

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-442

No. COA21-614

Filed 21 June 2022

Cumberland County, No. 19 CVS 6776

CHRISTINA LYN WRIGHT, as Executrix of the Estate of Lena Frances Jackson,
Deceased, Plaintiff,

v.

ROBERT FRANK JACKSON, SR., BRADFORD SCOTT HANCOX as Trustee for The Robert Frank Jackson, Sr. and Lena Frances Jackson Trust, CHRISTINA LYN WRIGHT, LADONNA PHILLIPS-YOUNG, DEBORAH JACKSON HAHN, BOBBY JACKSON, and DANIEL JACKSON, Defendants.

Appeal by Plaintiff from judgment entered 2 March 2021 by Judge James F. Ammons, Jr., in Cumberland County Superior Court. Heard in the Court of Appeals 10 May 2022.

Lewis, Deese & Ditmore, LLP, by Eric M. Ditmore, for Plaintiff-Appellant.

Ray Law Firm, PLLC, by Isaac C. Halverson, for Defendants-Appellees Deborah Jackson Hahn, Bobby Jackson, and Daniel Jackson.

Player McLean, LLP, by Lonnie M. Player, Jr., and Stacey E. Tally, for Defendant-Appellee Bradford Scott Hancox.

COLLINS, Judge.

On or about 24 February 2009, Defendant Robert Frank Jackson, Sr. (“Jackson”), and Lena Frances Jackson executed The Robert Frank Jackson Sr. and

Lena Frances Jackson Trust (“Trust”) as the Settlers and initial co-trustees thereof. The Trust was a Revocable Living Trust that could only be amended, modified, or revoked, in whole or in part, by an instrument in writing signed by both Jackson and Lena, until the death, incapacity, and/or incompetence of either Settlor, whereupon the Trust became irrevocable. The Trust contains a Spendthrift Provision, which provides that after the Trust becomes irrevocable, the interests of each beneficiary of the Trust are free from the control or interference of any creditor of such beneficiary and shall not be subject to attachment or assignment, either voluntarily or involuntarily. The Trust also provides that, upon the death of the survivor of the Settlers, the Trust Estate shall be divided among Defendants Christina Lyn Wright, Ladonna Phillips-Young, Deborah Jackson Hahn, Robert Frank Jackson, Jr. (a.k.a. Bobby Jackson), and Daniel Jackson.

¶ 2 Also on or about 24 February 2009, Lena executed the Last Will and Testament of Lena Frances Jackson (“Will”). The Will makes no specific bequests or devises and, pursuant to N.C. Gen. Stat. § 31-47, Lena bequeathed and devised all of her residuary estate to the Trust.

¶ 3 Lena died testate on 22 November 2017, after being shot at least twice by Jackson on that date. On 20 February 2018, upon the Petition of Christina Lyn Wright, Jackson was removed as Trustee of the Trust pursuant to N.C. Gen. Stat. § 36C-7-706, and Bradford Scott Hancox (“Trustee”) was appointed Successor Trustee

of the Trust.

¶ 4

On 20 July 2018, Jackson pled guilty to second-degree murder in the death of his wife, Lena. Plaintiff Christina Lyn Wright, as the Executrix of the Estate of Lena Frances Jackson, filed a civil action against Jackson for the wrongful death of Lena. By judgment entered 23 July 2018, the Court found that, by his plea of guilty to second-degree murder, Jackson is a “slayer” within the meaning of N.C. Gen. Stat. § 31A-4, and awarded Plaintiff \$500,000.00 against him.

¶ 5

Plaintiff commenced this action for declaratory judgment on 7 November 2019, seeking a declaration that Plaintiff is entitled to pierce the Trust for purposes of satisfying the wrongful death judgment against Jackson. Defendants Deborah Jackson Hahn, Bobby Jackson, and Daniel Jackson filed a joint Answer, Counterclaim and Crossclaims. Defendant Bradford Scott Hancox filed an Answer and Motion to Dismiss, and an Answer to Defendants’ Crossclaims. The trial court entered judgment on 2 March 2021 denying Plaintiff’s request to pierce the Trust under N.C. Gen. Stat. § 36C-5-505 to satisfy the judgment against Jackson. Plaintiff timely filed notice of appeal.

¶ 6

Plaintiff argues the trial court erred by declaring that Plaintiff could not use N.C. Gen. Stat. § 36C-5-505(a)(3) to pierce the Trust and use the Trust’s assets to satisfy the outstanding civil judgment against Jackson.

¶ 7

“The standard of review in declaratory judgment actions where the trial court decides questions of fact is whether the trial court’s findings are supported by any competent evidence. Where the findings are supported by competent evidence, the trial court’s findings of fact are conclusive on appeal.” *Lineberger v. N.C. Dep’t of Corr.*, 189 N.C. App. 1, 7, 657 S.E.2d 673, 678 (2008). “[T]he trial court’s conclusions of law are reviewable de novo.” *Browning v. Helff*, 136 N.C. App. 420, 423, 524 S.E.2d 95, 98 (2000).

¶ 8

N.C. Gen. Stat. § 36C-5-505 provides in pertinent part:

(a) Subject to the other applicable law, whether or not the terms of a trust contain a spendthrift provision . . . , the following rules apply:

. . . .

(3) After the death of a settlor, and subject to the settlor’s right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor’s death is subject to claims of the settlor’s creditors, costs of administration of the settlor’s estate, the expenses of the settlor’s funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the settlor’s probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by applicable law.

N.C. Gen. Stat. § 36C-5-505(a)(3) (2019). “A person who has entered a plea of guilty in open court as a principal or accessory before the fact of the willful and unlawful

killing of another person” is a “slayer,” *id.* § 31A-3(3)(b) (2019), and “[t]he slayer shall be deemed to have died immediately prior to the death of the decedent,” *id.* § 31A-4 (2019).

¶ 9 Plaintiff argues that Jackson as an adjudicated “slayer” is deemed to have predeceased Lena and thus, the Trust was revocable at the time of Jackson’s “death.” Plaintiff reasons that as the Trust only became irrevocable upon Jackson’s death, pursuant to N.C. Gen. Stat. § 36C-5-505(a)(3) the Trust is subject to claims of the settlor’s creditors, including the \$500,000 judgment against Jackson. We disagree.

¶ 10 The trust was revocable until Lena’s death on 22 November 2017. Pursuant to the terms of the Trust, upon Lena’s death, the Trust became irrevocable and Jackson became the sole Trustee of the Trust. Although Jackson was subsequently found to be a “slayer” and “deemed to have died” immediately prior to Lena’s death, N.C. Gen. Stat. § 31A-4 “deems the slayer to have predeceased his victim only for purposes of excluding the slayer from his victim’s estate.” *Mothershed v. Schrimsher*, 105 N.C. App. 209, 212, 412 S.E.2d 123, 125 (1992). “The Statute does not indulge the fiction that the slayer’s date of death is other than the actual date of death, but merely establishes a presumption to exclude the slayer.” *Id.* at 213, 412 S.E.2d at 125 (citation omitted). As the Trust became irrevocable at the time of Lena’s death in 2017, and Jackson is not in fact dead, subsection (a)(3) is inapplicable to the facts

WRIGHT V. JACKSON

2022-NCCOA-442

Opinion of the Court

of this case, and the Trust's assets cannot be used to satisfy the outstanding civil judgment against Jackson.

¶ 11

The trial court's judgment is affirmed.

AFFIRMED.

Chief Judge STROUD and Judge CARPENTER concur.

Report per Rule 30(e).