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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-263

Filed: 7 April 2020

Guilford County, No. 16 E 2169

IN RE ESTATE OF VIJAY KRISH PURSWANI

Appeal by Respondent from Orders entered 9 January 2018 and 30 January 2018 by Judge Lindsay R. Davis, Jr. in Guilford County Superior Court and from Order entered 8 March 2018 by Judge Edwin G. Wilson, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 29 October 2019.

*Krish Purswani, respondent-appellant, pro se.*

*Black, Slaughter & Black, P.A., by T. Keith Black and Jennifer L. Ruby, for estate-appellee.*

HAMPSON, Judge.

This appeal arises out of the administration of the estate of Vijay Krish Purswani (Decedent), who was the son of Krish Purswani (Appellant) and Kiran Purswani (Appellee). Appellant, proceeding *pro se*, attempts to appeal from numerous orders entered throughout this litigation and raises thirteen issues on appeal. Several of these orders, however, and the corresponding issues on appeal,

are not properly before this Court. We therefore limit our factual recitation to those facts necessary to resolve the issues that are properly before us.

**Factual and Procedural Background**

When Appellant and Appellee obtained a final decree of divorce in 2002, they also executed a final parenting plan that provided the minor children, including Decedent, would reside primarily with Appellee and that Appellee would have the majority of the decision-making authority regarding the children. On 10 April 2016, seventeen-year-old Decedent was a passenger in a vehicle involved in a high-speed, single-car accident, resulting in his death. Appellee sought to have Decedent cremated in accordance with Hindu tradition. On or about 14 April 2016, Appellant “executed an Application for the Authorization of the Cremation Process and Instructions for the Disposition of [Decedent].” However, at Decedent’s funeral on 15 April 2016, Appellant “appeared and objected to the cremation and withdrew his consent to cremation and as a result the funeral home did not believe it could proceed.” Appellant did not believe Decedent’s death was caused by a single-car accident; rather, Appellant asserted Decedent “was actually murdered and [Appellee] was involved in ordering his murder.”

Appellee filed a complaint against Appellant in Guilford County District Court, requesting a temporary restraining order, preliminary injunction, and permanent injunction against Appellant from interfering or stopping the cremation of Decedent.

On 26 and 29 April 2016, the trial court held a hearing on Appellee’s complaint and requests for injunctions. At this hearing, the trial court heard testimony from the state trooper that responded to the single-car accident—who opined “the injuries suffered by [Decedent were] consistent with a single vehicle automobile accident in which the vehicle rolled over and a body [was] ejected”—and from the medical examiner that conducted an examination of Decedent’s body on the day of his death—who “found the injuries on [Decedent’s] body to be consistent with an automobile accident in which a body is ejected from an automobile.”

Thereafter, the trial court entered an order on 6 May 2016, finding “[n]either the medical examiner nor the trooper indicated that there was any evidence of criminal activity other than the texting while driving which contributed to the accident and [Decedent’s] demise.” The trial court ordered Appellee would have the sole authority to decide whether to cremate Decedent but allowed Appellant until 13 May 2016 to have an autopsy of Decedent conducted. However, no autopsy was ever conducted.

On 19 July 2016, Appellant applied for and was issued letters of administration by Guilford County Clerk of Superior Court Lisa Johnson-Tonkins (Johnson-Tonkins) for the estate of Decedent. After learning of this event, Appellee filed a verified petition for revocation of letters of administration on approximately 8 August 2016, seeking the removal of Appellant as administrator of Decedent’s estate and

appointment of her as administratrix. Appellee's petition came on for hearing before the clerk's office on 12 October 2016.

On the day of the hearing on 12 October 2016, Appellant also filed a motion for recusal (Motion for Recusal), requesting, *inter alia*, Johnson-Tonkins recuse herself from the matter because of a perceived conflict of interest. However, Johnson-Tonkins was not the hearing officer for the parties' hearing; rather, an assistant clerk of court presided over the hearing. During the hearing, Appellant notified the assistant clerk of court that he was not feeling well and needed to go to the hospital. After EMS took Appellant to the hospital, the assistant clerk of court continued the hearing until 10 November 2016. On 14 October 2016, the assistant clerk of court entered an order (Recusal Order) denying Appellant's Motion for Recusal because it was not timely filed or calendared and because Johnson-Tonkins did not preside over the hearing.

On 10 November 2016, the assistant clerk of court held a hearing on Appellee's petition. Appellee presented evidence at this hearing; however, Appellant was not present due to illness. On 15 November 2016, the assistant clerk of court entered an order (Revocation Order) revoking Appellant's letters of administration because of his "private interest" in the administration of Decedent's estate and appointing Appellee as administratrix of Decedent's estate. The Revocation Order also noted Appellee

“will be represented and aided by the law firm of Black, Slaughter & Black, P.A. in the wrongful death matter and the Estate filings and obligations.”

On 28 November 2016, Appellant filed notice of appeal to superior court from both the Recusal Order and Revocation Order (Notice of Appeal from Clerk Orders). The Record before us includes no indication that Appellant’s Notice of Appeal from Clerk Orders was ever heard in superior court. Indeed, Appellant in his appellate brief notes this “appeal is pending.”

On 31 October 2017, Appellee, through her counsel T. Keith Black of Black, Slaughter & Black, P.A. (Attorney Black), filed a Petition for Approval of Settlement (Settlement Petition) in Guilford County Superior Court. In her Settlement Petition, Appellee alleged that after investigating individuals or entities potentially liable for the wrongful death of Decedent, recovery was likely limited to the insurance policy limits, totaling \$200,000.00, of the owner of the automobile involved in Decedent’s death. Accordingly, the Settlement Petition sought approval of a settlement agreement in this amount for the settlement and resolution of the wrongful-death claim of Decedent’s estate.

On 1 December 2017, Appellant filed two motions with Guilford County Superior Court in opposition to the Settlement Petition. The first motion (Objection Motion) requested the trial court deny the Settlement Petition because, according to Appellant, Appellee was not authorized to enter into this settlement, the amount of

the settlement was too low and thus “not fair, nor reasonable, and certainly not in the best interests of the Estate[.]” and Attorney Black was disqualified to represent Decedent’s estate. As for the second motion (Motion to Disqualify), Appellant requested the trial court disqualify Attorney Black because of an alleged conflict of interest.

On 2 January 2018, the trial court held a hearing on the Settlement Petition and Respondent’s Objection Motion and Motion to Disqualify. On 30 January 2018, the trial court enter an Order denying Appellant’s Motion to Disqualify.<sup>1</sup> In its Order, the trial court also noted Decedent’s estate had obtained outside counsel (Attorney Walker) to “conduct a fact investigation independent of that performed by [Attorney Black] and to provide advice to [Appellee] concerning the proposed settlement[.]” Because Attorney Walker had only recently been engaged by the estate, the trial court continued the hearing on Appellee’s Settlement Petition to allow Attorney Walker sufficient time to conduct his independent investigation.

On 19 February 2018, the trial court held a hearing on Appellee’s Settlement Petition. After this hearing, in which both parties presented evidence and testimony, the trial court entered its Order Approving Settlement on 8 March 2018. The Order Approving Settlement found “there are no other parties from which a recovery is

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<sup>1</sup> This Order actually amended a previously entered order of the trial court. The only change between the two orders was to correct the amount of the policy limits identified in the Settlement Petition. Accordingly, for ease of reading, we only refer to the later Order.

reasonable or probable” and that Appellee and the insurer of the automobile had agreed to a settlement in the full amount of the policy limits, \$200,000.00. Accordingly, the Order Approving Settlement authorized Appellee to settle the wrongful-death claim of Decedent’s estate.

**Appellate Jurisdiction**

Here, Appellant presents to this Court thirteen issues on appeal. Issues 1-6 and 8 deal with certain alleged errors of the assistant clerk of court by entering the Recusal Order and Revocation Order. These two Orders, however, are not properly before this Court.

In *In re Estate of Johnson*, our Court explained Section 1-301.2 of our General Statutes governs appeals from an order of the clerk of superior court granting or denying a petition to revoke letters testamentary or letters of administration. \_\_\_ N.C. App. \_\_\_, \_\_\_, 824 S.E.2d 857, 861-62 (2019) (citations omitted). Section 1-301.2(e) provides “a party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo.” N.C. Gen. Stat. § 1-301.2(e) (2019); *see also In re Estate of Johnson*, \_\_\_ N.C. App. at \_\_\_, 824 S.E.2d at 861-62 (explaining the appropriate court to appeal to when appealing from an order granting or denying revocation of letters of administration is the superior court (citations omitted)). Whereas, all other appeals from orders entered by the clerk of

court in the administration of a decedent's estate are governed by Section 1-301.3(c), which provides—"A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or judgment after service of the order on that party." N.C. Gen. Stat. § 1-301.3(c) (2019).

Accordingly, Appellant's Notice of Appeal from Clerk Orders, which appealed both the Recusal Order and Revocation Order to Guilford County Superior Court, was proper. *See id.* §§ 1-301.2(e); -301.3(c); *see also In re Estate of Johnson*, \_\_\_ N.C. App. at \_\_\_, 824 S.E.2d at 861-62. However, as Appellant concedes, this "appeal is pending[.]" and on this Record, there is no indication that a hearing on these two Orders was ever held before the Guilford County Superior Court. Indeed, no superior court order addressing these two Orders exists in the Record. Without a final order from superior court reviewing these two Orders, we lack jurisdiction to address both Orders. *See* N.C.R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . . [and] obtain[ed] a ruling upon the party's request, objection, or motion."). Because Appellant has not obtained a final order from superior court reviewing the Recusal and Revocation Orders, these two Orders are not properly before this Court, and we therefore do not address Appellant's Issues 1-6 and 8 concerning these Orders.



In Appellant's Issue 9, he also contends the trial court erred by failing to disqualify Attorney Walker. Although Appellant filed on 19 February 2018, the day of the hearing on the Settlement Petition, a "Motion to Cancel Hearing of 2/19/18 and Stay All Proceedings Pending Appeal[.]" which alleged Attorney Walker had a conflict of interest, the trial court never heard arguments on the Motion and did not rule on whether Attorney Walker should be disqualified. Without a ruling by the trial court, this issue also is not properly before our Court. *See* N.C.R. App. P. 10(a)(1).

In the majority of Appellant's remaining Issues on Appeal, Appellant takes issue with the Order denying Appellant's Motion to Disqualify and the Order Approving Settlement. Appellant filed timely Notices of Appeal from both of these Orders. Accordingly, both the Order denying Appellant's Motion to Disqualify and the Order Approving Settlement are properly before this Court.

### **Issues**

The dispositive issues on appeal are thus whether the trial court (I) abused its discretion by denying Appellant's Motion to Disqualify and (II) erred by entering the Order Approving Settlement.

### **Analysis**

#### **I. Order Denying Motion to Disqualify**

"Decisions regarding whether to disqualify counsel are within the discretion of the trial judge and, absent an abuse of discretion, a trial judge's ruling on a motion

to disqualify will not be disturbed on appeal.” *Travco Hotels v. Piedmont Natural Gas Co.*, 332 N.C. 288, 295, 420 S.E.2d 426, 430 (1992) (citation omitted); *see also In re Lee*, 85 N.C. App. 302, 310, 354 S.E.2d 759, 764 (1987) (explaining a trial court’s decision regarding whether to disqualify counsel “is discretionary with the trial judge and is not generally reviewable on appeal” (citation omitted)). “A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason . . . [or] upon a showing that [the trial court’s decision] was so arbitrary that it could not have been the result of a reasoned decision.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). On a motion for disqualification, the findings of the trial court are binding on appeal if supported by any competent evidence. *See Lange v. Lange*, 167 N.C. App. 426, 428, 605 S.E.2d 732, 733 (2004) (citation omitted); *see also State v. Smith*, 258 N.C. App. 682, 686-87, 813 S.E.2d 867, 870 (2018) (citations omitted).

In his Motion to Disqualify, Appellant requested the trial court disqualify Attorney Black because of an alleged conflict of interest, citing Revised Rule of Professional Conduct 1.7. Rule 1.7, titled “Conflict of Interest: Current Clients,” states in pertinent part:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or

- (2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

N.C. St. B. Rev. R. Prof'l Conduct r. 1.7(a).

In his Motion, Appellant contends Attorney Black must be disqualified because, among other things, his "representation of the Estate will be adverse to his other client, [Appellee], as he must pursue the Estate's possible claims against her, due to their possible involvement in [Decedent's] death or at least depose and subpoena them and obtain information about [Decedent] and [Decedent's] records in their possession or control." Appellant's conflict-of-interest argument thus centers around his unsubstantiated belief that Appellee was involved in the murder of Decedent and staged his death. However, in its Order denying Appellant's Motion to Disqualify, the trial court found: "[Appellant] offered no evidence of any wrongdoing, conflict of interest, or unethical or immoral conduct of [Attorney Black] or his firm in connection with their representation of [Appellant], and *none to support his allegations that [Appellee] may have been culpable personally in the death of the deceased.*" (emphasis added). This Finding by the trial court is supported by the evidence offered at the hearing on Appellant's Motion to Disqualify and thus is binding on appeal. *See Lange*, 167 N.C. App. at 428, 605 S.E.2d at 733 (citation

omitted). Accordingly, the trial court did not abuse its discretion by not disqualifying Attorney Black.<sup>2</sup>

## II. Order Approving Settlement

Lastly, Appellant contends the trial court erred by entering the Order Approving Settlement. Appellant argues the settlement reached by Appellee and the insurer “is not fair, nor reasonable, and certainly not in the best interests of the Estate and its Heirs.”

Pursuant to N.C. Gen. Stat. § 28A-13-3(a)(23), a personal representative of an estate is entitled to maintain actions for the wrongful death of a decedent and, in doing so, may compromise or settle any such claims. *See* N.C. Gen. Stat. § 28A-13-3(a)(23) (2019). However, “[u]nless all persons who would be entitled to receive any damages recovered . . . are competent adults and have consented in writing, any such settlement shall be subject to the approval of a judge of the court or tribunal exercising jurisdiction over the action[.]” *Id.*

Here, given the fact Appellant assuredly would not consent to a settlement of Decedent’s wrongful-death claim, Appellee sought the trial court’s approval of the settlement agreement with the insurer of the automobile. After hearing arguments regarding the Settlement Petition, the trial court entered its Order Approving

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<sup>2</sup> Appellant also requests this Court sanction Attorney Black for his alleged misconduct. In our discretion, we decline Appellant’s request. *See* N.C.R. App. P. 34.

Settlement, which approved the settlement of Decedent's wrongful-death claim. In its Order, the trial court made the following Findings of Fact:

3. That [Appellee] was appointed Administratrix of the Estate of [Decedent] on November 15, 2016 after Letters of Administration formerly issued to [Appellant] were revoked.
4. That [Decedent] was killed in a single car automobile accident on April 10, 2016, in a car driven by [Minor Driver], also a minor and owned by [Pizon].
5. That [Minor Driver] was an insured driver through [Insurer] under policies held by the name of [Daniels] and [Pizon].
6. That [Insurer] was the insurer of the automobile involved in the accident through both [Pizon] and [Daniels].
7. That the policy limits for the automobile are \$200,000.00  
.....
8. That [Appellee] has determined that any further recovery from [Pizon] above the policy limits is improbable due to his lack of resources.
9. That [Appellee] has determined that any further recovery from [Daniels] above the policy limits is improbable due to his lack of resources.
10. That [Appellee] has determined that any recover from [Minor Driver] is improbable due to his age and lack of resources.
11. That [Appellee] has performed an asset search and has determined that neither [Pizon] nor [Daniels] own any real estate in Guilford County, North Carolina.

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12. That [Appellee] as Administratrix of the Estate has negotiated and agreed upon a full and final settlement of all matters at issue for the wrongful death of [Decedent] with [Insurer], subject to approval of a Superior Court Judge pursuant to North Carolina General Statutes Section 28A-13-(a)(23) in the amount of Two Hundred Thousand Dollars (\$200,000.00).
13. That there are no other parties from which a recovery is reasonable or probable.
14. That there is no underinsured motorist coverage available to the Estate of [Decedent].

Based on these Findings, the trial court concluded Appellee was authorized to enter the settlement agreement and that it was “in the best interest of the parties and the Estate.”

Here, the trial court’s Findings of Fact support its Conclusion that approval of the settlement agreement was in the best interest of the parties and Decedent’s estate. As the trial court recognized, Appellee, as administratrix, has the authority to settle claims on behalf of Decedent’s estate. *See id.* The trial court heard from Attorney Walker who testified to investigating potential sources of assets from which Decedent’s estate could potentially recover; however, Attorney Walker’s investigation revealed the only likely source of recovery was the \$200,000.00 from the insurer. Therefore, on these facts, the trial court correctly applied the law to the facts found and did not err by entering the Order Approving Settlement. *See generally College v. Thorne*, 13 N.C. App. 27, 32, 185 S.E.2d 303, 307 (1971) (citation omitted).

**Conclusion**

Accordingly, for the foregoing reasons, we affirm the trial court's Order denying Appellant's Motion to Disqualify and Order Approving Settlement.

AFFIRMED.

Judges INMAN and BERGER concur.

Report per Rule 30(e).