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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE MATTER OF THE SUPERVISED )  
ESTATE OF MARY MIKELS, )  
 )  
JOHN HAYES, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
JACKSON COUNTY BANK, )  
 )  
Appellee. )

No. 36A05-1006-ES-429

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APPEAL FROM THE JACKSON CIRCUIT COURT  
The Honorable William E. Vance, Judge  
Cause No. 36C01-0511-ES-98

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April 26, 2011

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

John Hayes appeals the trial court's order authorizing Jackson County Bank ("the Bank"), Personal Representative of the Estate of Mary Mikels ("the Estate"), to sell real property, pay claims, and close the Estate. Hayes presents a single issue for our review, namely, whether the trial court abused its discretion when it authorized the sale of the real property.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Mikels died intestate in 2002. In 2005, the Indiana Family and Social Services Administration ("FSSA"), a creditor, opened the Estate in an effort to recover more than \$20,000 for reimbursement of Medicaid claims paid on behalf of Mikels during her life. Mikels' sons Joseph Ritter and John Hayes were appointed co-personal representatives, but the Bank was named sole personal representative of the Estate in 2007 after Ritter and Hayes were removed.

The Bank attempted to sell real property owned by the Estate on three occasions before it discovered a fatal defect in the title of that real property. The trial court described that defect as follows:

[D]ue to a surveyor's error committed during the 1940s, the residential real estate of the deceased, Mary L. Mikels, was misdescribed in such a way that the structure where said decedent lived until her death was never located on the parcel of land described in her deed. The error was not discovered until the Estate attempted to sell said real estate pursuant to an earlier order of this Court to sell the property.

Appellant's App. at 3. Rather than pursuing an action to quiet title, the Bank approached an adjacent landowner who owned the land where Mikel's house actually stood, and that

adjacent landowner agreed to purchase the house for \$10,000. Thereafter, the Bank filed a petition to sell the real property, pay claims, and close the estate. In that petition, the Bank averred in relevant part that “only the adjoining landowners could purchase the property and, by process of merger, eliminate the defective nature of the deed delivered to Mary L. Mikels more than fifty years ago.” Id.

Following a hearing, the trial court issued its order authorizing the Bank to sell the real property for \$10,000,<sup>1</sup> and to distribute the proceeds of that sale as follows:

- a. \$174.00 to Lee Mead & Clark, attorneys, for reimbursement of the opening costs for the Estate;
- b. \$250.00 to Garrett Fee for appraisal of the real estate.
- c. \$1,500.00 to attorney Nick Herthel for fees earned in the early administration of the Estate;
- d. \$3,926.01 for real estate taxes due and owing to Jackson County;
- e. \$2,000.00 to Jackson County Bank for its services as personal representative;
- f. \$2,000.00 to attorney Stephen S. Pierson for his services to Jackson County Bank; and
- g. \$441.40 (balance of estate checking account and remaining proceeds of sale) shall be paid to the Indiana Family and Social Services Administration[.]

Id. at 5. This appeal ensued.

## **DISCUSSION AND DECISION**

Hayes’ sole contention on appeal is that the Bank, as personal representative of the Estate, “had a statutory duty to maximize the corpus of the estate in order to satisfy the established obligations of Ms. Mikels, during her life, final illness and drawing to a close of her estate.” Brief of Appellant at 12. Hayes maintains that the Bank failed to fulfill

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<sup>1</sup> While the Estate received offers to purchase of \$35,000, \$42,000, and \$44,000, these offers were made on the assumption that the legal description was correct and that a deed would convey marketable title to the structure located within that description. But the trial court found, and all of the parties except for Hayes agreed, that since the structure was never located within the legal description, the defect in title made the adjacent property owner the only plausible purchaser.

that duty when it sold the real property for \$10,000 rather than pursuing “the likely successful quiet title action[.]” Id. We cannot agree.

We review a trial court’s determination of whether a proposed action by a personal representative is in the best interests of an estate for an abuse of discretion. Konger v. Schillace, 875 N.E.2d 343, 351 (Ind. Ct. App. 2007). An abuse of discretion occurs either when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or the court misinterprets the law. Id. Here, the trial court noted Hayes’ objection to the proposed sale of the real property, but found that the sale represented “the best and most reasonable course of action to finish up the affairs of Mary Mikels, deceased, and to close this Estate.” Appellant’s App. at 4.

On appeal, Hayes cites to Indiana Code Section 29-1-13-1 in support of his contention that the Bank had a duty to pursue a quiet title claim in an effort to maximize the profit obtained by the sale of the real property. But that statute provides merely that a personal representative may maintain an action to quiet title to real property, not that it shall maintain such an action. See id. Hayes also asserts that “there is little apparent risk” to the Bank if it were to pursue a quiet title action. Brief of Appellant at 10. But Hayes does not make any cogent argument to demonstrate that such an action would be economically feasible or beneficial to the Estate. Nor does Hayes argue or present any evidence in support of his allegation that a quiet title action would be successful. While Hayes states that had the Bank sold the real property for more money, the sale “would have served to satisfy all outstanding claims against the [E]state,” id. at 11, he does not address the trial court’s finding that “the Estate is essentially penniless except for said

real estate and . . . the costs of filing and pursuing a quiet title action . . . would quickly render the estate insolvent.” Appellant’s App. at 3.

Indeed, at the hearing on the Bank’s petition to sell the real property, pay claims, and close the Estate, Hayes did not present any evidence and argued only that the real property had been appraised at “substantially more” than \$10,000. Transcript at 4. Hayes made no argument regarding the potential cost of pursuing a quiet title action or the likelihood that the Estate would be solvent if the Bank sold the real property after quieting title.<sup>2</sup> Hayes has not demonstrated that the trial court abused its discretion when it ordered the Bank to sell the real property, pay claims, and close the Estate.

Affirmed.

ROBB, C.J., and CRONE, J., concur.

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<sup>2</sup> Hayes also briefly mentions the disposition of two automobiles but neither cites to the record nor makes cogent argument concerning that property.