

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

D. ANDREW HEYMAN, ADMINISTRATOR OF THE ESTATE OF ADAM HUNTLEY,	:	APPEAL NOS. C-100688 C-100689 C-100713 C-100714
Plaintiff-Appellee/Cross- Appellant,	:	TRIAL NOS. 2007-4188 2009-0169
vs.	:	
WILLIAM BELL,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant/Cross- Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Adam Huntley (“Huntley”) executed a power of attorney in favor of defendant-appellant cross-appellee William Bell on July 8, 2004. In 2006, Huntley executed a will that included a specific bequest of \$500 in favor of his daughter, Tamyra Alysha Huntley-Brown, and left the residue of his estate to his other daughter, Portia Huntley (“Portia”).

Huntley died on September 28, 2006. That same day, Bell, a licensed attorney, withdrew \$241,866.94 from Huntley’s account and deposited the funds into his own IOLTA account. Bell learned of Huntley’s death the next day. After that, Bell used the funds to pay Huntley’s funeral expenses, to pay himself \$25,000 in attorney fees, and then paid the balance to Portia.

A year and a half passed before Huntley’s will was filed with the probate court. The action was filed in 2007 in the probate case numbered 2007-4188 by attorney D. Andrew Heyman, who represented a creditor of Huntley. The will named

Portia as executrix and Bell as the alternate. Bell declined to serve, and Portia failed to appear in the action, so the trial court named Heyman as executor. In 2009, in the probate case numbered 2009-0169 Heyman filed a complaint against Bell that contained three claims: (1) a concealment claim asserting that Bell had concealed estate assets; (2) a declaratory judgment claim asking the trial court to determine that Bell's payments from the IOLTA account were improper; and (3) a claim that Bell had breached his fiduciary duty to Huntley.

The trial court held an initial hearing at which it determined that Bell had not concealed estate assets. The case then proceeded, and the trial court issued a decision in which it ordered Bell to repay the \$25,000 that he had paid to himself for attorney fees. The trial court concluded that Bell was a creditor of the estate and that he had not made a timely claim. It recognized that all of the transfers were invalid, but determined that the best way to close the estate was to begin with the return of the \$25,000 that Bell had received. The court noted that, if the \$25,000 was insufficient to pay administration expenses, taxes, and the specific bequest of \$500, then it would order additional reimbursement. The trial court further certified, pursuant to Civ.R. 54(B), that there was no just reason to delay the appeal of its decision. Both parties now appeal.

In Bell's first two assignments of error, he claims that the trial court improperly reversed its initial determination that he had not concealed assets in its decision ordering him to repay the \$25,000 in attorney fees. While the entry is entitled "Ruling on Complaint for Concealment of Assets," the decision itself addresses only the impropriety of the payments from Bell's IOLTA account. Thus, it resolved only the declaratory judgment portion of the probate case numbered 2009-0169. At no point in its decision did the trial court conclude that Bell had concealed

assets, and the decision did not even reference R.C. 2109.50. Since the decision of the trial court did not reverse its determination regarding Bell's concealment of assets, his first two assignments of error are overruled.

In Bell's third assignment of error, he claims that it was improper for the trial court to file copies of its decision in both the 2007 and 2009 actions when the decision only related to issues in the 2009 suit. But Bell has not established how he has been harmed by this alleged misfiling, as it did not, as Bell claims, result in a judgment against him that he had no opportunity to defend against. Bell fully litigated the issues addressed in the decision. Since Bell cannot show that he was prejudiced by the double filing, any error was harmless. See *O'Brien v. Angley* (1980), 63 Ohio St.2d 159, 164, 407 N.E.2d 490 (an error is harmless where it does not affect the substantial rights of the complaining party). Bell's third assignment of error is overruled.

In Bell's fourth assignment of error, he asserts that the trial court lacked jurisdiction to determine the propriety of the payments that Bell had made because they represented an inter vivos transaction. There are two problems with Bell's argument. First, a declaratory judgment action may be brought in a probate court to determine the validity of inter vivos transfers where the property transferred would revert to the estate if the transfers were invalidated. See *Clark v. McCauley*, 5th Dist. No. 2010CA00131, 2010-Ohio-5137, ¶21, citing *State ex rel. Lipinski v. Cuyahoga Cty. Common Pleas Court, Probate Div.*, 74 Ohio St.3d 19, 22, 1995-Ohio-96, 655 N.E.2d 1303.

The second problem with Bell's argument is that the payments he made were not inter vivos transfers. Even assuming that the money had been transferred out of Huntley's account prior to his death (the record indicates that the transfer actually

occurred twelve minutes after he died), the money was transferred into Bell's IOLTA account. Funds deposited in an attorney's IOLTA account are the property of the client; they do not become the property of the attorney. See, e.g., *Disciplinary Counsel v. Crosby*, 124 Ohio St. 3d 226, 2009-Ohio-6763, 921 N.E.2d 225, ¶17. Thus, the funds remained Huntley's even after they were transferred into the IOLTA account. When Bell used Huntley's funds, which were being held in the IOLTA account, to make the payments he did, it was both after Huntley had died and after Bell had actual knowledge of his passing.

For these reasons, the trial court had jurisdiction to determine the validity of the payments Bell made with Huntley's funds. His fourth assignment of error is overruled.

In his final assignment of error, Bell claims that the trial court improperly concluded that he was a creditor of the estate for the attorney fees because he had paid himself pursuant to the power of attorney that Huntley had executed. But the power of attorney had expired when Bell learned of Huntley's death. R.C. 1337.091(A). The trial court properly concluded that "[e]ven accepting as true Mr. Bell's testimony that he was unaware of the Decedent's death at the time he made this initial transfer of the funds into his IOLTA account, upon Mr. Bell's learning of the Decedent's death on 9/29/06, R.C. 1337.091(A) no longer applied to any disbursements Mr. Bell made from his IOLTA account. The Court finds that the funds that remained in Mr. Bell's IOLTA account after Mr. Bell learned of the Decedent's death were estate assets and should have been transferred to an estate fiduciary and included in an estate inventory in accordance with R.C. 2115.02." Thus, Bell did not have the authority to pay his fees from Huntley's funds, and he remained a creditor of the estate. Bell's fifth assignment of error is overruled.

In its cross-appeal, Huntley's estate asserts two assignments of error. First, the estate claims that because the trial court determined that all of Bell's payments from the IOLTA account were improper, the trial court should have ordered Bell to repay the entire \$241,866.94. The trial court recognized that it had this option, but reasoned that "as to the balance of the disbursements Mr. Bell made, most of which were made to residual beneficiary Portia Huntley * * *, at this time the Court will not order reimbursement of such funds to the estate as she would have ultimately received any funds in excess of the specific bequest, taxes and the cost of administration. However, if the \$25,000 amount that Mr. Bell is ordered to reimburse to the estate is insufficient to pay administration expense, taxes and the specific bequest of \$500, then the Court may order such reimbursement in the future."

The estate claims that this decision was an abuse of discretion. We disagree. The trial court noted it had "been informed that Portia Huntley, who received seven parcels of real estate and \$207,683.14 in cash, claims to have no money." Attempting to collect the entire sum from either Portia or Bell, who also suggested "financial inability," would be a useless act, especially in light of the fact that the proceeds would then be repaid to Portia in any event. We cannot say that it was an abuse of discretion for the trial court to order repayment of only Bell's attorney fee payment. Therefore, the estate's first assignment of error is overruled.

The estate's second assignment of error asserts that the trial court abused its discretion to the extent it might have implicitly determined that the breach of fiduciary duty claim was moot. But our reading of the decision indicates that it addresses solely the declaratory judgment claim. As such, we conclude that the

breach of fiduciary duty claim remains pending. Since the trial court's decision does not render the claim moot, the estate's second assignment of error is overruled.

Having considered and rejected all assignments of error, we affirm the decision of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27.

DINKELACKER, P.J., HILDEBRANDT and SUNDERMANN, JJ.

To the clerk:

Enter upon the journal of the court on December 16, 2011

per order of the court _____.

Presiding Judge