

Illinois Official Reports

Appellate Court

In re Estate of Jackson, 2022 IL App (1st) 211132

Appellate Court Caption	<i>In re</i> ESTATE OF GLADYS D. JACKSON, Deceased (Eartha Watson, Petitioner-Appellee, v. Raymond Thomas, Respondent-Appellant).
District & No.	First District, Third Division No. 1-21-1132
Filed	December 2, 2022
Rehearing denied	December 22, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 19-P-08758; the Hon. Shauna L. Boliker, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Edward R. Sherman, of Lillig & Thorsness, Ltd., of Oak Brook, for appellant. No brief filed for appellee.
Panel	JUSTICE GORDON delivered the judgment of the court, with opinion. Presiding Justice McBride and Justice Burke concurred in the judgment and opinion.

OPINION

¶ 1 In 2016, Gladys D. Jackson granted Raymond Thomas power of attorney, giving him authority to handle her business, financial, medical, and real estate affairs. During Thomas's time as Jackson's agent, which spanned from 2016 through early 2020, several substantial disbursements were made from Jackson's accounts. After a physician performed a neurological evaluation of Jackson in November 2019 and found her unable to make financial and personal decisions due to progressive cognitive impairment, Jackson's sister, Eartha Watson, petitioned for appointment of a guardian of Jackson's estate and person. The trial court appointed Valee Salone as Jackson's guardian *ad litem* and Watson as Jackson's plenary guardian. The trial court ordered Thomas to provide an accounting during the time he served as Jackson's agent.

¶ 2 Given numerous opportunities to provide a record of Jackson's accounts during the period Thomas served as Jackson's agent, Thomas did not do so. The trial court entered an order finding Thomas liable for the disbursements for which he could not account, which totaled \$76,274.99. Thomas appeals, arguing that he was not required to maintain an accounting because the power of attorney document that he signed did not comply with the sample form set forth in section 3-3 of the Illinois Power of Attorney Act (Act) (755 ILCS 45/3-3 (West 2018)) and that the trial court erred in ordering Thomas to reimburse Jackson's estate. For the following reasons, we affirm the trial court's order requiring Thomas to reimburse Jackson's estate.

¶ 3 I. BACKGROUND

¶ 4 On January 18, 2016, Jackson appointed Thomas to handle "all of [her] financial, medical and real estate affairs, and any other personal or business affairs." The signed document, titled "Power of Attorney," also contained the following language:

"GIVING AND GRANTING UNTO, RAYMOND THOMAS, my close FRIEND, full power and authority to do and perform every act necessary to be done in the premises as fully to all intents and purposes as I might or could do if personally were capable and present at the doing thereof, including the signing of my name on affidavits, contracts, checks, banking drafts, and other instruments inclusive of authorizations necessary to carry out the handling of business, financial, medical, real estate affairs, and if any, other matters necessary to be handled by me. In addition, if at any time, I am declared to be incapable of making decisions on my own for medical reasons, I give, my close FRIEND RAYMOND THOMAS full power and authority to make decisions for me until such authorization is discharged by me in writing to be terminated.

FURTHER, GRANTING TO, RAYMOND THOMAS complete authority and powers to make decisions for me if I am ever declared incapable to handle or settle any and all matters that may occur and that may be necessary to provide for the consummation of my FINANCIAL, MEDICAL and REAL ESTATE affairs as determined by RAYMOND THOMAS."

¶ 5 According to Thomas's November 2, 2020, affidavit, Jackson contacted her broker, Scottrade, on September 16, 2016, to request that Thomas be granted trading authorization. According to an account statement for Jackson's Scottrade brokerage account for the month of

August 2017, a check in the amount of \$47,397.37 was disbursed from that account on or about August 8, 2017, following the sale of 749 shares of British American Tobacco. At a hearing in March 2021, discussed in more detail below, Thomas stated that this amount was then deposited into another account belonging to Jackson, but he was unable to provide any documents or records to support his contention.

¶ 6 On November 8, 2019, as Jackson's health deteriorated, Dr. Lauren Gleason performed a neurological evaluation on Jackson and generated a report of her findings. Gleason found Jackson to be "impulsive and totally incapable of making financial and personal decisions due to progressive cognitive impairment." Gleason also stated that Jackson "requires 24/7 supervision, a supervised living environment due to safety concerns related to impaired decision making as a result of underlying dementia."

¶ 7 According to an account statement for Jackson's Ameritrade brokerage account for the month of November 2019, there was a distribution in the amount of \$25,000. At a hearing in March 2021, discussed in more detail below, Thomas stated that this amount was then deposited into another account belonging to Jackson, but he was unable to provide any documents or records to support his contention.

¶ 8 On December 26, 2019, Eartha Watson, Jackson's sister, filed a petition for appointment of a guardian of Jackson's estate and person. On February 10, 2020, the trial court held a hearing and appointed Valee Salone as Jackson's guardian *ad litem*. On the same day, \$1000 was disbursed from one of Jackson's accounts to allegedly pay for Thomas's legal representation in the petition matter, Arthur Sutton, but Thomas did not obtain court approval prior to retaining Sutton.

¶ 9 On March 1, 2020, Salone interviewed Jackson at her home. Salone reported that Jackson was "in a hospital bed with her eyes shut and having a nasal oxygen tube" and "did not respond to her name" but that she made no discernible objection to the appointment of Watson as her guardian. Salone doubted whether Jackson fully comprehended the issue of guardianship. Further, Salone recommended terminating Thomas's power of attorney and ordering him to file an accounting for 2016 to 2020 due to Thomas's suspicious acts during that period as Jackson's agent, which included the alleged purchase of a vehicle in Jackson's name with her funds.

¶ 10 On March 3, 2020, Watson was appointed Jackson's plenary guardian. The same day, Thomas resigned and revoked his power of attorney over Jackson. Additionally, the court ordered Thomas to provide an accounting of Jackson's assets from February 2016 through January 2020.

¶ 11 Over the next year, Thomas filed numerous accounting statements, all of which were objected to by Watson. On December 10, 2020, Thomas filed his third revised accounting with the court. The trial court ordered Watson to review the accounting and file objections, if she deemed them necessary. On January 11, 2021, Watson filed her objections to the third revised accounting. In her objections, Watson demanded that Thomas explain the August 2017 disbursement of \$47,397.37 following the sale of certain British American Tobacco shares, as well as the November 2019 distribution of \$25,000 from Jackson's Ameritrade brokerage account. It remains unknown where this amount was distributed. Watson also demanded explanations for the discrepancy in Jackson's retirement income that Thomas alleged was \$3667.00 per month but was shown to be \$4444.62 per month; the discrepancy in the amount allegedly paid for the pavement of the driveway at Jackson's residence, which Thomas stated

was \$14,000, when the amount in the statement provided by the concrete company was \$11,900; and the issue of the February 2020 attorney fees for \$1000. The trial court granted Thomas 30 days to respond and granted Watson 14 days to reply. Thomas responded that he did not have any explanation for the \$47,397.37 disbursement and \$25,000 distribution, as he alleged that Jackson handled those transactions. Thomas further responded that the \$3,667 monthly teacher's pension amount was based on conversations he had with Jackson, that the discrepancy in the driveway pavement amount was due to an error in Thomas's memory, as he did not have the invoice at the time he compiled the accounting, and that the \$1000 was paid to Sutton at Jackson's behest to represent her in the guardianship matter.

¶ 12 On March 31, 2021, the trial court held a hearing on the objections to the most recent accounting that Thomas had filed. The trial court found that, despite being given numerous chances to provide an accounting to explain all the disbursements related to Jackson's accounts, Thomas was still unable to provide an adequate accounting to sufficiently explain the following: (1) where the proceeds from the sale of 749 shares of British American Tobacco on August 8, 2017, in the amount of \$47,397.37 went; (2) where the \$25,000 distribution from Jackson's Ameritrade brokerage account went; (3) the \$1000 paid to Sutton without court approval; (4) the understatement of Jackson's monthly income by \$777.62.

¶ 13 On the same day as the hearing, the trial court ordered Thomas to reimburse Jackson's estate in the amount of \$76,274.99. On April 22, 2021, Thomas filed a motion to reconsider, which was denied on August 13, 2021. On September 10, 2021, Thomas filed an appeal challenging the trial court's April 22 and August 13, 2021, orders. Watson did not file a brief in response to Thomas's appeal. Thus, we consider the instant appeal on the record and the appellant's brief only.

¶ 14 II. ANALYSIS

¶ 15 On appeal, Thomas argues that the trial court erred in (1) finding that Thomas had a statutory fiduciary duty to provide an accounting, (2) entering a judgment on the basis that Thomas failed to provide an adequate accounting, and (3) holding Thomas responsible to produce an accounting for the \$47,397.37 that was disbursed from Jackson's brokerage account following the sale of the tobacco stock held by her.

¶ 16 When a challenge is made to a trial court's ruling following a bench trial, the proper standard of review is whether the trial court's judgment is against the manifest weight of the evidence. *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277 (2009). "A reviewing court will not substitute its judgment for that of the trial court in a bench trial unless the judgment is against the manifest weight of the evidence." *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). "For a finding or judgment to be against the manifest weight of the evidence, an opposite conclusion must be clearly evident." *Schackleton v. Federal Signal Corp.*, 196 Ill. App. 3d 437, 445 (1989).

¶ 17 Thomas argues first that he did not have a duty to maintain accounting records while he served as Jackson's agent because the power of attorney document that he and Jackson executed did not comply with the sample form set forth in section 3-3 of the Act. 755 ILCS 45/3-3 (West 2018). Thomas argues that, because the power of attorney document at issue did not include a notice paragraph requiring Thomas to keep an accounting, he was not required to do so.

¶ 18 Thomas’s argument that he did not have a duty to maintain accounting records is unpersuasive for two reasons. First, nothing in our case law mandates strict compliance with the form set forth in section 3-3. In fact, we have

“h[e]ld that the Short Form provided in section 3-3 is merely directory and that absolute or exact compliance with the statutory format is not required. It is axiomatic that if the legislature had intended that every Short Form power of attorney be in the exact form set out in section 3-3, it would not have used the word ‘substantially.’ ” *Fort Dearborn Life Insurance Co. v. Holcomb*, 316 Ill. App. 3d 485, 492 (2000).

¶ 19 In *Holcomb*, the validity of a power of attorney was challenged because the document omitted certain notice language. *Holcomb*, 316 Ill. App. 3d at 492. We found that, since the function of the omitted language was simply to inform the principal of the nature of the powers he was granting his agent, the omission was insufficient to invalidate the power of attorney, as that would have led to an absurd or unjust result. *Holcomb*, 316 Ill. App. 3d at 493. Here, as in *Holcomb*, the omitted notice language would have simply informed Thomas of his accounting duties as agent. By the very language of the power of attorney document he signed, which gave him authority to handle contracts, checks, banking drafts, and other instruments related to business and financial affairs, Thomas should have known that he was required to keep an accounting of substantial disbursements, even without explicit mention of his duty to keep records. In the case at bar, Thomas, as a fiduciary, had a duty to explain the disbursements and distributions that he made. We find that his explanations here are not sufficient.

¶ 20 Second, even if we assume that the document executed by Jackson did not comply with the requirements of section 3-3, Thomas must still provide an accounting to detail where the money from the distribution of \$76,274.99 went. A power of attorney, regardless of whether it was executed precisely as set forth in section 3-3, creates a fiduciary duty as a matter of law. *In re Estate of Shelton*, 2017 IL 121199, ¶ 22. As a fiduciary, “[a]n agent shall keep a record of all receipts, disbursements, and significant actions taken under the authority of the agency and shall provide a copy of this record when requested to do so.” 755 ILCS 45/2-7(c) (West 2018). As a fiduciary, Thomas had the duty to keep an accounting of disbursements made from Jackson’s accounts starting on the date he and Jackson executed the power of attorney document because “[t]he fiduciary relationship between the principal and agent begins at the time the power of attorney document is signed.” *Shelton*, 2017 IL 121199, ¶ 22.

¶ 21 Thomas argues next that the trial court erred in entering an order requiring Thomas to reimburse Jackson’s estate solely on the basis that he failed to provide an acceptable accounting for all of Jackson’s property. As we concluded above, Thomas had a duty to keep records and show where the money went, but he failed to do so. The question before us now is whether the remedy ordered by the trial court was proper.

¶ 22 Section 2-7(d) and (f) sets forth the remedies available to the principal against his or her agent who has violated the Act. Section 2-7(d) deals specifically with an agent’s failure to provide records and reads as follows:

“If the agent fails to provide his or her record of all receipts, disbursements, and significant actions within 21 days after a request under subsection (c), the adult abuse provider agency, the State Guardian, the public guardian, or a representative of the Office of the State Long Term Care Ombudsman may petition the court for an order requiring the agent to produce his or her record of receipts, disbursements, and significant actions. If the court finds that the agent’s failure to provide his or her record

in a timely manner to the adult abuse provider agency, the State Guardian, the public guardian, or a representative of the Office of the State Long Term Care Ombudsman was without good cause, the court may assess reasonable costs and attorney's fees against the agent, and order such other relief as is appropriate." 755 ILCS 45/2-7(d) (West 2018).

¶ 23 Section 2-7(f), which deals with violations of the Act more generally, reads as follows:

"An agent that violates this Act is liable to the principal or the principal's successors in interest for the amount required (i) to restore the value of the principal's property to what it would have been had the violation not occurred, and (ii) to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf. This subsection does not limit any other applicable legal or equitable remedies." 755 ILCS 45/2-7(f) (West 2018).

¶ 24 In his brief, Thomas argues that the trial court entered a judgment against him "solely on the basis that an accounting is incomplete or unacceptable without finding that an agent actually undertook an action that resulted in a principal losing property that needed to be given back." Thomas mischaracterizes the trial court's findings. At the hearing on Thomas's third revised accounting, the trial court found that Thomas was unable to produce any evidence "that [Jackson's] accounts were not mismanaged." The trial court noted that Thomas was unable to show where two significant sums of money (\$47,397.37 and \$25,000) went. In other words, the trial court did not find that Thomas was able to provide *any* evidence that he managed Jackson's funds in her best interest. Since Thomas could not show he managed Jackson's funds in her best interest, the trial court concluded that Thomas breached his fiduciary duty to Jackson.

¶ 25 It was Thomas's failure to show that he fulfilled his duty as Jackson's agent, and not simply his inability to provide an accounting, that led the trial court to conclude that Thomas breached his duty. The production of an accounting was simply one way Thomas could have shown the trial court that he acted in Jackson's best interest and upheld his fiduciary duty. Despite being given multiple opportunities to present evidence to show he acted in Jackson's best interest, Thomas was unable to do so. The failure to show where the money went shows that Thomas either embezzled the funds or was responsible for their disappearance. As Thomas breached his fiduciary duty by failing to show that he acted in Jackson's best interest, we find that both section 2-7(d) and (f) justify the trial court's order requiring Thomas to reimburse Jackson's estate.

¶ 26 Thomas urges us to reverse the trial court's decision and remand the matter to allow Thomas to now "perform a proper accounting." He contends that the appropriate remedy, should he fail to perform such an accounting, would be to hold him in contempt rather than require him to reimburse Jackson's estate. However, as the record shows, Thomas was given no fewer than four opportunities to provide an accounting, and he has still been unable to adequately explain the transactions at issue. Thomas does not explain how, if given yet another opportunity to provide a revised accounting, he would be able to remedy the deficiencies of his most recent accounting and show where the money went. In fact, during the March 31, 2021, hearing on Thomas's third revised accounting, his counsel argued that Thomas already "did the best he could with keeping up with the accounting" and urged the court to accept the accounting "as is." We therefore find no utility in granting Thomas another chance to file

another accounting. Based on the foregoing, we cannot conclude that the trial court's order on reimbursement was against the manifest weight of the evidence.

¶ 27 Thomas's final argument on appeal is that the trial court erred in holding Thomas responsible to provide an account for the \$47,397.37 disbursement because that transaction occurred in August 2017 and Thomas contends he did not act under the power of attorney until February 2018.¹ This argument is not persuasive. The record shows that Jackson granted Thomas authority to handle her "business, financial, medical, [and] real estate affairs" on January 18, 2016. Moreover, according to Thomas's own affidavit, Jackson contacted her broker, Scottrade, on September 16, 2016, to request trading authorization for Thomas. This trading authorization was granted to Thomas nearly a year before the \$47,397.37 disbursement. Since Thomas was appointed to handle Jackson's affairs and given specific trading authorization for the account from which the \$47,397.37 disbursement was made, he cannot now claim that he was not acting under power of attorney.

¶ 28 III. CONCLUSION

¶ 29 For the reasons set forth above, we affirm the trial court's order requiring Thomas to reimburse Jackson's estate in the amount of \$76,274.99.

¶ 30 Affirmed.

¹In his brief, Thomas argues that he did not serve as Jackson's power of attorney until February 2018, but no further information is given regarding the significance of February 2018. We presume that Thomas is referring to his November 2, 2020, affidavit, in which he states that "[i]n February 2018 Ms. Gladys Jackson asked me (Raymond Thomas) to assist with making sure her needs were met medically, real estate and financial with her approval."