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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-593

Filed: 7 November 2017

Buncombe County, No. 15 CVS 5429

CATHY C. BRIDGERS, Plaintiff,

v.

GEORGE WOODRUFF, JR. and MEGAN W. SCOTT, Defendants.

Appeal by plaintiff from order entered 28 March 2017 by Judge Mark E. Powell in Buncombe County Superior Court. Heard in the Court of Appeals 17 October 2017.

Barnwell & Long, PLLC, by Stephen Barnwell, for plaintiff-appellant.

The Henry Law Firm, by Peter R. Henry, for defendant-appellees.

ARROWOOD, Judge.

Cathy C. Bridgers (“plaintiff”) appeals from an order granting George Woodruff, Jr. (“George”) and Megan W. Scott’s (“Megan”) (collectively “defendants”) motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. For the reasons stated herein, we affirm.

I. Background

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On 31 December 2015, plaintiff filed a complaint against defendants. In the first cause of action, plaintiff alleged as follows: Plaintiff is one of two daughters of Hoyt W. Chambers (“decedent”), whose last will and testament was probated in common form on 15 April 2014 in the Office of the Clerk of Superior Court of Buncombe County, North Carolina. George is the spouse of decedent’s other daughter, Patricia C. Woodruff (“Patricia”), who is now deceased. Megan is the daughter of Patricia and George. A paper writing dated 24 May 2011, purporting to be the last will and testament of decedent was probated in common form by Patricia as the executrix named in the will. Plaintiff has filed a caveat seeking to declare null and void the 24 May 2011 paper writing and requested the trial court to probate in solemn form, the paper writing executed 15 September 2006 by decedent as the last will and testament of decedent.

Plaintiff alleged that on or about 8 June 2012, defendants and Patricia caused monies to be withdrawn from accounts owned by decedent and deposited them into a separate account with Telco Community Credit Union where Megan was employed. Decedent was not a party to such actions and did not give consent for the transfers. Plaintiff alleged that defendants and Patricia acted with the intent of transferring the monies with the intent of establishing a joint account with right of survivorship, caused all communication relative to the separate account to be mailed to George’s address with the intent of depriving decedent of any knowledge about his assets, and

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acted with the intent of defrauding plaintiff of her prospective inheritance as a beneficiary of decedent's assets. Any participation by decedent was the result of undue influence by defendants and Patricia and constituted a conversion of decedent's assets and unfair and deceptive trade practices.

In the second cause of action, plaintiff alleged that George converted all the farming equipment and other personal property of decedent by purchasing them prior to decedent's death for a consideration substantially less than their fair market value. Plaintiff alleged that the actions of George were performed willfully and with the intention of defrauding plaintiff of her prospective inheritance, constituting unfair and deceptive trade practices.

On 5 February 2016, defendants filed their answer and a motion to dismiss pursuant to Rules 9(b) and 12(b)(6) of the North Carolina Rules of Civil Procedure.

On 28 March 2017, the trial court entered an order granting defendants' motion to dismiss pursuant to Rule 12(b)(6). The order provided as follows:

4. Upon the argument of counsel, and pursuant to Holt v. Holt, 232 N.C. 497 (1950), and Hauser v. Hauser, COA16-606 (February 21, 2017), the Court determined that a child has no standing to pursue a cause of action that arose in the parent.
5. Plaintiff's lack of standing requires that Plaintiff's case be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

Plaintiff timely appealed on 21 April 2017.

II. Discussion

The sole issue on appeal is whether the trial court erred in granting defendants' motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Plaintiff argues that *Holt v. Holt*, 232 N.C. 497, 61 S.E.2d 448 (1950), "although not directly [o]n point, offers some direction" and that *Hauser v. Hauser*, __ N.C. App. __, 796 S.E.2d 391 (2017), is not controlling. Plaintiff further contends that because there is no reason for the personal representative to take control of the assets in question, such assets belong to the beneficiaries under decedent's will, and thus, she has standing to bring a civil action for their recovery. We are not convinced by her arguments.

"The motion to dismiss under N.C. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. In ruling on the motion the allegations of the complaint must be viewed as admitted, and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be granted." *Stanback v. Stanback*, 297 N.C. 181, 185, 254 S.E.2d 611, 615 (1979) (citations omitted). "Dismissal of a complaint is proper under the provisions of Rule 12(b)(6) of the North Carolina Rules of Civil Procedure . . . when some fact disclosed in the complaint necessarily defeats the plaintiff's claim." *Carlisle v. Keith*, 169 N.C. App. 674, 681, 614 S.E.2d 542, 547 (2005) (citation omitted).

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“This Court must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court’s ruling on the motion to dismiss was correct.” *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4, *aff’d per curiam*, 357 N.C. 567, 597 S.E.2d 673 (2003).

In the present case, the trial court relied on the holdings of *Holt* and *Hauser* when ruling on defendants’ motion to dismiss. In *Holt*, the plaintiff brought an action for fraud and undue influence against his brothers in which he alleged that they had fraudulently induced their father to convey and to will his real and personal property to them prior to his death. *Holt*, 232 N.C. at 500, 61 S.E.2d at 450. The plaintiff argued that the cause of action existed at the time of the father’s death and that such cause of action thereupon passed to the plaintiff in his capacity as heir and next of kin to the father. *Id.* at 500, 61 S.E.2d at 451. The trial court dismissed the plaintiff’s action and the North Carolina Supreme Court affirmed, holding that the plaintiff had no standing to maintain the action until the will was declared to be invalid in a caveat proceeding. *Id.* at 503, 61 S.E.2d at 453. The Supreme Court stated as follows:

A child possesses no interest whatever in the property of a living parent. He has a mere intangible hope of succession. His right to inherit the property of his parent does not even exist during the lifetime of the latter. Such right arises on the parent’s death, and entitles the child to take as heir or distributee nothing except the undevise property left by the deceased parent.

In so far as his children are concerned, a parent has an absolute right to dispose of his property by gift or

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otherwise as he pleases. He may make an unequal distribution of his property among his children with or without reason. These things being true, a child has no standing at law or in equity either before or after the death of his parent to attack a conveyance by the parent as being without consideration, or in deprivation of his right of inheritance.

When a person is induced by fraud or undue influence to make a conveyance of his property, a cause of action arises in his favor, entitling him, at his election, either to sue to have the conveyance set aside, or to sue to recover the damages for the pecuniary injury inflicted upon him by the wrong. But no cause of action arises in such case in favor of the child of the person making the conveyance for the very simple reason that the child has no interest in the property conveyed and consequently suffers no legal wrong as a result of the conveyance.

Id. at 500-501, 61 S.E.2d at 451-52 (internal citations omitted). The Supreme Court further explained that “if the cause of action still exists in the person making the conveyance at the time of his death, it passes to those who then succeed to his rights.”

Id. at 501, 61 S.E.2d at 452. When the property at issue is real, the right to succeed to the unimpaired right of the decedent to ratify or repudiate a conveyance “passes to the heirs in case of intestacy, and to the devisees in case the grantor leaves a will.”

Id. at 502, 61 S.E.2d at 452 (internal citation omitted). Alternatively, if the property at issue is personal, actions challenging transfers made by the decedent during his lifetime “must be brought by his personal representative[.]” *Id.* Legatees or distributees “may sue, however, to recover personal assets of an estate when fraud, collusion, or a refusal to sue on the part of the personal representative renders such

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action necessary for the protection of ultimate rights accruing to them under a will or the statute of distribution.” *Id.*

In *Hauser*, the plaintiff brought an action against her brother and sister-in-law for tortious interference with an expected inheritance, alleging that their wrongful acts had caused the transfer and withdrawal of her mother’s funds, diminishing the plaintiff’s expected inheritance. *Hauser*, __ N.C. App. at __, 796 S.E.2d at 393. The plaintiff’s action was brought during her mother’s lifetime. *Id.* at __, 796 S.E.2d at 394. Our Court confirmed the principles stated in *Holt* and held that they “remain[ed] the law of this State[,]” necessarily defeating the plaintiff’s claim. *Id.*

We find that the principles stated in *Holt*, as recently applied by this Court in *Hauser*, control the outcome of this case. During his lifetime, decedent had the absolute right to dispose of his property as he pleased. *Holt*, 232 N.C. at 500, 60 S.E.2d at 451. Plaintiff has no interest in the monies that were withdrawn from decedent’s account during his lifetime. She only had a “mere intangible hope of succession.” *Id.* Her right to inherit decedent’s personal property only arises on decedent’s death, entitling her to take “as heir or distributee nothing except the undivided property left by the deceased parent.” *Id.* Accordingly, plaintiff has no standing to attack a conveyance made by decedent as being in deprivation of her right to inheritance.

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Plaintiff further asserts that based on N.C. Gen. Stat. §§ 28A-2-4¹ and 28A-15-2², (1) the superior court clerk does not have jurisdiction of actions for monetary damages, including fraud and (2) because the personal representative did not take action to recover the assets in question, such assets belong to the beneficiaries under decedent's will, and thus, have standing to bring a civil action for their recovery. Plaintiff relies on the holding in *Horry v. Woodbury*, 189 N.C. App. 669, 659 S.E.2d 88 (2008), *rev'd*, 363 N.C. 7, 673 S.E.2d 127 (2009), to support this contention. Plaintiff argues that the facts of the present case are "very similar" to those found in *Horry*. We disagree.

In *Horry*, the plaintiff, the decedent's nephew, initiated an action after the decedent's death against the defendant, the decedent's cousin. The plaintiff alleged that the defendant engaged in improper conduct while acting under a power of attorney for the decedent and while serving as the executor of the decedent's estate.

¹ N.C. Gen. Stat. § 28A-2-4(c) (2015) provides as follows: "[T]he clerk of superior court shall not have jurisdiction under subsection (a) or (c) of this section of the following: . . . (2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence."

²N.C. Gen. Stat. § 28A-15-2(a) (2015) provides that: "Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right of possession of personal property of the decedent is vested in the decedent's heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, the personal representative's possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto."

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Id. The Supreme Court adopted the reasoning set out in the dissenting opinion from the Court of Appeals that held an estate beneficiary has standing to bring a tort action against an administrator without first making a demand upon the administrator or seeking to have the administrator removed. *Id.* Significantly distinguishable from the facts in *Horry*, here, plaintiff's allegations against defendants are not based on their conduct while acting under a power of attorney for decedent and do not contain an allegation that any actions on behalf of decedent's estate were improper.

Plaintiff also cites to *Shoaf v. Shoaf*, 219 N.C. App. 471, 727 S.E.2d 301 (2012), for the contention that she has standing. After careful review, we do not find this case dispositive. In *Shoaf*, after the decedent's death, there was a pending caveat proceeding and a separate civil action in which the plaintiffs alleged claims of conversion, breach of fiduciary duty, and constructive fraud against the defendant. *Id.* at 474, 727 S.E.2d at 304. The issue before our Court was whether, based on the prior pending action doctrine, the civil action was barred by the caveat proceeding. *Id.* at 475, 727 S.E.2d at 305. Our Court held that both actions may be maintained simultaneously because although they "involve[d] the same parties, the two proceedings do not present the same legal issues or demand the same relief." *Id.* at 476, 727 S.E.2d at 305. The Court did not address the issue of standing.

Based on the foregoing reasons, we affirm the order of the trial court, granting defendants' Rule 12(b)(6) motion.

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AFFIRMED.

Judges BRYANT and MURPHY concur.

Report per Rule 30(e).