IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
October 19, 2022 Session

IN RE CONSERVATORSHIP OF ANNETTE H. CROSS

Appeal from the Probate Court for Shelby County
No. C-2645 Karen D. Webster, Judge

No. W2021-00835-COA-R3-CV

In a previous appeal, this Court affirmed the probate court's order granting summary judgment to the defendants on two separate grounds – res judicata and the statute of limitations. On remand, the appellant filed a Rule 60 motion seeking to set aside the same order granting summary judgment to the defendants on the basis that a recent order from a circuit court necessitated that the probate court's summary judgment order be "voided and set aside." The probate court denied the motion. The appellant appeals. We affirm and remand.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed and Remanded

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KENNY W. ARMSTRONG, JJ., joined.

André C. Wharton, Memphis, Tennessee, for the appellant, Estate of Barbara Pinson.

Allan J. Wade and Brandy S. Parrish, Memphis, Tennessee, for the appellee, Teresa Gibbs.

Richard S. Townley and James A. Crislip, Jr., Memphis, Tennessee, for the appellee, Cleveland Gibbs.

MEMORANDUM OPINION[1]

[1] Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall

I. FACTS & PROCEDURAL HISTORY

This appeal arises from a long-running family dispute involving three sisters, two of whom are now deceased. The technical record for the case at bar spans over twenty years, beginning in the year 2000. The record consists of twenty volumes. This is the third appeal to this Court. During the first appeal in 2009, we noted the trial court's observation that there was a "long history of contentiousness involving the Conservatorship of Annette H. Cross[.]" *In re Conservatorship of Cross*, No. W2008-02122-COA-R3-CV, 2009 WL 3230911, at *5 (Tenn. Ct. App. Oct. 8, 2009). That observation is even more true today. We will attempt to condense the relevant facts and procedural history as pertinent to the issues on appeal. Bear with us.

The three sisters at issue were Annette Cross, Teresa Gibbs, and Barbara Pinson.[2] When their mother died in 1998, her will left her real property to a trust. The will appointed Teresa to serve as trustee of the trust. The purpose of the trust was to provide supplemental care for Annette, who was disabled, but the trust was to be operated "at the full discretion of the Trustee." Upon the death of Annette, the trust would terminate, and the remaining principal of the trust would be distributed one-third to Teresa; one-third to Barbara; and one-third to any children of Annette.

A conservatorship was established for Annette, beginning this litigation, in 2000. In 2001, Teresa (already trustee of the trust) was appointed as conservator of the person for Annette, and another individual was appointed as the conservator of her estate. In 2005, Teresa, acting as trustee of the trust, conveyed the real property that was owned by the trust to her son, Cleveland Gibbs, for a stated consideration of $78,000. On May 22, 2009, Cleveland initiated a second lawsuit by filing a detainer warrant in general sessions court, seeking possession of the real property that had been conveyed to him and seeking to remove the third sister, Barbara, along with her daughter, from the property.

Shortly thereafter, on August 17, 2009, the conservator for the estate of Annette filed a petition in the case at bar (the conservatorship proceeding), seeking to set aside the deed to Cleveland and remove Teresa as trustee. The petition alleged that Teresa had conveyed the property in 2005 as trustee without informing the conservator of the estate, for a price much less than its previously appraised value. On August 28, 2009, Barbara and her daughter filed a motion in the general sessions detainer action, through counsel, seeking to remove that case from general sessions court to probate court, noting that the conservator of the estate for Annette had filed a petition to set aside the deed to the subject

---

be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

[2] Because some individuals share the same last name, we will refer to the family members by their first names. We intend no disrespect.

property in probate court. Thus, Barbara and her daughter argued that "ownership of the subject property is contested" and sought removal to probate court. However, the general sessions court denied the motion for removal. The general sessions court ultimately entered a judgment in favor of Cleveland for possession of the property. The general sessions judgment was then appealed to circuit court. On June 4, 2010, the circuit court entered a final judgment in favor of Cleveland and against Barbara and her daughter for possession of the property as well as damages in the sum of $38,815.81.

In yet another proceeding, on December 15, 2010, the probate court appointed a conservator for Barbara upon finding that she was a "partially disabled adult." The order appointing the conservator for Barbara stated that she was a residuary beneficiary of a trust established by her mother and that the trustee, Teresa, had conveyed the trust property to her son in 2005. The order appointed a conservator of the estate, Ruby R. Wharton, and authorized her to "take appropriate action as to the conveyance of the property" as she deemed necessary.

On April 29, 2011, the newly appointed conservator for the estate of Barbara filed a motion to intervene in this case (the conservatorship proceeding for Annette), in which the petition had been filed seeking to set aside the deed. The probate court granted the petition to intervene in October 2011. The conservator for the estate of Barbara then filed a separate petition, in January 2012, seeking to set aside the 2005 deed and compel a trust accounting. The petition alleged that Teresa had sold the trust property to her son in a "bargain sale" in a "scheme to defraud the trust." The conservator for the estate of Barbara also filed a Rule 60 motion in circuit court, seeking to set aside the circuit court judgment against Barbara, but that motion went unresolved.

Annette died on February 12, 2012, leaving no children. Barbara died on October 13, 2012. It appears that this case was dormant for several years thereafter. In December 2017, Teresa filed a motion for summary judgment. She claimed that she sold the property to Cleveland in her "full authority and discretion" for a reasonable price in the best interest of the life beneficiary, Annette. Additionally, she argued that no proceeding was commenced to challenge the sale as a breach of trust within the one-year statute of limitations provided by Tennessee Code Annotated section 35-15-1005. Cleveland Gibbs filed a separate motion for summary judgment, incorporating by reference both the facts and the legal arguments made by Teresa regarding the statute of limitations. Alternatively, however, he argued that the current petition to set aside the deed was barred by res judicata because the issues alleged should have been raised in the previous detainer action involving the same parties and the same property. Thus, Cleveland argued that the present petition was barred both by the statute of limitations and by res judicata. Barbara's estate filed a response, maintaining that the 2005 conveyance was a fraudulent conveyance and invalid.[3]

[3] Ruby R. Wharton and George Pinson, II were appointed as administrators of the estate of Barbara Pinson. The original petition that was filed by the conservator for the estate of Annette apparently was not

On May 30, 2018, the probate court entered an order granting summary judgment to both defendants, Teresa and Cleveland. Initially, the court stated that Teresa "was the duly nominated and acting Trustee" of the trust and that she was given "full discretion" to handle trust property. The court stated that these undisputed facts negated an essential element of the petitioner's claim and supported a finding that Teresa "did not blatantly breach her fiduciary duty as Trustee" by selling the property to her son Cleveland. "Additionally," the court continued, it found no genuine issue of material fact with respect to whether the action was barred by the statute of limitations. The court found that the undisputed facts showed that Barbara, her attorneys, and her conservator all had actual notice of the 2005 conveyance to Cleveland in 2009 and 2010. Based on these undisputed facts, the court found that the petition to set aside the deed, filed in this action in 2012, was barred by the one-year statute of limitations found in Tennessee Code Annotated section 35-15-1005. As such, the trial court found that both respondents were entitled to summary judgment on the basis that the action was barred by the statute of limitations. Finally, the trial court further found that the current petition was barred by the doctrine of res judicata because the primary issue in this case involved the lawful ownership of the property, which was an issue that could have been addressed in the detainer action involving the same parties or their privies. The trial court granted summary judgment to both defendants on this basis as well. Barbara's estate was ordered to pay attorney fees under Tennessee Code Annotated section 35-15-1004(a).

Barbara's estate appealed to this Court. On October 9, 2020, this Court issued an opinion affirming the trial court on all issues. *See In re Conservatorship of Cross*, No. W2018-01179-COA-R3-CV, 2020 WL 6018759 (Tenn. Ct. App. Oct. 9, 2020). Regarding the statute of limitations, we concluded that Barbara had sufficient information regarding her potential claim, or to know that additional inquiry was necessary, at the earliest in November 2005 when Teresa sold the property to Cleveland, or at least by May 2009 when Cleveland filed the detainer action against Barbara, or at the latest when Barbara's legal counsel filed a motion to remove the matter to probate court in August 2009. *Id.* at *7. Therefore, we explained, the 2012 petition filed in this action came too late. *Id.* We also affirmed the finding of res judicata, concluding that Barbara "could have raised the defense of fraudulent conveyance in the general sessions court and on appeal to the circuit court but failed to do so." *Id.* at *10. We also affirmed the award of attorney fees. *Id.* at *14.

One month after this Court's decision, the circuit court entered an order, on November 20, 2020, resolving the long-outstanding Rule 60 motion that had been filed by Barbara's conservator of her estate years earlier. The circuit court order described the "long and tortured history" of the litigation between these parties in the detainer action and also in probate court, which bears repeating. The order stated that Cleveland filed the detainer action against Barbara and her daughter in general sessions court in 2009 and that

pursued after her death.

Barbara and her daughter were represented by an attorney in that action. The order noted that the attorney filed a motion to remove the case to probate court on the basis that "title was being challenged" in probate court, but the general sessions court denied the motion for removal. The order stated that the general sessions court entered a judgment for possession in favor of Cleveland and against Barbara and her daughter on August 28, 2009. The order also stated that a notice of appeal was filed to circuit court, listing both Barbara and her daughter as the appellants. The order stated that the circuit court entered judgment against both defendants on June 4, 2010, in the sum of $38,815. The order also noted that a Rule 60 motion had been filed on behalf of Barbara thereafter, referencing the fact that Barbara had been declared disabled and the fact that there was an ongoing dispute regarding the property in probate court. However, according to the order, the Rule 60 motion "was never set to be heard or otherwise prosecuted" until Cleveland filed a motion to renew his judgment and set it for a hearing in June 2020. The order stated that the circuit court was unaware of the pending Rule 60 motion prior to the hearing on Cleveland's motion to renew his judgment, at which time the court requested that it be set for argument.

Upon reviewing the record, the circuit court concluded that *its* judgment was void as to Barbara for a different reason than those alleged. The court discovered that the notice of appeal from general sessions court had only been signed by Barbara's daughter, not by Barbara herself. Because Barbara's daughter was not an attorney, the court explained, she could not represent Barbara to effectuate an appeal. Thus, the circuit court reasoned, the general sessions judgment for possession had become final as to Barbara when it was not appealed. Accordingly, the court set aside the *circuit court* judgment as to Barbara but clarified that "[t]he General Sessions Judgment as to Barbara Pinson remains in full force and effect."

On December 8, 2020, Barbara's estate filed an application for permission to appeal to the Tennessee Supreme Court, and the next day, her estate filed a motion to consider post-judgment facts regarding the recent circuit court order. On January 15, 2021, the Tennessee Supreme Court entered an order denying both the application for permission to appeal and the motion to consider post-judgment facts.

On January 25, 2021, the mandate issued from the Tennessee Supreme Court. That same day, the probate court, on remand, entered an order of reference to a special master for the Cross and Pinson matters.[4] Citing the long duration of the litigation as well as "the unwillingness of the Fiduciary to respond to this Court regarding the financial status of these cases," the probate court appointed a special master to determine if there was any justification for the matters to remain open, to decide what must be done to bring closure, and to determine whether the best interest of the ward and estate had been served.

[4] The order listed three docket numbers, including this case, Barbara's conservatorship proceeding, and Barbara's estate.

On February 24, 2021, Barbara's estate filed a "Rule 60" motion in probate court seeking to set aside the May 30, 2018 order that granted summary judgment to Teresa and Cleveland on the basis of res judicata and the statute of limitations, which this Court had affirmed. Barbara's estate argued that the circuit court's recent order setting aside its judgment against Barbara had "implications" on the probate court's summary judgment order in this case. According to Barbara's estate, "any and all other judgments that flowed from this prior [circuit court] judgment, should be voided and set aside pursuant to Rule 60." Thus, Barbara's estate argued that the circuit court's order "renders all judgments flowing from the circuit court judgment to be void." The estate argued that the probate court's ruling regarding res judicata was "premised upon a now void circuit court ruling," and it argued that no court can "enforce" a void judgment. In addition, the estate argued that the general sessions court also lacked subject matter jurisdiction to hear the detainer action. Barbara's estate argued that the probate court was required by due process to afford it an opportunity to be heard, and it asked the court to consider the merits of the allegations against Teresa and exercise its "equitable powers to right a wrong." The estate cited "Rule 60.02(3-5)" in closing.[5]

The special master issued several reports, with one specifically addressing the Rule 60 motion.[6] The special master found the argument that the probate court's order must necessarily be voided was "at best, a forced interpretation of the [circuit court order] and a strained construction of its effect." The special master noted the explicit statement in the circuit court order that the general sessions judgment remained in full force and effect as to Barbara. The special master found that the Court of Appeals had already confirmed that Barbara's failure to challenge title at the general sessions court level was sufficient to support the award of summary judgment based on res judicata. The special master also concluded that, to the extent that Barbara's estate was not heard on the underlying merits of its claim, this was a result of its failure to timely file its claim within the statute of limitations. The special master also stated that the probate court had no power to overlook the legal dictates of the statute of limitations or the doctrine of res judicata or to disregard the mandate of the Court of Appeals. Accordingly, the special master recommended denying the Rule 60 motion. Barbara's estate filed objections to the special master's report.

---

[5] Those subsections provide:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: . . . (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment.

Tenn. R. Civ. P. 60.02.

[6] Neither party raises any issue regarding the role of the special master.

On June 8, 2021, the probate court held a hearing to address several pending matters, including the Rule 60 motion. On each of the pending motions, the trial judge allotted five minutes of oral argument for each party. At the conclusion of the hearing, the trial judge announced her oral ruling denying the Rule 60 motion and set a later hearing for a determination of the attorney fees to be awarded to Teresa. Teresa then filed a motion and fee affidavit seeking an award of her attorney fees pursuant to Tennessee Code Annotated section 35-15-1004(a).[7]

On June 22, 2021, one day before the scheduling hearing on attorney fees, Barbara's estate filed an "Offer of Proof and Request for Full Hearing on Same." The "Offer of Proof" cited Tennessee Rule of Evidence 103(a)(2), which states:

> **(a) Effect of Erroneous Ruling**. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
> . . .
> (2) *Offer of Proof*. In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.
> Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

The Offer of Proof stated that this litigation had spanned several docket numbers over the course of a decade and implicated the fundamental right of due process. It stated that counsel for Barbara's estate had "attempted to effectively present these issues to the court" at the June 8 hearing on the Rule 60 motion and that "counsel hoped to expound on the various issues" for the court to consider. According to the Offer of Proof, the trial judge had previously informed counsel that she "[did] not foresee the need to hear witness testimony" but that she might have some questions for the fiduciaries, and so counsel had arranged for his clients to be present in the event the court wanted to ask questions.[8] It

---

[7] The referenced statute provides:

> In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Tenn. Code Ann. § 35-15-1004(a).

[8] Counsel attached an email sent by the trial judge to the attorneys one week before the hearing on the Rule 60 motion, which stated,

further stated that the trial judge had informed the attorneys before the hearing commenced that each would be afforded approximately five minutes to argue each motion. Although counsel conceded that he requested and was granted additional time for rebuttal argument, he argued that the time allowed was fundamentally insufficient to highlight "the serious injustices" presented in his Rule 60 motion and all of the caselaw submitted prior to the hearing. Counsel suggested that he was "prevented from effectively arguing and raising the pertinent points." He submitted the Offer of Proof and requested "a full hearing so that an adequate record can be developed." Specifically, counsel stated that co-administrators Ruby R. Wharton and George Pinson, II were present and prepared to testify and answer any questions the court had concerning the dockets, the need for this litigation, and why it remained necessary to bring unlawful actions to light. Counsel stated that "former fiduciaries" would be prepared to testify as well, and he suggested that Teresa and Cleveland should also be required to testify regarding the authority for their actions and the duties they owed in this case.

The second hearing, regarding attorney fees, was held as scheduled the next day, on June 23, 2021. Although the "Offer of Proof" had not been set for hearing that day, it was discussed at the outset by counsel and the trial judge. Barbara's estate conceded that its request for a full hearing had only been filed *after* the June 8 hearing on the Rule 60 motion and the trial court's oral ruling denying the motion. Counsel stated, "We determined that after the last hearing[.]" However, counsel suggested that a full hearing "may affect your June 8 initial ruling" and maintained that the estate was entitled to such a hearing. In response, Teresa's counsel argued that a request for a full hearing should have been made long ago, when the issue was before the special master, or at least before the June 8 hearing before the trial judge. He argued that it was improper for counsel to insist on a full hearing after the trial judge's oral ruling, at a hearing on attorney fees. Counsel for Cleveland likewise argued that a full hearing was not necessary because the trial judge had already ruled, and the issues raised in the Rule 60 motion were legal arguments regarding the effect of the circuit court order, so there was "nothing new" in the offer of proof that needed to be heard. Still, counsel for Barbara's estate insisted that he was prevented from developing "a full and thorough record."

> The Court is completing her review of the Cross/Pinson matters that are before the Court, particularly those pertaining to the referenced cases. While the Court does not foresee the need to hear witness testimony in these matters, the Court may have questions for the Fiduciaries appointed thereunder. ["Conservators act as the court's agent and are under the courts supervision." *In re Conservatorship of Clayton*, 914 S.W.2d 84, 90 (Tenn. Ct. App. 1995). The courts appointing conservators "retain continuing control over guardians and conservators because the persons who accept these appointments become 'quasi-officials' of the court appointing them." *Amsouth Bank v. Cunningham*, 253 S.W.3d 636, 642-43 (Tenn. Ct. App. 2006).]
>
> Because of the multiple issues scheduled, arguments on the various motions will be timed. It is the Court's hope to begin the hearing promptly on June 8, 2021 at 1:30 p.m. so that the hearing can be concluded timely. Should the Court run late that day, you will be afforded the full time scheduled.

The trial judge noted that the "Offer of Proof" was not framed by way of a motion so she could not technically "deny" it as such. She also noted that this was not a trial situation in which an "offer of proof," in its usual sense, was appropriate, so she did not find the cited Rule applicable. The judge reminded counsel that she had already denied the Rule 60 motion upon concluding that she did not "have authority to do anything beyond" what the appellate court had done on appeal. She interpreted counsel's Offer of Proof as a request to essentially "rehear" the matter after remand. However, she stated that the actual Rule 60 motion had only involved "legal issues" and that no one involved in the case could have assisted the court in making a determination on those legal issues. She said she did not accept any proof because there were no factual determinations to be made. She also stated that "[w]e had our time frame set for the hearing" and that the court had heard from the special master and allowed each party time to respond. She explained that she limited the oral arguments because they "can go on and on and on," resulting in the parties' attorney fees having "skyrocketed, as may have been done in the past." The trial judge stated that she was very familiar with this case and that was why she set those limitations, which she determined to be reasonable.

Next, the arguments turned to attorney fees. On the date of the hearing, Barbara's estate had filed a response to the motion for attorney fees, arguing, among other things, that Teresa had not submitted any proof "concerning the current value of the estate" and whether the estate "has the necessary financial assets to cover another fee to counsel for [Teresa]." During the hearing, counsel for Teresa stated that according to the last accounting filed under the docket number for the estate, there was $345,000 left in Barbara's estate. The trial judge then asked counsel for Barbara's estate if he could give her the amount in the estate. He replied, "Judge, no, I cannot. I don't have the amount, Your Honor, in front of me." He also said, "I don't think that's my burden to provide it." The trial judge asked Teresa's counsel to repeat the information stated in the last accounting, and the judge stated that she specifically recalled the accounting from the end of the last year reflecting a sum exceeding $300,000. She did not recall approving any other expenditures to be paid out of it since that date. The trial judge went on to discuss the relevant factors regarding awards of attorney fees and ultimately announced her ruling that the sum of approximately $15,000 sought by Teresa's counsel was reasonable.

On June 29, 2021, the trial court entered its written order denying the Rule 60 motion and awarding attorney fees. After describing in detail the relevant procedural history of the case, the trial court quoted the mandate from the appellate court, which stated that the matter was remanded "for further proceedings and final determination therein," proceeding "with the execution of this Judgment of our said Court of Appeals by such further proceedings in our Court as shall effectuate the objects of this order to remand[.]" Thus, the court stated that on remand, in order to comply with the mandate, it was required to only entertain further proceedings that were consistent with effectuating the grant of summary judgment. The trial court concluded that it had no authority to set aside or modify

any issue regarding the 2018 summary judgment order on which the Court of Appeals had already rendered an opinion. As such, the order stated that the Rule 60 motion was "at a minimum baseless, but more accurately stated, the present Motion is unknown to the law."

As for the "Offer of Proof," the order stated that it was denied on the basis that it was inapplicable and inappropriate in the context of the present motion. The court explained that the Rule 60 motion did not involve a trial or the presentation of evidence that would give rise to objections. Finally, the court stated that it had analyzed the relevant factors related to awards of attorney fees and determined that the fees requested were reasonable. Therefore, the court awarded Teresa $15,295 in attorney fees. Barbara's estate filed a notice of appeal to this Court.

II. ISSUES PRESENTED

Barbara's estate presents the following issues, which we have slightly reworded, for review on appeal:

1. Whether the trial court erred by finding its previous judgment remained valid and denying Appellant's Rule 60.02 motion despite the circuit court's subsequent order determining its judgment against Barbara Pinson was void;
2. Whether the trial court erred by failing to exercise its equitable powers to grant Appellant's Rule 60.02 motion when the plainly unconscionable, illegal, and unethical acts by Teresa warrant an equitable resolution to this matter;
3. Whether the trial court erred by limiting Appellant and failing to allow and conduct a full evidentiary hearing on the matters before the court, including those issues addressed by the special master; and
4. Whether the trial court erred in granting attorney fees, rendering another award under the unique circumstances of this case.

In her posture as appellee, Teresa presents the following additional issue for review on appeal:

1. Whether Teresa should be awarded attorney fees pursuant to the frivolous appeal statute, Tennessee Code Annotated section 27-1-122.

For the following reasons, we affirm the decision of the probate court and remand for further proceedings.

III. DISCUSSION

A. Relief Due to the Circuit Court Order

The first issue raised by Barbara's estate is whether the trial court erred by denying

the Rule 60 motion and declining to set aside its summary judgment order despite the circuit court's order determining that its judgment against Barbara Pinson was void. In response, Teresa argues that the circuit court's recent order is ultimately irrelevant because the probate court's summary judgment order additionally awarded summary judgment on the basis of the statute of limitations. Teresa points out that this Court affirmed the trial court's summary judgment ruling on both grounds – res judicata and the statute of limitations. She notes that Cleveland adopted and incorporated her arguments regarding the statute of limitations in his motion for summary judgment, although he further argued that the claim was barred by res judicata. Teresa argues that the probate court's additional ruling regarding res judicata was "superfluous and unnecessary in light of the court's ruling on the statute of limitations." Thus, she argues that the award of summary judgment based on the statute of limitations "resolved all requests for relief against her and Cleveland Gibbs." She also argues that "[t]he statute of limitations issue is unrelated to the circuit court action or the Circuit Court order." As such, she contends that the trial court properly denied the motion to set aside the summary judgment order.

We agree with Teresa on this issue. The probate court's May 2018 summary judgment order clearly found that both Teresa and Cleveland were entitled to summary judgment on the basis that the action was barred by the statute of limitations. The order stated, "Respondents, Teresa Gibbs and by way of adoption Cleveland Gibbs, assert that Summary Judgment is appropriate in this case, because the relative Statute of Limitations is a bar to the Petitioner's Claim." The court concluded its analysis of the issue by stating that "there are no genuine issues of material fact for trial and Respondents are entitled to Summary Judgment as a matter of law on the issue of this action being barred by the applicable statute of limitations." Despite all of the arguments in the Rule 60 motion regarding the impact of the circuit court's order on the ruling regarding res judicata, Barbara's estate does not offer any reason to suggest that the circuit court order would impact the trial court's alternative ruling on the basis of the statute of limitations. In the previous appeal, this Court affirmed the trial court's ruling on that basis, concluding that Barbara had sufficient information regarding her potential claim at the earliest in November 2005 when Teresa sold the property to Cleveland, or at least by May 2009 when Cleveland filed the detainer action, or at the latest when her legal counsel filed a motion to remove the matter to probate court in August 2009. *In re Conservatorship of Cross*, 2020 WL 6018759, at *7. As such, her 2012 petition was time-barred. *Id.* The circuit court order voiding its judgment has no impact on the probate court's alternative ruling regarding the statute of limitations, and the probate court's summary judgment order on the basis of the statute of limitations would remain valid in any event.

Nonetheless, to the extent that Barbara's estate argues that the summary judgment order should be set aside as partially void, at least with respect to the ruling on res judicata, we will address the issue. The estate's reasoning is somewhat difficult to discern, but according to its brief on appeal, its Rule 60 motion sought to set aside the probate court's order based on "lack of subject matter jurisdiction." It describes the Rule 60 motion as

"requesting that the probate court declare its original judgment null and void due to lack of subject matter jurisdiction and because the general sessions court also lacked the requisite subject matter jurisdiction." It argues that the circuit court order "rendered the trial court's prior summary judgment ruling null and void or of no binding legal consequence." The estate argues, "A voided judgment is grounds for granting a Rule 60.02 Motion. *See generally* Rule 60.02(3&4) of the Tennessee Rules of Civil Procedure."

According to the Tennessee Supreme Court, "a judgment of a court of general jurisdiction is presumed to be valid and will be held void only when 'its invalidity is disclosed by the face of that judgment, or in the record of the case in which that judgment was rendered.'" *Turner v. Turner*, 473 S.W.3d 257, 270 (Tenn. 2015) (quoting *Giles v. State ex rel. Giles*, 191 Tenn. 538, 235 S.W.2d 24, 28 (1950)).

> A [judgment] is absolutely void if it appears on the face of the record itself either that the Court had no general jurisdiction of the subject matter, or that the [judgment] is wholly outside of the pleadings, and no consent thereto appears. A [judgment] is void as to any person shown by the record itself not to have been before the Court in person, or by representation. A [judgment] not prima facie void is valid and binding. . . .
>
> All [judgments] not thus appearing on their face to be void are absolutely proof against collateral attack, and no parol proof is admissible on such an attack to show any defect in the proceedings, or in the [judgment].

Id. at 270-71 (quoting *Gentry v. Gentry*, 924 S.W.2d 678, 680 (Tenn. 1996)). Applying these principles, the probate court's ruling regarding res judicata remained valid despite the circuit court's recent order, and it was not rendered void. The circuit court order simply did not impact the subject matter jurisdiction of the probate court, as the estate suggests.

Barbara's estate further argues that the circuit court's recent order changes the "entire analysis" regarding res judicata. It insists that "[n]either the trial court nor this court can enforce a judgment which is void." We are not persuaded by this argument either. We note that "[a] judgment rendered without jurisdiction of the subject matter is a nullity and cannot operate as res judicata." *State of Tenn. Dep't of Hum. Servs. v. Gouvitsa*, 735 S.W.2d 452, 457 (Tenn. Ct. App. 1987). However, when the circuit court set aside *its* judgment against Barbara because she did not sign the notice of appeal to circuit court, it specifically stated that "[t]he General Sessions Judgment as to Barbara Pinson remains in full force and effect."[9] Furthermore, when this Court affirmed the probate court's ruling

[9] Barbara's estate argues that "because the judgment against [her] in Circuit Court was declared void, the judgment in General Sessions likewise should not stand and must be voided." It argues that the general sessions court "did not have the authority or jurisdiction to act in this matter." As support for this argument, the estate argues that Barbara "did not come into possession of the property at issue in a landlord/tenant relationship," and therefore, "her interest in the property could not have been extinguished by a detainer action in general sessions court." Barbara's estate never raised this argument in the trial court, however,

on res judicata in the previous appeal, we stated that Barbara "could have raised the defense of fraudulent conveyance *in the general sessions court* and on appeal to the circuit court but failed to do so." *In re Conservatorship of Cross*, 2020 WL 6018759, at *10 (emphasis added).

The estate suggests that this Court should revisit its prior decision on whether the underlying issue could have been heard in general sessions court. However, "when an initial appeal results in a remand to the trial court, the decision of the appellate court establishes the law of the case which generally must be followed upon remand by the trial court, and by an appellate court if a second appeal is taken from the judgment of the trial court entered after remand." *Memphis Publ'g Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998). Thus, "under the law of the case doctrine, an appellate court's decision on an issue of law is binding in later trials and appeals of the same case if the facts on the second trial or appeal are substantially the same as the facts in the first trial or appeal." *Id*. Simply put, "a court will generally refuse to reconsider an issue that has already been decided by the same court in the same case." *In re Neveah W.*, 525 S.W.3d 223, 236 (Tenn. Ct. App. 2017). The law of the case doctrine "'is not a constitutional mandate nor a limitation on the power of a court' but 'is a longstanding discretionary rule of judicial practice which is based on the common sense recognition that issues previously litigated and decided by a court of competent jurisdiction ordinarily need not be revisited.'" *State v. Willis*, 496 S.W.3d 653, 743 (Tenn. 2016) (quoting *Memphis Publ'g Co.*, 975 S.W.2d at 306).

There are limited circumstances when redetermination of a previously decided issue may be justified, *see id*., but having reviewed the exceptions, we deem them inapplicable here. There was no change in controlling law, the evidence now before the court is not substantially different, and this Court's previous decision was not clearly erroneous. *See id.* As such, we decline to reconsider the issues already decided by this Court in the previous appeal.

"A judgment is not void because a party is dissatisfied with the result" or "claims it is unjust." *Hussey v. Woods*, 538 S.W.3d 476, 485 (Tenn. 2017). Having rejected each of the arguments raised by Barbara's estate regarding the merits of the Rule 60 motion in relation to the impact of the circuit court order, we affirm the trial court's denial of relief

---

and in fact, it made contrary representations in the court below. In its supplemental response to the motion for summary judgment on the issue of res judicata, when arguing about whether both cases involved the same parties, Barbara's estate argued that "at the time of the FED action, Ms. Barbara Pinson's interest in litigation was that of a ***tenant*** who was being removed from her residence." (emphasis in original). This was not an isolated reference. The motion subsequently referred to Barbara again as "a tenant included in the previous FED action" and referenced "the interest in litigation of Barbara Pinson as a tenant." Thus, her argument on appeal is not supported by the record. In any event, however, the detainer warrant stated that a complaint had been made "of a certain forcible entry and detainer, *or* an unlawful detainer" by the defendants. (emphasis added).

on this issue.[10]

B. Relief on Remand Based on Equity

The second issue raised by Barbara's estate is whether the trial court erred by failing to exercise its "equitable powers" to grant it relief on remand because the unethical acts of Teresa warranted an equitable resolution to this matter. The estate argues that a court of equity cannot be used to aid a party in profiting from his or her own misconduct. Thus, the estate contends that the trial court should have considered the underlying facts of this case after remand and found fraud or unclean hands or imposed a constructive trust using its equitable powers.

Again, Barbara's estate overlooks the fact that this Court has already held that the claims it asserted against Teresa and Cleveland are barred by the statute of limitations and res judicata. *See In re Conservatorship of Cross*, 2020 WL 6018759, at *14. The decision of this Court established the law of the case, which must be followed after remand to the trial court. *Memphis Publ'g Co.*, 975 S.W.2d at 306. Barbara's estate could not bypass these rulings by appealing to the "equitable powers" of the probate court. This Court encountered a similar situation, procedurally speaking, in *Grant v. Anderson*, No. M2019-01099-COA-R3-CV, 2020 WL 2850039, at *2 (Tenn. Ct. App. June 2, 2020), in which this Court affirmed a trial court's order, and after issuance of the mandate, the appellant, undeterred, filed a Rule 60 motion seeking relief in the trial court. On appeal from the denial of the motion, we explained that this Court's "judgment and opinion were binding on both the trial court and the plaintiffs" pursuant to the law of the case doctrine, and "[t]he trial court had no authority to revise or modify our prior opinion." *Id.* at *2. We affirmed the denial of the Rule 60 motion and deemed the appeal frivolous. *Id.* at *3.

---

[10] In the trial court, Teresa argued that a Rule 60 motion was not appropriate so long as the trial court had "not yet fully and completely executed the mandate of the appellate courts." However, neither party raised an issue on appeal regarding whether the motion to set aside the summary judgment order was properly filed as and construed as a Rule 60 motion. Either way, we review the issue regarding whether the circuit court order rendered the probate court's summary judgment order void de novo. *See Turner*, 473 S.W.3d at 269 (stating that appellate courts "apply de novo review, with no presumption of correctness, when reviewing a trial court's ruling on a Tennessee Rule 60.02(3) motion to set aside a judgment as void"). Likewise, whether subject matter jurisdiction exists is an issue of law. *Id.* at 268.

Barbara's estate does not develop any separate argument based on Rule 60.02(4). This Court has stated that "Tennessee cases interpreting Rule 60.02(4) are few." *White v. Gault*, No. M2000-00534-COA-R3-CV, 2001 WL 950042, at *2 (Tenn. Ct. App. Aug. 21, 2001). As subsection (4) provides for relief from a judgment when "a prior judgment upon which it is based has been reversed or otherwise vacated," Tenn. R. Civ. P. 60.02(4), we have recognized that it is applicable to "'situations where the present judgment is based on the prior judgment in the sense of res judicata or collateral estoppel.'" *White*, 2001 WL 950042, at *3 (quoting *Continental Cheshire Assocs. v. AGS Cheshire Assocs.*, 1986 WL 14444 (Tenn. Ct. App. Dec. 22, 1986)). To the extent that subsection (4) was minimally asserted in this case, the trial court did not abuse its discretion in denying the motion considering that the general sessions judgment remained valid.

To the extent that the estate's motion can be construed as one filed pursuant to Tennessee Rule of Civil Procedure 60.02(5), we further note the following explanation by the Tennessee Supreme Court:

> Rule 60.02(5) functions as a catch-all to provide equitable relief when relief is not available under the other subsections. *Duncan v. Duncan*, 789 S.W.2d 557, 564 (Tenn. Ct. App. 1990). Its language is open-ended but subject to a narrow interpretation. *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94, 97 (Tenn. 1993). The rule "affords relief in the most extreme, unique, exceptional, or extraordinary cases and generally applies only to circumstances other than those contemplated in sections (1) through (4) of Rule 60.02." *Furlough* [*v. Spherion Atl. Workforce, LLC*, 397 S.W.3d 114, 128 (Tenn. 2013)] (quoting *Holiday v. Shoney's South, Inc.*, 42 S.W.3d 90, 94 (Tenn. Ct. App. 2000)) (internal quotation marks omitted). Reasons justifying relief are found only "in cases of overwhelming importance or in cases involving extraordinary circumstances or extreme hardship." *Federated Ins. Co. v. Lethcoe*, 18 S.W.3d 621, 624 (Tenn. 2000) (citing *Underwood*, 854 S.W.2d at 97).
>
> The standards of Rule 60.02(5) are more demanding than those applicable to the other grounds for Rule 60.02 relief. *In re Joeda J.*, 300 S.W.3d 710, 716 (Tenn. Ct. App. 2009) (quoting *Wilkerson v. PFC Global Grp., Inc*., No. E2003-00362-COA-R3-CV, 2003 WL 22415359, at *9 (Tenn. Ct. App. Oct. 23, 2003)). "The bar for obtaining relief is set very high," and the moving party bears a heavy burden. *DeLong v. Vanderbilt Univ*., 186 S.W.3d 506, 511 (Tenn. Ct. App. 2005) (citing *Johnson v. Johnson*, 37 S.W.3d 892, 895 n.2 (Tenn. 2001), *overruled by Howell v. Howell*, ––– U.S. ––––, 137 S.Ct. 1400, 197 L.Ed.2d 781 (2017)). A Rule 60.02(5) motion "is not to be used to relieve a party from 'free, calculated, and deliberate choices he has made;' a party remains under a duty to take legal steps to protect his own interests." *Banks v. Dement Constr. Co*., 817 S.W.2d 16, 19 (Tenn. 1991) (quoting *Cain* [*v. Macklin*, 663 S.W.2d 794, 796 (Tenn. 1984))].

Hussey, 538 S.W.3d at 485-86. However, a Rule 60.02 motion is "not for use by a party merely because he is dissatisfied with the results of the case." *In re Joeda J*., 300 S.W.3d 710, 715 (Tenn. Ct. App. 2009) (quoting *Wilkerson v. PFC Global Group, Inc*., No. E2003-00362-COA-R3-CV, 2003 WL 22415359, at *6 (Tenn. Ct. App. Oct. 23, 2003)). "We review the trial court's denial of a Rule 60.02(5) motion for an abuse of discretion." *Hussey*, 538 S.W.3d at 487.

The facts of this case do not rise to the level of exceptional circumstances warranting equitable relief under Rule 60.02(5). Therefore, the trial court did not abuse its discretion in denying the motion.

C. The Hearing on Remand

The next issue raised by Barbara's estate is whether the trial court erred by limiting oral argument and failing to allow a full evidentiary hearing on its Rule 60 motion. The estate concedes that it was able to file "its written position and argument." Still, the estate argues that the trial court deprived it of its due process right to a fair hearing because it did not allow counsel additional time for oral argument and did not receive evidence.

The record shows that the trial judge emailed the attorneys one week prior to the scheduled hearing and informed them that "the Court does not foresee the need to hear witness testimony in these matters," although she noted that she "may have questions for the Fiduciaries appointed thereunder." She also informed the parties that "[b]ecause of the multiple issues scheduled, arguments on the various motions will be timed." At the June 8 hearing, counsel for Barbara's estate did not object to the limitation on oral argument but requested additional rebuttal time, which was granted. We discern no denial of due process by the time limit on oral argument. *See Jerkins v. McKinney*, 533 S.W.2d 275, 279 (Tenn. 1976) ("Due process does not require that oral argument be permitted on a motion, and, except as otherwise provided by local rule, the court has discretion to determine whether it will decide the motion on the papers or hear argument by counsel. Oral argument is especially unnecessary when only questions of law are concerned.") (quotations omitted); *Simpkins v. John Maher Builders, Inc*., No. M2021-00487-COA-R3-CV, 2022 WL 1404357, at *24 (Tenn. Ct. App. May 4, 2022) ("Although the trial court eventually made a determination concerning Plaintiffs' motions based on the written submissions only, such action does not constitute a violation of due process."); *see also Hutter v. Bray*, No. E2001-02408-COA-R3-CV, 2002 WL 1190273, at *3 (Tenn. Ct. App. June 5, 2002) ("There is no requirement in the rules of civil procedure that oral arguments be permitted on motions. The trial court has the discretion whether it will hear arguments or decide the issues on the pleadings.").

We also find no reversible error regarding the lack of evidence at the hearing. We recognize that Barbara's estate cites *Gonzalez v. Gonzalez*, No. W2012-02564-COA-R3-CV, 2013 WL 4774139, at *8 (Tenn. Ct. App. Sept. 5, 2013), in which this Court stated that "the failure to allow a party to present proof to support his or her Rule 60.02 motion may be considered an abuse of discretion." In *Gonzalez*, however, this Court was "not confronted with the trial court's decision to **deny** Mother's request for Rule 60.02 relief, but rather with its decision to **dismiss** her Motion and refuse to allow a hearing," without considering the "proffered new evidence." *Id.* at *5. We concluded that "if the trial court's dismissal of Mother's Motion is construed as a *sua sponte* grant of a motion to dismiss for failure to state a claim upon which relief can be granted, then the trial court erred in summarily dismissing the Rule 60.02 Motion without any indication that the trial court considered either the sufficiency or the merits of Mother's Motion." *Id.* at *9. Accordingly, the case was remanded for the trial court to consider the sufficiency and

merits of the motion. *Id.* at *10. Likewise, in *Harper v. Harper*, No. E2002-01259-COA-R3-CV, 2003 WL 192151, at *4 (Tenn. Ct. App. Jan. 29, 2003), which the estate also cites, a party "never was given the opportunity to present proof" as to what happened that caused her to miss a trial date due to the trial court's "refusal to hear any proof" related to her Rule 60 motion. This Court remanded for the court to give her "an opportunity to explain the events," even if the motion was ultimately denied. *Id.* at *5.

Similar circumstances are not present here. In this case, Barbara's estate never sought to introduce any proof prior to or during the hearing on the Rule 60 motion. Even though the trial judge announced that she did not foresee the need to hear witness testimony at the upcoming hearing, Barbara's estate did not take any action to suggest that witness testimony was necessary in the week that followed. And, on the date of the hearing, the estate's attorney appeared and participated in oral argument but did not ask to present witness testimony. Accordingly, the trial judge announced her oral ruling at the conclusion of the hearing, reserving only the issue of attorney fees. It was not until two weeks later that counsel for Barbara's estate filed an "Offer of Proof and Request for Full Hearing." The trial judge denied the "Offer of Proof" in its written order, finding the request inappropriate and the cited Rule inapplicable. She noted during the hearing that the Rule 60 motion had only involved "legal issues" and that no one involved in the case could have assisted the court in making a determination on those legal issues. The judge said she did not accept any proof because there were no factual determinations to be made. She also noted that the Offer of Proof was filed only one day before the hearing on attorney fees. We discern no abuse of discretion or denial of due process under these circumstances. Because the estate did not seek to present any evidence until two weeks after the hearing and oral ruling on the motion, it cannot now complain that it was not afforded a fair hearing based on the lack of proof.

D. Attorney Fees

The estate's final issue concerns the award of attorney fees. However, its precise argument on appeal is somewhat difficult to follow. The estate frames the issue as: "Whether the trial court erred in granting attorney fees rendering another award of attorney fees under the unique circumstances of this case." The corresponding section of its brief begins by stating:

> If this Court finds [Teresa and Cleveland] violated the doctrine of unclean hands and their actions are so unconscionable to the Court that the trial court's award of additional attorney's fees in the amount of $15,363.00 at the time of the trial court's June 29, 2021 Order, then Appellant prays this Court vacate the trial court's award of attorney's fees to [Teresa and Cleveland] based on equity.

The estate concedes that the trial court applied the factors in the Rules of Professional

Conduct but suggests that the court erred "in failing to appropriately factor the equitable considerations" considering what the estate describes as "inequitable and illegal" conduct by Teresa and Cleveland. Again, the estate suggests that the court should have heard proof from "the fiduciaries." It argues that this Court should find that the trial court abused its discretion in awarding attorney fees, "given the egregious inequities in this case," and vacate the award on appeal. Thus, we do not interpret the estate's argument as a challenge to the reasonableness of the amount of the fee.

As we said in the previous appeal, "'[t]he determination of whether an award of attorney's fees is warranted under section 35-15-1004(a) lies within the sound discretion of the trial court." *In re Conservatorship of Cross*, 2020 WL 6018759, at *14 (citing *In re Estate of Goza*, 397 S.W.3d 564, 571 (Tenn. Ct. App. 2012)). During the previous appeal, Barbara's estate also argued that the trial court's award of attorney fees at that stage was inappropriate considering "justice and equity." *Id.* at *11. We rejected that argument with the following explanation:

> Having determined that this case involves the "administration of a trust" under section 35-15-1005(a), we also agree with the trial court that justice and equity permit an award of attorneys' fees and expenses for [Teresa] and Cleveland. The purpose of the Trust was to support [Annette] during her lifetime. [Teresa] undertook the burden of helping support [Annette] while [Barbara] lived on the Berryhill property for free. Additionally, [Barbara] prosecuted this case over several years despite the terms of the Trust giving [Teresa] the "absolute and unfettered discretion" to act as trustee, which included the authority to sell the property. Despite [Barbara] initiating the action, the case went dormant for several years, causing a significant delay for all of the parties involved. Further, the trial court found that the Estate of Barbara Pinson contains substantial funds. The court made this determination by taking judicial notice of the facts contained in its prior order, which were filed at the initial summary judgment stage. Taken together, the trial court did not abuse its discretion in finding justice and equity require awarding attorneys' fees to [Teresa] and Cleveland under section 35-15-1004(a).

Id. at *14. These same considerations hold true today, and Barbara's estate extended the litigation unnecessarily after remand. It steadfastly maintains that "equity" requires a different result in this case but has not met its burden of showing that the trial court abused its discretion in any manner.

The estate does complain about one specific aspect of the trial court's analysis. It argues that "the trial court did not hear any evidence on the current value of the estate" and instead relied on a recent accounting. However, we find this argument disingenuous. Teresa's counsel stated during the hearing that according to the last accounting filed, there

was $345,000 left in the estate. The trial judge then asked counsel for the estate to give her the amount in the estate, and counsel responded that he "[didn't] have the amount" and had no burden to produce it. Apparently somewhat frustrated by this answer, the trial judge stated that "the fiduciary and/or his or her attorney is answerable to the Court at all times regarding anything that's going on in any conservatorship or guardianship or anything with the estate." However, in the absence of current information, she stated that she recalled that the last accounting showed over $300,000 remaining in the estate and that she had not approved anything else to be paid out of it since that time. Thus, the estate had the opportunity to provide "current" information to the court at the hearing and simply failed to do so, even when it was requested by the trial judge. The estate is not entitled to relief on appeal with respect to this issue. *See* Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.").

E. Attorney Fees on Appeal

On appeal, Teresa seeks an award of attorney fees pursuant to Tennessee Code Annotated section 27-1-122, contending that this is a frivolous appeal.[11] She argues that Barbara's estate sought a reversal of the denial of its Rule 60 motion when it had no prospect of success. She also argues that she should not have to bear the expense of repetitive appeals that only seek to relitigate issues that have been fully adjudicated.

The decision to award attorney fees for a frivolous appeal "rests in the appellate court's sound discretion." *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017). "A frivolous appeal is one 'utterly devoid of merit.'" *Buckley v. Carlock*, 652 S.W.3d 432, 446 (Tenn. Ct. App. 2022) (quoting *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978)). We agree with Teresa that this appeal falls into that category. Barbara's estate has continued to assert that the 2018 summary judgment order was rendered void by the circuit court order, even though the summary judgment order provided an alternative basis for its ruling that was clearly unaffected by the circuit court order. In the previous appeal to this Court, we affirmed the trial court's ruling that the estate's claims were barred by the statute of limitations. That ruling would stand regardless of any challenge to the alternative finding regarding res judicata. This appeal had no reasonable chance of success. The trial court should determine a reasonable attorney fee on remand.

IV. CONCLUSION

[11] Barbara's estate also requests attorney fees within the argument section of its brief, but the issue is waived because it was not designated for review on appeal. *See Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) ("[A]n issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Tenn. R. App. P. 27(a)(4).").

For the aforementioned reasons, the decision of the probate court is affirmed and remanded. Costs of this appeal are taxed to the Estate of Barbara Pinson, for which execution may issue if necessary.

_____

CARMA DENNIS MCGEE, JUDGE