

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN RE: THE ESTATE OF)
 JACQUELIN K. STEVENSON)
)
 Jacquelin S. Bennett and Kathleen S. Turner as)
 Personal Representatives of the Estate of)
 Jacquelin K. Stevenson,)
)
 Appellants,)
)
 v.)
)
 Estate of James Kelly King and Genevieve S.)
 Felder,)
)
 Respondents.)

IN THE PROBATE COURT
 Case. No. 2007-ES-10-1437

ORDER ON APPEAL

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 SC Court of Appeals

This matter came before the Court on June 3, 2016, at 9:30 A.M. pursuant to Appellant's Notice of Intent to Appeal and Appeal of the Ruling of the Honorable Tamara C. Curry, Judge of the Probate Court for Charleston County, entered July 30, 2015, and subsequent Order Denying Motion to Reconsider, entered September 10, 2015.

PROCEDURAL HISTORY

Jacquelin K. Stevenson died testate on September 17, 2007. She was survived by two daughters, Kathleen S. Turner and Jacquelin S. Bennett (Appellants), and a step-daughter, Genevieve S. Felder (Respondent). She was also survived by two sons, Thomas C. Stevenson, III and Daniel R. Stevenson, and a step son, James Kelly King.¹ The will originally designated Kathleen S. Turner and Thomas C. Stevenson as Co-Personal Representatives.

¹ James Kelly King passed away during the administration of the estate, and his share has been resolved by private agreement.

The will was admitted to probate in the Charleston County Probate Court in October of 2007. The six individuals named above were the devisees under the will. Among the various assets of the estate are four real properties:

Lot 19 Dupree Creek Lane, Mt. Pleasant
("Paradise Island")

Glascow Island Lane, Edisto Island
("Bailey's Island")

Lots 34, 35, 36, and 37, Lake Front Drive, Hendersonville
("Lake Summit")

2414 Rockland Avenue, Rockville, SC
("Rockville")

Rockville is a waterfront lot with an upscale vacation and rental home and a deep-water dock. The Lake Summit property is a long-time family vacation home, lakefront, also with a dock. Lake Summit carries itself financially and is used by the family when available. Paradise Island and Bailey's Island are unimproved investment lots with significant carrying costs. It is the proposed distribution of these properties that is the basis of this dispute.

Pursuant to the terms of the will, Appellants were devised the Rockville property. Lake Summit was devised to Daniel R. Stevenson and Thomas C. Stevenson, III. Genevieve S. Felder and James Kelley King received monetary bequests roughly equal in value to the real estate shares. Thomas C. Stevenson, III was subsequently removed as Personal Representative due to malfeasance. Both he and Daniel Stevenson lost their inheritance rights to the real properties by order of the Probate Court dated February 11, 2011, also for malfeasance. Accordingly, the disposition of all of the real properties with the exception of Rockville is now governed by the residuary clause, which states:

All the rest, residue, and remainder of my property and estate real and personal, of whatsoever nature, and wheresoever situate,

including any property before mentioned but not effectively disposed of, . . . I give, devise, and bequeath to Kathleen S. Turner, Jacquelin S. Bennett, Thomas S. Stevenson, III, Daniel R. Stevenson, James Kelly King, and Genevieve S. Felder, in equal shares, per stirpes, and not per capita . . . Jacquelin S. Bennett was appointed Co-Personal Representative in place of Thomas C. Stevenson, Jr., so that she and Kathleen S. Turner are currently Co-Personal Representatives.

By Private Agreement executed in March of 2015, the claims of the estate of James Kelly King, who died during the administration of the Stevenson estate, were resolved by monetary payment. Other disbursements were approved, leaving the allocation of the residuary assets between Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder to be resolved either by further agreement or the probate court. (The Private Agreement stated that “the remaining residuary assets between them will be resolved by subsequent agreement or will be determined by the Charleston County Probate Court.”)

On September 14, 2011, Respondent Genevieve Felder filed a Demand for Hearing, which was subsequently held on June 16, 2015. The interested parties were Jacquelin S. Bennett and Kathleen S. Turner as Co-Personal Representatives, and Genevieve S. Felder. The proposal of the Co-Personal Representatives was that they divide Lake Summit equally between themselves, with the Bailey’s Island and Paradise Island properties to be divided among the three in various shares. Genevieve S. Felder would receive the large majority of the Bailey’s Island lot, but no interest in Lake Summit. Respondent argued that the proposed distribution was not fair and equitable, and inconsistent with the fiduciary duty of the Personal Representatives.

At the hearing, Appellants argued that the will gave the Co-Personal Representatives broad authority to distribute in kind, so that the only consideration to be made was that the distribution “come out equal” based strictly on monetary value, with no other factors being relevant. Respondent argued that while the language in the will clearly grants the Co-Personal

Representatives broad authority to distribute in kind, such authority is not absolute, and is constrained by fiduciary principals and the duty to treat all beneficiaries equitably and fairly. Respondent further argued that the determination of what was fair and equitable should, in proper circumstances, include non-economic considerations such as sentimental value, utility, and other intangible factors. The position of the Respondent is that in the particular circumstances of this case, only a pro-rata distribution of the remaining real properties can be fair and equitable.

By order dated July 30, 2015, Tamara C. Curry, judge of the probate court, stated that in the absence of an agreement, the probate court, as provided by the private agreement, would decide the allocation of the remaining real properties utilizing fiduciary principals. The Court ruled:

Petitioners . . . acting as Co-Personal Representatives of the Estate of Jacquelin Stevenson, are to divide said properties located on Lots 34, 35, 36, and 37, Lakefront Drive . . . , Lot 19 Dupree Creek Lane . . . , and Glasgow Island Lane' . . . in equity and in good faith among the devisees so that each receives an equal ownership interest in each piece of real estate that is before the Court.

Appellant filed a Motion to Alter or Amend on August 12, 2015, which was denied by order dated September 10, 2015, stating that under the circumstances of this case, the language of the residuary clause requires a pro-rata distribution. This appeal followed.

FINDINGS OF FACT

By the express terms of the will, Rockville was devised to Kathleen S. Turner and Jacquelin S. Bennett, who now find themselves in the position of co-Personal Representatives. Lake Summit was devised to Daniel R. Stevenson and Thomas C. Stevenson, III, who have forfeited their interests in the estate. The remaining real properties, Paradise Island and Bailey's Island, were, under the will, to be disposed of pursuant to the residuary clause.

Paradise Island appraised for \$390,000.00, Bailey's Island for \$725,000.00, and Lake Summit for \$1,100,000.00. The distribution proposed by the Appellant Personal Representatives was, at the time Respondent filed her Request for Hearing, as follows:

Paradise Island	
Jaquelin Bennet	\$83,000.00
Kathleen Turner	\$83,000.00
Genevieve Felder	\$83,000.00
James Kelly King	\$140,000.00

Bailey's Island	
Jaquelin Bennet	\$35,000.00
Kathleen Turner	\$35,000.00
Genevieve Felder	\$548,500.00
James Kelly King	\$106,500.00

Lake Summit	
Jaquelin Bennet	\$550,000.00
Kathleen Turner	\$550,000.00

James Kelly King has, by agreement, accepted a monetary settlement and is no longer a factor in these deliberations. The buy-out of his share did not otherwise alter the distribution as among the remaining three beneficiaries.

As a result of the forfeiture of the interests of Daniel R. Stevenson and Thomas C. Stevenson, III, the disposition of all of the real properties of the estate (with the exception of Rockville) is governed by the residuary clause, which states:

All the rest, residue, and remainder of my property and estate real and personal, of whatsoever nature, and wheresoever situate, including any property before mentioned but not effectively disposed of, . . . I give, devise, and bequeath to Kathleen S. Turner, Jacquelin S. Bennett, Thomas S. Stevenson, III, Daniel R. Stevenson, James Kelly King, and Genevieve S. Felder, in equal shares per stirpes, and not per capita . . .

The powers of the personal representatives are set forth in Article 10 of the will, designated "Fiduciary Powers," which states in relevant part:

my personal representatives shall have all of the powers granted by law . . . It is my intention in specifying the following powers to give broad discretion and flexibility to my Personal Representatives . . .

10.6 Distributions. Without the consent of any beneficiary, to make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property . . . and without making pro-rata distributions of specific assets.

It is in reliance on this language that Appellants contend authorizes them to select their proposed distribution scheme, that of conveying Lake Summit to themselves, alone, in equal shares, and conveying to Respondent and to themselves varying shares in the remaining properties so that ultimately each receives roughly equal value as determined by the appraisals.

CONCLUSIONS OF LAW

In an action at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them. *See Adams & B & D, Inc.*, 297 S.C. 416, 420, 377 S.E.2d 315, 317 (1989). When the proceeding is equitable in nature, the circuit court, on appeal, may make factual findings according to its own view of the preponderance of the evidence. *See In re Estate of Weeks*, 329 S.C. 251, 261, 495 S.E.2d 454, 460 (Ct. App. 1997). Appellants present two arguments in support of their position:

- 1. The trial court erred in holding that the Testator's intent was that the real property passing through the Residuary Estate shall pass in equal ownership interest shares to each devisee as opposed to as directed by the Personal Representative, provided that the distributions are of equal monetary value.**

The trial court noted Respondent's position that Appellant's distribution scheme was not fair and equitable. Quoting S.C. Code Section 62-3-703 (1976, as amended), the Court found that the Personal Representatives were bound by the duties of a fiduciary, using their authority "for the best interests of the successors to the estate."

The court further quoted *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004)

in reviewing the duties of a fiduciary, stating as follows:

(a) fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of one imposing the confidence.

Under the circumstances of this case, the court made its determination concerning the disposition of the residue “in light of the duties imposed upon a fiduciary” ruling that equity and good faith required a pro-rata distribution.

On reconsideration, the court further noted that the residuary clause specifically directs that property “not effectively disposed of” by specific devise was to be divided among the residuary beneficiaries “in equal shares,” and that a plain and ordinary reading of this language called for a pro-rata distribution of the residuary estate.

Regardless of whether this interpretation was actually the testator’s intent, however, the Personal Representatives are, as the court observed, subject to the duties of a fiduciary, and I find the lower court’s finding—that here, the fiduciary duty in fact requires a pro-rata distribution—to be appropriate in light of the evidence presented. I find that the allocation of Lake Summit by the Personal Representatives to themselves and the division of the remaining properties among all three beneficiaries—particularly in light of highly disproportionate division of Bailey’s Island to force an overall equal valuation of interests—serves no apparent purpose other than to favor themselves, allowing them to “cherry pick” among the assets at the expense of the remaining beneficiary, which fails the test of equity and good faith.

2. **The trial court erred in holding that the Co-Personal Representatives did not have the broad discretionary authority to make determinations as to what property falls within the general descriptions, and to make distributions in any reasonable manner, pursuant to sections 10.1 and 10.6 of the Last Will and Testament of Jacquelin K. Stevenson.**

A court's consideration of the actions and duties of a fiduciary is equitable in nature. *See, e.g., Farley v. Matthews*, 168 S.C. 294, 167 S.E. 502 (1933).

[I]t is a well-settled rule that anyone acting in a fiduciary relationship not be permitted to make use of that relationship to benefit his own personal interests. It is a doctrine repeatedly announced by the courts of this nation that courts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other[.]

Island Car Wash, Inc. v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987).

There can be no dispute that pursuant to the language of the "Fiduciary Powers" section of the will that the Personal Representatives enjoy broad discretion in making distributions. The trial court did not rule otherwise. Rather, the trial court correctly observed that such authority is subject to the duties of a fiduciary, and found that in this particular instance, that duty requires a pro-rata distribution of the residuary estate. On its face, the proposed distribution scheme is not related to any apparent reasonable purpose. The unequal distribution of Bailey's Island can only be interpreted so as to allow the Personal Representatives to retain Lake Summit for themselves and exclude Respondent. The record is devoid of any assertion or explanation as to what other purpose the proposed distribution scheme might serve, or why it is in fact "reasonable."

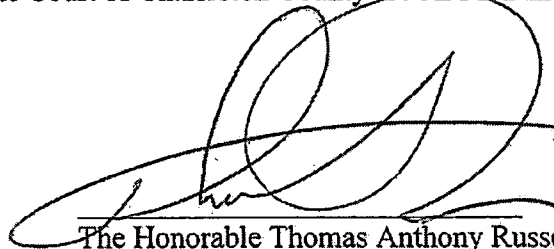
CONCLUSION

Based upon my view of the facts of this case, by a preponderance of the evidence, I find that the Personal Representatives' proposed distribution of the residuary assets is inconsistent with their fiduciary duty to treat all parties fairly and equitably. I further find that, based on the facts of this case, by a preponderance of the evidence presented, and in light of well-settled fiduciary

principals, a pro-rata distribution of the Paradise Island, Bailey's Island, and Lake Summit properties among the three remaining estate beneficiaries is required.

Accordingly, the findings of the Probate Court of Charleston County are ~~AFFIRMED~~.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Thomas Russo', written over a horizontal line.

The Honorable Thomas Anthony Russo
Presiding Judge

4/18 2017
Florence, South Carolina