IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

PAUL V. MELLINI AS PERSONAL REPRESENTATIVE IN RE: ESTATE OF JENO F. PAULUCCI A/K/A LUIGINO FRANCESCO PAULUCCI, CYNTHIA J. SELTON, MICHAEL J. PAULUCCI, JENO MICHAEL PAULUCCI, ET AL.,

Appellants,

v.

Case No. 5D20-131

GINA J. PAULUCCI,

Appellee.

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Opinion filed December 18, 2020

Appeal from the Circuit Court
for Seminole County,
John Galluzzo, Judge.

Beverly A. Pohl, of Nelson Mullins Broad and Cassel, Fort Lauderdale, and Todd K. Norman, Shaina Stahl, and Anthony Palma, of Nelson Mullins Broad and Cassel, Orlando, for Appellants Paul V. Mellini, Michael J. Paulucci, and Cynthia J. Selton.

Joseph A. Frein, of Joseph A. Frein, P.A., Orlando, for Appellants Jeno Michael Paulucci, Angela Paulucci Milich, Brittany deArcos, and Tiffany Hope Geisz.

Douglas C. Spears, of Swann Hadley Stump Dietrich & Spears, P.A., Winter Park,

Guardian ad Litem for Appellants, the minor great-grandchildren beneficiaries.

Virginia B. Townes, of Losey PLLC, Orlando, and Jonathan M. Bye, of Ballard Spahr, LLP, Minneapolis, MN, for Appellee.

LAMBERT, J.

The question that we address in this case is whether the probate court erred in entering an order rescinding a satisfaction and release executed by Appellee, Gina Paulucci ("Gina"), of a claim that she previously filed against the estate of her deceased father, Jeno F. Paulucci, a/k/a Luigino Francesco Paulucci ("Jeno"). For the following reasons, we reverse the order.

FACTS AND HISTORY OF THE CASE—

For many years, Jeno and his daughter, Gina, had been involved in contentious lawsuits against each other. In March 2007, the two of them resolved their disputes through a mediated settlement agreement. As part of their settlement, Gina agreed to sell to Jeno her interest in certain real property located in Apopka, Florida for the sum of $12 million. Jeno paid $2,000,000 at the closing and executed a promissory note payable to Gina in the sum of $10,000,000 for the balance of the purchase price. The note had a six percent interest rate and was to be repaid in three annual payments of $1,000,000 each, beginning in September 2008, with a balloon payment for all remaining principal and interest owed on the note to be paid on September 9, 2011. Each installment payment was to be applied first towards the accrued interest on the note, and then towards reducing the principal.

As part of the same mediated settlement agreement to resolve then-pending litigation in federal court, Gina separately agreed to pay Jeno $2.9 million and executed a promissory note in favor of Jeno for this amount. Pertinent here, Jeno also had a right to set off the amount Gina owed to him under this note against any monies that he owed to her under the aforementioned $10 million note.

Gina received the $1,000,000 annual payments from Jeno for the years 2008, 2009, and 2010. Gina also made the payments due to Jeno on her note.[1] When the September 2011 balloon payment to Gina was coming due, Jeno was experiencing temporary financial difficulties and was in failing health. As a result and also because there was an anticipated sale by Jeno of a business entity that would generate significant funds for him, Gina's attorneys and Jeno's financial adviser/manager, on behalf of their clients, agreed to a sixty-day moratorium on Gina pursuing any collection efforts.

On November 24, 2011, Jeno passed away. Not long thereafter, his estate was opened. Gina's attorneys prepared a statement of claim that Gina executed and timely filed against Jeno's estate regarding the money owed to her by Jeno on the note. This statement of claim specifically stated that "[a]t the time of [Jeno's] death, the remaining balance due to [Gina] was $7,000,000 plus interest."

On January 14, 2013, counsel for the initial personal representative of Jeno's estate sent a letter to Gina's counsel enclosing a check in the amount of $4,677,594.52 to fully satisfy the claim that Gina had filed against her father's estate. The letter advised that the estate was exercising its right to offset the amount that Gina owed Jeno under her note from the amount that Jeno's estate owed to Gina on her claim. The letter further

[1] These were annual, interest-only payments.

explained that the sum of $4,677,594.52 to pay the claim was calculated by first taking Gina's statement of claim of $7,000,000, adding the interest that accrued on the $7,000,000 since September 10, 2010,[2] and then subtracting the $2,900,000 owed by Gina on her note payable to Jeno, plus the accrued interest on that note, also since September 10, 2010.

Finally, the letter from the estate's counsel contained a satisfaction and release of claim that was to be executed by Gina prior to and as a condition of negotiating the check. As part of the resolution of the claim, counsel also indicated that he would return to Gina the original $2.9 million note, marked "cancelled and paid in full," with the expectation that Gina would return Jeno's original $10 million note to the personal representative, with similar markings on that note.

On January 16, 2013, Gina, upon advice of her attorneys, executed the satisfaction and release of claim. This document specifically related that Gina had received "full payment" of her claim and that she was "releas[ing] the estate and the personal representative of the estate from all personal liability with respect thereto." The original $10 million promissory note, marked "paid in full," was returned to the personal representative; and the original $2.9 million note, also marked "paid in full," was returned to Gina.

Approximately eighteen months later, Gina's accountant was preparing Gina's 2013 income tax return when he noticed that there appeared to be a discrepancy or error in the amount of the claim that Gina previously filed against Jeno's estate. Specifically, it

[2] September 10, 2010, was the first day after the last $1,000,000 installment payment was due and paid.

appeared that the statement of claim simply applied the $1,000,000 annual installments paid by Jeno in 2008, 2009, and 2010 towards reducing the principal balance of the $10 million note, instead of applying them first towards the accrued interest and then towards a reduction in the principal balance of the note, as required by the terms of the note. The accountant calculated that the principal balance that was owed by Jeno to Gina on the note at the time of his death was $8,726,560, and not the $7,000,000 that was reflected in Gina's statement of claim. Gina's counsel was notified by the accountant of this error; and, on October 31, 2014, pursuant to section 733.704, Florida Statutes (2011), and Florida Probate Rule 5.490(e), Gina, through counsel, filed a petition with the probate court to amend her claim to include this unpaid $1,726,560 in principal, plus additional accrued interest.

In response to this petition, the initial personal representative of Jeno's estate filed his own petition, requesting instructions or direction from the probate court on how to proceed regarding Gina's petition to amend her claim. The personal representative represented in his petition that the other beneficiaries of the estate objected to the relief being sought by Gina.

The probate court entered an order granting Gina's petition to amend her claim and directed the personal representative to pay the amended claim. The estate's other beneficiaries appealed this order and, in a single-sentence opinion, our court reversed the order and remanded the case to the probate court to hold an evidentiary hearing "[t]o determine whether there is a legitimate basis to set aside the release at issue." *See Selton v. Paulucci*, 192 So. 3d 1257, 1258 (Fla. 5th DCA 2016).

The evidentiary hearing was held in 2019. The probate court found that the unilateral mistake committed by Gina's attorneys' in preparing the statement of claim "was not the result of [an] inexcusable lack of due care" and rescinded her satisfaction and release of claim. The court also determined that Gina's filing of her amended claim was permissible under section 733.704, Florida Statutes, and was not time-barred by section 733.710, Florida Statutes; and it ordered the successor personal representative to pay Gina's amended claim.

ANALYSIS—

Appellants, who are the successor personal representative and the other beneficiaries and interested persons of Jeno's estate, have timely appealed this order. They first argue that, contrary to the conclusion reached by the probate court, the unilateral mistakes committed by Gina's attorneys were the result of an inexcusable lack of due care and therefore no valid or legitimate basis was shown to rescind the satisfaction and release. [3] *See Flynt v. Progressive Consumers Ins. Co.*, 980 So. 2d 1217, 1219 (Fla. 5th DCA 2008) ("Florida law permits a party to rescind a contract based on unilateral mistake unless the mistake results from an inexcusable lack of due care or unless the other party has so detrimentally relied on the contract [that] it would be inequitable to order rescission." (citing *Fla. Ins. Guar. Ass'n, Inc. v. Love*, 732 So. 2d 456, 457 (Fla. 2d DCA 1999))). Preliminarily, neither party disputes that Gina's attorneys committed a unilateral mistake in preparing her statement of claim and in thereafter directing or permitting her to execute and file the satisfaction and release of the claim.

[3] Because we find this first issue to be dispositive of the appeal, we have declined to address Appellants' other arguments raised.

Despite the lengthy litigation over Gina's claim, the evidentiary hearing held by the probate court following our earlier remand showed that the material facts in this case surrounding the preparation of Gina's statement of claim and the execution of the satisfaction and release of the claim are largely undisputed. Gina's attorneys admittedly did not review the terms of the mediated settlement agreement and the promissory note executed by Jeno prior to preparing the statement of claim. Had they done so, it would have been readily apparent that each $1,000,000 annual payment received by Gina was applied first towards the accrued interest and then to reducing the principal balance owed on Jeno's note. Instead, counsel simply subtracted the $3,000,000 in payments received by Gina from the original $10,000,000 principal balance of the note and prepared the statement of claim showing the amount owed to be $7,000,000. Then, upon receiving payment from the personal representative of the estate to settle the claim, counsel again did not review the note and settlement agreement to verify that this was the proper amount owed to Gina to satisfy her substantial claim before advising her to execute the satisfaction and release of claim and to return the note marked as "paid in full."

Here, because the probate court's finding that Gina's attorneys' unilateral mistakes were not the result of an inexcusable lack of due care is drawn from undisputed evidence, it is more in the nature of a legal conclusion to which we, as an appellate court, are not obligated to give deference. *See Holland v. Gross*, 89 So. 2d 255, 258 (Fla. 1956) (explaining that "[a] finding [of fact] which rests on conclusions drawn from undisputed evidence, rather than on conflicts in the testimony, does not carry with it the same conclusiveness as a finding resting on probative disputed facts, but is rather in the nature of a legal conclusion"). Instead, our review is de novo. *See City of Hollywood v. Petrosino*,

864 So. 2d 1175, 1177 (Fla. 4th DCA 2004) (explaining that the standard of review following a bench trial is de novo where there are no disputed facts and the trial court's conclusions were purely legal (citing *Bush v. Ayer*, 728 So. 2d 799, 801 (Fla. 4th DCA 1999))).

We respectfully disagree with the legal conclusion reached by the probate court that the aforedescribed actions of Gina's attorneys did not constitute an inexcusable lack of due care. The terms of the promissory note were not complicated. The attorneys' failure to review the promissory note and mediated settlement agreement that they admittedly had access to before preparing the statement of claim and later advising Gina to execute the satisfaction and release of claim, especially on a claim of this size, cannot be characterized as a minor, inadvertent, or clerical error or one resulting from a simple miscalculation. Simply put, there was no excuse for the attorneys not to review the terms of the documents before preparing the statement of claim for Gina's execution and later advising Gina to satisfy the claim.

Accordingly, because Gina has failed to establish a legitimate basis to set aside the satisfaction and release of claim, we reverse the order under review.[4]

ORDER REVERSED.

EVANDER, C.J., and HARRIS, J., concur.

[4] Lastly, we find no merit in Gina's separate argument that we should affirm the order based on the doctrine of equitable estoppel. *See Castro v. E. Pass Enters., Inc.*, 881 So. 2d 699, 700 (Fla. 1st DCA 2004) ("In the probate context, [equitable] estoppel also requires a showing of affirmative deception." (citing *Am. & Foreign Ins. Co. v. Dimson*, 645 So. 2d 45, 48 (Fla. 4th DCA 1994))).