

RECEIVED

Jul 22 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Aiken County
Courtney Clyburn-Pope, Circuit Court Judge

Opinion No. 2023-UP-151 (S.C. Ct. App. filed April 12, 2023)

Deborah T. Weeks.....Respondent,

v.

David W. Weeks.....Petitioner.

In Re: Estate of James Randall Weeks, Jr.

BRIEF OF PETITIONER

Clarke W. McCants, III
Clarke W. McCants, IV
Amy P. Shumpert
Nance & McCants
PO Box 2881
Aiken, SC 29802
(803) 649-6200 Extension 3
Attorneys for Petitioner

Other Counsel of Record:

Leon Edward Green
104 Florence St. SW
Aiken, S.C. 29801

INDEX

Certificate of Counsel ii

Questions Presentediii

Statement of the Case1

Arguments

1. THE COURT OF APPEALS ERRED BY CONCLUDING THAT THERE IS NO EVIDENCE TO SUPPORT THE PROBATE COURT’S CONCLUSION THAT THE RESPONDENT WAIVED HER CLAIM FOR AN ELECTIVE SHARE OF MR. WEEKS’ ESTATE 3

2. IF THIS COURT FINDS THAT THE RESPONDENT DID NOT WAIVE HER CLAIM FOR AN ELECTIVE SHARE OF THE ESTATE THEN THE COURT OF APPEALS ERRED BY CONCLUDING THAT THE PROBATE COURT IMPROPERLY CALCULATED THE VALUE OF CERTAIN REAL PROPERTY WHICH IS PART OF THE ESTATE 9

Conclusion 11

CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 4, 2023.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by concluding that there is no evidence to support the Probate Court's conclusion that the Respondent waived her claim for an elective share of Mr. Weeks' estate?
2. If this Court finds that the Respondent did not waive her claim for an elective share of the estate did the Court of Appeals err by concluding that the Probate Court improperly calculated the value of certain real property?

STATEMENT OF THE CASE

The Petitioner in this matter respectfully asks this Court to reverse the Court of Appeals' decision to reverse the Circuit Court's Order affirming the Aiken County Probate Court's disallowance of the Respondent's claim for an elective share of the Estate of James Randall Weeks, Jr.

The Respondent married the late Mr. Weeks in January 1998. (App. pp. 1-12, p.53). He died in August 2017. (App. p. 84). There is no dispute that the Respondent and Mr. Weeks were never officially divorced by the time he passed away.

After Mr. Weeks died the Respondent filed a claim for an elective share of his estate. The Petitioner, Mr. Weeks' brother and his personal representative, timely filed a disallowance of the claim. The Honorable Tonya L. Marchant, Aiken County Probate Judge, then conducted a hearing to consider the Respondent's claim. Following that hearing she issued her order disallowing that claim. (App. pp. 1-12).

The Respondent appealed Judge Marchant's decision to the Court of Common Pleas for Aiken County. That appeal was heard by the Honorable Courtney Clyburn-Pope on August 2, 2012. Following that hearing Judge Clyburn-Pope issued her decision affirming Judge Marchant's Order for this case. (App. pp. 26-28).

The Respondent appealed Judge Clyburn-Pope's decision to the Court of Appeals. In its unpublished decision dated April 12, 2023, the Court of Appeals reversed Judge Clyburn-Pope's decision and remanded this matter to the Aiken County Probate Court. (App. pp. 126-129). This Petition for a Writ of Certiorari was then filed by Mr. Weeks on behalf of his brother's estate, and this Brief followed.

ARGUMENTS

1. THE COURT OF APPEALS ERRED BY CONCLUDING THAT THERE IS NO EVIDENCE TO SUPPORT THE PROBATE COURT'S CONCLUSION THAT THE RESPONDENT WAIVED HER CLAIM FOR AN ELECTIVE SHARE OF MR. WEEKS' ESTATE.

In its opinion for this matter the Court of Appeals stated that there is no evidence in the record for this matter to support Judge Marchant's conclusion that the Respondent knew she was waiving her right to an elective share of Mr. Weeks' estate. The Petitioner respectfully submits that the Court of Appeals erred in this regard.

In 1983 Mr. Weeks' Mother, Harriett T. Weeks, conveyed to him 1.15 acres of real property located in Aiken County. (App. pp. 1-12). He owned that property until the time of his death on August 16, 2017.

The course of the marriage of Mr. Weeks and the Respondent was difficult. After just two years of being wedded the Respondent sought and obtained an Order of Protection from the Aiken County Family Court. (App. pp. 19-20). As part of that Order the Family Court Judge issued mutual restraining orders between the parties and began the process of dividing their marital property. (Id.). There is no evidence in this case showing that Mr. Weeks and the Respondent ever lived together again as husband and wife nor otherwise reconciled their differences.

On July 15, 2010, the Respondent filed a Complaint for a divorce from Mr. Weeks. (App. pp. 22-25). As part of that Complaint, she sought divorce immediately and on alleged at-fault grounds of adultery and physical cruelty. (Id.). As noted by Judge Marchant Mrs. Weeks, at that time, filed an affidavit stating that she and Mr. Weeks separated on May 1, 2010, and had remained so separate and apart since that time. (App. pp. 1-12). In her affidavit she also swore under oath that there was no chance that the parties could reconcile and asked the Court to grant an award of alimony to her and a final division of marital property. (App. pp. 22-25).

On November 1, 2010, another Order was issued by the Family Court setting forth that the Respondent and Mr. Weeks had reached an agreement with respect to the division of certain marital property and marital debt. (App. pp. 22-26).

Harriett J. Weeks died testate on November 11, 2010. As part of her Last Will and Testament she bequeathed a 5/29th interest in certain real property owned by her to Mr. Weeks. (App. pp. 1-12). In February 2011, Mr. Weeks executed his own Last Will and Testament leaving his entire estate to his two children, including the real property identified above. (App. pp. 80-83). He specifically noted in his will that he was legally separated from the Respondent. (Id.).

Mr. Weeks and the Respondent found themselves before the Family Court again in February of 2011. At that time the Family Court Judge issued another Order by which Mr. Weeks was required to pay alimony to the Respondent, which he did. (App. pp. 15-18). The Judge also undertook to further equitably divide the parties' marital property. (Id.). Of note, the Financial Declaration Mr. Weeks submitted to the Family Court does not list as "marital property" the real property his Mother gave to him in 1983 or the 5/29th interest in the real property he inherited from her. (App. p. 6). Likewise, the Respondent did not list such property in her Financial Declaration. (Id.).

There is no dispute that as of the date of this latest Family Court Order, Mrs. Weeks had been awarded and received a substantial part, if not all, of the property, both real and personal, that she would have ultimately received as part of a Final Order of Divorce from Mr. Weeks.

As this Court is aware, the parties in a divorce proceeding in South Carolina are required to finalize such an action within a certain period of time. Mrs. Weeks failed to do so. As a result, her complaint for divorce was administratively dismissed by the Family Court on August 5, 2012. (App. p. 13). Again, however, there is no evidence in this case that she and Mr. Weeks

ended their differences, reconciled, acquired any additional property or debt together or lived as husband and wife after that date.

Of particular importance here is the fact that the Respondent never, as part of the Family Court case, asserted or contended that the real property given to Mr. Weeks by his Mother in 1983 or the 5/29th interest in the real property he inherited from her after her death should be treated by the Court as marital property subject to equitable distribution. It is also clear that the Respondent never pursued any further action in the Family Court seeking any further claim to any type of property, real or personal, to which she believed she was entitled.

As noted, Mr. Weeks passed away in August 2017. His Brother, David W. Weeks, the Respondent herein, was appointed to be the Personal Representative of his Estate. (App. p. 85). In December 2017 the Respondent filed a petition seeking an elective share of Mr. Weeks' estate. (App. p. 1). Pursuant to the Rules of the Probate Court, the Petitioner filed a disallowance of that petition. (Id.). A hearing to consider the merits of those issues was held by Judge Marchant on February 27, 2020, after which she filed her Order disallowing the Respondent's claim for an elective share. (App. p. 1-12).

When reviewing the decision of a Probate Court, the Court of Appeals should not disturb its conclusions unless review of the record discloses no evidence to support them. Matter of Howard, 315 S.C. 356 at 361, 434 S.E.2d 254 at 257 (1993); Neely v. Thomasson, 365 S.C. 345, 349, 618 S.E.2d 884, 886 (2005). In such actions, the party seeking relief, of course, bears his or her burden of proof by the greater weight of or preponderance of evidence presented. Vt. Mut. Ins. Co. v. Singleton, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (1994). An appellate court considering an appeal from the Probate Court must apply the same rules of law s24 that a higherCourt would apply on appeal. Matter of Howard, 315 S.C. 356, 434 S.E.2d 254 (1993);

S.C. Code Ann. § 62-1-308 (1976). Judge Marchant correctly found and concluded that the Respondent waived any claim to an elective share of Mr. Weeks' estate by way of the Family Court proceedings. She cited S.C. Code Ann. § 62-2-204 (1976) to support her decision. That statute provides as follows:

(A). The rights of a surviving spouse to an elective share, homestead allowance, and exempt property, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver voluntarily signed by the waiving party after fair and reasonable disclosures to the waiving party of the other party's property and financial obligations have been given in writing.

(B) Unless it provides to the contrary, a waiver of all rights in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, and exempt property by each spouse in the property of the other and a disclaimer by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of a will executed before the waiver or property settlement.

After reviewing the lengthy history of the marital litigation between the Respondent and Mr. Weeks, including the agreements they reached during the course of such litigation and with respect to the division of any real or personal property interests, Judge Marchant wrote:

Therefore, the Court specifically finds that [the Respondent] 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.

(App. pp. 1-12).

Such an evidentiary finding supports a legal conclusion her claim for an elective share of Mr. Weeks' estate. As part of the Family Court action both the Respondent and Mr. Weeks had the benefit of full disclosure and discovery with respect to any type of property owned by them together. Both had the benefit of able legal counsel representing them. The various Orders issued by the Family Court during the pendency of the marital litigation constitute agreements of the parties to that litigation.

The Respondent relies heavily upon a single fact to support her claim for an elective share - that is, she and Mr. Weeks were still legally married at the time of his death. The Respondent does not dispute this fact. However, this does not control the outcome of this case. Indeed, § 62-2-204 contemplates situations where spouses, still married but legally separated, may enter into agreements by which their property is fully divided before a final and formal divorce is entered between them, rendering moot the issue of the existence of an elective share. If such an interpretation of this statutory provision is not correct then this particular section of our Probate Code is meaningless.

Neither this Court or the Court of Appeals has directly addressed this issue. Judge Marchant, however, noted that decisions in at least two other jurisdictions, New Jersey and Pennsylvania, would prohibit the Respondent from receiving an elective share under such circumstances as those presented in this case.

In North Carolina the Respondent would be barred from pursuing an elective share from Mr. Weeks estate. In The Matter of the Estate of Cracker, No. COA20-4 (N.C. App. 2020), the North Carolina Court of Appeals ruled that parties may even “impliedly” agree that any claims for elective shares of their respective estates may be waived in full. There, the North Carolina court reviewed the history of the marital litigation between the parties and based upon the totality of the circumstances presented, and examining the separated but not divorced, may certainly enter into agreements or other arrangements whereby each waives any claim for an elective share of their estates upon death.

Using such a standard in this case, not only is it clear that the Respondent and Mr. Weeks divided all of their marital property by way of the agreements into which they entered as part of the Family Court case, there is no evidence that they intended to hold in abeyance any

unresolved claims for division of any such property. Otherwise, any reasonable person would have undertaken to pursue the division of such unresolved claims promptly during the pendency of marital litigation instead of waiting for the death of their estranged spouse. The Respondent certainly believes that the elective share she pursues now has significant value to her. That belief had to also exist during the two years spent in Family Court resolving their claims with respect to their marital property.

Judge Marchant also correctly found and concluded that even if the Respondent and Mr. Weeks did not resolve all of their property claims as part of their Family Court case, and for some unknown reason left open a division of the two real property interests involved in this matter, the Respondent seeks to recover by way of an elective share an interest in property she would never have recovered in the Family Court. It is well-settled by statute and other applicable law that an estranged spouse has no claim to any property interests the other spouse obtained by way of “inheritance, devise, bequest or gift”. See S.C. Code Ann. § 20-3-360 (1976). In other words the Respondent should not be allowed to use a back door to pursue a claim which is not available to her by way of a side or front entrance.

An elective share exists to protect one spouse who otherwise may be left impoverished by the failure, for whatever reason, of their spouse to include them as part of their estate. Such a noble societal purpose principally envisions scenarios where a disinherited spouse, by way of a marriage, has made an investment in the acquisition of property during the course of that marriage and, absent the allowance of a forced share, stands to lose that investment as a result of the selfishness or inadvertence of the now deceased spouse.

Such a scenario does not exist in this case. Mr. Weeks was the fourth husband of the Respondent. By the time he died he and the Respondent had been legally separated for almost

seven years. They had divided their marital property in the Family Court. Certainly, if any issues as to claims for property remained outstanding, the Respondent would have asked the Family Court to address them while she was there and, equally importantly, more timely and promptly – there is certainly no evidence in this case suggesting that the Respondent was prevented from doing so.

The facts of this case support Judge Marchant’s legal decision in this matter. In her words we should not turn a blind eye to justice, as “a wrong does not cease to be a wrong because it is cloaked in the form of law.”

2. IF THIS COURT FINDS THAT THE RESPONDENT DID NOT WAIVE HER CLAIM FOR AN ELECTIVE SHARE OF THE ESTATE THEN THE COURT OF APPEALS ERRED BY CONCLUDING THAT THE PROBATE COURT IMPROPERLY CALCULATED THE VALUE OF CERTAIN REAL PROPERTY WHICH IS PART OF THE ESTATE.

Having decided that the Respondent is not entitled to receive an elective share from Mr. Weeks’ Estate Judge Marchant proceeded further and correctly ruled with respect to the appropriate date for the valuation of an elective share and also properly discounted the value of the larger tract of real property which is part of the Estate. As stated, the Respondent believes that Judge Marchant’s ruling as to the alleged existence of an elective share renders moot any need to address the other issues raised by the Respondent.

That said, S.C. Code § 63-3-706 (1976) provides that the Court’s duty is to determine the value of property comprising an estate at the time of a decedent’s death. There is no statutory requirement that a formal appraisal be performed. S.C. Code § 63-3-707 (1976) provides that a personal representative “may” use professional appraisers. Interestingly, § 63-3-706(B) provides that with respect to certain property a personal representative is required to obtain a formal appraisal of property of such property upon proper demand made within a certain period of time. There appears not to be such a demand in this case.

Regardless Judge Marchant did rely on a formal appraisal in determining the value of the larger tract of real estate involved in this case. The Respondent objected to this appraisal based primarily upon its age. In the end, however, the appraisal upon which Judge Marchant relied is, in fact, evidence of the real property's fair market value at the time of Mr. Weeks' death. If the Respondent believed an updated appraisal was necessary, a demand for one should have been made or the Respondent should have obtained her own appraisal.

Judge Marchant also concluded that the fair market value of the larger tract should be discounted. The Respondent, again, objected to this being done, contending that there is no legal support for doing so. As Judge Marchant correctly noted the larger tract is presently owned by at least twenty-nine undivided interests. Such a fact obviously directly affects the value and marketability of the property. Any willing purchaser in a stable real estate market would want the value of such a parcel of land discounted before sale and conveyance in light of what would be a huge task to clear marketable title in favor of a single landowner. Given this fact Judge Marchant's ruling on this issue should also not be disturbed.

CONCLUSION

For these reasons the Petitioners respectfully ask that their Petition for a Writ of Certiorari in this matter be granted.

Respectfully submitted,

NANCE & MCCANTS

s/ Clarke W. McCants, III

Clarke W. McCants, III

S.C. Bar No. 3725

Clarke W. McCants, IV

S.C. Bar No. 103228

Amy P. Shumpert

S.C. Bar No. 65339

Post Office Box 2881

Aiken, South Carolina 29802
(803) 649-6200 Ext. 3
Attorneys for Petitioner

Dated: July 21, 2024