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Apr 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2021-001253

Deborah T. Weeks, Appellant,

v.

David W. Weeks, Respondent.

PETITION FOR REHEARING

Comes now the Respondent, by and through his undersigned Counsel, pursuant to Rule 221 S.C.A.C.R. and respectfully requests this Court to reconsider its Decision filed April 12, 2023 in the above-captioned matter.

This Petition is respectfully based upon the grounds that the Court misapprehended the Respondent's argument that the Probate Court's ruling that the Appellant waived her right to her elective share is supported by the evidence. There is evidence in the record to support the Probate Judge's ruling. The Appellant and Mr. Weeks had been continuously separated for seven years at the time Mr. Weeks died. They had previously divided their marital property in the Family Court. If any issues remained regarding the Parties' intent in this regard, the Appellant could have filed a new action in the Family Court. The Appellant voluntarily elected to not file a new action.

The Probate Judge determined as a result of the March 23, 2011 Family Court Order, the

Appellant received substantial tangible property in the settlement. The value of these assets is at least equal to or higher than the tangible assets owned by Mr. Weeks at the time of his death. The Probate Judge specifically found "... [the Appellant] received all assets from the marriage to which she was entitled and that the litigation between the parties essentially and for all practical purposes resulted in a final property division of the parties. (ROA, Pages 6-7). This finding is supported by the evidence in the record.

The Respondent respectfully contends the Court misapprehended his argument that the Probate Court properly applied S.C. Sec. 20-3-360 (1976) regarding equitable apportionment of marital property to exclude Mr. Weeks' partial interest in inherited real property from the Estate. In the Family Court case, the Appellant never contended the real property given to Mr. Weeks by his Mother in 1983 or the 5/29th interest in the real property he inherited from his Mother should be treated as marital property subject to equitable distribution. She should not be allowed to take a contrary position in the Probate Court by contending she is entitled to a one-third share of the Probate Estate which includes the inherited property.

Further, the Respondent respectfully contends the Court misapprehended his argument that the Probate Court properly valued the Probate Estate and using an appraisal performed in 2011. S.C. Code Sec. 63-3-706 (1976) provides that the Court's duty is to determine the value of the property comprising an estate at the time of a decedent's death. There is no statutory requirement that a formal appraisal be performed. The statute indicates a personal representative "may" use professional appraisers. Additionally, S.C. Code Sec. 63-3-706 (B) provides that the personal representative is required to obtain a formal appraisal upon proper demand by an interested individual and within a certain period of time. The Appellant did not request a formal appraisal, nor did she obtain her own appraisal.

The Respondent respectfully contends the Court misapprehended his argument that there is evidence to support the Probate Judge's application of a 40% marketability/minority discount to the inherited real property. Appellant did not dispute the fact that the larger tract was owned by at least twenty-nine undivided interests. This fact alone clearly impacts the value and marketability of the property. Any reasonable purchaser would demand a discount on the value of the property given the huge task to clear marketable title in favor of a single landowner. The Probate Judge's ruling on this issue should be affirmed.

Based on the foregoing, the Respondent respectfully requests this Court to reconsider its decision rendered in this matter and enter an Order affirming the Probate Court's Order and the Circuit Court's affirmance thereof.

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Dated: April 27, 2023

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PROOF OF SERVICE

I certify I have served the Petition for Rehearing on counsel for the Appellant, Leon E. Green, Esquire on April 27, 2023 by electronic mail via the email address on record with AIS, at lgreenlaw1@msn.com.

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Dated: April 27, 2023