

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

DEBORAH T. WEEKS,)
)
Petitioner,)
)
vs.)
)
DAVID W. WEEKS,)
)
Respondent.)
)
IN RE: ESTATE OF JAMES)
RANDALL WEEKS, JR.)
_____)

IN THE PROBATE COURT
CASE NUMBER 2017ES02-0855

ORDER

RECEIVED
OCT 29 2021
SC Court of Appeals

A hearing in this matter was held before me on February 27, 2020. Present were Petitioner, Deborah T. Weeks (Deborah) and her attorney, Leon Green, Esq. Also present was Respondent, David W. Weeks (David), Dawn Weeks (Dawn), the daughter of the Decedent, and Arthur W. Rich, Esq., Attorney for David. After taking testimony from Deborah, David and Dawn, I find the following facts.

FACTS

The Decedent, James Randall Weeks, Jr. (Decedent), died on August 16, 2017. He left his Last Will and Testament dated February 9, 2001, under which all assets were devised to his two children, Joshua Randall Weeks and Miranda Dawn Weeks, or the survivor thereof, in equal shares. Joshua Randall Weeks predeceased Decedent and therefore Miranda Dawn Weeks (Dawn) is the sole beneficiary under the Will.

The Decedent's brother, David, was appointed in the Will as the Personal Representative of the estate and has been issued Letters Testamentary by this Court and is currently acting in that capacity.

Deborah filed a Petition with this Court alleging that she was entitled to an elective share against the estate of the Decedent. David, in his capacity as Personal Representative, filed an Answer to the Petition for an elective share denying the claim.

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The Court finds as a matter of fact that the claim was timely filed.

The amended Inventory and Appraisalment in this estate indicates assets of real estate of \$77,110.35 and miscellaneous personal property of \$19,555.00. The real estate consists of two parcels. Parcel number one is approximately 255 acres located in Aiken County, S.C. The valuation on the Inventory indicates that the appraised value of the property is \$670,000.00 less a forty (40%) percent discount, giving a value of the Decedent's interest of \$69,310.35.

Decedent's interest in this property was inherited from his mother, Harriett J. Weeks, who died on November 11, 2010. A Deed of Distribution from the estate of Harriett J. Weeks was issued on April 5, 2012. The Deed of Distribution conveyed the property as follows:

- (1) To David W. Weeks as Trustee for the Benson A. Weeks Trust, an 8/29th interest;
- (2) To David Weldon Weeks, an 8/29th interest;
- (3) To Sylvia M. Studley f/k/a Marilyn W. Burris, an 8/29th interest; and
- (4) To James Randall Weeks, Jr., a 5/29th interest.

The Deed of Distribution indicates that the original tract was 320 acres, less a tract of 32 acres, and less a second tract which had been sold out of the property.

This property has been in the Weeks family since 1894. The property was originally sold to Luther J. Weeks by deed of J.V.D. Weeks, et al, dated April 2, 1894, recorded in Title Book Y, Page 243, records of Aiken County, S.C. The property was subsequently conveyed from Luther J. Weeks to Alvin W. Weeks on November 13, 1944, recorded in Title Book 94, Page 218, records of Aiken County, S.C. Subsequently, Alvin W. Weeks died on July 30, 1956 devising his property to his wife, Cora Randall Weeks for her lifetime and the remainder to his children under his Last Will and Testament. Cora Randall Weeks later died and the property was conveyed by her heir, Sylvia M. Weeks, to Harriett K. Weeks by deed dated April 14, 1978, recorded in Title Book 605, Page 142; by her heir, David W. Weeks, to Harriett K. Weeks by deed dated April 4, 1978, recorded in Title Book 605, Page 155; by her heir, Benson A. Weeks

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by deed dated April 5, 1978 in Book 605, Page 139; and by her heir, James R. Weeks by deed dated June 21, 1979 in Book 646, Page 62, records of Aiken County, S.C. Accordingly it appears from the records that this property has been in the Weeks family for approximately 126 years.

At the death of Harriett Kilgore Weeks, her estate had her property appraised. A copy of an appraisal was filed with the Court, which said appraisal was completed by Holstein Appraisals of Batesburg-Leesville on September 6, 2011. The appraised value of the property at that time was \$670,000.00. The appraisal indicates that the property consisted of 320 acres of cropland and woodland improved with a farmhouse. It is evident that the actual acreage of the property being appraised was approximately 255 acres, not 320 acres. It also appears from the appraisal that the value of any cropland, woodland and timber on the property was included.

Since this property was appraised for the estate of Harriett K. Weeks on September 6, 2011, only seven years prior to the date of decedent, the Court finds that the appraised value of \$670,000.00 has not changed and that it is an accurate appraisal for the purposes of this estate.

The Court further acknowledges that when any individual owns property only owning a fractional interest in the property, that the true value of the property is diminished for a lack of marketability and minority discounts. There are a number of cases, mostly in Federal Court, discussing applicable discounts for lack of marketability and minority discounts.

There are also Treasury regulations regarding the same. The cases as to the appropriate discount range from 20% to 60%. In this particular case, the Personal Representative used a 40% discount, which is the midway point between the generally accepted discount figures of 20% to 60%. The Court therefore specifically finds that the valuation for purposes of this inventory of \$69,310.35 accurately reflects the value of the property in this estate.

The second piece of real estate in the estate is 1121 Weeks Road, which the Personal Representative has shown at a value of \$7,800.00. This property was conveyed from Harriett

K: Weeks (the mother of Decedent) to Decedent on June 20, 1983, recorded in Title Book 792, Page 257, records of Aiken County, S.C. The Personal Representative retained the services of Maurice M. Williams, Jr. of Aiken County, S.C., a certified real estate appraiser, to value this property. Mr. Williams submitted his appraisal dated August 21, 2018 indicating a value of \$7,800.00. The Court therefore specifically finds that the valuation of \$7,800.00 on the inventory reflects an accurate value of this property.

Tangible personal property on the amended Inventory consists of 33 items with a total estimated value of \$19,555.00. The Personal Representative testified at the hearing that this indicates an accurate list of tangible property owned by the decedent at the time of his death and the accurate value. There was a good deal of testimony at the hearing from both David, Dawn and Deborah regarding items of tangible personal property. Deborah also submitted a list of what she believes to be tangible personal property of the estate and an estimated value of \$43,080.00. The Court specifically notes that Deborah has not been on the property of the Decedent since the date of their separation in 2010 and therefore had limited information as to which items of tangible personal property that she remembered might still be on the property. Based on the testimony of David and Dawn, the Court specifically finds that the items of tangible personal property owned by the Decedent as listed upon the Inventory, with a value of \$19,555.00, represents an accurate listing of tangible personal property of the estate with a value of \$19,555.00.

Decedent and Petitioner were married on or about January 10, 1998. Previously, Petitioner was married and divorced to three other individuals, namely:

- a. Webb Knox Singletary
Married - December 15, 1973
Divorced - February 21, 1983
- b. Jerry W. Smith
Married - February 26, 1983
Divorced - August 22, 1996

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c. Kevin Leroy Shirley
Date of Marriage - unknown
Divorced - January 6, 1998

Decedent married Petitioner on January 10, 1998. From the records it appears that there was significant marital litigation between the parties as shall be described herein but that the parties were never formally divorced.

Petitioner and Decedent had a long involved history of marital litigation prior to the death of Decedent. Initially, Petitioner filed a Petition for an Order of Protection from Decedent on May 3, 2010. An Order was issued by the Aiken County Family Court on May 20, 2010. This Order gave Decedent possession of the marital residence, certain horses and other tangible property to Petitioner and issued a mutual restraining order.

Subsequently, Petitioner filed a Complaint in the Aiken County Family Court asking the Court to provide her with an equitable value of the marital home and its contents, for the decedent to pay certain utilities and maintenance, and to be awarded certain assets of the marriage. An Order by the Aiken County Family Court dated May 20, 2010 indicated that the Petitioner and Decedent had reached an agreement whereby Decedent retained the marital residence and granting Petitioner certain property of the marriage and issuing a mutual restraining order. As part of the marital proceedings, Petitioner filed her affidavit with the Court dated September 8, 2010. Therein she swore that she was making the representations for the purpose of appearing in Family Court at a final hearing for divorce. She states that she had been separated from Decedent since May 1, 2010 and had been continuously separated since that time. She further stated that there was no chance of reconciliation between the parties. She asked for alimony and for division of certain marital assets. She further stated that she was asking the Court to grant a divorce based on the grounds of adultery and physical cruelty and she was asking the Court for equitable division of marital property. Subsequently, the Family Court of Aiken County issued its Order dated November 1, 2010. At that point the parties had reached a temporary agreement regarding all the bills, cell phones, possession of the marital

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home, and other assets. The Order further indicated that a later hearing would be held to address marital property after the payments were made on a vehicle. A Financial Declaration filed with the Court by the decedent dated February 15, 2011 did not indicate the ownership of any real estate.

An Order was issued by the Family Court of Aiken County, S.C. on March 23, 2011. In that Order, the Decedent was ordered to pay alimony to Petitioner and the Order further made division of other tangible property of the marriage. The Order further stated that the parties shall live separate and apart from one another as if they were unmarried. Subsequently, the case was dismissed without prejudice by Order of the Family Court dated August 5, 2012 due to the fact that the parties had failed to pursue the matter further.

It therefore appears that there were three hearings between these parties that were all held on a temporary basis. Deborah received substantial tangible property in the settlement, which was listed on Exhibit F provided to the Court. Deborah specifically denies receiving some of the items and disputes the amount of the items, but even accounting for the items which she denies receiving and the values which she states, it appears to the Court that she still received approximately \$32,000.00 in marital property from the divorce and the Court so finds.

The Court further finds that although the final temporary Order of the Court does not specifically state that all marital assets are divided, that it appears from the division of the assets and the assets that still remain in the estate that Deborah received substantial assets from the divorce, the value of which is at least equal to or higher than the tangible assets owned by the Decedent at the date of his death. The Family Court action was later dismissed for lack of the Petitioner (Deborah) pursuing the matter further. The Decedent was ordered to pay \$250.00 per month to Deborah and according to Deborah, she received this for several months, but the Decedent failed to continue paying alimony. Nevertheless, from 2011 until the date of the death of Decedent, approximately seven years later, Deborah never further pursued divorce and never further pursued action to recover additional property from the marriage. Therefore, the Court

specifically finds that Deborah 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. The Court further notes that the Decedent's interest in the 255 acres was only received by him after the death of his mother which occurred following the final Order of the Family Court in 2011.

In 2013, the Decedent's son, Joshua, died. The health of the Decedent at that time was declining and his daughter, Dawn, moved with her family back onto the family property in Aiken, where she tended to Decedent until his death. Dawn continues to reside in an old farmhouse located on the 255 acre tract. Deborah testified that following the death of Decedent that she applied for and began receiving Social Security benefits based upon the work records of the Decedent. She is currently receiving approximately \$1,300.00 per month.

A list of funeral expenses, administrative expenses and any enforceable claims that have been incurred by the estate to date are in the amount of \$31,583.12 and shown on Exhibit G. The Court therefore specifically finds that the expenses shown on Exhibit G in the amount of \$31,583.12 are valid for the payment of funeral expenses, administrative costs and any enforceable claims.

LAW

In South Carolina the concept of dower and courtesy have been eliminated. To protect the surviving spouse from impoverishment, South Carolina and most other states provide for the right of an elective share. "The legislative purpose behind the elective share statute is to protect the family unit from becoming society's ward by preventing impoverishment of the surviving spouse." Williams v Williams 517 S.E. 2d 689 335 S.C. 386.

"Since State common law did not require a spouse to devise any property to a surviving spouse, statute giving surviving spouse to take elective share is a statute of creation, and, thus, strict compliance with this term is mandatory in order to exercise the right of elective share."

Simpson v. Sanders 445 S.E. 2d 93 314 S.C. 413.

Section 62-2-201 of the S.C. Code of Laws provides for the right of an elective share.

An elective share is one-third of decedent's probate estate.

Section 62-2-204 of the S.C. Code of Laws provides in part that the elective share does not apply to "a complete property settlement entered into or in anticipation of separation or divorce." Section 62-2-207(d) of the S.C. Code of Laws provides "in choosing assets to fund the elective share, remaining property of the probate estate is applied so that liability for the balance of the elective share of the surviving spouse is satisfied from the probate estate, with devises abating in accordance with Section 62-3-902. Section 62-2-202 of the S.C. Code of Laws provides that for purposes of computing the elective share that any calculation of the available probate estate must be reduced by funeral and administrative expenses and enforceable claims.

S.C. further limits property which may be divided between the spouses in a divorce action for equitable distribution. Pursuant to Section 20-3-630 of the S.C. Code of Laws, property "acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse" is not subject to marital division.

In many states there are statutes which would prevent the Petitioner in this case from receiving an elective share. For example, in New Jersey the elective share statute provides that there is no elective share where "provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his death under the laws of this State." NJ Rev Stat § 3B:8-1 (2013). In Pennsylvania an elective share is not allowed "in the event a married person domiciled in this Commonwealth dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 and grounds have not been established as provided in 23 Pa.C.S. § 3323(g)". 20 Pa.C.S. § 2203(c)

Further in Connecticut, no elective share is allowed "if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death" CT Gen Stat § 45a-4536(g).

For legal purposes, a fair market value of property transferred to another party is measured on the date of the transfer "as the price at which the property would change hands between a hypothetical willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." Treasury Regulation. Section 20.2031-1(b). Real estate fractional ownership interests, also called a tenancy in common interest, exist as in this case when two or more co-tenants each own a separate fractional share of undivided property. In the absence of an agreement between the co-tenants, each co-tenant may possess and enjoy the entire real estate. Although having equal right to possess and enjoy, he or she cannot exclude the other co-tenants or designate any portion as his or her own. Real estate fractional ownership interests typically suffer from the valuation influences of a lack of marketability and a lack of ownership control. There are numerous cases in the tax court and federal court which support discounting for both minority discounts and lack of marketability. For cases discussing discounting for lack of marketability, see Lefrak vs. Commissioner 66 T.C.M. 1297(1993). Also, Connecticut Bank and Trust Company vs. U.S. 71-1 USTC #12,753 (439 F.2nd 931), For a case discussing the applicability of minority discounts, see Propsta vs. U.S. #82-2 USTC #13,502 (680.F.2nd 1248). Also see Bright vs. U.S. 81-2 USTC #13,436 (658 F.2nd 999).

DISCUSSION

Respondent argues that if the Court should determine that Petitioner is entitled to an elective share, that Petitioner should receive no elective share from the real estate owned by the Decedent. Decedent owned two parcels of property at his death, both of which were received from his mother, Harriett Kilgore Weeks. The property at 1121 Weeks Road, valued at \$7,800.00, was deeded to Decedent by his mother in 1983. It is a parcel of land with no

improvements thereon. The second property owned by the Decedent was an undivided 5/29th interest in approximately 255 acres which was owned by Decedent's mother, Harriett Kilgore Weeks, at the time of her death. Pursuant to the Last Will and Testament of Harriett Kilgore Weeks, the Decedent inherited a 5/29th interest in this property. Harriett Kilgore Weeks died on November 11, 2010 at the time when the Decedent and Petitioner were already separated. The property was later conveyed to Decedent in 2012 from the Estate of Harriett Kilgore Weeks. It is therefore obvious that the 5/29th interest in the property was not property owned by the Decedent or Petitioner during their marriage and should be excluded from any claim of elective share by Petitioner. Section 20-3-630 of the S.C. Code of Laws specifically states that property which is acquired by either party "by inheritance, devise, bequeath or gift from a party other than the spouse is not subject to marital division." Although our elective share statute is not specific, the principle as stated under Section 20-3-630 should apply equally to claims under the elective share. The rationale here, of course, is that a surviving spouse or a spouse under divorce litigation should have no claim to property acquired by the other party by inheritance or gift from a third party such as in this case which was clearly owned by Decedent's mother. Further, the property was not even in the name of Decedent at the time of the separation of the parties due to the fact that Decedent's mother was still living. If Petitioner is allowed to claim an elective share interest against an inherited property of the Decedent, she would be receiving assets which she clearly would not have been able to receive had the divorce been finalized.

Respondent further argues that in the event that the Court determines that the elective share should apply to the inherited real estate and the lot deeded to Decedent by his mother, that the Court should order that the estate may pay a sufficient sum to Petitioner for her interest in the property. Discounts for lack of control and minority interests are well established. Most of the cases in this area in the Tax Court and Federal Court are based on Federal law for gift and estate tax purposes, however the principle of the valuation discount should equally apply in an

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estate. Respondent argues that if the Court should find such an interest, that the 40% discount as applied to the valuation of the inventory is correct.

Respondent further argues that if the Court allows an elective share, that it must be reduced by the value of the funeral and administrative expenses and enforceable claims pursuant to Section 62-2-202 of the S.C. Code of Laws. The amount of administrative expenses, funeral and enforceable claims as testified to by Respondent and pursuant to Exhibit G are \$31,583.12.

Respondent further argues that if the real estate is excluded from the estate, that the only assets in the estate that are subject to equitable distribution are the tangible property with a value of \$19,555.00, which is significantly less than the estate expenses. Therefore, the amount of the elective share will be reduced to zero excluding real estate.

The guiding principle for the elective share is based on the social argument that a surviving spouse should not be totally impoverished at the death of a spouse. In this case, however, the Decedent was the fourth husband of the Petitioner and they had been separated for approximately seven years prior to the death of the Decedent. Petitioner initiated Family Court action for separation and divorce and there were three hearing in the Family Court. The Family Court Order provided for separation and division of many items of tangible personal property and ordered the Decedent to pay alimony. It is obvious from the proceedings that the Petitioner had ample opportunity to visit the marital property and to remove most, of not all, of the property which she desired. In fact, the records reveal that the items removed by Petitioner had a value which likely exceeded the tangible property of the Decedent at the time of his death.

The Family Court actions were initiated by Petitioner. She failed to pursue the divorce, although she had previously asked for it in her pleadings. The Family Court action was dismissed by Administrative Order for failure to pursue the action.

Petitioner would not have been able to recover any interest in the Decedent's real estate in the divorce action based upon Section 20-3-630 of the S.C. Code of Laws. She now,

therefore, seeks an elective share in the inherited and gifted property owned by Decedent which he received from his mother, which would have been unavailable to her in the divorce. Should this Court allow her to receive an elective share against the inherited property, this would grant property to her unavailable in the Family Court action. This is an obvious unjust result. This Court is obligated to follow the law, but it is not obligated to turn a blind eye to justice. "A wrong does not cease to be a wrong because it is cloaked in the form of law." Newman v Dore 275 N.Y. 371, 9 N.E. 2d 968.

IT IS THEREFORE ORDERED that it is the finding of this Court that Petitioner's Elective Share claim in hereby disallowed. Petitioner is entitled to nothing for her Elective Share Claim against the estate of the Decedent due to the fact that there was essentially and for all practical purposes, a Family Court Order terminating all marital rights and equitable distribution between the spouses.

So Ordered this 15th day of May, 2020.

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Tonya L. Marchant
Honorable Tonya L. Marchant
Probate Judge for Aiken County, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THIS THE FOREGOING IS A TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT
WITNESS MY HAND AND SEAL OF THE COURT THIS THE

15th DAY OF May AD. 2020
Tonya L. Marchant
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.
BY S. Cuff CLERK

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