IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-74

No. COA19-713-2

Filed 16 March 2021

Mecklenburg County, No. 15 E 002702

JUDITH E. CROSLAND, Petitioner,

v.

BAILEY PATRICK, JR., as Executor of the Estate of JOHN CROSLAND, JR., Respondent.

Appeal by Defendant from order entered 24 May 2019 by Judge Louis A. Trosch in Mecklenburg County Superior Court. Originally heard in the Court of Appeals 8 January 2020. Petition for Rehearing allowed 8 December 2020. The following opinion supersedes and replaces the prior opinion filed 15 September 2020.

Shumaker, Loop & Kendrick, LLP, by Lynn F. Chandler and Lucas D. Garber, for petitioner-appellant.

Alexander Ricks PLLC, by Roy H. Michaux, Jr., for respondent-appellee.

Essex Richards, P.A., by Jonathan E. Buchan, Jr., for intervenor.

MURPHY, Judge.

¶ 1 Where the statute of limitations for a contract and fraud claim is three years, the statute of limitations bars any claim of fraud, duress, or undue influence after three years. Here, the prenuptial agreement was signed and executed thirty-seven

years prior to this *Petition for Elective Share*, and the statute of limitations bars any challenge. Moreover, the alleged unilateral revocation of the prenuptial agreement argued in the pleadings has no legal significance. The trial court properly granted Respondent's *Motion for Summary Judgment*.

BACKGROUND

¶ 2 John Crosland, Jr. ("Husband") died testate on 2 August 2015. His *Last Will and Testament* was executed on 7 August 2013 and admitted to probate 13 August 2015. Judith E. Crosland ("Wife"), as the surviving spouse, filed a *Petition for Elective Share* on 15 October 2015. She requested the trial court to determine whether the value of property passing to her under Husband's estate plan was less than fifty percent of his estate as provided by N.C.G.S. § 30-3.1.

¶ 3 On 5 November 2015, Respondent, Bailey Patrick, Jr. ("Executor"), as Executor of Husband's estate, filed a notice of transfer to Superior Court to determine all issues relating to or arising out of the *Petition for Elective Share*, and seeking a declaratory judgment that the prenuptial agreement dated and signed on 3 February 1978 ("the Agreement") was valid and enforceable. Executor argued the Agreement, if valid, would bar any claim for an elective share sought by Wife. Executor also sought a stay pending a determination of whether the Agreement barred Wife's right to pursue an elective share.

¶ 4 Wife claims Husband first presented the Agreement to her on 3 February 1978, the night before their wedding. In her deposition, Wife testified she did not feel she had a choice regarding whether to sign the Agreement because she believed the wedding would not go forward unless she signed it. Both Husband and Wife signed the Agreement on 3 February 1978; their signatures were acknowledged before a notary public that day. Husband had a daughter and a son from his previous marriage, and Wife had two sons from her previous marriage.

¶ 5 Wife filed a reply to Executor's counterclaim for declaratory judgment ("the Reply") on 8 December 2015, which asserted the Agreement was invalid and unenforceable based upon allegations it was signed under duress, it was procured without adequate disclosure of material financial information, and it had been "revoked" by Husband during his lifetime. The Reply included the following:

> [Executor's] Counterclaim is barred in whole or in part because the document entitled "[Prenuptial] Agreement" was revoked by [Husband] during his lifetime.
>
> [Executor's] Counterclaim is barred in whole or in part by waiver, as [Husband] evidenced his intent to revoke and did revoke the document entitled "[Prenuptial] Agreement" during his lifetime.
>
> [Executor's] Counterclaim is barred in whole or in part by estoppel, as [Husband] evidenced his intent to revoke and did revoke the document entitled "[Prenuptial] Agreement" during his lifetime.

¶ 6 Wife died 16 October 2018. On 11 January 2019, Branch Banking & Trust Company ("BB&T"), as Executor for Wife's estate, was substituted as Petitioner.

¶ 7 On 27 March 2019, Executor moved for summary judgment pursuant to Rules 7 and 56 of the North Carolina Rules of Civil Procedure and for dismissal of the *Petition for Elective Share* under N.C.G.S. § 30-3.1. On 23 April 2019, Wife filed a cross-motion for summary judgment declaring the Agreement void, or alternatively voidable, and unenforceable.

¶ 8 An order was entered 24 May 2019 granting Executor's *Motion for Summary Judgment* and denying Wife's cross-motion for summary judgment. Wife appealed.

ANALYSIS

> Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the [R]ecord shows 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. When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party. If the movant demonstrates the absence of a genuine issue of material fact, the burden shifts to the nonmovant to present specific facts which establish the presence of a genuine factual dispute for trial.

In re Will of Jones, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (internal citations and quotation marks omitted).

A. Statute of Limitations

¶ 9 Wife argues the Agreement is unenforceable on grounds it was signed under duress, was procured without financial disclosure, or is unconscionable. Absent admissible evidence the Agreement was void *ab initio*, the statute of limitations for each of these claims is three years. *See* N.C.G.S. § 1-52(1), (9) (2019). "The statutes of limitations contain no exception in favor of [one spouse] against [the other spouse]. . . . [The] statutes of limitation[s] run as well between spouses as between strangers." *Fulp v. Fulp*, 264 N.C. 20, 26, 140 S.E.2d 708, 713 (1965) (internal quotation marks omitted). The Agreement was signed before a notary in 1978. The enforceability and validity of the Agreement was not challenged until 2015, thirty-seven years after it was entered into and after any "alleged fraud" was discovered. *See Swartzberg v. Reserve Life Insurance Co.*, 252 N.C. 150, 156, 113 S.E.2d 270, 276-77 (1960) (holding the statute of limitations in N.C.G.S. § 1-52(9) "appl[ies] to all actions, both legal and equitable, where fraud is an element, and to all forms of fraud, including deception, imposition, duress, and undue influence").

¶ 10 Wife argues "the statute of limitations [did not begin] to run, if at all, [until] [Husband] died and [Wife] discovered that [Executor] sought to enforce the [Prenuptial] Agreement against her." However, we have held the "cause of action accrues when the wrong is complete, even though the injured party did not then know the wrong had been committed." *Dawbarn v. Dawbarn*, 175 N.C. App. 712, 717, 625 S.E.2d 186, 190 (2006) (quoting *Davis v. Wrenn*, 121 N.C. App. 156, 158-59, 464

S.E.2d 708, 710 (1995)); *see also Baars v. Campbell Univ., Inc.*, 148 N.C. App. 408, 415-16, 558 S.E.2d 871, 876 (2002) (holding the claim of undue influence accrued at the time the deed was executed and filed, which was four years and one month beyond the statute of limitations and was, therefore, time-barred). Thus, the claim in this case accrued at the time Husband and Wife signed and implemented the Agreement, which was thirty-seven years prior to the initiation of this lawsuit in 2015. Wife's argument the Agreement is unenforceable and voidable is, accordingly, time-barred.

¶ 11 Both parties acknowledge the Agreement is not controlled by the Uniform Premarital Agreement Act ("UPAA"), N.C.G.S. §§ 52B-1-11. The UPAA "became effective on 1 July 1987 and is applicable to premarital agreements executed *on or after that date*." *Huntley v. Huntley*, 140 N.C. App. 749, 752, 538 S.E.2d 239, 241 (2000) (citing 1987 N.C. Sess. Laws ch. 473, § 3) (emphasis added). Here, the Agreement was signed in 1978 and therefore is not controlled by the UPAA. Accordingly, N.C.G.S. § 52B-9, which states "[a]ny statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement" is not applicable. N.C.G.S. § 52B-9 (2019). The statute of limitations is not tolled in this case. We hold the three-year statute of limitations applies and Executor's *Motion for Summary Judgment* was properly granted.

B. Enforceability

¶ 12 Moreover, in terms of the validity of the Agreement, "[i]t is well-settled in this jurisdiction that a man and woman contemplating marriage may enter into a valid contract with respect to the property and property rights of each after the marriage, and such contracts will be enforced as written." *In re Estate of Tucci*, 94 N.C. App. 428, 432-33, 380 S.E.2d 782, 784-85 (1989) (quoting *In re Estate of Loftin*, 285 N.C. 717, 720-21, 208 S.E.2d 670, 673-74 (1974)); *see* N.C.G.S. § 52-10(a) (2019). "[Prenuptial] agreements are not against public policy, and if freely and intelligently and justly made, are considered in many circumstances as conducive to marital tranquility and the avoidance of . . . disputes concerning property." *Turner v. Turner*, 242 N.C. 533, 538, 89 S.E.2d 245, 248 (1955).

¶ 13 If we were to rule the Agreement unenforceable, we would "disregard . . . the sanctity of a solemn written agreement, probated before a notary public, promptly recorded in the public land records of the county, and unchallenged for over [thirty-seven] years"; it would be a "wholesale disregard of the bargained for and settled expectations of parties of equal bargaining power in preference to wholly unsupported parol averments in direct contradiction to the terms of the written agreement." *Kornegay v. Robinson*, 176 N.C. App. 19, 32, 625 S.E.2d 805, 813 (Tyson, J. dissenting), *rev'd for reasons stated in dissent*, *Kornegay v. Robinson*, 360 N.C. 640, 637 S.E.2d 516 (2006). As Judge Tyson notes in the *Kornegay* Dissent, "[n]o regard [would be] shown for [Husband and Wife's] clearly stated bargain, long after

[Husband] is no longer able to explain or defend the circumstances surrounding the execution of the agreement." *Id.* Holding the Agreement unenforceable would "only cause great uncertainty into the finality and enforceability of an . . . agreement entered into lawfully." *Id.* Accordingly, here Executor's *Motion for Summary Judgment* was properly granted.

¶ 14 Wife further argues Executor's *Motion for Summary Judgment* was not properly granted because the Agreement was "revoked" during Husband's lifetime:

> [Executor's] Counterclaim is barred in whole or in part because the document entitled "[Prenuptial] Agreement" was revoked by [Husband] during his lifetime.
>
> [Executor's] Counterclaim is barred in whole or in part by waiver, as [Husband] evidenced his intent to revoke and did revoke the document entitled "[Prenuptial] Agreement" during his lifetime.
>
> [Executor's] Counterclaim is barred in whole or in part by estoppel, as [Husband] evidenced his intent to revoke and did revoke the document entitled "[Prenuptial] Agreement" during his lifetime.

Wife is the only party who claims, in her pleadings, the Agreement was revoked. Wife's son, from her first marriage, provided an affidavit to support Wife's pleading the Agreement was revoked. Presuming, *arguendo*, Wife's son's affidavit is admissible, it is irrelevant because Wife merely claimed the Agreement was revoked by Husband. One spouse "may not unilaterally cancel a valid marital contract[.]" *In*

re Estate of Tucci, 94 N.C. App. at 433, 380 S.E.2d at 785. Wife's argument the Agreement was revoked is of no legal significance.

CONCLUSION

¶ 15 Executor's *Motion for Summary Judgment* was properly granted and Wife's cross-motion for summary judgment was properly denied. The order and judgment appealed from is affirmed.

AFFIRMED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).