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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-386

Filed 2 July 2024

Wilson County, No. 19-E-343

IN THE MATTER OF THE ESTATE OF
GERALD JACKSON.

Appeal by the Estate from order entered 16 September 2022 by Judge Clinton Rowe in Wilson County Superior Court. Heard in the Court of Appeals 17 October 2023.

Narron & Holdford, P.A., by Attorney Ben L. Eagles, for the Estate-Appellant.

White & Allen, P.A., by Attorneys Amanda L. Owens, James C. Purnell V., and Christopher J. Waivers for the Appellee.

STADING, Judge.

Co-executors Allen Jackson and Sheila Jackson Waller, representing their father's estate, contest the trial court's decision to uphold the Clerk's Order on Elective Share. This order determined that the decedent-father's then-wife, Mrs. Jackson, did not waive her rights to several brokerage accounts. Consequently, the father's widow was entitled to a larger elective share derived from the proceeds of those accounts. For the reasons discussed below, we affirm the Clerk's Order and the trial court's endorsement.

I. Factual and Procedural History

Mary Grace Jackson and Gerald Jackson (“decedent”) were married on 3 June 2007, and they lived together when the decedent passed away on 29 April 2019. For roughly ten years—but at different times—the decedent owned several brokerage accounts held by Edward Jones. The investment accounts were subject to “transfer on death” agreements. Through these agreements, the decedent structured the investment accounts so that, upon his death, Edward Jones would transfer ownership of the accounts to the decedent’s named beneficiaries—not to Mrs. Jackson. To ensure the accounts went to the named beneficiaries, the decedent and Mrs. Jackson first agreed that Mrs. Jackson would sign a waiver of her rights to the investment accounts.

Over the years, however, the decedent modified the Edward Jones brokerage accounts. At the time of the decedent’s 2019 death, he had three brokerage accounts with Edward Jones. In one of the underlying accounts, the decedent closed a previous, separate account and rolled the proceeds over to the new account. The former account contained the waiver; the latter, new account, did not. The second and third accounts also first contained waivers, but the decedent modified both accounts in 2019 and did not include a renewed waiver for either.

After the decedent’s death, Mrs. Jackson, now a widow, filed a claim for an elective share of the decedent’s estate on 30 August 2019. The Clerk of Superior

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Court, on 25 June 2020, determined that Mrs. Jackson had “not received her Applicable Share, as determined by N.C.G.S., § 30-3.1(a) of the Decedent’s Total Net Assets, as defined in N.C.G.S., § 30-3.2(4).” Because the three accounts lacked a waiver provision for Mrs. Jackson, the Clerk found that Mrs. Jackson had not waived her rights to the three accounts. The Clerk concluded that Mrs. Jackson was entitled to an elective share of \$666,845.67.¹

The decedent’s estate appealed the Clerk’s order to the trial court. The trial affirmed the Clerk’s Order, which was “supported by evidence pursuant to § 1-301.3 of the North Carolina General Statutes.” The Estate then appealed to this Court.

On appeal, the Estate contended that the Clerk and trial court erred in finding that Mrs. Jackson was entitled to an elective share of the decedent’s estate. Specifically, the Estate objected to the Clerk’s and trial court’s findings because, per the Estate, Mrs. Jackson waived any right she had in the investment accounts via the initial waiver provisions. The Estate argued that the trial court erred by affirming the Clerk’s Order on Elective Share. The Estate also asserted that the trial court erred by finding that the evidence and applicable law supported the Clerk’s findings of fact and conclusions of law. The Estate further contended that the trial court erred in its conclusions of law nos. 2-4. In summary, the Estate’s overall

¹ See *In re Est. of Heiman*, 235 N.C. App. 53, 57, 761 S.E.2d 191, 193–94 (2014) (“[I]f the decedent owns an individual retirement account at the time of his death, it is included in the decedent’s total net assets for purposes of calculation of the elective share.”).

contention that threaded together the three raised issues was “the question of whether or not there was a waiver of right to an elective share for any Edward Jones brokerage accounts.” In support, the Estate pointed to Mrs. Jackson’s initial signing of the Spousal Consent forms as waiving any right to the Edward Jones brokerage accounts.

Mrs. Jackson countered that she did not waive her rights because none of the initial waiver forms she signed applied to the three accounts that existed at the time of the decedent’s death. Even if the initial waivers remained effective, Mrs. Jackson claimed they were not waivers per N.C. Gen. Stat. § 30-3.6(a) (2023).

The Estate replied that the waiver provisions that Mrs. Jackson signed remained in effect because Mrs. Jackson never revoked them. The Estate also asserted that the Spousal Consent forms were, in fact, waivers of Mrs. Jackson’s rights to the investment accounts.

II. Jurisdiction

The trial court’s order on the Estate’s appeal constitutes a final judgment; appeal, therefore, lies with this Court under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Analysis

As the surviving spouse, the parties concede that Mrs. Jackson is entitled to an elective share of the decedent’s estate per N.C. Gen. Stat. § 30-3.1 (2023). What

remains is the value of Mrs. Jackson's elective share based on the value of the Edward Jones brokerage accounts.²

The Estate claims that Mrs. Jackson waived her rights to share in the Edward Jones brokerage accounts; Mrs. Jackson contends that she did not waive her rights. The Estate noted that all three of its objections to the Clerk's and trial court's findings "are tied together on the question of whether or not there was a waiver of right to an elective share for any Edward Jones brokerage accounts."

A "surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share.'" N.C. Gen. Stat. § 30-3.1(a). This statutory right "may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse. . . ." N.C. Gen. Stat. § 30-3.6(a). In this case, Mrs. Jackson claims—and the Clerk and trial court found—that no such waiver occurred. After careful review, we agree.

On appeal of a probate matter decided by the clerk, the superior court reviews the clerk's order to determine "(1) [w]hether the findings of fact are supported by the evidence[,] (2) [w]hether the conclusions of law are supported by the findings of facts[,"

² *In re Est. of Heiman*, 235 N.C. App. at 57, 761 S.E.2d at 193–94 ("if the decedent owns an individual retirement account at the time of his death, it is included in the decedent's total net assets for purposes of calculation of the elective share. If someone other than the surviving spouse is the IRA beneficiary, then the elective share to which the surviving spouse is entitled will be her share of the total net assets—including the IRA—without any reduction in value. If, however, an individual retirement account owned by the decedent passes by beneficiary designation to the surviving spouse, her elective share will be reduced by the value of the IRA. In either case, the total value of the decedent's assets to which a surviving spouse is entitled is simply the applicable share of the total net assets of the decedent.").

and] (3) [w]hether the order or judgment is consistent with the conclusions of law and applicable law.” N.C. Gen. Stat. § 1-301.3(d) (2023). On appeal, this Court applies the same standard of review as the superior court. *Matter of Est. of Cracker*, 273 N.C. App. 534, 538, 850 S.E.2d 506, 509 (2020). In other words, this Court reviews the lower court’s findings *de novo*. *Id.* (citing *In re Estate of Johnson*, 264 N.C. App. 27, 824 S.E.2d 857, 861 (2019)); *In re Estate of Pate*, 119 N.C. App. 400, 403, 459 S.E.2d 1, 2-3 (1995) (“The standard of review in this Court is the same as in the Superior Court.”).

The governing documents of the Edward Jones brokerage accounts, including the waiver provisions, are contracts. *See McLean v. Spaulding*, 273 N.C. App. 434, 440 (2020) (noting that an Edward Jones brokerage account is a contract). *See also Carpenter v. Brooks*, 139 N.C. App. 745, 749–50, 534 S.E.2d 641, 645, *rev. denied*, 353 N.C. 261, 546 S.E.2d 91 (2000) (noting that securities brokerage agreements are contracts “involving” interstate commerce, and therefore, the Federal Arbitration Act applies to them”). We then employ several principles in contract construction to the issue at hand. “It must be presumed the parties intended what the language used clearly expresses, and the contract must be construed to mean what on its face it purports to mean.” *Hartford Acc. & Indem. Co. v. Hood*, 226 N.C. 706, 710, 40 S.E.2d 198, 201 (1946) (internal citations omitted). “Courts are not at liberty to rewrite contracts for the parties. We are not their guardians, but the interpreters of their words. We must, therefore, determine what they meant by what they have said—

what their contract is, and not what it should have been.” *Penn v. Standard Life Ins.*, 160 N.C. 399, 402, 76 S.E. 262, 263 (1912).

The facts show that the decedent owned three Edward Jones brokerage accounts when he passed away, and none of them contained a waiver by Mrs. Jackson of her rights to the accounts. At first, two accounts included a spousal waiver, but the decedent modified those accounts in 2019 and removed the waiver provision for both accounts, constituting a new agreement for both. *See Yamaha Int’l Corp. v. Parks*, 72 N.C. App. 625, 628 (1985) (“The effect of a modification to a contract is the production of a new agreement.”). A third account never contained the waiver provision.

Since Mrs. Jackson first signed waiver provisions, but then the decedent later modified the requirements not to include the waiver or create an account that never contained a waiver provision, we are to carry out the decedent’s intent and purpose in omitting the waiver provision in the underlying accounts. *See Citizens Nat. Bank v. Corl*, 225 N.C. 96, 102, 33 S.E.2d 613, 616 (1945) (“[T]he object of all interpretation is to arrive at the intent and purpose expressed in the writing, looking at the instrument from its four corners, and to effectuate this intent and purpose unless at variance with some rule of law or contrary to public policy.”). *See also In re Est. of Sharpe*, 258 N.C. App. 601, 610, 814 S.E.2d 595, 601 (2018) (“[T]he plain and unambiguous language does not permit us to read the agreement to mean the parties

intended to waive rights to each other's separate property while they were alive, but not after one of them had pre-deceased the other.").

If the decedent and Mrs. Jackson wanted Mrs. Jackson's rights in the investment accounts waived, they could have executed a waiver provision for the modified and new accounts. *See Parks*, 72 N.C. App. at 628. They knew how yet took no action to do so. The Estate cannot now ask this Court to read in waiver provisions for the accounts when there are none. *See Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, 368 N.C. 693, 700, 784 S.E.2d 457, 462 (2016) ("Allowing litigants to assign to the court their drafting duties as parties to a contract would put the court in the role of scrivener, making judges postulate new terms that the court hopes the parties would have agreed to be reasonable at the time the covenant was executed or would find reasonable after the court rewrote the limitation. We see nothing but mischief in allowing such a procedure.").

IV. Conclusion

For these reasons, the Clerk's order in favor of Mrs. Jackson and the trial court's endorsement are affirmed.

AFFIRMED.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).