

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

IN THE MATTER OF: :

THE ESTATE OF JOHN C. : CASE NO. CA2010-02-019  
BRUNSWICK :

: OPINION  
 : 3/7/2011  
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APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
PROBATE DIVISION  
Case No. 05 1026

Ann E. Krehbiel, 42 East Mulberry Street, Suite B, Lebanon, Ohio 45036, for appellees  
Mark Fleming, 8328 Kingsmere Court, Cincinnati, Ohio 45231, appellant, pro se

**HENDRICKSON, J.**

{¶1} Appellant, Mark A. Fleming, appeals a judgment of the Warren County Common Pleas Court, Probate Division, confirming the allowance and classification of claims filed by appellee, John Edward Powell, Jr., the Executor of the Estate of John C. Brunswick.

{¶2} Fleming challenges the trial court's decision finding that the executor acted properly in allowing and classifying the claims of the estate. It is from this decision that Fleming now appeals.

{¶3} Brunswick and Fleming were involved in a 17-year relationship which lasted from April 1986 to July 2003 when Brunswick ended the relationship. During this time period, the two pooled their monies together and paid the bills. Fleming alleged that after the relationship had terminated, he entered into an oral agreement with Brunswick on how to divide certain assets that were attributed to their relationship. In particular, Fleming claims he was to receive all interest in Blue Chip Builder's Inc., a company incorporated in 1992 and run by Fleming, as well as two parcels of property known as 7856 Perry Street, Cincinnati, Ohio and 897 West North Bend Road, Cincinnati, Ohio.<sup>1</sup> According to Fleming, Brunswick was to receive a Hawaiian time share titled in Blue Chip's corporate name, a stock account and his retirement account. The two also allegedly agreed on a division of the debt incurred during the relationship. The parties, however, never memorialized their agreement in writing prior to Brunswick's death.

{¶4} Brunswick passed away on November 18, 2004, and John Edward Powell, Jr. was appointed as the executor of Brunswick's estate on January 18, 2005. At the time of his death, Brunswick owned all of the outstanding stock of Blue Chip and held the deeds to both the Perry Street and West North Bend Road properties in his name. Pursuant to Brunswick's Last Will and Testament, the Perry Street and West North Bend Road properties were devised to Fleming. Brunswick also bequeathed all of his stock in Blue Chip to Fleming who continued to run the company after Brunswick's death.

{¶5} On June 17, 2005, the executor filed the Inventory listing assets totaling \$339,497.48. The Inventory listed, inter alia, the Perry Street and West North Bend Road properties and assets of Blue Chip, namely a checking account, miscellaneous

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1. Blue Chip used the West North Bend Road property as its business headquarters and Fleming and Brunswick used the Perry Street property as their residence until Brunswick moved out in July 2003. After Brunswick's death, Fleming continued to use the West North Bend Road property for the benefit of Blue

furniture and equipment and the Hawaiian timeshare. Fleming then filed exceptions to the Inventory claiming that the Perry Street and West North Bend Road properties and the stock in Blue Chip should not be included as an estate asset on a variety of legal theories based upon the alleged oral agreement he entered into with Brunswick. On July 25, 2006, the trial court overruled Fleming's exceptions which this court later affirmed in *In re Estate of John C. Brunswick*, Warren App. No. CA2006-08-096, 2007-Ohio-5396.

{¶16} On September 14, 2005, the executor filed a "Representation of Insolvency" and Schedule of Claims. The schedule of claims represented that the claims of the estate totaled \$446,687.74, of which \$10,658.00 was Fleming's claim which the executor assigned as an administrative expense under R.C. 2117.25(A)(1), while \$152,036.02 was Fleming's claim assigned as other debts under R.C. 2117.25(A)(9). The claim assigned to the (A)(1) class represented reimbursement to Fleming for mortgage payments he made on the Perry Street and West North Bend Road properties from December 2004 through August 2005 and from December 2004 through May 2005, respectively. The estate's attorney represented to the court at the insolvency hearing that this amount covered a reasonable time period after Brunswick's death to reimburse Fleming for the mortgage payments he made. Fleming's claim for \$152,036.02 was filed with the probate court on May 16, 2005, and represents a claim for \$63,500 in equity in Perry Street property, \$84,200 in equity in West North Bend Road property, and \$4,336.02 for reimbursement for payments Fleming made on Brunswick's car payments and insurance. Fleming also claimed an unspecified amount for payments he made to cover Brunswick's line of credit established for Blue Chip and mortgage payments he made on the Perry Street and West North Bend Road properties

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Chip and continued to use Perry Street as his personal residence.

since November 2004.

{¶17} Then, on October 30, 2007, Fleming filed his second claim with the probate court in the amount of \$70,726.51, all of which Fleming claimed were administrative expenses. In this claim, Fleming sought \$23,570.54 for services as President of Blue Chip from November 19, 2004 to November 18, 2005; \$15,742.85 for expenses he incurred in closing Blue Chip; \$14,633.02 for administrative expenses for the Perry Street property; \$14,942.60 for administrative expenses for the West North Bend Road property; and \$1,837.50 for administrative expenses for the Hawaiian timeshare.

{¶18} The executor filed an Amended Schedule of Claims on November 4, 2009, representing that all claims against the estate totaled \$444,173.74. The amended schedule included Fleming's earlier claims reflected in the September 14, 2005 claim schedule. The executor represented that there was \$25,948.82 in the estate checking account and requested a hearing on the amended schedule of claims. After notice was provided, a hearing was held on January 5, 2010 to determine whether the estate was insolvent and whether the executor properly assigned the claims. At the hearing, Fleming filed and presented his "Exhibits" consisting of 11 separate letters. These documents only referenced issues relating to his October 30, 2007 claim for services rendered as President of Blue Chip and mortgage payments he made on the Perry Street and West North Bend properties. Subsequent to the hearing, Fleming filed a separate "Memorandum in Support of Mark Fleming's Claim for Reimbursement of Administrative Expenses" asking the court to: (1) hold him as a mortgagor and order the estate to reimburse him for mortgage payments he made on Perry Street and West North Bend Road properties; (2) hold that the Hawaiian timeshare proceeds should have been deposited in Blue Chip's account; (3) order certain reimbursement made to the

executor below the (A)(1) class be refunded back to the estate; (4) order all claims listed under (A)(1) and his additional administrative expenses be ratably paid to the creditors; and (5) withhold or dramatically reduce the executor's and estate attorney's fees for failing to perform their respective duties properly.

**{¶9}** On February 17, 2010, the trial court filed its Decision and Entry finding that the estate was insolvent and that the executor had acted properly in allowing and classifying all of the debts listed in its amended schedule of claims. The probate court also rejected Fleming's October claims in their entirety. In its decision, the court also addressed Fleming's arguments regarding the classification of his claims against the estate. The court determined that Fleming was not entitled to reimbursement for acting as president of Blue Chip, for costs associated with Blue Chip's closing, or for payments made for the Hawaiian timeshare because they were the company's expenses for which the estate was not liable. The probate court also found that the estate was not responsible for reimbursing Fleming for all the payments he made on the mortgages for Perry Street and West North Bend Road. Lastly, the court concluded that Fleming was not entitled to recoup money he expended on a new furnace at West North Bend Road, as it was purchased without the consent of the estate.

**{¶10}** Fleming filed the instant appeal, raising five assignments of error. For ease of discussion, we have elected to address the assignments out of order.

**{¶11}** Assignment of Error No. 3:

**{¶12}** "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN NOT ENFORCING THE AGREEMENTS BETWEEN THE ESTATE AND FLEMING."

**{¶13}** In his third assignment of error, Fleming argues that the probate court failed to enforce the "agreements" he and the estate entered into whereby the estate

promised to reimburse him, as administrative expenses of the estate, for: (1) expenses incurred with running Blue Chip, including his salary, and (2) mortgage and other payments made on Perry Street and West North Bend Road. We do not agree.

{¶14} "The existence of a contract is generally an issue for the trier of fact to resolve." *In re Estate of Ivanchak*, 169 Ohio App.3d 140, 2006-Ohio-5175, ¶18. As such, a trial court's findings are entitled to a presumption of correctness, and will not be reversed so long as they are supported by competent, credible evidence. *Id.*

{¶15} The probate court found there was no agreement or representation from the estate to compensate Fleming for running Blue Chip, or to reimburse him for expenses incurred in managing and closing Blue Chip, as these were debts for which the company was responsible, not the estate. In addition, the court found there was no agreement to compensate Fleming for mortgage payments made beyond those amounts allowed by the estate, or to reimburse him for utility payments incidental to his occupancy, or for the new furnace he obtained without the estate's permission.

{¶16} Fleming argues that he "entered into two bilateral, executory, express oral agreements" with the attorney for the estate. According to Fleming, the first "agreement" was entered into via a telephone conversation in January 2005. Fleming maintains that the estate's attorney asked him to continue in his role as president of Blue Chip and to continue the company's operations on behalf of the estate. Fleming also asserts that the estate's attorney promised to reimburse him for any expenses he incurred in operating Blue Chip as an administrative expense of the estate. The trial court noted that the only evidence supporting Fleming's assertions was a reference in a June 3, 2005 letter from the estate's attorney to him that stated: "I understand that you are continuing to run the business of Blue Chip Builders, Inc. on behalf of the estate of John C. Brunswick." Fleming maintains that the second "agreement" was entered into

on April 18, 2005 when the estate's attorney asked both the executor and Fleming to continue making mortgage payments on behalf of the estate, which later would be reimbursed as administrative expenses of the estate.

{¶17} We note that the estate did not provide any evidence disputing the existence of these two alleged agreements. However, the failure by the estate to refute these allegations by Fleming does not prevent the trial court from finding that there were no such agreements entered into between the parties. On appeal, great deference is given to the trier of fact in assessing the credibility of the witnesses when it decided this issue. See *In re C.C.*, Butler App. No. CA2006-06-139, 2007-Ohio-3347, ¶10. The only evidence substantiating Fleming's position that there was such an agreement was his own self-serving testimony. None of the written correspondence sent to Fleming by the estate's attorney reflects this agreement.

{¶18} The June 10, 2005 letter Fleming claims substantiates his position merely makes reference to the fact that the estate's debts exceed the value of the assets and the procedure that is followed in classifying debts when an estate is insolvent. The estate attorney merely asked Fleming to provide her with "an itemized listing of all expenses that you have advanced on behalf of the estate. This should include payments on the two mortgages and the line of credit on behalf of Mr. Brunswick and Blue Chip Builders, Inc. In addition, please provide me with a detailed accounting for the business income and expenditures since the date of Mr. Brunswick's death."

{¶19} The estate attorney then outlined the law in Ohio as to the order in which debts are to be paid. Even though she specified certain estate claims as falling under certain categories, the estate attorney did not represent that Fleming's contested claims were considered administration expenses. To the contrary, the estate attorney stated "The first order of priority consist of administrative expenses." After explaining the

procedure set forth in R.C. 2117.17, the estate attorney concluded the letter by saying: "As you can see, we must verify the amount of the debts in each category prior to moving to the next category; however, I believe it will be unlikely that the last category of debts will be paid in full. Please provide me with the requested information and contact me with your questions or concerns."

**{¶20}** We concur with the trial court in its finding that Fleming failed to establish that the parties entered into such an agreement. It is readily apparent that the trial court considered both the relevant facts and the credibility of the witnesses when it decided this issue.

**{¶21}** Even assuming, arguendo, that some sort of agreement existed between the estate and Fleming – namely, that expenses Fleming incurred for running Blue Chip and/or making mortgage payments on the two properties would be reimbursed by the estate as administrative expenses – the probate court properly determined that the reimbursements Fleming sought were not administrative expenses of the estate. This will be further discussed under Fleming's fourth assignment of error. Based upon the record before us, we conclude that there is competent and credible evidence to support these findings. Fleming's third assignment of error is overruled.

**{¶22}** Assignment of Error No. 4:

**{¶23}** "THE TRIAL COURT ACTED ARBITRARILY IN DISPROVING A CLAIM WHICH THE EXECUTOR HAS ALLOWED AND ALLOWING THE ESTATE TO CLASSIFY EXPENSES PAID BY FLEMING ON BEHALF OF THE ESTATE AS 'OTHER DEBTS.'"

**{¶24}** In his fourth assignment of error, Fleming argues that the trial court improperly rejected his October 30, 2007 claims against the estate rather than determining whether they were properly classified. We do not agree.



**{¶25}** R.C. 2117.17 sets forth the procedure for allowing and classifying claims and requires a hearing at which the court "shall determine whether the executor or administrator acted properly in allowing and classifying each claim and shall make an order confirming or disapproving such action." Therefore, the probate court has the statutory authority to approve, re-classify or reject any claims allowed and assigned by the executor.

**{¶26}** R.C. 2117.25(A)(1) – (A)(9) lists the following order for priority in which debts are to be paid: (A)(1) costs and expenses of administration of the estate; (A)(2) funeral expenses up to \$4,000; (A)(3) allowance for support; (A)(4) debts entitled to preference under U.S. laws; (A)(5) expenses of the last sickness of the decedent; (A)(6) an additional \$2,000 for funeral expenses; (A)(7) personal property taxes, Medicaid estate recovery program claims instituted pursuant to R.C. 5111.11, and obligations for which the decedent was personally liable to the state or its subdivision; (A)(8) debts for manual labor performed for the decedent within 12 months preceding the decedent's death, not to exceed \$300 per creditor; and (A)(9) any other debts which claims have been presented and finally approved.

**{¶27}** When reviewing probate court decisions regarding the allowance and classification of claims, we are limited to determining whether the probate court abused its discretion in making its findings. See *In re Estate of Kendall*, Montgomery App. No. 21702, 2007-Ohio-3809, ¶11; *In re Estate of Ring*, Franklin App. No. 06AP-801, 2007-Ohio-500.

**{¶28}** Fleming claims that the probate court failed to address his classification arguments and instead focused on disallowing the claims he presented in October 2007 in the amount of \$70,726.51. Fleming maintains that the probate court should have reviewed the expenses he claimed for reimbursement and found that they were "actual,

necessary, just and reasonable" and entitled to classification as administrative expenses. In particular, Fleming argues that the expenses he incurred with running Blue Chip after Brunswick's death (including his salary, payments made to close the business, and payments made on the Hawaiian timeshare) should have been classified as administrative expenses. In addition, Fleming contends that the mortgage payments made on Perry Street and West North Bend Road were also misclassified and entitled to be paid as administrative expenses.

**{¶29}** In its entry, the probate court stated it was restricting its decision to the classification of Fleming's claims by the executor. The court observed that the executor had listed two claims for Fleming in the amended schedule of claims, one that was classified under (A)(1) and one that was classified under (A)(9). The probate court then discussed each of Fleming's October 2007 claims. After careful review of the record, we conclude that the probate court did not abuse its discretion when it rendered its decision on the allowance, classification and rejection of Fleming's claims against the estate.

**{¶30}** First, we agree with the probate court that any expenses incurred in managing and closing Blue Chip were debts for which the company was responsible, not the estate. As the probate court properly noted in its judgment entry:

**{¶31}** "The compensation of employees of a corporation whose stock is held by a decedent at death can hardly be said to be an administrative expense of the decedent's estate. Fleming's compensation as president of Blue Chip is not an obligation of Brunswick's estate, administrative or otherwise."

**{¶32}** The probate court further stated:

**{¶33}** "Blue Chip has an existence that is separate and independent of the estate. The estate holds all of Blue Chip's stock. That does not make the estate generally responsible for Blue Chip's obligations. A primary purpose of the corporate

form is the limited liability for corporate obligations enjoyed by the corporation's owners (i.e., stockholders) \* \* \* and [payments associated with Blue Chip's closure are] not [debts] for which the estate is liable."

{¶34} Furthermore, with regard to payments made by Fleming related to the Hawaiian timeshare, the probate court correctly found that the estate was not liable for these expenditures because the timeshare "was owned by Blue Chip, not Brunswick," and, as such, "Brunswick had no personal responsibility for the timeshare or expenses relating thereto." We believe the probate court did not err in finding that the Blue Chip claims were not administrative expenses of Brunswick's estate.

{¶35} Second, we agree with the probate court that any mortgage payments made by Fleming on Perry Street (after August 2005) and on West North Bend Road (after May 2005) were reasonable rental amounts on the properties and not administrative expenses of the estate.<sup>2</sup> This is especially true in light of the fact that Fleming was a holdover tenant on the Perry Street property.

{¶36} Also, the probate court did not err in finding that additional funds expended by Fleming for a furnace and for utilities at the West North Bend Road property were not administrative expenses of the estate. Fleming neither consulted with the executor nor obtained proper authority to be reimbursed for this expenditure.

{¶37} In conclusion, the probate court correctly found that Fleming's October 2007 claims in the amount of \$70,726.51 were not administrative expenses of the estate. Therefore, we conclude that the probate court did not abuse its discretion when it rejected this claim against Brunswick's estate. Fleming's fourth assignment of error is hereby overruled.

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2. As noted earlier, the estate attorney determined it was reasonable to classify the mortgage payments Fleming made on behalf of the estate prior to these dates as reasonable administration expenses. These amounts were included in the \$10,658 claim assigned to Fleming and classified as (A)(1) claims.

{¶38} Assignment of Error No. 1:

{¶39} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN ALLOWING THE ESTATE TO CLASSIFY MORTGAGE PAYMENTS MADE BY FLEMING AS 'OTHER DEBTS.'"

{¶40} In his first assignment of error, Fleming presents an alternative theory of recovery for the payments he made towards the mortgages for Perry Street and West North Bend Road. Fleming contends he is entitled to recoup these expenses from the proceeds of the sale of the properties rather than having the estate classify the expenditures as general debts. We disagree.

{¶41} Fleming relies on this court's decision in *Ogan v. Ogan* (1997), 122 Ohio App.3d 580, to support his proposition that a "claimant takes the place of the mortgagor to the extent of payments made." We find that *Ogan* can be distinguished and is inapplicable to the case at bar for two reasons.

{¶42} First, unlike *Ogan*, Fleming failed to timely raise this issue. "Litigants in Ohio are entitled to an appeal from a trial court judgment when a notice of appeal is filed within the time allowed." *Rothman v. Rothman*, 124 Ohio St.3d 109, 2009-Ohio-6410, ¶4, citing App.R. 3(A). A party generally has 30 days after a judgment entry or order is issued to file a notice of appeal. App.R. 4(A). If a party fails to file a notice of appeal within the time prescribed by law, the reviewing court is without jurisdiction to consider the matter being appealed. *State ex rel. Pendell v. Adams Cty. Bd. of Elections* (1988), 40 Ohio St.3d 58, 60.

{¶43} Fleming claims he should have been reimbursed for the mortgage payments from their respective sale proceeds.<sup>3</sup> However, in order to timely assert this

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3. The West North Bend Road property was sold by the filing of a Complaint to Sell Real Estate in Warren Probate Case No. 051026.1, and the Perry Street property was also sold by filing a similar complaint in

position, Fleming had to do so during the sale proceedings of each property. In both actions, Fleming was named as a party defendant, filed respective responsive pleadings claiming an equitable interest in the properties, and filed objections to the sale of parcels of real estate. There is no assertion by Fleming to be reimbursed from the sale proceeds for the mortgage payments he claims should now be classified as administrative expenses. On February 12, 2008, the probate court filed its "Judgment Entry Confirming Sale, Ordering Deed and Distribution" on the sale of West North Bend Road property. This entry orders the executor to distribute the sale proceeds to the listed entities or persons in the amounts designated therein. Likewise, the probate court put on a similar judgment entry in the sale of the Perry Street property on June 25, 2009. Fleming filed the instant appeal on February 22, 2010, well beyond the time allowed by the appellate rules to challenge these final appealable orders. As such, we lack jurisdiction to consider any argument with the regard to these respective orders.

{¶144} Secondly, *Ogan* is factually distinguishable from the instant case. In *Ogan*, the surviving spouse remained in the marital home after her husband's death and continued to make the mortgage payments. The mortgage was in the decedent's name and title to the property was held in survivorship form between the decedent and the surviving spouse. Unlike the case at bar, the executor in *Ogan* did not assert that sums paid by the surviving spouse towards the monthly mortgage payments were deemed reasonable rent for occupying the premises. Here, the executor found that the sums paid by Fleming towards the mortgages on each property were reasonable rent since Blue Chip was still using the West North Bend Road property for its headquarters and he was still using the Perry Street property for his personal residence. Also, *Ogan* did not address

the specific issue whether the surviving spouse's claim for reimbursement was an administrative expense or other debt under R.C. 2117.25. The trial court did not abuse its discretion by determining the amounts Fleming paid on the two mortgages was reasonable rent. Based upon the foregoing, Fleming's first assignment of error is overruled.

**{¶45}** Assignment of Error No. 5

**{¶46}** "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN ALLOWING THE STATE TO PAY CLAIMS IN VIOLATION OF TITLE 21 OF THE OHIO REVISED CODE."

**{¶47}** In his fifth assignment of error, Fleming maintains that the executor and the two attorneys for the estate were not entitled to the amount of the fees they presented to the court. First, Fleming claims it was improper for the executor and the attorney to receive \$3,160.00 and \$8,900 respectively from the proceeds of the sale of Perry Street property. These fees were part of the court's final appealable order confirming the sale on February 12, 2008. Almost two years later, appellant raises this issue for the first time in his memorandum in support of his administrative expense claim filed on January 8, 2010. As discussed in the first assignment of error, Fleming failed to timely appeal the judgment confirming sale of the Perry Street property. Therefore, we lack jurisdiction to consider the reasonableness of these fees. See *Rothman*, 2009-Ohio-6410; *Pendell*, 40 Ohio St.3d at 60.

**{¶48}** Fleming also questions the attorney fees in the amount of \$28,344.01 that were paid to M. Michele Fleming for services rendered in representing the estate in litigation and on appeal. Michele Fleming submitted an application for this fee and accompanied it with an affidavit and detailed time record. The probate court considered this evidence along with testimony from the executor and Thomas W. Breidenstein, Esq.

in determining that the submitted fee was reasonable. In its February 12, 2008 "Entry on Application for Fees of M. Michele Fleming, Esq.", the court noted that no objection was made at the hearing held on January 29, 2008, and approved the requested fee. This fee was contained in the Third Partial Account filed with the court on January 20, 2009, and subsequently approved by entry dated March 17, 2009. For the same reason set forth above, we lack jurisdiction to consider the reasonableness of Michele Fleming's fees.

{¶49} Finally, Fleming contests the reasonableness of the attorney fees submitted by Anne E. Krehbiel as the attorney for the estate in the sum of \$54,000. Although there is no application for this fee in the record, counsel classified her fee as an administrative expense in the estate's Amended Schedule of Claims filed on November 4, 2009. Krehbiel provided very detailed documentation setting forth her basis for her fee. As noted in footnotes 1 and 2 to the Amended Schedule of Claims, Krehbiel billed the estate for 302 hours at \$200 per hour for services rendered on behalf of the estate through October 22, 2009. Krehbiel pointed out to the court that her fee was increased in part because she had to represent the executor in defending the estate against a claim filed by Fleming's former attorney.

{¶50} We note that Fleming did not raise this issue until after the January 5, 2010 hearing on the classification of claims by the executor. Fleming raised this issue in his memorandum in support of his claim for administrative expenses that he filed on January 8, 2010. Although Fleming made allegations that Krehbiel's attorney fees were unreasonable, he did not provide any evidence to the court to substantiate his position. Because Fleming failed to properly submit evidence to support his claim as to the reasonableness of Krehbiel's attorney fees and based upon the record below, we find the trial court did not abuse its discretion by approving her claim.

**{¶51}** Fleming's fifth assignment of error is overruled.

**{¶52}** Assignment of Error No. 2:

**{¶53}** "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN ALLOWING THE ESTATE TO SELL ASSETS OF BLUE CHIP BUILDERS, INC. WITHOUT THE AUTHORITY OF ITS BOARD OF DIRECTORS AND THEN MISAPPROPRIATE THE FUNDS."

**{¶54}** In his second assignment of error, Fleming maintains that the estate did not have the authority to sell Blue Chip's Hawaiian timeshare and to deposit the proceeds in the estate's account. By misappropriating the proceeds of the sale of the timeshare, Fleming argues that the estate has defrauded both Blue Chip and its creditors.

**{¶55}** Although Fleming raised this argument to the probate court in his "Memorandum in Support of Mark Fleming's Claim for Reimbursement of Administrative Expenses," we find that the judgment entry being appealed from was expressly limited by the probate court to the insolvency of the estate and the allowance and classification of claims. Since this issue was not addressed in the court's February 17, 2010 decision and entry, we cannot consider it on appeal.

**{¶56}** Fleming's second assignment of error is overruled.

**{¶57}** Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.