

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of:	:	
Estate of L.P.B.,	:	Nos. 12AP-710 (Prob. No. 520494)
(P.B. & E.B., the minor pretermitted heirs of decedent and S.B., spouse of decedent,	:	12AP-711 (Prob. No. 520494 A)
Appellants).	:	12AP-712 (Prob. No. 520494 C)
	:	12AP-713 (Prob. No. 520494 B)
	:	
	:	(REGULAR CALENDAR)
	:	

---

D E C I S I O N

Rendered on March 26, 2013

---

*Bonnie D. Michael*, for appellee.

*Gillett Law Office, LLC*, and *Gary A. Gillett*, for appellants.

---

APPEALS from the Franklin County Probate Court

TYACK, J.

{¶ 1} S.B., E.B., and P.B. are appealing from the judgment of the Franklin County Probate Court. They assign five errors for our consideration:

FIRST ASSIGNMENT OF ERROR:

The Probate Court erred in its Entry of December 30, 2010 by denying the Objections to the Magistrate's Decisions of June 7, 29 and 30, 2010, on the basis that the surviving spouse and minor children did not file a "complete" transcript.

**SECOND ASSIGNMENT OF ERROR:**

The Probate Court erred when it failed to issue an Entry for Lack of Record when counsel for Administrator WWA could not produce properly filed documents to show that she filed a Motion to allow the late filing of objections to the Magistrate's Decision of May 21, 2008, that she served the surviving spouse and minor children with that Motion, or that her Motion was granted.

**THIRD ASSIGNMENT OF ERROR:**

The Probate Court erred in denying the Appellants' November 2, 2010 Motion to Disqualify Attorney Bonnie Michael as Counsel for Administrator WWA.

**FOURTH ASSIGNMENT OF ERROR:**

The Probate Court erred in declining to grant a Nunc Pro Tunc Order to correct its June 5, 2008 Entry Extending Time to Object to the Magistrate's Decision of May 21, 2008 Removing [B.B.] as Administrator WWA, especially where the entry is issued ex parte upon a missing Motion and proof of excusable neglect or good cause and constituted denial of the substantial right of due process of the minor pretermitted heirs.

**FIFTH ASSIGNMENT OF ERROR:**

The Probate Court Erred In Ratifying The Magistrate's Decision Of June 30, 2010 (by Entry of December 30, 2010), and in issuing its Entry on May 9, 2012, Approving Legal Fees Of The Fiduciary's Counsel That Were Excessive On Their Face.

{¶ 2} L.P.B. died on December 7, 2006. He was survived by five children. Three of the children were fathered during his first marriage. Two more were fathered during his second marriage, but not by his wife. He later married the mother of the last two children, but only months before he died. His extramarital activity generated serious family conflict which continues.

{¶ 3} The case is further complicated by the fact that the Probate Court has had four different judges in recent years, each of which had to start from scratch in addressing the pertinent issues.

{¶ 4} Because of the family conflict and the changes in the judiciary, full evidentiary transcripts are and were especially necessary. The failure of the parties to provide complete transcripts made the job of the current probate judge virtually impossible to perform. We cannot find error in the trial court requiring transcripts as the basis for disagreeing with the findings of its magistrates. Without transcripts, the trial court could not fully review the proceedings and reach different conclusions.

{¶ 5} Because the trial court, lacking complete transcripts, could do little but adopt the decision of its magistrate issued June 30, 2010, we cannot fault the court for doing so.

{¶ 6} The first assignment of error is overruled.

{¶ 7} Perhaps, unfortunately, when families engage in protracted litigation over limited assets, the primary beneficiaries are the attorneys representing the parties. Initial estimates of the values of the estate were in the \$40,000 to \$45,000 range. The value now being considered is \$105,000. The fact that approximately one-third of that sum has now been consumed by attorney fees is not really a surprise. The trial court's award of such fees was not an abuse of discretion.

{¶ 8} The fifth assignment of error is overruled.

{¶ 9} The lack of a complete record also affects our ability as an appellate court to address whether the probate court erred as a matter of law or abused its discretion as to the other issues presented in these appeals. As a result, we have no option but to overrule the remaining three assignments of error.

{¶ 10} All five assignments of error having been overruled, the judgments of the Franklin County Probate Court are affirmed.

*Judgments affirmed.*

BRYANT and BROWN, JJ., concur.

---