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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-53

Filed: 3 October 2017

Harnett County, No. 16 CVD 669

RONNIE EDWARD MOORE, Plaintiff,

v.

PRISCILLA ANN MCKENZIE individually, and PRISCILLA ANN MCKENZIE, as
Executor of the Estate of Bobby Jenkins Byrd, Defendants.

Appeal by Plaintiff from order entered 29 August 2016 by Judge Jimmy L.
Love, Jr. in Harnett County District Court. Heard in the Court of Appeals 15 May
2017.

*Buzzard Law Firm, by Robert A. "Tony" Buzzard and Jason P. Kimble, for
Plaintiff-Appellant.*

Jones & Jones, PLLC, by Cecil B. Jones, for Defendants-Appellees.

INMAN, Judge.

Ronnie Edward Moore ("Plaintiff") appeals an order granting summary
judgment in favor of Priscilla Ann McKenzie ("Defendant"). Plaintiff contends that
the trial court erred by concluding that there was no genuine issue of material fact

as to whether Plaintiff's mother and stepfather entered into a mutual will. After careful review, we affirm the trial court's order.

Factual and Procedural Background

The evidence of record tends to show the following:

Plaintiff is the son of Doris Mae Coats Byrd ("Doris") and the stepson of Bobby Jenkins Byrd ("Bobby"). On or about 20 August 2003, Bobby and Doris, who were at all relevant times married, executed last wills and testaments (the "2003 Wills"), each leaving all of their property to the other, and in the event one spouse predeceased the other, leaving all of their property to Plaintiff. The 2003 Wills included identical language, except for the name of the testator and the beneficiary spouse, and were executed on the same date and signed by the same witnesses and notary.

On a date after the 2003 Wills were executed, Doris died.¹

On or about 23 February 2012, after the death of Doris, Bobby executed a new will and testament leaving all of his property to Defendant, his stepdaughter, and naming Defendant as the executrix of his will.

On 4 June 2013, Bobby conveyed to Defendant via a warranty deed real property described as "all of Lot No. 109, Ponderosa Subdivision, Section IV, Dunn, North Carolina, as shown on the plat recorded in Book 17, at Page 34, in the Harnett

¹ The record does not provide a date of death for Doris.

County Registry” (hereinafter the “Property”). After executing the warranty deed, Bobby passed away.²

Defendant initiated a probate proceeding to open Bobby’s estate in Harnett County. No claims were asserted against the estate. After Defendant submitted a final accounting to the Harnett County Clerk of Court, the estate was closed.

In March 2016, Plaintiff filed a complaint in Harnett County District Court for breach of contract and specific performance, alleging that Bobby’s and Doris’s concurrent wills—the 2003 Wills—amounted to a mutual will, thereby contractually precluding Bobby and Doris from executing other wills, and alleging that Bobby breached this contract by executing a new will after Doris’s death that bequeathed his property to Defendant.

Defendant moved to dismiss the action for failure to state a claim upon which relief could be granted. Plaintiff filed a cross motion for summary judgment. On 29 August 2016, the trial court granted summary judgment in favor of Defendant. Plaintiff timely appealed.

Analysis

Plaintiff argues that the trial court erred by concluding that there was no genuine issue as to whether the 2003 Wills constituted a contractual agreement binding the testators to bequeath their property consistent with the terms stated in

² The record does not provide a date of death for Bobby.

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each will. Based upon controlling precedent and because the 2003 Wills do not refer to a mutual promise or agreement to bind either testator, we disagree.

This Court reviews an appeal from summary judgment *de novo*. *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007). Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” *Id.* at 523-24, 649 S.E.2d at 385 (internal quotation marks and citation omitted); *see also* N.C. Gen. Stat. § 1A-1, Rule 56(c) (2015). “If the granting of summary judgment can be sustained on any grounds, it should be affirmed on appeal.” *State Farm Mut. Auto. Ins. Co. v. Gaylor*, 190 N.C. App. 448, 450, 660 S.E.2d 104, 105 (2008) (internal quotation marks and citation omitted).

To determine whether mutually executed wills give rise to a contractual agreement, the trial court must look no further than the four corners of the wills. *Collins v. Estate of Collins*, 173 N.C. App. 626, 629, 619 S.E.2d 531, 534 (2005). In *Collins*, this Court held that in the absence of contractual language in the wills, and without a separate contract or agreement incorporated into a will, the testator is not contractually bound to bequeath property by the terms of that will. *Id.* at 629, 619 S.E.2d at 534.

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Plaintiffs in *Collins*, like Plaintiff in this case, were stepchildren who were left out of their stepparent's will. *Id.* at 626-27, 619 S.E.2d at 532-33. They contended that spouses' wills, which were identical and reciprocal in provisions and bequeaths and which were executed at the same time, created a contractual agreement that legally bound each spouse to the disposition of property as stated in the wills. *Id.* at 627, 619 S.E.2d at 533. However, no language in the wills referred to or stated contract terms, nor did the wills make reference to an outside agreement or contract. *Id.* at 626-27, 619 S.E.2d at 532-33. This Court quoted prior precedent, stating that “ [i]n the absence of a valid contract, . . . the mere concurrent execution of the will, with full knowledge of its contents by both testators, is not enough to establish a legal obligation to forbear revocation.’ ” *Id.* at 628, 619 S.E.2d at 533 (second alteration in original) (quoting *Godwin v. Wachovia Bank & Trust Co.*, 259 N.C. 520, 530, 131 S.E.2d 456, 463 (1963)). We concluded that:

Plaintiffs fail[ed] to point to any contractual language contained within the mutual wills in the instant case.[] There [was] no statement in the wills . . . expressing the clear intent of the parties that the wills are made pursuant to a contract. . . . The mere fact that the provisions of the wills are reciprocal and identical in language, except for the name of the maker, is not sufficient to create a binding contract.

Collins, 173 N.C. App. at 629, 619 S.E.2d at 534 (citations omitted). This Court ultimately held that the defendants, including the stepchild named in a later will, were entitled to summary judgment in their favor. *Id.* at 629-30, 619 S.E.2d at 534.

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Here, as in *Collins*, Plaintiff failed to show any evidence of contractual language within the 2003 Wills or any evidence of a separate agreement or contract incorporated into the wills. Because Plaintiff failed to demonstrate any genuine issue of material fact as to whether there was evidence of a binding contract, we affirm the trial court's order granting summary judgment in favor of Defendant.

AFFIRMED.

Chief Judge MCGEE and Judge TYSON concur.

Report per Rule 30(e).