Cite as 2023 Ark. App. 253

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-20-496

WILLIAM GREG SPURLOCK APPELLANT V. ESTATE OF SHERRY LADD APPELLEE	Opinion Delivered May 3, 2023 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, EASTERN DISTRICT [NO. 16LPR-15-35] HONORABLE DAN RITCHEY, JUDGE AFFIRMED

RITA W. GRUBER, Judge

Appellant William Greg Spurlock appeals from a decision of the Craighead County Circuit Court distributing the estate of his mother, Sherry Ladd ("Sherry"). Mr. Spurlock raises three points on appeal: (1) the circuit court erred in denying Mr. Spurlock's motion to recuse; (2) the circuit court erred in finding that the inventories and accountings filed by the estate's administrator were substantially compliant with the probate code; and (3) the circuit court erred in finding that the estate's administrator had not breached his fiduciary duty. We affirm.

I. *Factual Background*

The Ladd family operated a soybean-farming operation in and around Lake City, Arkansas. It was owned and run by Sherry; her husband, James E. "Jim" Ladd; and their son, James M. "Mark" Ladd.

Sherry individually owned her family's historic farming land known as Black Oak and twenty acres in Monette, Arkansas (the "Monette 20"). Sherry and Jim owned several pieces of real property as tenants by the entirety. Sherry, Jim, and Mark owned several pieces of real property as tenants in common, including a property in Needham with grain bins. Jim was the sole owner of certain real property as well. Additionally, Sherry, Jim, and Mark each owned a one-third interest in Ladd Farms Partnership ("LFP"), which owned many large pieces of farming equipment as well as pickup trucks, an ATV, shop tools, and hand tools. Jim and Mark were members of Ladd Farms, Inc. ("LFI"), and J&J Trucking ("J&J"). LFI owned real property, a tractor-trailer, and some farming equipment. Sherry was not a member of LFI or J&J and had no interest in either. The farming operation was heavily in debt, and the joint and individual real and personal property of Sherry, Jim, Mark, LFP, LFI, and J&J was all cross-collateralized to secure loans held by Southern Bancorp that totaled approximately $2.2 million. Sherry performed all the business and banking functions for the farming operation. Before Sherry's death, LFP's secured debt was in the form of three loans: a 2015 crop loan, a farm-equipment loan, and a real estate loan. Sherry, Jim, and Mark all executed personal guarantees on the secured debt, and Southern Bancorp was the beneficiary on a life insurance policy on Sherry. In addition to the secured debt, LFP, LFI, and Jim also had unsecured debt for chemicals and other farming necessities in excess of $150,000.

On August 2, 2015, Sherry suddenly died intestate. Her heirs are Jim, Mark, and Mr. Spurlock, who lives in Florida and is Sherry's son from a previous marriage. Sherry's death came just before the soybeans were to be harvested, and Jim took out a $100,105 line of

credit on August 20, 2015, in the name of LFP to assist with the harvest. This was before an estate was even opened, and Jim did not seek court approval before taking this loan. There were approximately $82,000 in draws against the line of credit.

Pursuant to his December 16, 2015 petition, Jim was appointed the administrator of Sherry's estate (the "Estate") on December 18, 2015. Over the next four years, Jim sold the Estate's assets and his own assets in an attempt to remain solvent. The Estate sold a number of pieces of farm equipment, crops, and Black Oak. Some of these sales took place with court oversight, and some did not. Jim sold real estate that had been owned by Sherry and him as tenants by the entirety. The Estate received certain rebates and payments from the government. Mark and Jim both claimed to have paid taxes owed by the Estate out of their personal funds. By the time the Estate was distributed, LFP owed approximately $73,000 on its secured debt.

On January 30–31 and February 4, 2020, the circuit court held a three-day distribution hearing. Mr. Spurlock's counsel stated several times throughout the hearing that it was difficult to cross-examine the witnesses regarding the value of the Estate's assets because the accountings had not been sufficiently detailed or supported. He also called an accountant as a witness who testified that it was impossible to determine the value of any Estate property from the filed inventories because they were not supported as required by the statute.

The circuit court made several rulings from the bench regarding the ownership and value of property that was included in the Estate and some that was not. On February 20, 2020, the circuit court sent a letter opinion to the parties clarifying and amending certain

rulings from the distribution hearing. The letter opinion did not distribute any property and invited the parties to submit objections, comments, alternative distribution proposals, and any additional findings of fact. There is no evidence in the record that Mr. Spurlock submitted any objections, comments, distribution proposals, or additional findings of fact. The Estate submitted a proposed distribution.

On April 13, 2020, the letter opinion was entered with the clerk, and on that same day, the circuit court entered an additional order regarding the distribution of the Estate. The distribution order incorporated the letter opinion. The letter opinion and the distribution order addressed all known property of the Estate. The distribution order further denied Mr. Spurlock's motions to recuse, found that the accountings and inventories had substantially complied with the probate code, and that Jim had not breached his fiduciary duty. The circuit court did not follow the Estate's proposed distribution, to Mr. Spurlock's favor. Under the distribution order, Mr. Spurlock and Mark became tenants in common on the Monette property as well as on a grain bin in Needham. Jim and Mark received all of the Estate's personal property and were required to assume all of the Estate's debts, which were in excess of the value of the personal property. Additionally, Jim and Mark were to pay all of the tax liabilities of the estate up to $60,000, after which Jim, Mark, and Mr. Spurlock would split the tax liabilities equally.

Mr. Spurlock timely appealed from the letter opinion and the distribution order.

II. *Recusal*

A. Sale of Black Oak

Mr. Spurlock filed his motion to recuse in response to the circuit court's conduct during and after the sale of Black Oak, which Sherry owned individually. It is, therefore, necessary to set out the facts regarding the sale of Black Oak in some detail.

On August 24, 2017, the Estate filed a petition for permission to sell Black Oak. Mr. Spurlock opposed that petition. After a hearing, the circuit court granted the Estate's petition and stated that Black Oak could be sold through a sealed bidding process. Mr. Spurlock submitted the highest sealed bid at $111 more than the next highest bid. On June 29, 2018, the circuit court accepted Mr. Spurlock's bid as being in the best interest of the estate, ordered him to deposit $25,000 earnest money into escrow, and ordered that the closing take place on or before July 27. Mr. Spurlock filed a motion to extend the closing date on July 12, basing his request on difficulty finalizing financing. The circuit court granted the extension. In the order granting the extension until August 31, the circuit court stated that the motion was granted "reluctantly" because it was "caused by the unreasonable delay" of Mr. Spurlock, and that Mr. Spurlock "did not act in good faith in presenting an Offer and Acceptance."

On August 30, Mr. Spurlock filed another motion to extend the closing date, again alleging difficulty in finalizing financing. The circuit court never ruled on this motion, and the closing never happened. However, on October 8, 2018, the circuit court sent a letter via

email to Mr. Spurlock's counsel requesting he send weekly emails to the circuit court explaining what actions had been taken that week to secure financing for Black Oak.

On January 15, 2019, the circuit court issued a show-cause order to Mr. Spurlock and set a hearing on it for February 21 due to Mr. Spurlock's failure to provide an update regarding his financing each week. At the time of the hearing, Mr. Spurlock had provided updates in only nine of the nineteen weeks that had transpired. The court also planned to consider at the show-cause hearing a motion filed by the Estate to terminate Mr. Spurlock's offer and acceptance on Black Oak so the Estate could find a different buyer. Mr. Spurlock was instructed to personally appear at the hearing. However, shortly before it was set to begin, Mr. Spurlock's counsel informed the circuit court that Mr. Spurlock would be available only by phone due to travel delays.

After joining the hearing by phone, Mr. Spurlock explained to the circuit court that he had purchased an airline ticket originating from Orlando and terminating in Memphis, with a layover in Atlanta. He said that after he checked in and received his boarding pass in Orlando, he was informed that his plane was having mechanical trouble and he would not arrive in Atlanta in time to take his flight to Memphis. At the end of the hearing, the circuit court ruled from the bench that Mr. Spurlock's offer and acceptance on Black Oak was terminated and appointed an auction firm to handle the sale of Black Oak.

On February 25, the circuit court ordered Mr. Spurlock to provide proof that he had booked a flight, he had received a boarding pass, and his flight had been delayed due to mechanical difficulties. Mr. Spurlock provided by email one ticket for a Southwest Airlines

flight from Orlando to Memphis that did not include a layover. The circuit court then instructed his assistant to contact Southwest Airlines; the assistant called the airline and was told that the ticket Mr. Spurlock provided was actually for a flight that Mr. Spurlock's wife had taken several months before and that Mr. Spurlock had not purchased a ticket for February 21. The circuit court did not notify counsel for any party that these actions had been taken until the distribution hearing in January 2020.

Also on February 25, the circuit court entered a written order memorializing the ruling from the bench that terminated Mr. Spurlock's offer and acceptance for Black Oak and appointed an auction company to auction the property. In that February 25 order, the circuit court stated, "Based on Mr. Spurlock's testimony and his actions and inaction and behavior toward this matter, I find that Mr. Spurlock has demonstrated a lack of good faith toward the administration of this estate and toward the Court. And I will comment that I am being generous in offering those choice words." As a result of this order, Black Oak was sold at auction for $489,888, which was applied to LFP's loans at Southern Bancorp.

On April 18, 2019, the circuit court held Mr. Spurlock in contempt of court due to his failure to provide updates on the financing. The circuit court ordered him to pay $250 for each financing email he failed to send, totaling $2,500. In the contempt order, the circuit court stated, "The Court finds that [Mr. Spurlock's] conduct over the course of the case has been obstructive. The Court is not able to ascertain whether [Mr. Spurlock's] conduct is the result of what the Court finds to be a narcissistic demeanor or whether it is due to his obvious ill will toward [Jim]. It is likely a combination of both." The contempt order did not mention

Mr. Spurlock's conduct at the show-cause hearing, the airline ticket, or the circuit court's conversation with Southwest Airlines.

At some point after receiving the information about the airline ticket from Southwest Airlines, Judge Ritchey reported the information to the Craighead County prosecuting attorney. Judge Ritchey did not inform the parties or their counsel that he had reported the information to the prosecuting attorney until January 30, 2020, the first day of the distribution hearing. At the end of the hearing day, Judge Ritchey told Mr. Spurlock's counsel in an off-the-record conversation in chambers that there was a warrant out for Mr. Spurlock's arrest on a perjury charge due to his statements at the February 2019 show-cause hearing. Mr. Spurlock's counsel immediately moved for Judge Ritchey's recusal and renewed said motion several times throughout the hearing. The circuit court denied each motion.

B. Standard of Review

"A judge's recusal is discretionary, and his decision will not be reversed absent a showing of an abuse of discretion. Further, judges are presumed to be impartial and the party seeking disqualification bears a substantial burden in proving otherwise." *Duty v. State*, 45 Ark. App. 1, at 5, 871 S.W.2d 400, 402 (1994) (citing *Woods v. State*, 278 Ark. 271, 644 S.W.2d 937 (1983); *Korolko v. Korolko*, 33 Ark. App. 194, 803 S.W.2d 948 (1991); *Chancellor v. State*, 14 Ark. App. 64, 684 S.W.2d 831 (1985)). In order to determine whether there has been an abuse of discretion, this court "reviews the record to determine if prejudice or bias was exhibited." *McKinney v. State*, 2019 Ark. App. 347, at 5, 583 S.W.3d 399, 402–03. The

fact that the circuit court ruled against the appellant "is not sufficient to demonstrate bias." *Id.* at 6, 583 S.W.3d at 403.

C. Bias or Prejudice

Mr. Spurlock's first argument is that Judge Ritchey abused his discretion by not recusing himself due to bias or prejudice. Mr. Spurlock takes exception to the requirement for him to pay interest for the delay in the sale of the property, even though Black Oak sold at auction for $47,000 more than he had offered. Mr. Spurlock also argues that the circuit court's bias was clear because it did not distribute the Estate on a per capita basis and instead ordered an equitable distribution. The Estate responded that adverse rulings do not demonstrate bias or lack of impartiality and that Mr. Spurlock received more than the Estate proposed during the hearing while not being responsible for any of the outstanding debts that had been secured by Sherry or LFP.

Judges have a duty to hear a case "unless there is a valid reason to disqualify[.]" *Perroni v. State*, 358 Ark. 17, 24, 186 S.W.3d 206, 210 (2004). This court will "presume impartiality on the trial judge's part." *Id.* Judges may have—or develop during trial—an opinion or a bias, but this

> does not make the trial judge so biased and prejudiced as to require his disqualification in further proceedings. Whether a judge has become biased to the point that he should disqualify himself is a matter to be confined to the conscience of the judge. The reason is that bias is a subjective matter peculiarly within the knowledge of the trial judge.

Matthews v. Rodgers, 279 Ark. 328, 331, 651 S.W.2d 453, 455 (1983) (citing *Walker v. State*, 241 Ark. 300, 408 S.W.2d 905 (1966); *Narisi v. Narisi*, 229 Ark. 1059, 320 S.W.2d 757 (1959)).

Arkansas Code of Judicial Conduct Rule 2.11 governs recusal. It mandates, "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." Ark. Code Jud. Conduct R. 2.11(A)(1).

As an initial matter, a review of the entire record does not demonstrate actual bias or prejudice on Judge Ritchey's part. *See Perroni*, 358 Ark. at 24, 186 S.W.3d at 210. During the distribution hearing, the circuit court overruled and sustained the objections of the parties fairly and did not make any disparaging comments to the parties or their counsel that would evidence any grudge. Regarding the distribution, it also does not demonstrate bias or prejudice that would have been caused by the show-cause hearing or Judge Ritchey's investigation. Even though Mr. Spurlock never proposed an alternative distribution, the circuit court declined to adopt the Estate's proposed distribution in full. Jim and Mark both asked for reimbursements from the Estate that were not granted. In reviewing the totality of the record, it is clear there was no abuse of discretion—Jim and Mark were left responsible for large debts, while Mr. Spurlock was not. Jim and Mark were required to scramble to complete the harvest after Sherry died suddenly and unexpectedly, and Jim sold many

personal assets that were applied to the debt of the Estate in order to prevent foreclosure. The complex nature of the Estate and how intertwined it was with other assets ensured that the distribution would not be a straightforward and easy task. Adverse rulings are not evidence of bias, and a circuit court can form opinions during a trial that do not require disqualification.

Because there is no showing of actual bias or prejudice, we turn to the issue of the appearance of bias. Mr. Spurlock argues that the language in the circuit court's orders can be taken as evidence of the personal nature of the dispute. In the order regarding the sale of Black Oak, the circuit court stated, "Based on Mr. Spurlock's testimony and his actions and inaction and behavior toward this matter, I find that Mr. Spurlock has demonstrated a lack of good faith toward the administration of this estate and toward the Court. And I will comment that I am being generous in offering those choice words." Later, the contempt order stated, "The Court is not able to ascertain whether [Mr. Spurlock's] conduct is the result of what the Court finds to be a narcissistic demeanor or whether it is due to his obvious ill will toward [Jim]. It is likely a combination of both."

Perroni, 358 Ark. 17, 186 S.W.3d 206, is instructive. In that case, an attorney had trials in state and federal court on the same day. The attorney knew about this conflict for many months but did not file a motion for continuance in state court until ten days before the trial was set to begin. *Id.* at 21–22, 186 S.W.3d at 208–09. The state court judge denied the continuance after two hearings on the matter. The day before the state court trial was to begin, the attorney sent a letter to the judge, enclosing the scheduling order in the federal

court case. *Id.* at 22, 186 S.W.3d at 209. The attorney did not appear for trial on the scheduled date. At that point, the state court judge issued a show-cause order for the attorney's failure to appear at the trial. Soon thereafter, the attorney filed a motion requesting that the state court judge recuse himself. The state court denied the motion. The attorney argued to the supreme court that he and the judge "were in an adversarial relationship which suggested [the judge's] impartiality might reasonably be questioned." *Id.* at 23, 186 S.W.3d at 209. The supreme court held that the judge was not required to recuse—*despite* the finding of criminal contempt against the attorney—because the attorney had actually violated the state court's scheduling order. *Id.* at 27, 186 S.W.3d at 212–13. Because there was no question of a violation, the attorney had not demonstrated prejudice or bias or the appearance of such. *Id.*

This case is analogous. As in *Perroni*, the show-cause hearing was a collateral matter that did not involve the final issue in the Estate case. Additionally, as in *Perroni*, Mr. Spurlock had actually disobeyed an order of the court by not providing a weekly status update as to his efforts to obtain financing. He admitted as much during the show-cause hearing. According to the contempt order, the circuit court relied on Mr. Spurlock's delay in carrying through with the purchase of Black Oak and his failure to report the loan status when holding him in contempt, rather than the conversation with the airline or anything else that happened during the show-cause hearing. Although the circuit court included extraneous comments in the orders following the show-cause hearing, those two phrases do not rise to the level of requiring recusal due to a personal dispute. The comments were also referring to

Mr. Spurlock's behavior in disregarding the circuit court's orders, not to behavior outside the context of the show-cause hearing. *Contra In re Estate of Edens*, 2018 Ark. App. 226, 548 S.W.3d 179.

Mr. Spurlock has not shown actual bias or prejudice, and the circuit court's comments did not evidence a personal dispute that would require him to recuse himself.

D. Ex Parte Communications

Mr. Spurlock further argues that the circuit court's calling Southwest Airlines violated the prohibition against a judge investigating a factual matter independently and that he should have disclosed this investigation and his report to the prosecuting attorney before the distribution hearing commenced. The Estate responds that, although the circuit court did contact Southwest Airlines to investigate the airline ticket, this fact had nothing to do with the matters that the circuit court had to decide in the probate matter. Instead, the investigation had to do with the collateral issue of whether Mr. Spurlock had been truthful about his reason for attending the show-cause hearing by phone.

The Estate also asks this court to take judicial notice that Mr. Spurlock pled guilty in his perjury case and wrote a letter to Judge Ritchey to apologize for "attempting to deceive the Court[.]" This court will not take judicial notice of the record in other cases. *See Anderson v. State*, 2011 Ark. 488, at 7, 385 S.W.3d 783, 788–89. We have not considered any proceedings, pleas, or other matters in the perjury case in coming to a decision in this case.

The Code of Judicial Conduct states that "[a] judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may

properly be judicially noticed." Ark. Code Jud. Conduct R. 2.9(C). Further, "A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter[.]" Ark. Code Jud. Conduct R. 2.9(A).

Again, *Perroni* is instructive. In that case, the state court judge directed his law clerk to go to the federal clerk's office and get copies of pleadings and scheduling orders in the federal case. The judge paid for the copies with his own money. *Perroni*, 358 Ark. at 38–39, 186 S.W.3d at 216–17 (facts regarding ex parte investigation set out in dissent). Again, the supreme court held that the judge was not required to recuse—*despite* the ex parte investigation—because the attorney had actually violated the state court's scheduling order. *Id.* at 24, 186 S.W.3d at 211. The supreme court declined to reach the issue of the ex parte investigation because the judge "was justified in issuing a show-cause order and finding [the attorney] in contempt for willfully failing to comply with the state court's scheduling order." *Id.* at 27, 186 S.W.3d at 212–13.

Here, the judge issued the show-cause order, in response to which Mr. Spurlock admitted having violated the circuit court's prior orders. The contempt order entered by Judge Ritchey relied only on Mr. Spurlock's delay in carrying through with the purchase of Black Oak and his failure to report the loan status when it held him in contempt. No findings regarding the failure to appear in person, the conversation with Southwest Airlines, or the conversation with the prosecuting attorney were made by the circuit court.

Judge Ritchey did not abuse his discretion in declining to recuse himself as a result of the call to Southwest Airlines or the conversation with the prosecuting attorney.

E. Potential Material Witness

Mr. Spurlock also argues that Judge Ritchey was a potential witness in the criminal case against him and should have recused himself for that reason, regardless of whether he suffered any prejudice.

Rule 2.11 of the Code of Judicial Conduct states that a judge should recuse from a matter if the judge "was a material witness concerning the matter[.]" Ark. Code Jud. Conduct R. 2.11(A)(6)(c). However, this rule refers to the matter over which the judge is currently presiding. It does not refer to the judge's potentially being a witness in a separate case. *See Duty*, 45 Ark. App. 1, at 6, 871 S.W.2d at 403.

Because there is no evidence Judge Ritchey was a material witness in the Estate matter, it was not an abuse of discretion for him to decline to recuse himself on that basis.

III. *Accountings and Inventories*

A. Filings

Jim filed the original inventory of the Estate on January 6, 2016, which listed Shery's interests in four pieces of real property, a one-third interest in LFP, the value of life insurance and an insurance refund, and the broad categories of household goods and personal effects.

The third amended inventory of the Estate was filed on July 1, 2016. This inventory stated that the Estate's real property was encumbered by $835,167.01 in debts and that it was impossible to determine the value of the real estate as it "is encumbered by crop loans

and other debts[.]" The third amended inventory also included two exhibits. The first exhibit listed specific personal property, such as furnishings, jewelry, and silverware and stated that Jim, Mark, and Mr. Spurlock had divided that property among themselves. The second exhibit was a list of the farm equipment that had been owned by LFP but that had been sold.

In addition to the inventories above, Jim filed three accountings: one on November 29, 2017; one on December 27, 2017; and one on September 9, 2019. The parties agree that none of the accountings were supported by any bank statements, canceled checks, invoices, or other documents that could be considered vouchers. They all included estimated values of real estate, and the final two included income, debt, payments, and the bank balance of the Estate.

B. Standard of Review

This court reviews probate matters de novo and will reverse only if the circuit court's decision was clearly erroneous. *In re Estate of Kemp*, 2014 Ark. App. 160, at 5, 433 S.W.3d 911, 914. The circuit court's findings are clearly erroneous "when the reviewing court is left with a definite and firm conviction that a mistake has been committed. In reviewing the circuit court's findings, we give due deference to the circuit judge's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony." *Taylor v. Woods*, 102 Ark. App. 92, 101, 282 S.W.3d 285, 291–92 (2008).

C. Analysis

Within two months after being appointed, the administrator of an estate must file an inventory of all property owned by the decedent at the time of death, which includes a

description of the property and the administrator's appraisement of the fair market value. Ark. Code Ann. § 28-49-110 (Repl. 2012). The administrator must correct any errors or omissions by filing a supplemental inventory or in a filed accounting. *Id.*

Additionally, the personal administrator must file "a verified account of his or her administration" annually. Ark. Code Ann. § 28-52-103 (Repl. 2012). The accountings must be "accompanied by proper vouchers." Ark. Code Ann. § 28-52-104(a)(2).

The circuit court found that Jim was in substantial compliance with the inventory and accounting statutes. Mr. Spurlock disagrees with this finding, arguing that during the distribution hearing, Mr. Spurlock's counsel elicited from Jim several previously undisclosed items that should have been included in the inventories as well as income that had not been previously disclosed that should have been included in the accountings. Mr. Spurlock subpoenaed documents from third parties to ascertain some of the information that would have been presented in the accountings, but Mr. Spurlock argues that should not have been his burden. The only witness Mr. Spurlock's counsel called at the distribution hearing was Matthew Knight, who is an accountant. Mr. Knight testified that the inventories and accountings were deficient, and there was no way to verify them without supporting documentation. The circuit court stated in the distribution order that Mr. Knight's testimony did not give "any significant help or guidance." The Estate responds that it complied with all court orders to file inventories and accountings and that all the documents needed to verify the accountings were available to Mr. Spurlock.

Mr. Spurlock relies heavily on *Price v. Price*, 253 Ark. 1124, 491 S.W.2d 793 (1973). *Price* held that "the filing of an inventory by a personal representative, describing each item of property in detail and setting out his appraisal of the fair market value thereof as of the date of decedent's death is not optional." *Id.* at 1133, 491 S.W.2d at 799. However, the facts in that case were extreme and are nothing like the facts in this case. The administratrix in *Price* filed the inventory six months after being appointed, listing the value of personal property as five hundred dollars and the only other property being 3.62 acres, which was being used as a homestead. *Id.* at 1129, 491 S.W.2d at 796–97. The administratrix never filed an accounting. Evidence of other personal property, including an automobile, was revealed at the distribution hearing. Additionally, the inventory had not included the fact that the 3.62 acres included a trailer park from which the administratrix was collecting rent. *Id.* at 1134–35, 491 S.W.2d at 799–800.

In the years following *Price*, the supreme court has held that no reversible error exists when there is "substantial compliance" with the statutory requirements, no evidence of wrongdoing, and there is no prejudice to the heirs. *See Morris v. Cullipher*, 306 Ark. 646, 649, 816 S.W.2d 878, 880 (1991); *Petty v. Lewis*, 285 Ark. 3, 5–6, 684 S.W.2d 250, 251 (1985).

The circuit court's holding that there was substantial compliance with the statute is not clearly erroneous. In his briefing, Mr. Spurlock does not identify any specific prejudice that resulted from the allegedly deficient inventory and accountings. He says he was "forced to subpoena" third parties to substantiate the accountings, even though that was not his burden. However, when the appellant has knowledge of what should have been in the

inventory and accounting and has access to the documents, the accounting is not necessarily deficient such that reversal is warranted. *See Petty*, 285 Ark. at 5–6, 684 S.W.2d at 251.

Further, Mr. Spurlock complains that he was not able to review certain credit card bills and canceled checks until the distribution hearings. The payments out of the Estate's bank account were listed in the accountings that were filed, and Mr. Spurlock had access to bank records. He never argues any specific deficiency in the lists of payments. Additionally, some of the statements were listed on the Estate's exhibit list, alerting Mr. Spurlock to their existence. Further, as discussed more below, the credit cards were paid out of Jim's personal funds rather than Estate funds, so it is not even clear that Mr. Spurlock was entitled to all of the credit card statements.

Mr. Spurlock points to one payment to the Estate for crops for $147,00 that was overlooked by Jim. However, that payment went straight to Southern Bancorp and was applied to the loans held by LFP. Therefore, the funds benefited the Estate, and the existence of that payment did not prejudice Mr. Spurlock.

With regard to any personal property that may not have been listed on the inventories, the circuit court reserved ruling on the value of most of the Estate's personal property and distribution at the end of the hearing. Instead, the circuit court requested that the Estate's attorney submit appraisals to determine the value of a Gator and some tools. Those appraisals were submitted by letter on February 19, 2020. In the letter opinion, the circuit court invited Mr. Spurlock to submit objections, comments, alternative distribution proposals, and any additional findings of fact. There is no evidence in the record that Mr.

Spurlock objected to the appraisals or proposed any alternative valuations or findings of fact. Mr. Spurlock had information about all of the Estate's property and failed to pursue alternative valuations. He also has not shown any specific prejudice or wrongdoing. This court affirms the circuit court's order declaring the inventories and accountings to be substantially compliant.

IV. *Fiduciary Duty*

A. Standard of Review

This court reviews probate matters de novo and will reverse only if the circuit court's decision was clearly erroneous. *Kemp*, 2014 Ark. App. 160, at 5, 433 S.W.3d at 914. The circuit court's findings are clearly erroneous "when the reviewing court is left with a definite and firm conviction that a mistake has been committed. In reviewing the circuit court's findings, we give due deference to the circuit judge's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony." *Taylor*, 102 Ark. App. 92, at 101, 282 S.W.3d at 291–92.

B. Analysis

Mr. Spurlock's final argument on appeal is that Jim breached his fiduciary duty to the Estate and should have been removed as administrator. Because Jim had pledged his own real property and executed a personal guarantee to secure the loans owed by LFP, Mr. Spurlock argues he had a conflict of interest and should not have been able to serve as administrator. Additionally, Mr. Spurlock argues that Jim allocated the proceeds of a life insurance policy and the proceeds from the sale of his residence to pay off debt that would

benefit Jim, personally, instead of the Estate. Mr. Spurlock also alleges that Jim used more than $58,000 from LFP's loans to pay his personal expenses and that he sold some of the Estate's property for less than it was worth. Mr. Spurlock argues that this was self-dealing without the circuit court's consent and is a violation of his fiduciary duty, even if unintentional.

The Estate responds that Mr. Spurlock never submitted any alternative distribution plan to the circuit court and notes that Mr. Spurlock does not attack any of the circuit court's findings of fact in his appellate brief. The Estate further argues that Mr. Spurlock received a proportional share of all the family property that was owned by the Estate. Finally, the Estate argues that all the actions Jim took were in the Estate's best interest, even if they were also in Jim's best interest, because those interests were inextricably intertwined, and the circuit court was correct to look at the whole picture.

For a breach of fiduciary duty to be grounds for reversal, the appellant must demonstrate prejudice. *Jones v. Balentine*, 44 Ark. App. 62, 77, 866 S.W.2d 829, 837 (1993). This court will examine the facts as a whole and weigh the administrator's positive and negative actions to determine whether there is a definite and firm conviction a mistake has been committed and the administrator should have been removed. *Taylor*, 102 Ark. App. 92, at 103, 282 S.W.3d at 293.

Mr. Spurlock's arguments revolve around a supposed conflict of interest and alleged self-dealing. This court has held that "[a]n executor of an estate occupies a fiduciary position and must exercise the utmost good faith in all transactions affecting the estate and may not

advance his own personal interest *at the expense of the heirs*." *Guess v. Going*, 62 Ark. App. 19, 24, 966 S.W.2d 930, 932–33 (1998) (emphasis added). The purported conflict of interest is that Jim's property was cross-collateralized along with the Estate's property. Any of the Estate's property used to pay down loans would benefit Jim as well because the real estate and other property he owned served as collateral for those loans. That is true. However, the Estate property sales proceeds were used to pay the debt that LFP actually took out. The Estate had a one-third interest in LFP. The sales and payments toward LFP's debts kept the remaining assets of the Estate safe from foreclosure or bankruptcy. Further, Jim sold several parcels of real property that he owned personally or that were owned by LPI in which the Estate had no interest. The proceeds from some of those sales were applied to loans for which Sherry's property had been cross-collateralized. Mr. Spurlock does not point to any specific prejudice to the heirs due to those sales or any way in which Jim advanced his interests at the expense of the heirs' interests. Jim is not compelled by any law to sell all of his own property before selling any of the Estate property for the payment of the *Estate's* debts.

With regard to self-dealing, *Hanna v. Hanna*, 2009 Ark. App. 574, 335 S.W.3d 438, is instructive. In that case, a husband and wife owned multiple successful, related businesses. Additionally, the husband was the trustee for trusts benefiting their children. When the husband and wife got divorced, the husband executed a very complicated financial transaction that encumbered a portion of the trust's property as well as certain property of the other businesses in order to pay his divorce settlement. This court held, "The economic fates of [husband], Hannah Candle, JBH, and the trusts were inextricably intertwined." *Id.*

at 6, 335 S.W.3d at 441. Because all the entities were tied together by "their symbiotic nature," the actions taken by the husband "inevitably protected them all." *Id.* The testimony at trial revealed that the husband "acted responsibly and to the trusts' advantage." *Id.* at 7, 335 S.W.3d at 442.

Similarly, the Ladds' real property and the Estate's real and personal property were all inextricably intertwined. Jim's actions in selling certain property of the Estate to be applied to the secured debt protected the Estate from foreclosure and other collection actions. Further, the specific instances Mr. Spurlock points to would not qualify as self-dealing or a breach of Jim's fiduciary duty. In reviewing the record, this court is not left with a definite and firm conviction that a mistake has been committed.

1. *Life insurance proceeds*

LFP's loans were partially secured by an insurance policy on Sherry's life for just over $100,000. This same policy also served as collateral for a property known as the Air-Evac house. The Air-Evac House was owed by Jim after Sherry's death because he and Sherry had previously owned it as tenants by the entirety. A bank loan-payment committee met and decided to apply $100,000 of the life insurance proceeds to the Air-Evac House, which paid off that loan completely. The remaining proceeds from the life insurance policy were applied to a crop loan that was part of LFP's debt.

This was not self-dealing or a breach of fiduciary duty. The life insurance proceeds never belonged to the Estate because the bank was the beneficiary on the policy, and the bank was the payee on the check. The bank could determine what to do with the insurance

proceeds. There was no legal requirement that the proceeds be applied to an Estate debt. Despite this, part of the proceeds *were* applied to Estate debt. Jim did not breach his fiduciary duty.

2. *Jim's residence*

Mr. Spurlock argues that Jim's sale of his residence was a breach of his fiduciary duty. The residence belonged to Jim upon Sherry's death because it had been owned by Jim and Sherry as tenants by the entirety. Jim sold the residence for $190,832. The proceeds from that sale were held in a type of escrow by Southern Bancorp. Each time Jim needed to use money from the sale of the residence—his own property—he would ask for a cashier's check. The money from that sale was used to pay unsecured debts for LFP, LFI, and Jim; taxes for LFP, LFI, and the Ladds; other expenses for LFP and LFI; and one of LFP's real estate loans. The circuit court also stated in its letter opinion that the proceeds from the sale of the residence "were used for the direct and indirect benefit of the Sherry Ladd Estate."

The residence was never Estate property. Jim had no legal obligation to sell it and apply the proceeds to Estate debt. Yet he did so. Some of the unsecured debt had been taken out by LFP, and almost $25,000 from the sale of the residence was applied to LFP's real estate loan. Again, these proceeds benefited the Estate by staving off a foreclosure or bankruptcy.

3. *The lots*

Mr. Spurlock argues that Jim has manipulated some property known as "the lots" to make them less valuable. Again, the lots were owned by Shery and Jim as tenants by the

entirety. Upon Sherry's death, they became Jim's real property. This does not constitute self-dealing or a conflict of interest with the Estate.

4. *Farm-equipment sale*

Mr. Spurlock argues that Jim breached his fiduciary duty by selling the farm equipment for less than it was worth. LFP's loan on the farm equipment was $550,197.50. The farm equipment belonged to LFP and was sold for $310,000 to an auctioneer without a court order. After the sale, the circuit court found that it was reasonable. At the distribution hearing, there was testimony that it was not unusual for an auction of farm implements to bring "substantially less than what may have been considered the book value of the equipment." Mr. Spurlock did not introduce any evidence that $310,000 was unreasonable. This court gives "due deference to the circuit judge's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony." *Taylor*, 102 Ark. App. at 101, 282 S.W.3d at 291–92.

This court is not left with a definite and firm conviction that the circuit court made a mistake in finding the farm-equipment sale to be reasonable, so there is no reason to find that Jim breached his fiduciary duty.

5. *Personal use of Southern Bancorp loans*

Mr. Spurlock's final contention is that Jim drew $58,970.92 from the Estate, which was self-dealing. This is without support in the record. That figure comes from Mark's testimony at the distribution hearing. LFP's 2015 tax return showed Jim receiving $58,970.92 in draws. Importantly, Sherry died in August of 2015—the same year covered by

the tax return. It is unclear when the draws were taken, but it is reasonable to believe the draws (or the majority) were taken before Sherry's death. Indeed, the draws were from a corporation that Jim did have an ownership in, even after Sherry's death. Also importantly, Mr. Spurlock never argued to the circuit court that Jim should pay back this amount. The circuit court ruled at the distribution hearing that Jim "owes the estate for estate draws in the sum of $8,000." Mr. Spurlock did not object or propose another number.

This court is not left with a definite and firm conviction that the circuit court made a mistake, so we affirm the finding that Jim did not breach his fiduciary duty.

Affirmed.

ABRAMSON and MURPHY, JJ., agree.

Appellate Solutions, PLLC, by: *Deborah Truby Riordan*, for appellant.

Woodruff Law Firm, P.A., by: *Arlon L. Woodruff*, for appellee.