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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-266

Filed: 20 October 2020

Johnston County, No. 12 E 23

JOAN MARIE S. BELNAP, in her capacity as Executrix of the ESTATE OF JOHN SIMON SHALLCROSS SR., JOAN MARIE S. BELNAP, Individually, Petitioners,

v.

JASON S. SHALLCROSS, JOHN S. SHALLCROSS, JR., JANET S. LANGSTON, JACQUELINE S. SHEFFIELD, Respondents.

Appeal by petitioner from order entered 22 January 2020 by Judge Keith Gregory in Johnston County Superior Court. Heard in the Court of Appeals 22 September 2020.

*Narron Wenzel, P.A., by James W. Narron and Stephanie G. Norris, for petitioner.*

*Spence & Berkau, P.A., by Robert A. Spence, Jr., for respondent-Jason S. Shallcross.*

ARROWOOD, Judge.

Joan Marie S. Belnap, (“petitioner”) appeals from the trial court’s order affirming an order regarding distribution of assets by the Clerk of Superior Court. Petitioner is joined in her appeal by her siblings John S. Shallcross Jr., Janet S.

Langston, and Jacqueline S. Sheffield. For the following reasons, we affirm the trial court's order.

I. Background

John S. Shallcross, Sr. ("Testator") died testate on 6 January 2012. He was survived by five children: Joan Marie S. Belnap, Janet S. Langston ("Ms. Langston"), Jaqueline Mary Sheffield ("Ms. Sheffield"), John S. Shallcross Jr. ("Mr. Shallcross, Jr."), and Jason S. Shallcross ("respondent"). Prior to his death, on 4 August 2010, Testator executed a will appointing petitioner as executor of his Estate. The five children are the beneficiaries of Testator's estate. Petitioner filed certificate of probate, and the Clerk of Superior Court of Johnston County issued letters testamentary on 27 January 2012.

Article VI of the will provided for the disposition of Testator's residuary estate, which represented the remainder of Testator's property after the bequest of Testator's tangible personal property, and the payment of all debts, costs of administration, and expenses. Article VI provided two primary scenarios for distribution of the residuary estate:

- (A) If Jason Survives Me. If Jason survives me, my residuary estate shall be administered and disposed of as follows:
  - (1) Valuation of Stock for the Purposes of Achieving the Agreed Upon Equal Distribution Among My Children or Their Issue. I direct my Executor to engage a qualified appraiser to determine the fair

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market value of my 121,877 shares of stock (“Stock”) in Shallco, Inc., or its successor corporation, whether by merger, change of name, consolidation or otherwise (“Shallco”). . . .

(2) Stock is Greater Than One-Fifth of Residuary Estate. If the value of the Stock, as determined in accordance with subparagraph (A)(1) above, is greater than one-fifth of the value of my residuary estate, the following provisions shall apply:

(a) Distribution of Stock to Jason. The Stock shall be distributed outright to Jason, subject to the provisions of this paragraph.

(b) Equalization and promissory notes. In order for Jason to receive this bequest of all of the Stock, Jason shall execute a promissory note in favor of each of his then living siblings and the then living issue, per stirpes, of any of his siblings who predecease me. Each promissory note payable to a sibling of Jason’s shall be in an amount equal to one-fourth of the value of the Stock that is in excess of one-fifth of the value of my residuary estate. Each promissory note payable to the issue, per stirpes, of a deceased sibling of Jason’s shall be in an amount equal to one-fourth of the value of the Stock that is in excess of one-fifth of my residuary estate, divided by the number of the deceased child’s issue, per stirpes. Each promissory note shall be for a five-year term, shall be secured by a pledge of the Stock, shall be due and payable in five equal annual installments and shall accrue interest annually at the rate of three and one-half percent (3.5%) per annum. In addition, Jason shall be obligated to use 50% of the dividends paid from Shallco to him by virtue of his ownership of the

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Stock to pay down the balance of the interest and principal due on each promissory note.

- (c) Distribution of remainder. After satisfying the foregoing provisions of this paragraph (2), the remaining assets of the residuary estate shall be divided into as many equal shares as required to apportion one equal share for each of my living children (excluding JASON S. SHALLCROSS), and one equal share for the then living issue, collectively, of each child who is then deceased (excluding the issue of JASON S. SHALLCROSS) -- such issue representing the deceased child. JASON S. SHALLCROSS and his issue are excluded from benefiting under this subparagraph (c) and shall be considered to have predeceased me for purposes of interpreting this subparagraph (c). I devise and bequeath the share apportioned for each child to the child. . . .
- (3) Stock is less than or equal to one-fifth of residuary estate. If the value of the Stock, as determined in accordance with subparagraph (A)(1) above, is less than or equal to one-fifth of the value of my residuary estate, my residuary estate shall be divided into as many equal shares as required to apportion one equal share for each of my then living children, and one equal share for the then living issue, collectively, of each child who is then deceased -- such issue representing the deceased child. The several equal shares so apportioned shall be administered and disposed of as follows:
  - (a) Bequest to Jason. The share apportioned for Jason shall be distributed outright to Jason and satisfied first with the stock. If the value of the Stock is insufficient to completely satisfy the share for Jason, then the balance of Jason's share shall be satisfied with a non-pro rata

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distribution of the remaining assets of my residuary estate.

(b) Bequest to other children. I devise and bequeath the share apportioned for each of my other children outright to the children.

Article VI provided an alternative direction if respondent did not survive Testator, but because respondent did survive Testator, that portion of the will did not apply. At the end of 2017, the Shallco stock was appraised at a value of \$565,140.00, which exceeded the value of a one-fifth interest of the Estate.

Due to the complexity of the estate, the final accounting and closing of the estate was delayed several times until the Clerk of Superior Court ordered a final accounting deadline of 29 December 2017. To resolve the issue of the equalization payments required under Article VI(A)(2)(b), the five children entered into an Estate Settlement Agreement (“Settlement Agreement”) on 21 February 2018. The Settlement Agreement required respondent to pay \$270,000.00 to petitioner as Executrix, to be divided into four equal payments of \$67,500.00 for each of respondent’s siblings. The final accounting was filed and the Estate was closed on 15 June 2018.

On 3 August 2018, new assets owned by Testator were discovered. The assets were 100 shares of stock in First Citizens SC, valued at approximately \$41,900.00 at the time of Testator’s death in January 2012. First Citizens SC had merged with First Citizens NC at the end of 2014, which converted the 100 shares of stock in First

Citizens SC into 400 shares of stock in First Citizens NC. After discovering the new assets, petitioner distributed the assets between herself and her three siblings, excluding respondent.

On 1 April 2019, petitioner filed a petition to re-open the Estate and a petition for instructions regarding the distribution of these new assets. Respondent answered the petition on 29 April 2019. The new assets were valued at approximately \$154,000.00 when the petitions were filed.

On 12 August 2019, the clerk entered an order finding that the cash payments made under the Settlement Agreement satisfied Article VI(A)(2) of Testator's will; that the will clearly showed the Testator's intent to treat all five beneficiaries equally; and that the newly discovered assets should be distributed equally among the five beneficiaries as provided in Article VI(A)(3). Accordingly, the clerk ordered that the newly discovered assets be equally distributed to the five beneficiaries, as set forth in Article VI(A)(3) of Testator's will. Petitioner, joined by Ms. Langston, Ms. Sheffield, and Mr. Shallcross, Jr., filed appeals from the Clerk of Superior Court's order on 21 August 2019. Petitioner specifically assigned error to the Clerk's findings regarding the application of Article VI(A)(3) of the will to the new assets, that the estate distributions were equalized by the Settlement Agreement. Petitioner also assigned error to the Clerk's conclusions of law.

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On 14 December 2019, the Honorable Keith Gregory of the Johnston County Superior Court conducted a hearing on Petitioner's appeal, and affirmed the order of the Clerk of Superior Court. Petitioners timely appealed.

II. Discussion

On appeal to the Superior Court of an order of the Clerk in matters of probate, the trial court judge sits as an appellate court. *Matter of Estate of Pate*, 119 N.C. App. 400, 402, 459 S.E.2d 1, 2 (1995) (citing *In re Estate of Swinson*, 62 N.C. App. 412, 303 S.E.2d 361 (1983)). Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following: whether the findings of fact are supported by the evidence; whether the conclusions of law are supported by the findings of facts; and whether the order or judgment is consistent with the conclusions of law and applicable law. N.C. Gen. Stat. § 1-301.3(d) (2019).

When the order or judgment appealed from contains specific findings of fact or conclusions to which an appropriate exception has been taken, the role of the trial judge on appeal is to apply the whole-record test. *Matter of Estate of Pate*, 119 N.C. App. at 402-03, 459 S.E.2d at 2. In doing so, the trial judge reviews the Clerk's findings and may either affirm, reverse, or modify them. *In re Estate of Lowther*, 271 N.C. 345, 156 S.E.2d 693 (1967). If there is evidence to support the findings of the Clerk, the judge must affirm. *Matter of Estate of Pate*, 119 N.C. App. at 403, 459

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S.E.2d at 2 (citation omitted). Moreover, even where the Clerk may have made an erroneous finding which is not supported by the evidence, the Clerk's order will not be disturbed if the legal conclusions upon which it is based are supported by other proper findings. *Id.* (citation omitted).

The standard of review in this Court is the same as in the Superior Court. *In re Estate of Outen*, 77 N.C. App. 818, 820, 336 S.E.2d 436, 437 (1985), *disc. review denied*, 316 N.C. 377, 342 S.E.2d 896 (1986).

A. Findings of Fact

Petitioner first argues that the Clerk's findings of fact regarding distribution of the new assets under Article VI(A)(3), and that the Settlement Agreement equalized the estate distributions, were clearly erroneous. We disagree.

As the trial court noted in its order, Testator clearly expressed his intent to treat all of his children equally. This is evident from Article VI(A)(1) of the will, in which Testator provided for "the Purposes of Achieving the Agreed Upon Equal Distribution Among My Children or Their Issue." The Settlement Agreement achieved the agreed upon equal distribution when the Estate was originally closed. Accordingly, there was competent evidence to support the Clerk's findings, and it was proper for the Clerk and trial court to conclude that the new assets should be distributed evenly between the five beneficiaries in accordance with the Testator's intent to create a final and equal distribution of the Estate.



B. Conclusions of Law

Petitioner additionally argues that the Clerk erroneously concluded that considering the “will as a whole” required an equal distribution of the new assets. We disagree.

As previously stated, the will clearly showed the Testator’s intent to create a final and equal distribution of the Estate among the five beneficiaries. Although the intended equal distribution was achieved by the Settlement Agreement rather than the promissory notes described in Article VI(A)(2)(b), the Testator’s intent was achieved in accordance with the four corners of the will. The Clerk’s application of Article VI(A)(3) of the will was proper because the Settlement Agreement achieved the equal distribution as Testator intended, and left respondent with a value equal to one-fifth of the residuary estate. Assuming *arguendo* that the Clerk’s application of Article VI(A)(3) was erroneous, the Clerk’s order should not be disturbed because the Clerk’s legal conclusions were supported by proper findings of fact. Therefore, the trial court properly affirmed the Clerk’s order.

III. Conclusions

For the foregoing reasons, we hold that the trial court did not err in affirming the Clerk’s order to distribute the new assets evenly among the five beneficiaries.

AFFIRMED.

Chief Judge MCGEE and Judge ZACHARY concur.

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Report per Rule 30(e).