

2023 IL App (2d) 220438-U
No. 2-22-0438
Order filed February 17, 2023

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ESTATE OF DONNA M. BROADDUS)	Appeal from the Circuit Court
)	of Kane County.
)	
)	No. 21-P-687
)	
)	Honorable
(Barbara Calvin, Petitioner-Appellee, v.)	Joseph M. Grady,
Scott Puig, Respondent-Appellant).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in ordering that respondent turn over an urn containing the cremated remains of decedent to decedent's estate on a temporary basis pending a hearing regarding rightful possession of the urn.

¶ 2 At issue in this appeal is whether the trial court erred in ordering that respondent, decedent's boyfriend, turn over an urn containing the cremated remains of decedent to decedent's sister, as administrator of the estate, on a temporary basis pending a hearing regarding rightful possession of the urn. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Donna Broaddus died intestate on October 20, 2021. At the time of her death, her long-time boyfriend, Scott Puig, lived with her in her home. She was cremated soon after her death and a memorial service was held. After the memorial service, Scott took possession of the urn containing Donna's cremated remains (urn).

¶ 5 Barbara Calvin, Donna's sister, was appointed administrator of Donna's estate on November 16, 2021. An order declaring heirship was entered listing Donna's parents and Barbara as Donna's surviving heirs. On January 27, 2022, a citation for discovery and recovery of assets was issued against Scott pursuant to a petition filed by Barbara. In her petition, Barbara alleged that Scott lived with Donna at her residence and controlled aspects of Donna's life including her residence, insurance policies, and other personal property. She contended that at the memorial service she "lent" Scott the urn, and despite her "repeated requests," Scott has failed to return it. The petition also claimed Scott was in possession of numerous other items of personal property belonging to Donna not relevant to this appeal. The petition sought return of Donna's personal property and the urn.

¶ 6 An amended verified petition was filed on June 14, 2022, alleging that Scott and decedent were never married or in a civil union. Regarding the urn, the amended petition stated as follows:

"After the decedent's memorial service in October 2021, [Scott] placed [*sic*] the urn containing the decedent's ashes, which the Estate, through the [Barbara], ordered and purchased. Noticing this, [Barbara] agreed with [Scott] to take turns having the urn and the decedent's ashes. Despite the [Barbara's] subsequent, repeated requests, [Scott] has failed to return the urn and ashes for [Barbara's] turn."

¶ 7 On July 29, 2022, the parties appeared on the citation. Scott testified, answering questions from both attorneys and the trial judge regarding the whereabouts of certain items of personal

property belonging to Donna and the urn. An order was entered continuing the citation proceedings and ordering the parties:

“to maintain the status quo with respect to any and all personal property, including records, documents and other items, in their possession or control that was owned by or relates to the decedent or her property, including the Urn containing her ashes (which Respondent testified was located on his bedroom dresser at his Round Lake home) and a black Labrador mix named Harley (which respondent testified is living with him and his daughter in Round Lake) and an uncashed check for \$204.37 from Nicor Gas made payable to the Estate of Donna M. Broaddus that Respondent testified was in his possession.”

¶ 8 On September 16, 2022, Barbara filed “Motions for Turnover Orders to Recover Estate Property.” She sought, *inter alia*, turnover of the urn “as property of the Estate” and an order that “decisions on the decedent’s disposition of remains be made by the decedent’s parents.” She alleged that Scott testified at a hearing on July 27, 2022, that he took possession of the urn at the memorial service, it remains in his possession, and he has refused to return the urn to the family. She alleged that Donna left no will, that Scott testified at the hearing that he did not know of any writing containing Donna’s wishes regarding the disposition of her remains, but her computer could have such a document. Barbara attested that after searching Donna’s computer, no document expressing her wishes was found. She argued that in accordance with section 65/5 of the Disposition of Remains Act (Act) (755 ILCS 65/5 (West 2020)), Donna’s parents had priority to control the disposition of Donna’s remains, therefore, she asked the court to order Scott to return the urn to her as administrator of Donna’s estate so she could give it to Donna’s parents.

¶ 9 On December 8, 2022, the parties appeared for a status hearing. Scott’s counsel noted that they previously had an “impromptu pretrial conference” on the last court date, and after talking

with Scott, Scott stated that he would not agree to the court's last recommendation.¹ Barbara renewed her motion for turnover of the urn, noting that the Act provides that this matter should have been resolved within 30 days. See 755 ILCS 65/50 (West 2020) (providing that disputes concerning the right to control disposition of a decedent's remains shall be resolved by a court within 30 days of filing). She noted that Scott has had possession of the urn for more than a year. She argued that Donna's parents, one of whom is in hospice care, desire for Donna to "come home." Given these circumstances, Barbara's attorney asked for "some sort of temporary resolution." In response, Scott's attorney said "[t]here are procedural requirements. My client has due process rights. We can't just short circuit things." He said the parties are entitled to a hearing, and they need to complete Barbara's deposition before that can happen.

¶ 10 The court ruled that the urn should change possession on a temporary basis, not to be disturbed, until the hearing takes place. Scott objected. He asked the court "what would the statutory order, caselaw basis be for that kind of injunction?" The court replied as follows:

"THE COURT: I don't have any.

I think it's kind of an equitable solution; it's a temporary solution. We can—we can always change that. I am—I do want the urn, whatever the ashes are in, to remain in a sealed condition, not be separated, not to be taken apart.

I don't know—I don't remember—I don't remember any religious issues in this, but if there are, I want to be in a position where we haven't already violated some religious tenants or procedures or practices.

I'll do that today."

¹The terms of the court's recommendation are not part of the record on appeal.

¶ 11 The court noted both parties had an interest in making sure things happened “expediently” and stated counsel for both sides should take steps to move discovery forward. The parties discussed arrangements for the turnover of the urn within a week. The court set the case for another status on January 19, 2023.

¶ 12 This appeal followed.²

¶ 13

II. ANALYSIS

¶ 14 On appeal, Scott asserts that he is “the owner and possessor of his deceased partner’s ashes.” He argues that the trial court abused its discretion by compelling him to temporarily transfer the urn to the family pending a hearing on the citation proceedings and motions for turnover of estate assets. He contends that the trial court essentially issued a preliminary injunction, but none of the preliminary injunction elements were discussed and the order was entered “[w]ithout any indication of how the Court answered these factors, any argument about

²In her brief, Barbara states that Scott filed a Motion to Stay the trial court’s order after filing the notice of appeal and these document and transcripts are not part of the record. An order included in the supplement to the record reveals that the motion to stay was denied by the trial court on December 13, 2022. The filing of a notice of appeal transfers jurisdiction from the trial court to the appellate court *instanter* and divests the trial court of jurisdiction to enter any further substantive orders. *In re Tr.A.*, 2020 IL App (2d) 200225, ¶ 39. However, by denying the motion, the court did not alter the case before us. Any documents or transcripts regarding proceedings held on that motion are properly *not* included in the record on appeal. See *Avery v. Sabbia*, 301 Ill. App. 3d 839, 843-44 (1998) (matters not properly part of the record and not considered by the trial court will not be considered on review even if included in the record).

[sic] that these factors were in fact met, [and] must be rejected as there is no foundation in the record to suggest such a conclusion.” In response, Barbara argues that we lack jurisdiction to consider this case because the order which temporarily transferred decedent’s remains does not “rise to the level of an injunction.” In support, she argues that no final determination has been made as to the rights of the parties, thus, to avoid a “piece-meal” appeal, this court should find that we lack jurisdiction under Illinois Supreme Court Rule 304(b)(1) (Mar. 8, 2016). Barbara argues, however, that if we determine that we have jurisdiction to consider this matter as an appeal of a preliminary injunction, the trial court’s decision to grant such relief is supported by the record.

¶ 15 As a reviewing court, we are required to consider our jurisdiction and dismiss an appeal if jurisdiction is lacking. *In re Marriage of Dougherty*, 2017 IL App (1st) 161893, ¶ 4. “It is well established that except as specifically provided in the supreme court rules, this court is without jurisdiction to review judgments, orders and decrees that are not final.” *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 108 (2005). In this case, Scott filed a petition for interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), which provides for appeal of an interlocutory order concerning “the granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.” To determine what constitutes an appealable injunctive order under Rule 307(a)(1) a reviewing court must look to “the substance of the action, not its form.” *In re A Minor*, 127 Ill. 2d 247, 260 (1989). An injunction is “a judicial process operating in personam, and requiring [a] person to whom it is directed to do or refrain from doing a particular thing.” (Internal quotation marks omitted.) *In re Marriage of Padilla & Kowalski*, 2017 IL App (1st) 170215, ¶ 17. “ ‘Actions of the circuit court having the force and effect of injunctions are still appealable even if called something else.’ ” *Id.* ¶ 17 (quoting *In re A Minor*, 127 Ill. 2d at 260).

¶ 16 At the status hearing in this case, Barbara requested “temporary relief” regarding possession of the urn. The court heard argument and ordered that the Scott turnover the urn to Barbara on a temporary basis until a hearing could be held. The court referred to it as an equitable solution and admonished the parties that the urn was to remain in a sealed condition and the contents not be disturbed. Though not expressly identified as such, the trial court’s order compelling Scott to transfer the urn to Donna’s family was injunctive in nature. Therefore, we have jurisdiction pursuant to Rule 307(a)(1).

¶ 17 For a preliminary injunction to be granted, the party seeking it “must demonstrate a ‘fair question’ as to each of the following: (1) a clear right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits.” *Abbinanti v. Presence Central and Suburban Hospitals Network*, 2021 IL App (2d) 210763, ¶ 15. A preliminary injunction addresses the need to preserve the *status quo* which is “the last actual, peaceable, uncontested status which preceded the pending controversy.” (Internal quotation marks omitted.) *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 638 (2005). The trial court is vested with broad discretion in granting or refusing a preliminary injunction, and its determination will not be overturned on review absent a showing of an abuse of that discretion. *Makindu v. Illinois High School Ass’n*, 2015 IL App (2d) 141201, ¶ 32. Therefore, we will not reverse unless the ruling is arbitrary, fanciful, or no reasonable person would adopt the court’s view. *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869, ¶ 12. Also, a reviewing court may affirm a trial court’s judgment on any grounds which the record supports even if those grounds were not argued by the parties. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 74.

¶ 18 Contrary to the tenor of the arguments made in this case, this is not a dispute over ownership of an item of personal property; this is a dispute over the possession and control of the

cremated remains of a human being. “The principle is firmly established that while in the ordinary sense, there is no property right in a dead body, a right of possession of a decedent’s remains devolves upon the next of kin in order to make appropriate disposition thereof, whether burial or otherwise.” *Leno v. St. Joseph Hospital*, 55 Ill. 2d 114, 117 (1973); see *People v. Harvey*, 286 Ill. 593, 601 (1919) (“Right of possession of a dead body in the absence of any testamentary disposition belongs usually to the husband or wife or next of kin.”); *Mensing v. O’Hara*, 189 Ill. App. 48, 53-54 (1914) (“The decided weight of authority in this country supports the proposition that while a dead body is not considered as property, in the ordinary, technical sense in which that word is usually employed, yet the law does recognize a right, somewhat akin, perhaps, to a property right, arising out of the duty of the nearest relatives of the deceased to bury their dead, which authorizes and requires them to take possession and control of the dead body for the purpose of giving it a decent burial. This right is an exclusive right to the custody and possession of the remains, and in the absence of any testamentary disposition, belongs to the surviving husband or wife, if any, or if there be none, then to the next of kin.”); *Palenzke v. Bruning*, 98 Ill. App. 644, 650 (1901) (“While it may be true there is no right of property in a dead body, in the ordinary sense, it is also true that the nearest relatives of the deceased are and have been in all ages, so far as known, except under ecclesiastical law, recognized as legally entitled to its custody, to lay it away in burial. It is the duty no less than the right of such relatives to protect it from unnecessary violation, and any infringement upon that right, except where made necessary for the discovery and punishment of crime, violates the tenderest sentiments of humanity.”)

¶ 19 This principle is codified in section 5 of the Act which provides, in relevant part:

“Unless a decedent has left directions in writing for the disposition or designated an agent to direct the disposition of the decedent’s remains as provided in Section 65 of the

Crematory Regulation Act or in subsection (a) of Section 40 of this Act, the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains and are liable for the reasonable costs of the disposition:

(1) the person designated in a written instrument that satisfies the provisions of Section 10 and 15 of this Act;

(2) any person serving as executor or legal representative of the decedent's estate and acting according to the decedent's written instructions contained in the decedent's will;

(3) the individual who was the spouse of the decedent at the time of the decedent's death;

(4) the sole surviving competent adult child of the decedent, or if there is more than one surviving competent adult child of the decedent, the majority of the surviving competent adult children; ***

(5) the surviving competent parents of the decedent; if one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this Act after reasonable efforts have been unsuccessful in locating the absent surviving competent parent;

(6) The surviving competent adult person or persons respectively in the next degrees of kindred ***;

* * *

755 ILCS 65/5 (West 2020).

¶ 20 Donna's parents are her next of kin, have priority under the Act, and have the right to possession and control of Donna's remains. As administrator of Donna's estate, Barbara is obligated to uphold her fiduciary relationship with the beneficiaries and to "act in the utmost good

faith to protect their interests.” *Will v. Northwestern University*, 378 Ill. App. 3d 280, 292 (2007).

Therefore, Barbara possesses a clearly ascertainable right that needs protection in this case.

¶ 21 Furthermore, there is a fair question that Donna’s family would suffer irreparable harm without the injunction because Scott has retained possession of the urn for over a year, has proclaimed himself the “owner” of the urn, and has refused repeated requests for its return. The family’s wish for “Donna to come home” is particularly dire and at risk of irreparable harm given that Donna’s father is in hospice care. For the same reasons and given the unique subject matter of this dispute, there is no adequate remedy at law.

¶ 22 Finally, based on the record before us, there is a likelihood of success on the merits in this case. Donna died intestate and her heirs are Barbara and their parents. Although Scott was Donna’s long-time companion and was living with her at the time of her death, he was not her spouse. With all due respect to their relationship, he is not recognized under any category of persons entitled to the right to control the disposition of Donna’s remains under section 5 of the Act, nor does he have a right to possession of her remains as her next of kin. Still, Scott has proclaimed that he is “the owner and possessor of his deceased partner’s ashes.” In his brief, he claims that “[a]t Donna’s wake, Scott and the other family members each split up the ashes. Scott left with the majority of the ashes, and the remaining family members each took their own shares.” However, the record reveals that one urn was purchased by the estate and that urn remains in Scott’s possession.

¶ 23 In this case, the last actual, peaceable, and uncontested status was when Barbara’s family had possession and control over the urn. The controversy commenced when Scott took possession of the urn after the memorial service and thereafter refused to return it to the family. Furthermore, we are compelled to point out that the fact that this controversy has continued for over a year is

contrary to the purpose of the citation proceedings (*In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 62 (noting that the purpose of citation proceedings is to “provide a simple, comprehensive and summary method of discovering and recovering estate assets found to be in the possession and control of others.”)) and the time limitation provided by the Act (755 ILCS 65/60 (West 2020) (providing that disputes concerning the right to control the disposition of a decedent’s remains shall be resolved by a court within 30 days)). The family deserves a timely final resolution of this matter.

¶ 24 Under the circumstances, we are unable to find that the trial court abused its discretion in ordering the temporary transfer of the urn back to Barbara, as administrator of Donna’s estate, to return it to her parents.

¶ 25

III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 27 Affirmed.