2019 IL App (1st) 181452

FIRST DIVISION
June 28, 2019

No. 1-18-1452

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE CONSERVATORSHIP ESTATE OF JOANNE BLACK, Plaintiff-Appellee, v. BERNARD S. BLACK, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County No. 17 L 62055 The Honorable Jeffrey L. Warnick, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court, with opinion.
Justices Griffin and Walker concurred in the judgment and opinion.

OPINION

¶ 1 This appeal involves a foreign money judgment entered by the Denver Probate Court (the probate court) in Denver, Colorado. The probate court found that defendant Bernard S. Black, while acting as conservator for the estate of his sister Joanne Black, converted estate assets for his own benefit. The probate court entered a money judgment against defendant for over $4.3 million (foreign judgment). Joanne's estate then filed the foreign judgment in the circuit court of Cook County. Pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)), defendant filed a petition to vacate the filing of the foreign judgment, asserting that the probate court's judgment was void due to various alleged jurisdictional defects.

¶ 2 While the parties were litigating defendant's petition in the circuit court, the Colorado Court of Appeals affirmed the probate court's judgment and denied defendant's request for rehearing. *Black v. Black*, 2018 COA 7, 422 P.3d 592, *cert. denied*, 2018SC419 (May 20, 2019). The Cook County circuit court denied defendant's petition to vacate the filing of the foreign judgment, and defendant appeals. For the reasons that follow, we affirm the circuit court's denial of defendant's petition to vacate.

¶ 3 I. BACKGROUND

¶ 4 Defendant and his sister Joanne Black are the children of the late Renata Black, who died in May 2012. Renata's will provided that her estate assets would be divided into two trusts. Two-thirds of Renata's estate would be distributed to a "Supplemental Needs Trust" for the benefit of Joanne, who had been diagnosed with schizophrenia. One-third of Renata's estate would be distributed to a trust for defendant and his children. Defendant was appointed as the executor of Reneta's estate, the bulk of which consisted of accounts holding nearly $3.5 million. Defendant discovered that before Renata's death, she designated Joanne as the payable-on-death beneficiary of some of Renata's accounts, resulting in the assets in those accounts passing directly to Joanne rather than to the Supplemental Needs Trust.

¶ 5 At the time of Renata's death, Joanne was homeless in Colorado. In December 2012, defendant initiated a proceeding in the Denver Probate Court seeking appointment as conservator of Joanne's estate because her "mental illness interferes with her ability to manage her assets and income." The probate court appointed an attorney and a guardian *ad litem* for Joanne, and subsequently appointed defendant as Joanne's conservator. According to defendant, Joanne's attorney and the guardian *ad litem* both expressly consented to defendant's request that, as conservator, he be permitted to disclaim Joanne's interest in Renata's payable-on-death accounts.

After a hearing, the probate court specifically authorized defendant "[t]o disclaim [Joanne's] interest as beneficiary under all payable on death or transferable on death accounts *** owned by *** Renata[.]" Defendant executed the disclaimer, which resulted in the assets in the payable-on-death accounts flowing through Renata's will, with two-thirds going to Joanne's Supplemental Needs Trust, and one-third going to the trust for the benefit of defendant and his children.

¶ 6 In February 2015, Joanne's counsel filed a motion in the probate court seeking to void the disclaimer. The motion asserted that defendant breached his fiduciary duties to Joanne by failing to disclose the effect of the disclaimer on Joanne's interest in the nearly $3.5 million in assets from Renata's accounts. At a status conference on the motion, the probate court ordered an independent accounting of Joanne's assets, scheduled an evidentiary hearing, and "advised the parties that it would consider whether 'disgorgement or unwinding of fiduciary actions' was appropriate." *Black*, 2018 COA 7, ¶ 16. On the day before the evidentiary hearing, the guardian *ad litem* filed a motion alleging that defendant's conduct amounted to civil theft under Colorado law and requested that the probate court award treble damages pursuant to Colorado's civil theft statute. *Id.* ¶ 17. After the evidentiary hearing, the probate court concluded that defendant breached his fiduciary duties to Joanne while serving as the conservator of Joanne's estate by converting roughly $1.5 million of her assets for his own benefit. The probate court found that plaintiff was required to reimburse Joanne's estate for the amount that he converted, and that damages were trebled under Colorado's civil theft statute, resulting in a judgment of nearly $4.5 million. *Id.* ¶ 18. Defendant filed a timely notice of appeal in the Colorado Court of Appeals from the probate court's judgment.

¶ 7 On September 21, 2017, Joanne's conservatorship estate filed the foreign judgment in the circuit court of Cook County. On October 23, 2017, defendant filed a petition pursuant to section 2-1401 of the Code to vacate the filing of the foreign judgment as void. Defendant argued that the probate court lacked subject-matter jurisdiction to enter the foreign judgment because (1) Joanne's motion was not a "complaint" under the Colorado Rules of Civil Procedure; (2) the probate court was not empowered under the Colorado Constitution to adjudicate civil theft claims; (3) Joanne failed to give proper written notice of her claim for surcharge as required by Colorado statute; and (4) Joanne failed to file the correct motion to vacate the probate court's order authorizing defendant to execute the disclaimer. Defendant also argued that the probate court lacked personal jurisdiction over him because he was never served with a complaint or summons for civil theft or reimbursement. The parties briefed defendant's petition.

¶ 8 On January 25, 2018, the Colorado Court of Appeals affirmed the probate court's judgment in all respects. Relevant to the issues before us, the court of appeals found that (1) defendant had proper notice of the surcharge hearing (*id.* ¶ 26); (2) any defect in the notice of the surcharge hearing did not divest the probate court of subject-matter jurisdiction (*id.* ¶ 27); (3) defendant failed to disclose a conflicted transaction—*i.e.*, the execution of the disclaimer—to the probate court and failed to demonstrate that the transaction was "reasonable and fair to Joanne" (*id.* ¶ 71); (4) the probate court had subject-matter jurisdiction to hear Joanne's civil theft claim (*id.* ¶ 78); (5) defendant had notice of Joanne's civil theft claim (*id.* ¶ 82); and (6) defendant waived or forfeited any challenge to the timing or form of Joanne's civil theft claim by failing to object in the probate court proceedings (*id.* ¶ 84). Defendant's petition for rehearing was denied on May 17, 2018.

¶ 9 On June 12, 2018, the circuit court denied defendant's petition to vacate the filing of the foreign judgment. The circuit court observed that the foreign judgment was presumed to be valid and that it was defendant's burden to rebut that presumption. *Ace Metal Fabricating Co. v. Arvid C. Walberg & Co.*, 135 Ill. App. 3d 452, 456 (1985). The circuit court found that it was "not unreasonable *** to place reasonable reliance on" the court of appeals's opinion, which directly addressed several of defendant's contentions. Defendant filed a timely notice of appeal in this court. Defendant also petitioned the Colorado Supreme Court for a writ of certiorari from the court of appeals's judgment in *Black*, which the Colorado Supreme Court denied on May 20, 2019.

¶ 10 II. ANALYSIS

¶ 11 At the outset, we note that portions of defendant's appellate brief violate Illinois Supreme Court Rule 341 (eff. May 25, 2018). First, Rule 341(h)(2) requires an appellant to include "[a]n introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question." Defendant's "Nature of the Action" section is a nine-paragraph argumentative screed spanning more than three pages. Both the length and argumentative nature of defendant's introductory paragraph violate Rule 341(h)(2). See *Artisan Design Build, Inc. v Bilstrom*, 397 Ill. App. 3d 317, 321 (2009) (finding that a two-page introductory statement containing argument violates Rule 341(h)(2)). Second, defendant's statement of facts is argumentative, in violation of Rule 341(h)(6), which requires a statement of facts "stated accurately and fairly without argument or comment." Ill. S. Ct. R. 341(h)(6). Our supreme court's rules governing appellate briefs are mandatory. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. A failure to comply with the rules runs the risk that this

court will strike the offending portions of a noncompliant brief, or, in rare cases, dismiss an appeal for serious rule violations. *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993). We decline to take any action with respect to defendant's brief other than to advise his counsel that future rule violations will not be tolerated.

¶ 12 On appeal, defendant raises three principal arguments for our review. First, he argues that the circuit court erred by presuming that (1) the probate court judgment was valid, (2) the Denver Probate Court is a court of general jurisdiction, and (3) the foreign judgment was final. Second, he argues that the Denver Probate Court lacked subject-matter jurisdiction to entertain a civil theft claim. Third, he argues that the probate court lacked subject-matter jurisdiction to order a surcharge because a statutorily-required notice was not given. He contends that the foreign judgment is void because of these jurisdictional defects, and that the circuit court should have vacated the filing of the foreign judgment.

¶ 13 Section 2-1401 of the Code allows a party to file a petition in the circuit court seeking relief from a final order or judgment more than 30 days after the entry of that order or judgment, provided that the petition is filed within two years of the complained of order or judgment. 735 ILCS 5/2-1401(a), (c) (West 2016). A section 2-1401 petition may assert either a purely legal challenge to a final judgment or raise a fact-dependent challenge to the judgment. *Warren County Soil & Conservation District v. Walters*, 2015 IL 117783, ¶ 31. Here, defendant's petition—filed more than 30 days after the filing of the foreign judgment— raised a purely legal challenge to the enforceability of the foreign judgment by asserting that the judgment was void for lack of subject-matter jurisdiction. Our review is therefore *de novo*. *Id.* ¶ 48; *Doctor's Associates, Inc. v. Duree*, 319 Ill. App. 3d 1032, 1042 (2001). On *de novo* review, we give no

deference to the reasoning or decision of the circuit court. *Stone Street Partners, LLC v. City of Chicago Department of Administrative Hearings*, 2017 IL 117720, ¶ 4.

¶ 14 We quickly dispense of defendant's argument that the circuit court erred by presuming that the foreign judgment was valid and that the Denver Probate Court is a court of general jurisdiction. On *de novo* review, we review the circuit court's judgment, not its reasoning for its judgment, and we may affirm on any basis supported by the record. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995). Even if the circuit court mistakenly believed that the probate court was a court of general jurisdiction, we may still sustain its judgment if defendant was not entitled to have the filing of the foreign judgment vacated.

¶ 15 Section 1 of article IV of the United States Constitution provides, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 4.

> "The intended purpose of this clause is 'to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.' " *Ace Metal Fabricating*, 135 Ill. App. 3d at 455 (quoting *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277 (1935)).

¶ 16 In Illinois, the Uniform Enforcement of Foreign Judgments Act (Act) (735 ILCS 5/12-650 *et seq.* (West 2016)) is designed "to implement the full faith and credit clause of the Federal Constitution and to facilitate interstate enforcement of judgments in any jurisdiction where the judgment debtor is found." *Ace Metal Fabricating*, 135 Ill. App. 3d at 455. The Act defines a

"foreign judgment" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this State." 735 ILCS 5/12-651 (West 2016).

¶ 17 Both Colorado law and Illinois law recognize that a judgment entered by a court that lacks either subject-matter jurisdiction over a cause of action or personal jurisdiction over the parties is void. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38; *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17; *Nickerson v. Network Solutions, LLC*, 2014 CO 79, 339 P.3d 526. A void order may be collaterally attacked at any time. *LVNV Funding*, 2015 IL 116129, ¶ 38; *Burton v. Colorado Access*, 2018 CO 11, 428 P.3d 208. When a foreign judgment is filed in Illinois, the circuit court may inquire into the jurisdictional basis of the foreign court's judgment, provided those issues have not been litigated in the foreign court. *Morey Fish Co. v. Rymer Foods, Inc.*, 158 Ill. 2d 179, 186-87 (1994). If the issue of jurisdiction has been litigated in the foreign court resulting in a final judgment, *res judicata* bars the circuit court from inquiring into the foreign court's jurisdiction. *First Wisconsin National Bank v. Kramer*, 202 Ill. App. 3d 1043, 1048 (1990). If the foreign court lacked jurisdiction over either the subject matter or the parties, its judgment is not entitled to full faith and credit in Illinois.

¶ 18 Defendant argues, and plaintiff acknowledges, that the principles of *res judicata* did not apply at the time of the circuit court's judgment because the probate court's judgment was not yet final; at the time of the circuit court's judgment, defendant's timely filed petition for a writ of certiorari was still pending before the Colorado Supreme Court. Under Colorado law, "a judgment is not final for purposes of issue preclusion until certiorari has been resolved both in the Colorado Supreme Court and the United States Supreme Court." *Barnett v. Elite Properties of America, Inc.*, 252 P.3d 14 (Colo. App. 2010). Therefore, we agree with the parties that, even

if the Colorado Court of Appeals in *Black* had directly addressed all of the jurisdictional issues raised by defendant in his petition to vacate, the circuit court was not barred from inquiring into the Denver Probate Court's jurisdiction. We note that the circuit court did not base its decision on *res judicata*; instead, it gave deference to the court of appeals's interpretation and analysis of Colorado law. Furthermore, as we stated above, the Colorado Supreme Court denied defendant's petition for a writ of certiorari. According to the clerk of the Colorado Court of Appeals, that court's mandate issued on May 24, 2019. Absent the filing of a petition for writ of certiorari with the United States Supreme Court, the probate court's judgment is destined to become final, at which point the question of the probate court's jurisdiction to enter the foreign judgment will have been fully litigated to a final judgment, and thereby barring further jurisdictional collateral attacks on the foreign judgment. *Morey Fish*, 158 Ill. 2d 186 (citing *Brownlee v. Western Chain Co.*, 49 Ill. App. 3d 247, 251 (1977)).

¶ 19 Defendant's first substantive argument in this court is that Joanne did not file a complaint in the probate court asserting a claim for civil theft and no summons was ever issued, which is a prerequisite for a civil action in a Colorado court. He contends that a claim for civil theft does not fall within the jurisdiction vested in the Denver Probate Court by the Colorado Constitution. Finally, he argues that "a probate court is a court of equity and punitive damages are not recoverable in actions in equity." We disagree.

¶ 20 Defendant correctly observes that Joanne filed a motion for civil theft damages, which was not styled as a complaint. However, the filing of a motion for civil theft damages is not fatal to the probate court having jurisdiction over the civil theft claim. In Colorado, as in Illinois, it is the substance of a filing, not its title, that controls how the filing is treated. *State ex rel. Suthers v. Mandatory Poster Agency, Inc.*, 260 P.3d 9, 13 (Colo. App. 2009) ("The substance rather than

the name or denomination given a pleading determines its character and sufficiency."); *People ex rel. Ryan v. City of West Chicago*, 216 Ill. App. 3d 683, 688 (1991) ("In determining the nature of a pleading or a motion, courts are not bound by the title given to the document by a party; instead, the substance of the document will be examined."). "Colorado has a liberal notice-pleading requirement." *Command Communications v. Fritz Companies, Inc.*, 36 P.3d 182, 187 (Colo. App. 2001). Joanne's motion to void the disclaimer alleged that defendant, in breach of his fiduciary duties to Joanne's estate, failed to disclose the effect of the disclaimer, resulting in the diversion of funds from Joanne's estate to defendant and his children, and her motion requested damages for civil theft. The Colorado Court of Appeals observed that "though not styled as a complaint, the motion set forth the allegations against Mr. Black and explained how the allegations satisfied the elements of a civil theft claim." *Black*, 2018 COA 7, ¶ 83. Joanne's motion, which was filed in the same conservatorship estate that defendant opened, was within the probate court's subject-matter jurisdiction. We find no error in the circuit court's judgment refusing to vacate the filing of the foreign judgment because defendant did not establish that Joanne's filing—styled as a motion rather than a complaint—failed to invoke the probate court's subject-matter jurisdiction.

¶ 21 Next, defendant argues that the probate court, as a court of limited jurisdiction, lacks subject-matter jurisdiction to adjudicate claims for civil theft. Defendant's argument lacks merit.

¶ 22 Section 9(3) of Article VI of the Colorado Constitution provides

> "In the city and county of Denver, exclusive original jurisdiction in all matters of probate, settlements of estates of deceased persons, appointment of guardians, conservators and administrators, and settlement of their accounts, the adjudication of the mentally ill, and such other jurisdiction as may be provided by law shall be

vested in a probate court, created by section 1 of this article." Colo. Const. art. VI, § 9(3).

¶ 23 Section 13-9-103 of the Colorado Revised Statutes provides,

"(1) The probate court of the city and county of Denver has original and exclusive jurisdiction in said city and county of:

* * *

(f) The administration of guardianships of minors and of persons declared mentally incompetent and of conservatorships of persons with mental health disorders or persons with an intellectual and developmental disability and of absentees[.]

* * *

"(3) The court has jurisdiction to determine every legal and equitable question arising in connection with decedents', wards', and absentees' estates, so far as the question concerns any person who is before the court by reason of any asserted right in any of the property of the estate or by reason of any asserted obligation to the estate[.]" Colo. Rev. Stat. Ann. § 13-9-103(1), (3) (West 2016).

¶ 24 The Colorado Court of Appeals rejected defendant's argument that the probate court lacked subject-matter jurisdiction to hear Joanne's civil theft claim. The court of appeals found that Joanne's "civil theft claim is coterminous with the breach of fiduciary duty claim, and is thus directly related to Mr. Black's 'obligation[s] to [Joanne's] estate.' " *Black*, 2018 COA 7, ¶ 78. Furthermore, defendant "had an obligation to preserve Joanne's assets, and any claim that he failed to do so arises 'in connection with' her estate and concerns someone 'who is before the court … by reason of an[ ] asserted obligation to [that] estate.' " *Id.* The court of appeals rejected

defendant's argument that the probate court lacked subject-matter jurisdiction to hear a civil theft claim where the civil theft claim is set forth in a criminal statute, reasoning "[t]he civil theft statute does not set forth a criminal violation; it establishes a private civil remedy for theft." *Id.* ¶ 79 (citing *Itin v. Ungar*, 17 P.3d 129, 133 (Colo. 2000)). In this court, defendant makes no effort to identify any flaws in the court of appeals's reasoning, or to identify any authority that conflicts with the court of appeal's opinion. Joanne accused defendant of breaching his fiduciary duties in order to divert assets from the estate to him and his own children, and those estate assets were indisputably part of the conservatorship estate. We therefore find no error in the circuit court's judgment, as defendant failed to establish that the probate court lacked subject-matter jurisdiction to adjudicate a civil theft claim arising out of defendant's breach of his fiduciary duties to Joanne's conservatorship estate.

¶ 25 Defendant argues that "a probate court is a court of equity and punitive damages are not recoverable in actions in equity[,]" and therefore the probate court lacked jurisdiction to treble Joanne's damages under the civil theft statute. The court in *Black* declined to address defendant's argument on this point because he raised it for the first time in his reply brief to that court. *Id.* ¶ 80. We find no merit to defendant's characterization of the damages awarded as punitive damages.

¶ 26 As the court of appeals in *Black* succinctly recited,

> "To recover civil theft damages, a party must prove, by a preponderance of the evidence, that the defendant committed all of the elements of criminal theft. [Citation.] A person commits theft when he 'knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception' with the intent to deprive the other person permanently of the

> thing of value. § 18-4-401(1), C.R.S. 2017. '[T]heft by deception requires proof that misrepresentations caused the victim to part with something of value and that the victim relied upon the swindler's misrepresentations.' [Citations.]" *Id.* ¶ 93.

¶ 27 The court in *Black* found sufficient evidence to support a finding of deception based on defendant's numerous misrepresentations to the probate court. *Id.* ¶¶ 96-97. Once the probate court found that the elements of a civil theft claim had been proven, it simply applied the remedy provided in section 18-4-405 of the Colorado Revised Statutes, which provides

> "All property obtained by theft, robbery, or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. The owner may maintain an action not only against the taker thereof but also against any person in whose possession he finds the property. *In any such action, the owner may recover two hundred dollars or three times the amount of the actual damages sustained by him, whichever is greater*, and may also recover costs of the action and reasonable attorney fees; but monetary damages and attorney fees shall not be recoverable from a good-faith purchaser or good-faith holder of the property." (Emphasis added.) Colo. Rev. Stat. Ann. § 18-4-405 (West 2016).

¶ 28 Defendant cites no authority to suggest that under Colorado law a statutory enhancement of damages is the same as punitive or exemplary damages, or that the probate court, which has "jurisdiction to determine every legal and equitable question arising in connection with *** wards' **** estates" (Colo. Rev. Stat. Ann. § 13-9-103(3) (West 2016)), is precluded from applying statutory enhancements to a damages award.

¶ 29 In sum, we find no error in the circuit court's judgment, as defendant has failed to demonstrate that the probate court lacked subject-matter jurisdiction to adjudicate Joanne's civil theft claim.

¶ 30 Defendant's final argument is that the probate court lacked the authority to order a surcharge because a statutorily-required notice of a surcharge hearing was not given. He contends that the probate court *sua sponte* raised the issue of a surcharge, but that the notice was not made in writing in advance of the hearing. Defendant couches his argument as a due process violation. We find no error in the circuit court's judgment rejecting defendant's argument.

¶ 31 Section 15-10-504(2)(a) of the Colorado Revised Statues provides,

> "If a court, after a hearing, determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court may surcharge the fiduciary for any damage or loss to the estate, beneficiaries, or interested persons. Such damages may include compensatory damages, interest, and attorney fees and costs." Colo. Rev. Stat. Ann. § 15-10-504(2)(a) (West 2016)

¶ 32 Section 15-10-504(1) provides "Except as provided in subsection (3) of this section, notice to a fiduciary concerning any matters governed by the provisions of this section shall be provided pursuant to section 15-10-505." *Id.* § 15-10-504(1) (West 2016). Section 15-10-505(1)(b) provides that "In nonemergency situations, notice to a fiduciary shall be governed by section 15-10-401." *Id.* § 15-10-505(1)(b). Section 15-10-401 provides that a "petitioner shall cause notice of the time and place of hearing on any petition to be given to any interested person or to the interested person's attorney of record or the interested person's designee" at least 14 days before the hearing by either mail, personal delivery, or publication. *Id.* § 15-10-401(1)(a)-

(c). The court "for good cause shown" may alter the method or time for giving notice of a hearing. *Id.* § 15-10-401(2).

¶ 33 Here, Joanne did not petition the probate court for a surcharge hearing; the probate court raised the issue *sua sponte*. The court of appeals in *Black* observed that on August 6, 2015, "after the conclusion of the liability phase, the [probate] court issued a minute order, explaining that the next hearing, set for September 8, would address the issues of surcharge and civil theft. Thus, Mr. Black had more than fourteen days' notice of the damages portion of the hearing." 2018 COA 7, ¶ 26. The court further observed that any defect in the notice was not jurisdictional, as defendant had actual notice of the proceedings more than 14 days in advance of the surcharge hearing, and that "[n]othing in section 15-10-401 indicates that the form of notice is a jurisdictional requirement; thus, 'actual notice may be substituted for it.' " *Id.* ¶ 27 (quoting *Feldewerth v. Joint School District 28-J*, 3 P.3d 467, 471 (Colo. App. 1999)). The court also observed that defendant never objected to proceeding with the surcharge hearing. *Id.* ¶ 32. In this court, defendant does not dispute that he had actual notice of the hearing, nor does he direct our attention to any Colorado authority suggesting that the notice provision in section 15-10-401 is jurisdictional. By all accounts, defendant fully participated in the hearing and defended against the imposition of a surcharge. Therefore, we find no error in the circuit court's judgment where defendant failed to establish that the probate court lacked subject-matter jurisdiction to enter a surcharge judgment based on an alleged defect in the notice of hearing.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 36 Affirmed.