

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THE NORTHERN TRUST COMPANY,)
as trustee of the Elizabeth W. Walker)
Trust fbo Charles P. Walker, III, e/u The)
Elizabeth W. Walker Revocable Trust,)
u/a/d April 26, 1976, as amended and)
restated,)

Appellant,)

v.)

Case No. 2D19-1082

JAMES COOPER ABBOTT and MARK)
THOMAS ABBOTT, as co-personal)
representatives of the Estate of Charles)
P. Walker, III, deceased; and REBECCA)
COOPER WALKER, individually and as)
trustee of the Charles P. Walker Trust)
u/a/d May 10, 1991, as amended and)
restated,)

Appellees.)

)

Opinion filed January 6, 2021.

Appeal from the Circuit Court for
Sarasota County; Charles E. Williams,
Judge.

David A. Wallace and Caroleen B. Brey
of Bentley & Bruning, P.A., Sarasota,
for Appellant.

Susan J. Silverman, Sarasota, for
Appellee Rebecca Cooper Walker,
individually and as trustee of the

Charles P. Walker Trust u/a/d May 10, 1991, as amended and restated.

No appearance for Appellees James Cooper Abbott and Mark Thomas Abbott as co-personal representatives of the Estate of Charles P. Walker, III, deceased.

SMITH, Judge.

The Northern Trust Company, as Trustee of the Elizabeth W. Walker Trust FBO Charles P. Walker, III, E/U The Elizabeth W. Walker Revocable Trust, U/A/D April 26, 1976 (Northern Trust), appeals the probate court's order denying its motion to strike the statement of claim (Claim) filed by Rebecca Cooper Walker, individually and in her capacity as Trustee of the Charles P. Walker Trust. Because the order entered in the probate court is a nonfinal, nonappealable order, we dismiss the appeal without prejudice to Northern Trust filing a subsequent motion to strike with the probate court.

Following the death of her husband Charles P. Walker, III (Decedent), Rebecca Walker was appointed the personal representative (PR) of his estate. On August 31, 2018, a notice to creditors was published. See § 733.701, Fla. Stat. (2018) (requiring every personal representative to publish a notice to creditors). During the pendency of the probate proceedings, Rebecca Walker discovered that in November 2018, without any forewarning to the Estate, Northern Trust had applied \$1.4 million of the assets held in the Charles P. Walker Trust to satisfy a secured pledge agreement signed by the Decedent in 2015. Rebecca Walker then petitioned for resignation as the PR, which the court granted. On December 3, 2018, the successor PR served Rebecca Walker with an amended notice to creditors pursuant to section 733.2121(3)(a), which

provides that "[t]he personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable . . . and shall promptly serve a copy of the notice on those creditors." On December 12, 2018, Rebecca Walker filed her Claim against the Decedent's estate, individually and as Trustee of the Charles P. Walker Trust. In her Claim she contends that the Decedent previously executed a mortgage modification agreement in 2010 with Northern Trust, which secured the Decedent's and Rebecca Walker's homestead, and the Decedent intended to satisfy this loan from the proceeds of his late mother's trust, Elizabeth W. Walker Trust.¹ The Decedent did not intend to satisfy the loan from the corpus of the Charles P. Walker Trust, the assets of which were meant for the benefit of Rebecca Walker during her lifetime. Rebecca Walker further contended that the Decedent was in the early stages of dementia when he signed the pledge agreement.

Northern Trust moved to strike the Claim, and Rebecca Walker countered with her own motion to strike Northern Trust's motion to strike.² At the nonevidentiary hearing on the competing motions, Northern Trust challenged the timeliness and legal

¹The Elizabeth W. Walker Trust provided for the appointment of funds from that trust to pay creditors of the Decedent's estate. Northern Trust serves as the Trustee for the Elizabeth W. Walker Trust. Northern Trust is also where the Charles P. Walker Trust is held. And according to Rebecca Walker, Northern Trust advised the Decedent regarding his estate planning, which included advising him as to the appointment of funds from the Elizabeth W. Walker Trust to pay creditors of the Decedent's estate, and Northern Trust knew of the Decedent's intent as it related to the repayment of the pledge agreement.

²Northern Trust also filed an objection to the Claim under section 733.705(4). In response to that objection, Rebecca Walker instituted an independent action in the circuit court to determine the validity of her Claim. See § 733.705(5) (providing that a claimant must file an independent action upon the claim within thirty days from the date of service of an objection to the statement of claim).

sufficiency of the Claim arguing: (1) pursuant to section 733.702(1), the Claim was precluded because it was filed more than three months after the first notice to creditors was published by Rebecca Walker who, as the former PR, had knowledge of the time period; (2) the Claim failed to state any facts alleging a valid claim against the estate; and (3) Rebecca Walker was not a creditor entitled to be paid from the estate pursuant to section 733.707. In response, Rebecca Walker first argued that because she had filed an independent action in response to Northern Trust's objection, any issues related to her Claim were now the subject of that independent action and the probate court no longer had jurisdiction over those issues. With regard to the timeliness of her Claim, Rebecca Walker argued she filed the Claim as soon as she became aware that she had one—when she learned Northern Trust had paid itself from the Charles P. Walker Trust. She also argued her Claim was timely filed pursuant to section 733.702(1) because it was filed within thirty days of her being served with the Amended Notice to Creditors; it was not until November 6, 2018, when Northern Trust depleted the corpus of the Charles P. Walker Trust, to which Rebecca Walker was a beneficiary, that the Claim arose. See § 733.702(1) (providing that to be valid, a claim must be filed against the estate within three months of the first publication of the notice to creditors, except that any creditor required to be served with a copy of the notice to creditors has thirty days after the date of service to file a claim).

Following the hearing, the probate court rendered an order denying Northern Trust's motion to strike, finding, without more, that "further discovery is needed to determine if there is any basis for a claim against the Decedent." The probate court denied Rebecca Walker's motion to strike as moot.

The posture in which this appeal arose is from the denial of Northern Trust's motion to strike the Claim. Following briefing in this case and prior to oral arguments, this court issued an order instructing Northern Trust to show cause why this appeal should not be dismissed as from a nonfinal, nonappealable order. See Dempsey v. Dempsey, 899 So. 2d 1272, 1273 (Fla. 2d DCA 2005) (explaining the "finality of the order on appeal is controlled by the nature of the proceedings established in the Florida Probate Rules" and the question of finality "must be viewed from the perspective of the appellant who is challenging the order"). Northern Trust responded by relying upon Florida Rule of Appellate Procedure 9.170(b).

Rule 9.170(b) provides that "appeals of orders rendered in probate and guardianship cases shall be limited to orders that finally determine the right or obligation of an interested person as defined in the Florida Probate Code." The rule enumerates a nonexclusive list of twenty-three orders that fall under the umbrella of rule 9.170(b)'s finality requirement. An order denying a motion to strike a claim is not one of the enumerated orders.

Comparing the subject order to the litany of orders in rule 9.170(b), the subject order lacks what the other orders share in common—finality. The order here fails to "finally determine a right or obligation of an interested person" or "terminate judicial labor or provide finality as to any issue or party in this case." See Maercks v. Maercks, 272 So. 3d 485, 487 (Fla. 3d DCA 2019). Rather, the order denies all requested relief, stating "further discovery is needed to determine if there is any basis for a claim against the Decedent." The order clearly contemplates additional judicial labor by the probate court. Such additional labor might include conducting an

evidentiary hearing on the issues raised in the motion to strike—whether Rebecca Walker was a "reasonably ascertainable" creditor entitled to notice under section 733.2121(3)(a), whether the Claim was legally sufficient in form under section 733.703 and Florida Rule of Probate and Guardianship Procedure 5.490, or whether the Claim was timely brought under section 733.702. These issues were appropriate for the probate court to decide. See Faerber v. D.G., 928 So. 2d 517, 518-19 (Fla. 2d DCA 2006) (holding the trial court was required to conduct an evidentiary hearing to determine whether petitioner should have been given actual notice as a reasonably ascertainable potential creditor of the estate); Bell v. Harris, 366 So. 2d 765, 767 (Fla. 1st DCA 1978) (noting on rehearing that the probate court properly determined that the claim was sufficient where it adequately put the appellant on notice of the basis of the claim); Picchione v. Asti, 354 So. 2d 954, 955 (Fla. 3d DCA 1978) (approving of the probate court's determination of timeliness on summary judgment). To be sure, the probate court was not provided the opportunity to complete its determination.³ We are constrained by the limited record before us and decline to speculate as to which particular issue the probate court determined additional discovery was required before it could make its determination on the issues raised by Northern Trust. Indeed, the probate court made no determination of any kind. It would be "inappropriate for us to render a decision as to the legal sufficiency of the claim until such time as the probate court has rendered an order thereon for our review." See Bell, 366 So. 2d at 767.

³We cannot adopt Northern Trust's suggestion that the probate court's order was referencing discovery from the independent action.

We are not persuaded by the cases advanced by Northern Trust which stand for the proposition that an order denying a motion to strike is proper for appellate review under rule 9.170, as those cases all involve orders finally determining the right or obligation of an interested party. See Herman v. Bennett, 278 So. 3d 178, 179 (Fla. 1st DCA 2019) (holding the probate court erred in determining the claimant's statement of claim was timely filed where the three-month period to file a claim began on the date of publishing the notice to creditors); Richard v. Richard, 193 So. 3d 964, 965 (Fla. 3d DCA 2016) (examining the probate court's order denying a motion to strike a statement of claim after the probate court nullified the published notice to creditors and, therefore, found the statement of claim to be timely filed); Estate of Shearer v. Agency of Health Care Admin., 737 So. 2d 1229, 1232 (Fla. 5th DCA 1999) (reversing probate court's order denying motion to strike amendment to statement of claim where the amounts claimed in the amendment were for separate and distinct services requiring different elements of proof); In re Perlman's Estate, 381 So. 2d 248, 248 (Fla. 4th DCA 1979) (explaining that the probate court erred in denying a motion to strike a claim filed beyond the statutory time provided for filing claims against an estate where there was no dispute that the claim was untimely filed). Contrary to the cases cited by Northern Trust regarding the timeliness of a claim, the probate court here made no determination as to the timeliness of Rebecca Walker's claim. The probate court also made no determination as to whether Rebecca Walker was a "reasonably ascertainable creditor." See Strulowitz v. Cadle Co., II, 839 So. 2d 879, 881 (Fla. 4th DCA 2003) (affirming probate court's order finding claimant was a reasonably ascertainable creditor entitled to

be served with a notice to creditor and allowing the claim to move forward as timely filed).

If an order on appeal fails to "terminate judicial labor or provide finality as to any issue or party in [the] case," it is subject to dismissal. Maercks, 272 So. 3d at 487 (dismissing appeal from probate court's order admitting a document as a codicil after finding the order merely ruled on the admission of the codicil and did not finally determine any right or obligation of an interested person and expressly contemplated "future judicial labor"); see also Dempsey, 899 So. 2d at 1273 (stating order determining widow was entitled to elective share of estate was a nonfinal, non-appealable order); Tyler v. Huggins, 175 So. 2d 239, 240 (Fla. 2d DCA 1965) (concluding that the order of the probate court setting aside and declaring void ab initio letters of administration and admitting claim against estate was interlocutory in nature and dismissing appeal); Favreau v. Favreau, 940 So. 2d 1188, 1189 (Fla. 5th DCA 2006) (dismissing appeal where the probate court's order prohibiting widow of decedent from filing future pro se filings was not final in nature). Having determined that the probate order is not "final" for purposes of satisfying rule 9.170, dismissal is the appropriate action. See Tyler, 175 So. 2d at 240.

While dismissal of this case is appropriate and inasmuch as the issue of the probate court's jurisdiction will likely arise again below, we write to address the parties' arguments related to the scope of the probate court's jurisdiction when faced with both an objection, which results in the filing of an independent action in circuit court, and a motion to strike a statement of claim. Rebecca Walker takes the position that when she filed her independent action under section 733.705(5), the probate court's

jurisdiction ended. Neither the probate rules nor chapter 733 address the filing of a motion to strike, but the cases allow an interested party to file both an objection and a motion to strike a statement of claim, as Northern Trust did here. See Simpson v. Estate of Simpson, 922 So. 2d 1027, 1029 (Fla. 5th DCA 2006); Bell, 366 So. 2d at 767.

A motion to strike tests the facial sufficiency of the statement of claim, whereas the objection—which requires the claimant to file an independent action—relates to the validity or merits of a facially sufficient claim. See Simpson, 922 So. 2d at 1029 (noting the probate court should have ended its inquiry after determining whether the claimant was a reasonably ascertainable creditor and erred in proceeding to determine the validity of the claimant's claim, stating "the merits of [the claimant's] claim should have been determined in an independent action"); Bell, 366 So. 2d at 767 ("The personal representative's objection to the sufficiency of the [s]tatement of [c]laim can be raised only in the probate court. The personal representative may not collaterally attack the sufficiency of the claimant's [s]tatement of [c]laim in the trial court which will hear the independent action." (citations omitted)). When a challenge to the legal sufficiency of a claim is made, the probate court must first determine the facial sufficiency of the claim before the parties litigate the subject matter of the claim in circuit court. See id. Similarly, a challenge to the timeliness of the claim is also a matter within the jurisdiction of the probate court. See Picchione, 354 So. 2d 955 (holding the probate court properly entered summary judgment on an untimely claim filed against the estate). If the statement of claim is not facially sufficient or is time barred, then there is no reason to require the parties to participate in an independent action to determine the merits of the claim.

Ultimately, we conclude that because the order denying Northern Trust's motion to strike Rebecca Walker's statement of claim was not final, it is not subject to our review and this appeal is dismissed without prejudice to Northern Trust filing a second motion to strike the Claim, after conducting the appropriate discovery in the probate court.

Dismissed.

NORTHCUTT and BLACK, JJ., Concur.