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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.

INITIAL BRIEF OF THE RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The Respondent respectfully submits that the following issues are presented for the Court's consideration in this matter:

1. DOES THE EVIDENCE CONTAINED IN THE RECORD FOR THIS MATTER SUPPORT THE PROBATE COURT'S DETERMINATION THAT THE APPELLANT WAIVED HER CLAIM FOR AN ELECTIVE SHARE OF THE ESTATE OF JAMES RANDALL WEEKS, JR?

2. IN THE EVENT THAT THIS COURT CONCLUDES THAT THE APPELLANT DID NOT WAIVE HER CLAIM DOES THE EVIDENCE CONTAINED IN THE RECORD FOR THIS MATTER SUPPORT THE PROBATE COURT'S CALCULATION OF THE VALUE OF CERTAIN REAL PROPERTY WHICH IS PART OF THE ESTATE?

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

This matter involves an appeal from an Order of the Honorable Tonya L. Marchant, Probate Judge for Aiken County, South Carolina. In her Order Judge Marchant concluded, in part, that the Appellant waived her right to claim an elective share of the real and personal property comprising the Estate of James Randall Weeks, Jr. The Appellant then timely filed its appeal to the Circuit Court, which affirmed Judge Marchant's Order in its entirety.

The Respondent contends that there is ample evidence to support Judge Marchant's ruling on that principal issue and her Order should be affirmed. The Respondent further contends that if Judge Marchant correctly ruled with respect to this principal issue then the remaining issues raised by the Appellant as part of her appeal are moot and need not be addressed by this Court.

In 1983 Mr. Weeks' Mother, Harriett T. Weeks, conveyed to him 1.15 acres of real property located in Aiken County. (Order of the Probate Court, dated May 15, 2020). He owned that property until the time of his death on August 16, 2017.

Mr. Weeks and the Appellant were married on January 1, 1998. Their marriage was tumultuous, as outlined below. After just two years of being wedded the Appellant sought and obtained an Order of Protection from the Aiken County Family Court. (Family Court Order, dated May 20, 2010). 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 Appellant ever lived together again as husband and wife nor otherwise reconciled their differences.

On July 15, 2010, Mrs. Weeks filed a Complaint for a divorce from Mr. Weeks.

As part of that Complaint she sought divorce immediately and on alleged at-fault grounds of adultery and physical cruelty. (Order of the Probate Court, dated May 15, 2020). 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. (Id.). 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. (Id.).

On November 1, 2010, another Order was issued by the Family Court setting forth that the Appellant and Mr. Weeks had reached an agreement with respect to the division of certain marital property and marital debt. (Order of the Family Court, dated November 1, 2020).

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. (Order of the Probate Court, dated May 15, 2020). In February 2011, Mr. Weeks executed his own Last Will and Testament leaving his entire estate to his two children. (Last Will and Testament of James Randall Weeks, dated February 9, 2011), including the real property identified above. He specifically noted in his will that he was legally separated from the Appellant. (Id.).

Mr. Weeks and the Appellant 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 Appellant, which he did. (Family Court Order of March 23, 2011). The Judge also undertook to further equitably divide the parties' marital property. (Id.). Of note, the Appellant's Financial Declaration 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. (Order of the Probate Court, dated May 15, 2020). Likewise, the Appellant 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, parties in divorce proceedings in South Carolina are required to finalize a such a matter 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. (Family Court Order dated August 5, 2020). 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 Appellant 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 Appellant 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 to receive.

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. (Certificate of Appointment; August 30, 2017).

In December 2017 the Appellant filed a petition seeking an elective share of Mr. Weeks' estate. (Plaintiff's Summons and Petition for Elective Share, dated November 30, 2017). Pursuant to the Rules of the Probate Court, his Brother, as Personal Representative, filed a

disallowance of that petition. (Defendant's Answer, dated February 5, 2018). A hearing to consider the merits of those issues was held by Judge Marchant on February 27, 2020. Following that hearing, Judge Marchant issued her Order which has been appealed by the Appellant, and is now under review by this Court.

ARGUMENTS

I. THERE IS EVIDENCE CONTAINED IN THE RECORD WHICH SUPPORTS JUDGE MARCHANT'S FINDINGS AND CONCLUSIONS THAT THE APPELLANT WAIVED HER RIGHT TO CLAIM AN ELECTIVE SHARE OF THE ESTATE OF JAMES RANDALL WEEKS, JR.

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 that a higher Court 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 Appellant 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 Appellant 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 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.

Such an evidentiary finding supports a legal conclusion that the Appellant waived her claim for an elective share of Mr. Weeks' estate. As part of the Family Court action both the Appellant 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.

As noted in her Brief before this Court the Appellant 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.

It appears that neither the South Carolina Court of Appeals nor our Supreme Court has directly addressed this issue. Judge Marchant, however, noted that decisions in at least two other jurisdictions, New Jersey and Pennsylvania, would prohibit the Appellant from receiving an elective share under such circumstances as those presented in this case.

In North Carolina the Appellant 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 Court of Appeals reviewed the history of the marital litigation between the parties and based upon the totality of the circumstances presented, and examining the intention of the parties, concluded that two parties, 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 Appellant 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 Appellant 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 Appellant 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 Appellant 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 Appellant should not be allowed to use a locked back door to pursue a claim which is not available by way of a front entrance.

Elective shares exist 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 Appellant. By the time he died he and the Appellant 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 Appellant 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 Appellant 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.”

II. IN THE EVENT THAT THIS COURT CONCLUDES THAT THE APPELLANT DID NOT WAIVE HER CLAIM FOR AN ELECTIVE SHARE THE EVIDENCE CONTAINED IN THE RECORD FOR THIS MATTER FULLY SUPPORTS THE PROBATE COURT’S CALCULATION OF THE VALUE OF CERTAIN REAL PROPERTY WHICH IS PART OF THE ESTATE.

Having decided that the Appellant 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 Appellant.

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 Appellant 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

Appellant believed an updated appraisal was necessary, a demand for one should have been made or the Appellant should have obtained her own appraisal.

Judge Marchant also concluded that the fair market value of the larger tract should be discounted. The Appellant, 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 the reasons stated above the Respondent submits that Judge Marchant's Order, and the Circuit Court's affirmation of the same, should be fully affirmed.

Very Respectfully Submitted,

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