

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP1100

Cir. Ct. No. 2000PR157

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE ESTATE OF THEODORE C. BECKER, DECEASED:
ALEKSANDRAS DAVIDOVICH GLIKAS,**

APPELLANT,

V.

**ESTATE OF THEODORE C. BECKER, MIHAILS KATZ, DAVID AMROMIN,
DONALD BLOOM, BARBARA BLOOM KREML, STEPHEN BLOOM, STEPHEN
SEEDER, JUDY SEEDER BASKIN, NANCY SEEDER GELLER, LORRAINE
BLOOM GRAWOIG, JOANN BLOOM HUGO, LESTER DUNDES, RICHARD
LEBENSON, STEPHANIE KOVEN WAHRMAN, NANCY KOVEN, JOANN
KOVEN, LESLIE UBERMAN RICHARDSON, DEBRA UBERMAN NEUFELD,
ELLEN UBERMAN MILLER, MARJORIE GALLANTER KOPEL, PETER
GALLANTER, STEVEN GALLANTER, JUSTIN GALLANTER, JOAN OPTNER
BROWN, ESTATE OF ELAINE ROSS MENSCH DECEASED, MARGERY
CHAPMAN, EXECUTOR, MARGERTY ROSS CHAPMAN, BARBARA DRELL,
DAVID TUNICK, NANCY TUNICK POOL-GREEN, MARVIN BLOCH,
GERALDINE BLOCH NAIDUS, JONATHAN WILK, RUDY WILK AUBERG,
RANDALL WILK, MICHAEL WILK, STEPHEN Z. COHEN, PH.D., JAMES
GOLDWASSER, MATTHEW GOLDWASSER, THOMAS GOLDWASSER, IRA
RAKLEY, MURIEL RAKLEY MATIN, LAURA ROSENBERG SWALLOW, JOAN
ROSENBERG BAKER, EDWARD CALDWELL, ROBERT IRVING, BRUCE
IRVING, FREDERIC SCOTT IRVING, HILLEL IRVING III AND
BARBARA SILVERSTEIN,**

RESPONDENTS.

APPEAL from an order of the circuit court for Green County:
JAMES R. BEER, Judge. *Cause remanded with directions.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Aleksandras Glikas appeals a probate order excluding him as one of the heirs of Theodore Becker and distributing Becker's estate to other heirs recognized by the court. Glikas argues that the order is void because he did not receive proper international notice of the deadline for submitting claims of heirship and the circuit court failed to follow required procedures for settling probate claims by compromise. For the reasons discussed below, we conclude that the notice given in this case was defective, but that Glikas still must establish that he is in fact a potential heir before having standing to challenge the distribution order. We therefore remand with directions that the circuit court provide Glikas with an opportunity to present his evidence of heirship.

BACKGROUND

¶2 Becker died on December 14, 2000, with an estate worth almost eighteen million dollars. Becker's will, which had been executed in 1963, named his mother as his sole heir. However, because Becker's mother predeceased him, the estate was scheduled for distribution according to Wisconsin's intestate succession scheme.

¶3 On April 19, 2001, the probate court appointed a guardian ad litem to represent all unknown heirs of the decedent. A genealogical chart prepared on behalf of some of the known claimants indicated that Becker's mother, Sophia,

who had immigrated to the United States in the late 1800s, had some siblings who had at one time lived in Lithuania and Latvia, but whose issue were unknown.

¶4 On October 30, 2003, the court ordered the guardian ad litem to publish notice of the administration of the estate in newspapers likely to give notice to any unknown heirs by December 5, 2003. On December 1, 2003, the court ordered publication of additional notice, that written claims of heirship with supporting documentation were to be filed by December 19, 2003, in a number of international newspapers, including some in Latvia and Lithuania. The notice specifically mentioned any unknown siblings of Sophia Glickman Becker or their issue. An amended order set the deadline for filing heirship claims to January 2, 2004, and newspaper notices were amended accordingly. The notice of the deadline for submitting claims of heirship was published in the Lithuanian papers for three consecutive weeks between December 16 and December 30, 2003.

¶5 On January 12, 2004, ten days after the court-imposed deadline, Glikas sent a written claim of heirship with copies of his passport, his father's passport, and his father's birth certificate. The packet was received by the court on February 2, 2004. Glikas explained that his receipt of the Lithuanian paper had been delayed because he had moved to Germany. The guardian ad litem wrote to Glikas on February 4, and asked him to submit additional information by February 16, 2004.

¶6 Meanwhile, the circuit court considered Glikas's claim at a hearing held on February 17, 2004, after the other potential heirs in the case had already mediated an agreement. The attorney for the estate informed the court that an expert consultant had advised him there was a chance that Glikas's claim could be valid, but that the estate was still waiting for Glikas to respond to the guardian ad

litem's request for additional information. The attorney for the estate further stated that he believed Glikas had filed his claim within a reasonable time after the actual publication of notice in the foreign newspapers. The guardian ad litem asked that the court wait until March 15, 2004, to allow Glikas to file his proofs. The court, however, concluded that Glikas had failed to show excusable neglect for missing the January 2, 2004 heirship claim deadline, and therefore denied Glikas's claim at the February 17, 2004 hearing as untimely filed, without waiting for any additional response from Glikas.

¶7 The court went on to set another hearing date of March 23, 2004, for final proof of heirship, and concluded that there was no need to republish notice with that date because it would be an adjournment of the already noticed hearing and all the interested parties were present or represented at the February 17, 2004 hearing. On March 1, 2004, prior to the scheduled hearing, the court entered an order of heirship and distribution for the Becker estate based on the mediated agreement of the other claimants.

¶8 On the scheduled hearing date of March 23, 2004, a "Proof of Heirship" form based on the court's order of March 1 was signed by the personal representative and filed. Attorney Andrew Erlandson appeared at this hearing to inform the court that his office was "on the precipice of representing" Glikas. The court, however, raised a sua sponte concern regarding a possible conflict of interest that could be triggered if Erlandson's firm undertook representation of Glikas. Consequently, Erlandson did not enter a formal appearance or make any arguments on Glikas's behalf at the March 23, 2004 hearing.

¶9 On April 15, 2004, Glikas filed the present appeal challenging the order entered by the court on March 1, 2004, distributing Becker's estate.

DISCUSSION

¶10 The primary issue on appeal is whether the March 1, 2004 order is void as to Glikas, for lack of personal jurisdiction, because Glikas did not receive proper legal notice of the probate proceedings. As a threshold matter, the Respondents¹ contend that Glikas has waived any right to challenge the sufficiency of the notice he received by failing to first raise the issue in the circuit court. The application of the waiver doctrine in these circumstances is more complex than the Respondents suggest, due in part to the general rule that a void judgment cannot be validated by waiver. *See Holman v. Family Health Plan*, 227 Wis. 2d 478, 480-81, 484-87, 596 N.W.2d 358 (1999) (concluding that a default judgment based on a superceded complaint was void when the amended complaint had not been served on the defaulting party). In any event, because waiver is a doctrine of judicial administration, we retain the authority to address an issue on appeal even if it has not been properly preserved. *See Wirth v. Ehly*, 93 Wis. 2d 433, 444, 287 N.W.2d 140 (1980). We choose to address the notice issue here.

¶11 An order or judgment in a probate proceeding is void and ineffective as to any party in interest who lacked legal notice of the proceeding. *Bank of Sturgeon Bay v. White*, 92 Wis. 2d 354, 362, 284 N.W.2d 908 (1979). This rule has two components: first, that the person raising the challenge was a party in interest, and, second, that the notice was legally deficient. *See id.*

¹ The estate and the other claimants have filed separate responsive briefs, raising some overlapping issues and some distinct issues. Because their positions are substantially aligned, we will refer to them collectively as the Respondents.

¶12 Addressing the second part of the rule first, WIS. STAT. § 863.23 (2003-04)² provides that the heirs of a decedent are to be determined by the court after a hearing of which notice has been given according to WIS. STAT. §§ 879.03 and 879.05(4). Section 879.05(4) deals with publication by newspaper, and is sufficient to obtain jurisdiction over unknown heirs or heirs for whom no address is known if the manner of giving notice is not directed by law. *See Bank of Sturgeon Bay*, 92 Wis. 2d at 363. However, the manner of giving notice to a person in a foreign country whose address is unknown is directed by § 879.03(3), which provides:

(3) DOMICILIARY OF A FOREIGN COUNTRY. If the petition for administration shows, *or if it appears, that any person interested* is a domiciliary of a foreign country and the address of the person is unknown, the court shall cause the notice of hearing of the petition or of any subsequent proceeding that may then be pending to be given the consul, vice consul or consular agent of the foreign country by mailing a copy of the notice in a sealed envelope, postage prepaid, addressed to the consul, vice consul or consular agent at his or her post-office address, at least 20 days before the hearing. If it is shown to the court that there is no consul, vice consul or consular agent of the foreign country, the court may direct that the notice be so mailed to the attorney general.

(Emphasis added.)

¶13 The Respondents contend that Glikas was not entitled to notice under WIS. STAT. § 879.03(3) because the circuit court was unaware of his existence. They argue that the statutory language, “it appears, that any person interested is a domiciliary of a foreign country and the address of the person is

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

unknown,” presumes that at least the identity of the claimant is known. We disagree. When searching for lost heirs, “any person interested” may include the unknown issue of a known relative. In this case, genealogical charts made it “appear” that there could be “interested parties”—namely descendants of siblings of Sophia Glickman Becker or their issue—living in Latvia or Lithuania. Therefore, § 879.03(3) is applicable, and its provision for notice to the consulates of those countries³ at least twenty days prior to the hearing should have been followed.

¶14 Although we conclude that the legal notice given in this case was defective, the distribution order entered by the court is void only if Glikas was actually a party in interest. *See Bank of Sturgeon Bay*, 92 Wis. 2d at 362. Because the court never addressed Glikas’s claim of heirship on its merits, it has yet to be determined whether Glikas is in fact a party in interest in this matter. *Cf. id.* at 360 (noting that trial court had held hearing to take proofs of heirship in conjunction with motion to set aside probate proceedings as void, and had determined that petitioners were in fact heirs at law of the decedent). We therefore remand this case with directions that the circuit court provide Glikas with a reasonable opportunity to establish what, if any, relationship he had to the deceased. If the circuit court determines that Glikas is a legitimate heir of Becker, then the court must set aside the probate order distributing the estate to the other claimants as void for lack of personal jurisdiction over Glikas.

³ Contrary to the Respondents’ assertions, Glikas is not claiming that the German consulate needed to be notified.

¶15 Because we conclude that legal notice of the time to submit claims of heirship was not given to the consulates of countries where it appeared there might be heirs twenty days in advance of the hearing, we need not decide whether the fact that Glikas had moved to Germany would have constituted excusable neglect for his failure to file his claim by the date specified in the notice published in the Lithuanian paper. Nor do we need to address the parties' dispute over whether the proper procedures were followed regarding the adoption of the compromise settlement. If Glikas is not an actual relative of Becker, and thus not a party in interest in the probate proceedings, he has no standing to challenge the compromise settlement reached by the other claimants. If Glikas is a party in interest, the deficient legal notice renders the court's order void for lack of personal jurisdiction, regardless whether the compromise settlement procedure was otherwise valid.

¶16 Finally, because Glikas has substantially prevailed upon the notice issue, we do not deem the appeal frivolous and therefore deny the Respondents' motion for costs and attorneys' fees.

By the Court.—Cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

