defendant's Fidelity Investments account shall remain in place until further order of the trial court. The trial court shall hold a scheduling conference within

thirty days of the date of this decision for the purpose of establishing deadlines for any further submissions from the parties regarding computation of interest, and any further claim for attorney's fees. [5]

***7** Affirmed and remanded in part, and dismissed in part. We do not retain jurisdiction.

All Citations

Not Reported in A.3d, 2016 WL 4086735

Footnotes

1 Notably, there was no written fee agreement between the **Cureton** firm and defendant; rather, the only written fee agreement was with the Rabil firm.

2 Despite defendant's preparation and submission of an accounting to his brother that listed a reserve for the **Cureton** firm's unpaid bill, defendant proceeded to challenge the claim of the **Cureton** firm without court approval, *see Rule* 4:95–2, or the approval of his brother.

3 *N.J.S.A.* 3B:1–1 defines “Devisee” as “any person designated in a will to receive a devise[,]” and “Distributee” as “any person who has received property of a decedent from his personal representative other than as a creditor or purchaser.”

4 Notwithstanding these comments, we note that the issue of defendant's potential claim to seek reimbursement from his brother for one-half, or some other portion, of the final amount he will pay to the **Cureton** firm was not before the trial court. While the trial judge correctly ruled that the refunding bonds signed by defendant and his brother could be enforced, she did not address whether it would be fair or equitable to require any payment from John **Lewis**. While the trial judge permitted John **Lewis**' attorney to state his client's position on the record at oral argument, John **Lewis** was never joined in the proceedings below.

5 We intimate no view as to any further claim for attorney's fees, or whether the **Cureton** firm would have a basis for asserting a claim for further fees.

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