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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-459

Filed 06 June 2023

Alamance County, No. 19 CVD 1335

ROGER DAVID SKENES, Plaintiff,

v.

MITZI INGLE, Administrator of the Estate of Charles Alfred Gates, Jr., Deceased,
Defendant.

Appeal by defendant from final judgment entered 2 February 2022 by Judge
Ricky W. Champion in Alamance County District Court. Heard in the Court of
Appeals 25 January 2023.

David K. Holley for the Plaintiff.

*Sue, Anderson & Bordman, LLP, by Gary K. Sue and Cam A. Bordman for the
Defendant.*

DILLON, Judge.

This case involves a dispute over the ownership of a 1968 Chevrolet Malibu.

I. Background

Plaintiff Roger David Skenes and Decedent Charles Alfred Gates, Jr., were
longtime friends. Each shared an interest in classic cars. On occasion, the pair would

work together to restore cars for a profit. They did not enter formal contracts but would later agree on the division of the sale proceeds for each car.

On one occasion, Mr. Skenes purchased a 1968 Chevrolet Malibu, titling it in his name only. He had the car moved to Mr. Gates' shop. There is evidence that Mr. Gates performed some work on the car. Mr. Gates informed Mr. Skenes that he had found a potential buyer who was coming to his shop to look at the car. Mr. Skenes signed the title for the car to facilitate a possible sale, but no purchaser's information was included in the title nor was Mr. Skene's signature properly notarized. In any event, the potential sale fell through, and the car remained at Mr. Gates' shop.

In 2018, Mr. Gates died. After Mr. Gates' death, Mr. Skenes informed the administrator of Mr. Gates' estate, Mitzi Ingle, that he owned the car. Initially, the title of the car could not be found. Mr. Skenes applied for and received a duplicate replacement title for the car in his own name. Ms. Ingle, however, later found the original title in Mr. Gates' safe.

In March 2019, Ms. Ingle's counsel sent Mr. Skenes a letter demanding that he execute the title to the car to Mr. Gates' estate. Mr. Skenes, however, did not execute a new title as requested.

In June 2019, Mr. Skenes filed his complaint against Ms. Ingle, seeking an order of possession for the car. Ms. Ingle filed an answer and counterclaim, alleging that Mr. Gates had, in fact, purchased the car from Mr. Skenes and requested that title to the car be signed over to Mr. Gates' estate.

In February 2022, after a bench trial, the trial court issued its final judgment, finding Mr. Skenes to be the legal owner of the car. The trial court ordered that possession of the car be given to Mr. Skenes. The trial court granted no relief to Mr. Gates' estate. Ms. Ingle, on behalf of the estate, timely appeals.

II. Appellate Jurisdiction

Rule 3 of our Rules of Appellate Procedure requires that the notice of appeal “shall designate . . . the court to which appeal is taken.” N.C. R. App. P. 3(d) (2021). We note Ms. Ingle's notice of appeal fails to designate any court as the venue for her appeal. We have held that Rule 3 is jurisdictional and that, generally, a notice which does not comply with Rule 3 requires dismissal of the appeal. *See Abels v. Renfro Corp.*, 126 N.C. App. 800, 802, 486 S.E.2d 735, 737 (1997). But we have also held that the failure to designate the court as the venue for appeal is not fatal “where the [appellant's] intent to appeal can be fairly inferred and the [appellee] is not misled by the [appellant's] mistake.” *Phelps v. S.C. Phelps*, 217 N.C. App. 403, 410, 720 S.E.2d 785, 791 (2011). To the extent that we are deprived of jurisdiction based on Ms. Ingle's defective notice of appeal, we grant *certiorari*, in our discretion, to aid in our jurisdiction to consider the merits of her appeal. N.C. Gen. Stat. § 7A-32 (2022).

III. Analysis

We conclude that the trial court did not err in determining that Mr. Skenes is the owner of the car. Section 20-72(b) of our General Statutes makes it clear that:

[i]n order to transfer title or interest in any motor vehicle

registered under the provisions of this Article, the owner shall execute in the presence of a person authorized to administer oaths an assignment and warranty of title on the reverse of the certificate of title in form approved by the Division, *including in such assignments the name and address of the transferee*; and no title to any motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee.

N.C. Gen. Stat. § 20-72(b) (2022) (emphasis added).

In the case at bar, the title certificate containing Mr. Skene's signature is not notarized or otherwise certified by a person authorized to administer oaths, and it does not contain the name and address of any purchaser.

The trial court did not err in failing to find Mr. Skenes had, in fact, sold the car to Mr. Gates. Our General Statutes requires that a contract for the sale of goods for more than \$500.00 must be in writing to be enforceable. N.C. Gen. Stat. § 25-2-201 (2022). Here, though, there was no evidence of a written contract, and the trial court did not find that Mr. Gates had paid for the car.

Ms. Ingle, though, argues on appeal that Mr. Gates' estate should have been compensated for some interest in the car based on statements made by Mr. Skenes suggesting Mr. Gates had at least a partial ownership in the vehicle. For instance, when asked at trial if the car was all his, Mr. Skenes responded, "I didn't say it's all mine, no. From the very beginning I mean you can see I've offered to – to try to make the estate whole on what [Mr. Gates] interest was in the car." Ms. Ingle also cites Mr. Skenes' testimony that he had offered Mr. Gates' estate 25% of the car's value for

work Mr. Gates had performed on the car before his death. However, we view this testimony as evidence of a settlement offer rather than an admission that Mr. Gates actually owned 25% of the car. In any event, there is no evidence that the estate accepted the offer.

It could be inferred, though, that Mr. Skenes did not intend that his testimony convey that Mr. Gates owned any particular share in the car. Rather, he felt Mr. Gates should be compensated from the proceeds from a sale for improvements he made to the car and in finding the buyer. It may be that Mr. Gates performed work on the vehicle prior to his death and, perhaps, was entitled to compensation for this work. And we note Ms. Ingle's arguments that the estate should be awarded money based on estoppel. However, the trial court as factfinder found that Ms. Ingle failed to meet her burden of proving the amount, if any, Mr. Gates had spent on repairing the vehicle. *See J.T. Russell v. Silver*, 217 N.C. App. 290, 297, 721 S.E.2d 699, 704 (2011) (stating that "the party seeking damages must show that the amount of damages is based upon a standard that will allow the finder of fact to calculate the amount of damages with reasonable certainty.")

Finally, we note Ms. Ingle's argument Mr. Skenes did not make a claim against the estate for the car within the time allowed by statute, pursuant to § 28A-19-1. We conclude this argument to be without merit, as the title to the car in Mr. Gates' possession at the time of his death clearly showed Mr. Skenes as the owner of the vehicle. Mr. Skenes had no claim against the estate. Rather, the estate asserted a

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claim against Mr. Skenes for an interest in the car contrary to what appeared on the title or for money damages for the work Mr. Gates allegedly performed on the vehicle.

We conclude that the trial court factual findings are supported by the evidence, the factual findings support the trial court's conclusions, and the conclusions support the trial court's judgment. Accordingly, we affirm the judgment of the trial court.

AFFIRMED.

Judges MURPHY and FLOOD concur.

Report per Rule 30(e).