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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-228

Filed 15 October 2024

Pitt County, No. 23SP16

LISA MICHELE SHEPPARD, individually and as Executrix of the Estate of Jesse Lee Sheppard, Petitioner,

v.

HAZEL MOORE SHEPPARD, unmarried; BENVAN LAMONT SHEPPARD, unmarried; MELODY S. ELLISON and husband, MACK ELLISON; JESSE LEE SHEPPARD, JR., and Wife, MARY SHEPPARD; Respondents.

Appeal by respondent-appellants from order entered 21 July 2023 by Judge G. Frank Jones in Pitt County Superior Court. Heard in the Court of Appeals 11 September 2024.

Colombo, Kitchin, Dunn, Ball, & Porter, LLP, by Tracy H. Stroud, for petitioner-appellee.

Ralph Bryant Law Firm, by Ralph T. Bryant, Jr., for respondent-appellants.

FLOOD, Judge.

Respondents Hazel Moore Sheppard, Benvan Lamont Sheppard, Melody S. Ellison, Mack Ellison, Jesse Lee Sheppard Jr., and Mary Sheppard appeal from the trial court's order for possession, custody, control, and sale of the decedent Jesse Lee Sheppard's ("Mr. Sheppard") real property. On appeal, Respondents argue the trial

court erred in granting Petitioner Lisa Michele Sheppard's petition for possession, custody, control, and sale of the real property. After careful review, we conclude the order's findings of fact are supported by competent evidence, which in turn support the conclusions of law, and therefore affirm the trial court's order.

I. Factual and Procedural Background

Mr. Sheppard was the biological father of Petitioner and Respondents Benvan, Melody, and Jesse, Jr. Respondent Hazel is the surviving spouse of Mr. Sheppard, and is not the biological mother of Petitioner nor any of the remaining Respondents. Petitioner is the biological sibling of Respondents Benvan, Melody, and Jesse, Jr.; all share the same biological mother who was previously married to Mr. Sheppard.

Mr. Sheppard died on 1 July 2021. On 10 January 2023, Petitioner commenced the special proceeding action giving rise to this appeal by filing a Petition for Possession, Custody, Control, and Sale of two parcels of Mr. Sheppard's real property (the "Petition"). In the Petition, Petitioner asserted she was filing it individually and as executrix of the estate of Mr. Sheppard, and identified N.C. Gen. Stat. §§ 12A-13-3(a), (c) and 15-1(c) as the bases for the Petition. On 1 February 2023, Respondent Hazel filed a Response and Objection to Petition of Petitioner, specifically objecting to the sale of the property located at 2519 Old River Road, in Pitt County, North Carolina (the "Property"), where Respondent Hazel resided at the time of the filing. On 20 April 2023, this matter came on for hearing before the Clerk of Pitt County Superior Court. On 24 May 2023, the Clerk of Pitt County Superior Court issued an

Order for Possession, Custody, Control, and Sale of Real Property, and on 2 June 2023, Respondent Hazel timely appealed to the trial court.

This matter came on for hearing before the trial court on 17 July 2023. At the hearing, Petitioner testified and had the following colloquy with the trial court:

Q. . . . [D]o you and your brothers and sisters, the remaindermen, do you intend to make any principal payments on the note on [the Property]?

A. I . . . do not have the money, and neither do my siblings have the money[.] . . . That's the reason why we're trying to sell the property, so that . . . Truist can get paid, the estate can get paid, everything can . . . be done. . . . [T]hat part is not true, that we don't want to [pay the principal payments]. If I had [the money], I would. But it's a lot of money, the money that I have paid out of pocket, and it is still more money. And it's probably well over twenty-some thousand dollars or more. . . . It's not that we're trying to sell anything from out under Miss Hazel. . . . [T]hat has never crossed my mind, to sell anything out from under her. But . . . I have my mortgage. I cannot pay the mortgage on that house, pay where I live at, and on . . . top of having my bills I'm responsible for. I can't do that.

Petitioner also provided that she has paid out of pocket “a lot” of money towards the fees associated with the disposition of the estate, and presented to the trial court documentary evidence demonstrating the amount paid to be around \$25,000.

On 31 July 2023, the trial court granted the Petition by order (the “Order”), wherein it ordered Respondent Hazel to vacate the Property by 5:00 p.m. on 18 September 2023, after which Petitioner “may apply for a writ of possession as needed to enforce the [c]ourt's order granting possession, custody, and control of the”

Property. Further, the trial court found as fact in the Order, in relevant part:

10. [Petitioner] filed an Inventory for Decedent's Estate on February 4, 2022, which shows the total amount of personal property of the estate . . . as \$52,780.73.

11. There is no further personal property with which to . . . pay [the] debts and claims of the Decedent's Estate.

12. The [P]roperty . . . is encumbered by an equity line deed of trust on which approximately \$56,000 was owed as of January 2023.

13. There are currently debts and claims against the estate of approximately \$13,000. This figure does not include approximately \$25,000 in reimbursements due to [Petitioner] for administrative and other expenses and monthly expenses to the Bankruptcy Trustee paid by [Petitioner] from her own funds and does not include any unpaid attorney's fees and expenses.

14. It is in the best interest of the Estate that . . . [Petitioner] be granted possession, custody, and control of the [Property] as alleged in the Petition, and that said [Property] be sold at private sale as alleged in the Petition in order to create assets and pay the debts of . . . [Mr. Sheppard] and the costs of administering this estate.

Respondents timely appealed.

II. Jurisdiction

Respondents' appeal is properly before this Court as an appeal from the final judgment of a superior court, pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Standard of Review

"On appeal to the Superior Court of an order of the Clerk in matters of probate, the trial judge sits as an appellate court." *In re Estate of Johnson*, 264 N.C. App. 27,

31, 824 S.E.2d 857, 861 (2019) (citation and internal quotation marks omitted). “The standard of review in this Court is the same as in the Superior Court. Errors of law are reviewed *de novo*.” *Id.* at 32, 824 S.E.2d at 861 (citations and internal quotation marks omitted). Under our *de novo* review, we determine “whether there is competent evidence to support the trial court’s findings of fact and whether the findings support the conclusions of law and ensuing judgment.” *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (2002) (citation and internal quotation marks omitted). “Where the findings are supported by competent evidence, the trial court’s findings of fact are conclusive on appeal. This is true even when there is evidence which sustains findings to the contrary.” *Lindberger v. N.C. Dept. of Corr.*, 189 N.C. App. 1, 7, 657 S.E.2d 673, 678 (2008) (citations and internal quotation marks omitted). “Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *Allred v. Exceptional Landscapes, Inc.*, 227 N.C. App. 229, 232, 743 S.E.2d 48, 51 (2013) (citation omitted).

IV. Analysis

Respondents argue on appeal that the trial court erred in granting the Petition, and present three sub-arguments in support of this contention: (1) the Property was protected under the Homestead Exemption contained in Article X, Section 2 of the North Carolina Constitution; (2) Petitioner admitted to a bad faith motive for wanting to sell the Property; and (3) there was insufficient evidence that the personal assets of Mr. Sheppard’s estate were insufficient to satisfy the debts of the estate.

Regarding the first sub-argument, “the existence of a constitutional protection does not obviate the requirement that arguments rooted in the Constitution be preserved for appellate review. Our appellate courts have consistently found that unpreserved constitutional arguments are waived on appeal.” *See In re J.N.*, 381 N.C. 131, 133, 871 S.E.2d 495, 497 (2022) (citation omitted). The Record shows that Respondents never developed their constitutional argument before the trial court; it is therefore waived, and we will not consider it on appeal. *See id.* at 133, 871 S.E.2d at 497.

Regarding the second sub-argument, Respondents quote the language from Petitioner’s testimony set forth in the factual and procedural section, above, and assert that this demonstrates Petitioner had a bad faith motive for filing the petition to sell the Property. While it is true that “[f]iduciaries must act in good faith[.]” Respondents cite no law in support of their contention that Petitioner’s testimony demonstrates a bad faith motive, and fail to develop their argument beyond that of a facial assertion. *See Albert v. Cowart*, 219 N.C. App. 546, 554, 727 S.E.2d 564, 570 (2012) (internal quotation marks omitted). Arguments not developed on appeal will be treated as abandoned, and as such, we will not consider Respondents’ third sub-argument. *See* N.C.R. App. P. 28(b)(6) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”).

We therefore consider only the third sub-argument on the sufficiency of the evidence. Under North Carolina law,

If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose[.]

N.C. Gen. Stat. § 28A-15-1(c) (2023). Thereafter, “[i]f the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control, the clerk of court shall grant an order authorizing that power.” N.C. Gen. Stat. § 28A-13-3(c) (2023).

Additionally,

a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate[.]

N.C. Gen. Stat. § 28A-13-3(a).

Here, in alleging error on part of the trial court, Respondents argue the Order's Findings of Fact 13—specifically, that there is approximately \$25,000 in reimbursements due to Petitioner—and 14—that it is in the best interest of the estate that Petitioner be granted possession of the Property and that the Property be sold—are unsupported by competent evidence. We disagree.

Respondents do not challenge Findings of Fact 10, 11, 12, and the first sentence of Finding of Fact 13, and as such, they are binding on appeal. *See Allred*, 227 N.C.

App. at 232, 743 S.E.2d at 51. These unchallenged findings of fact demonstrate that the debts and expenses exceed the assets of the estate. To satisfy such debts and expenses, a “reasonable and prudent” personal representative might liquidate the estate’s real property. *See* N.C. Gen. Stat. § 28A-13-3(a). Further, Petitioner testified that she has paid out of pocket “a lot” of money towards the estate’s disposition, and presented documentary evidence that the amount paid is approximately \$25,000. As such, the trial court’s finding that there is approximately \$25,000 in reimbursements due to Petitioner is supported by competent evidence. *See Cartin*, 151 N.C. App. at 699, 567 S.E.2d at 176. Presented with this and other relevant evidence, the trial court was tasked with determining whether it was in the best interest of the administration of the estate for Petitioner to sell the Property, and as denoted in Finding of Fact 14, the trial court made this determination. *See* N.C. Gen. Stat. § 28A-13-3(c). As such, supported by its findings of fact, the trial court properly concluded that Petitioner should be “granted possession, custody, and control of” the Property. *See Cartin*, 151 N.C. App. at 699, 567 S.E.2d at 176; *see also* N.C. Gen. Stat. § 28A-13-3(c).

Respondents, however, contend there was evidence in support of a finding that the estate’s personal assets were sufficient to satisfy the debts of the estate, and as such, it was improper for the trial court to allow the sale of the Property. This contention is unpersuasive. In ordering Petitioner to take control of the disposition of the Property, the trial court was tasked only with determining whether such

disposition was in the best interest of the administration of the estate. *See* N.C. Gen. Stat. § 28A-13-3(c). Even if there is evidence to the contrary, the trial court's determination is proper if the relevant findings of fact are supported by competent evidence, and as explained above, there was such competent evidence in support of the trial court's relevant findings of fact, which in turn supported the trial court's conclusions of law. *See Lindberger*, 189 N.C. at 7, 657 S.E.2d at 678; *see also Cartin*, 151 N.C. App. at 699, 567 S.E.2d at 176. Accordingly, upon our de novo review, we find no error in the trial court granting the Petition, and affirm the trial court's Order. *See In re Estate of Johnson*, 264 N.C. App. at 31, 824 S.E.2d at 861.

IV. Conclusion

Upon review, we conclude the trial court's findings of fact were supported by competent evidence, which in turn supported its conclusions of law. We therefore affirm the trial court's Order granting the Petition.

AFFIRMED.

Judges CARPENTER and STADING concur.

Report per Rule 30(e).