2025 IL App (3d) 240328-U

Order filed September 30, 2025

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2025

In re ESTATE OF NOAH A. KUCINSKI,	)	
	)	
Deceased	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
(Dorothy Kucinski,	)	Will County, Illinois,
	)	
Petitioner-Appellant,	)	Appeal No. 3-24-0328
	)	Circuit No. 22 PR 789
v.	)	
	)	Honorable
Colleen Wengler, Administrator, and,	)	Derek Ewanic,
Amy Blobaum,	)	Judge, Presiding.
	)	
Respondents-Appellees).	)	

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Peterson and Justice Davenport concurred in the judgment.

ORDER

¶ 1 *Held*: Grandmother of decedent had standing to intervene in grandson's estate as potential heir.

¶ 2 Grandmother of minor decedent petitioned to intervene in his estate, claiming status as an heir because the minor's father (the petitioner's son) died as a result of a drug overdose, and the minor's mother was subsequently convicted of drug induced homicide. Grandmother claimed the

minor's mother improperly benefited from the homicide by inheriting a greater portion of the minor's estate and sought to apply the "slayer statute" to prevent the mother from inheriting the deceased father's portion. Grandmother's petition to intervene was dismissed for lack of standing, and she appealed.

¶ 3 I. BACKGROUND

¶ 4 This appeal arises from the administration of the estate of Noah A. Kucinski. Noah died intestate at the age of thirteen on December 18, 2022. He had no children and was never married. Noah was born to Amy Blobaum and Peter Kucinski. Peter died of a heroin overdose on August 10, 2014, and Amy was charged with causing Peter's death by delivering heroin to him. Amy pled guilty to drug induced homicide on August 26, 2015, and she was sentenced to serve seven years in the Department of Corrections. Peter and Amy were never married, and Noah was Peter's sole heir at the time of Peter's death. While Amy was incarcerated, Noah's paternal grandmother, Dorothy Kucinski, was appointed to serve as Noah's guardian. Amy was released from incarceration in 2020, and she bore another child, Noah's half-brother, J.B.

¶ 5 Following Noah's death, Amy petitioned for the appointment of an independent administrator to administer Noah's estate. On December 22, 2022, the court appointed Colleen Wengler to administer the estate. On that same date, the court entered an order declaring Amy and J.B. Noah's sole legal heirs.

¶ 6 On January 26, 2024, Dorothy petitioned to intervene in the administration of the estate. Dorothy petitioned to "assert her rights as an heir of Peter Kucinski," and argued that section 2-6 of the Probate Act (755 ILCS 5/2-6 (West 2022)), commonly known as the "slayer statute," applied in the proceedings. The slayer statute precludes a person who intentionally and unjustifiably causes the death of another from inheriting the property of the decedent, and

Dorothy argued that it required the court to amend the heirship order to allow Peter's heirs at the time of his death in 2014 to receive a 1/3 share of the estate, because, "[t]he share of Noah's estate Amy is to receive *** that would otherwise have gone to [Peter] should be given to Peter's heirs at law."

¶ 7 Amy moved to dismiss the petition to intervene under section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619 (West 2022). She argued that Noah had no surviving spouse and no children. Thus, his only legal heirs under the laws of intestacy were his mother and his half-sibling, J.B. Amy further argued that "even if the Court were to apply [the slayer statute], [J.B.] would inherit the entirety of Noah's estate as his only heir." The court agreed that Dorothy lacked standing to intervene. The court did not directly address the applicability of the slayer statute. However, the court stated that if the slayer statute did apply, Dorothy would still not qualify as an heir under the laws of intestacy. The court therefore dismissed Dorothy's petition to intervene, and Dorothy filed a timely appeal of the dismissal.

¶ 8 II. ANALYSIS

¶ 9 On appeal, Dorothy argues the circuit court erred when it dismissed her petition. She requests that we find that she had legal standing to intervene in Noah's estate and asks us to reinstate her petition to intervene.

¶ 10 Section 2-6 of the Probate Act, the "slayer statute," states in pertinent part that

> "A person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary, joint tenant, survivor, appointee or in any other capacity and whether the property, benefit, or other interest passes pursuant to any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. The property, benefit, or other interest shall pass as if the person causing the death died before the decedent, provided that with respect to joint tenancy property the interest possessed prior to the death by the person causing the death shall not be diminished by the application of this Section. A determination under this Section may be made by any court of competent jurisdiction separate and apart from any criminal

> proceeding arising from the death, provided that no such civil proceeding shall proceed to trial nor shall the person be required to submit to discovery in such civil proceeding until such time as any criminal proceeding has been finally determined by the trial court or, in the event no criminal charge has been brought, prior to one year after the date of death. A person convicted of first degree murder or second degree murder of the decedent is conclusively presumed to have caused the death intentionally and unjustifiably for purposes of this Section." 755 ILCS 5/2-6 (West 2022).

¶ 11 The laws of intestacy provide that if a decedent dies with "no surviving spouse but a parent brother, sister or descendant of a brother or sister of the decedent," the estate passes to the parents, brothers and sisters of the decedent in equal parts, allowing that if one parent is dead then the other parent takes a double portion of the estate. 755 ILCS 5/2-1(d) (West 2022). If there is no surviving spouse, descendant, parent, brother, sister or descendant, then the estate passes in equal parts to the decedent's maternal and paternal grandparents, half to the decedent's maternal grandparents or their survivors and half to the decedent's paternal grandparents or their survivors. *Id*. § 2-1(e) (West 2022).

¶ 12 Standing is required to bring suit or join suit as a party, and it assures that only those with a real interest in the outcome of the controversy are permitted to raise issues. *Maraskas-Pacek v. Scwartz, Wolf & Bernstein, LLP*, 2017 IL App (1st) 162746, ¶ 29. Standing requires an injury to a legally cognizable interest, and it requires that a party assert his or her own legal rights and interests, rather than the rights and interests of third parties. *In re Estate of Mivalaz*, 2021 IL App (1st) 200494, ¶ 84.

¶ 13 A party's lack of standing is the proper subject of a motion to dismiss under section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2022)). *Maraskas-Pacek v. Scwartz, Wolf & Bernstein, LLP*, 2017 IL App (1st) 162746, ¶ 29. "A motion to dismiss, pursuant to section 2-619 of the Code, admits the legal sufficiency of the plaintiff's complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's

claim." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). An affirmative matter refers to "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004). A motion under section 2-619 requires the court to accept as true all well-pleaded facts and all inferences that can reasonably be drawn in the plaintiff's favor. *Id*. We review the circuit court's dismissal of a petition for lack of standing *de novo*. *In re Estate of Schumann*, 2016 IL App (4th) 150844, ¶ 17.

¶ 14 Intervention may be permissive or as a matter of right. Intervention as of right occurs "when a statute confers the unconditional right to intervene, when a party who will be bound by an order or judgment in the action will not be adequately represented by existing parties, or when a party will be adversely affected by the disposition of property subject to the control of the court." *In re Estate of Mueller*, 275 Ill. App. 3d 128, 139 (1995). Permissive intervention occurs at the court's discretion and may be allowed when "an applicant's claim and the main action concern a common question of law or fact." *Id*. Dorothy claims intervention as a matter of right, which must be granted if (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit. *In re Marriage of Vondra*, 2013 IL App (1st) 123025, ¶ 14.

¶ 15 The parties do not dispute that the petition was timely filed. Adequacy of representation is "a complex matter, not subject to hard and fast rules." *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 170 (1984). However, the most important factor in determining adequacy of representation is how and whether the interests of the party seeking intervention compares with the interests of the present parties. *Id*. As to interest, "[t]he Probate Act defines an 'interested person' as 'one who has or represents a financial interest, property

right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse's or child's award and the representative.' " *Schumann*, 2016 IL App (4th) 150844, ¶ 19, quoting 755 ILCS 5/1-2.11 (West 2022). Dorothy argues she qualifies as an interested person because, although "[t]here is no question that *** the Probate Act does not define Peter Kucinski's relatives as Noah's heirs *** [t]he public policy of the Slayer Statute requires the court to find heirship other than as mandated by [the Probate Act] to ensure that the slayer not benefit from her crime."

¶ 16 According to Dorothy, the slayer statute should operate to prevent Amy from inheriting what would have been Peter's portion of Noah's estate and Dorothy should be allowed to intervene as an heir to enforce the slayer statute.[1] We agree that Dorothy may be considered a potential heir, but for a different reason. The slayer statute's stated purpose is to preclude a person who unjustifiably causes the death of another from inheriting that person's property. It accomplishes that goal by causing the deceased person's property to "pass as if the person causing the death died before the decedent." 755 ILCS 5/2-6 (West 2022). Assuming, *arguendo*, the slayer statute applies, it would preclude Amy from inheriting any portion of Noah's estate that derives from Peter's estate. Moreover, a broad application of the statute would similarly preclude J.B. from inheriting any portion of Noah's estate derived from Peter's estate. If, as the slayer statute suggests, the court treats Amy as though she had predeceased Peter, she would not have borne any additional children, and, by the laws of intestacy, any portion of Peter's estate

[1] Specifically, Dorothy suggests we analyze Noah's estate as though a future interest was created at the time of Peter's death, which, upon Noah's death, reverted to Peter's heirs. She therefore suggests we reapportion a 1/3 interest in Noah's estate to Peter's heirs. However, this is a misreading of the slayer statute. Dorothy's theory ignores that some portions of Noah's estate may not be derived from Peter's estate and further fails to disinherit Amy of Peter's assets. The slayer statute, if applied, would operate to prevent Amy from inheriting any portion of Peter's estate.

remaining in Noah's estate would pass to his maternal and paternal grandparents. 755 ILCS 5/2-1(e) (West 2022). Applying the slayer statute in this way, Dorothy would become an heir of Noah's estate since she is Noah's paternal grandmother.

¶ 17 We are mindful that our task in this appeal is not to analyze whether or how the slayer statute applies to the facts of this case but to determine whether Dorothy should be permitted to intervene. Applying the factors governing intervention noted above, we find that (1) the petition was timely filed, (2) Dorothy's interests are not adequately represented by the parties, since neither Amy nor J.B. seeks to apply the slayer statute and the court failed to list Dorothy as a potential heir at law, and (3) Dorothy maintains an interest in the estate as a potential heir if the slayer statute applies. See *Vondra*, 2013 IL App (1st) 123025, ¶ 14. Because these factors are met, Dorothy must be permitted to intervene as a matter of right. We therefore hold only that Dorothy's potential heirship grants her standing to present her position to the court as a party.

¶ 18 Nonetheless, her claim is entirely contingent on the application of the slayer statute.

¶ 19 The circuit court correctly noted that it had not yet ruled on whether the slayer statute applies to Noah's estate. Although we review the dismissal of Dorothy's petition *de novo*, we cannot rule on the applicability of the statute on the record before us, particularly since the circuit court failed to do so. The statute itself suggests a civil proceeding may be required to determine its application, overseen by a "court of competent jurisdiction." 755 ILCS 5/2-6 (West 2022). Numerous factual and legal factors will affect the applicability of the statute in this case, such as the court's determination of whether Amy "intentionally and unjustifiably" caused Peter's death, the court's determination of whether the slayer statute precludes J.B. from inheriting, and what, if any, portion of Noah's estate consists of assets derived from Peter's estate. These determinations are properly for the circuit court to make based on the evidence and

arguments presented by the parties. See *Mueller*, 275 Ill. App. 3d at 131-32; *In re Estate of Vallerius*, 259 Ill. App. 3d 350, 351-52 (1994).

¶ 20 This result is consonant with both general pleading principles and broader probate principles. A plaintiff need not prove their case by clear and convincing evidence at the pleading stage. *Dehart v. Dehart*, 2013 IL 114137, ¶ 46. It is sufficient to state facts supporting a theory of recovery. *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003). Defendants bear the burden of pleading and proving a lack of standing. *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill. 2d 200, 206 (2000). Standing in a probate matter requires establishing a legally cognizable "financial interest, property right or fiduciary status" 755 ILCS 5/1-2.11 (West 2022). These pleading requirements are not the same as the requirements for proving heirship.

¶ 21 As in any civil proceeding, establishing heirship requires the claimant to produce evidence sufficient to overcome the applicable burden of proof. *Bengaly v. Bengaly*, 2014 IL App (1st) 123760, ¶ 175. Put another way, a potential heir may intervene to contest a disposition of the estate, providing they can articulate a theory of recovery and otherwise satisfy the pleading requirements. See *In re Estate of Lay*, 2018 IL App (3d) 170378, ¶ 16-18 (petitioner permitted to intervene to contest a previously entered will despite a subsequent will declaring that will invalid). To hold otherwise would insulate the probate process from potentially interested parties. *Id*. ¶ 20. Accordingly, Dorothy must be permitted to intervene to argue the applicability of the slayer statute. Whether it applies and whether it grants her heirship are separate questions properly resolved by the circuit court.

¶ 22 For the foregoing reasons, we reverse the court's dismissal of Dorothy's petition to intervene, and we remand this matter to the circuit court to determine whether and how the slayer statute applies to Noah's estate.

¶ 23 Reversed and remanded with instructions.