

STATE OF MICHIGAN
COURT OF APPEALS

In re MARIAN T. LEACH.

KEITH M. STORM,

Petitioner-Appellee,

v

JEREMY STORM, and DEREK STORM,

Respondents-Appellants.

UNPUBLISHED

October 16, 2012

No. 304688

Ingham Probate Court

LC No. 10-001615-DE

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Respondents appeal by leave granted the probate court's order granting in part petitioner's motion for summary disposition and denying respondents' motion for summary disposition. For the reasons set forth in this opinion, we affirm the probate court's order to the extent it denied the parties' motions for summary disposition, vacate the order in all other respects, and remand for further proceedings.

This case involves a dispute over whether certain documents can be admitted to probate as a will under MCL 700.2503. Petitioner seeks to probate two documents that decedent Marian Leach executed on her death bed that purported to convey real property in Illinois from Leach to petitioner effective upon Leach's death. Respondents oppose probate of the documents.

In order to be effective to transfer property, a will must comply with certain formal requirements set forth in MCL 700.2502. In this case, there is no dispute that the proffered documents did not comply with those requirements. However, MCL 700.2503 provides an exception for writings that do not meet all of the requirements of MCL 700.2502 where the proponent of the document "establishes by clear and convincing evidence that the decedent intended the document . . . to constitute . . . the decedent's will."

In this case, the probate court granted petitioner's motion for summary disposition, in part, pursuant to MCR 2.116(C)(9) and (C)(10) because it found that the documents had "testamentary intent." The probate court denied respondent's motion, reasoning that there were

questions of fact “regarding the circumstances of the execution of the deeds and how that affects Decedent’s intent.” Respondents contend that the probate court erred.

We review de novo a probate court’s ruling on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition is proper under MCR 2.116(C)(10) where there is no genuine issue of material fact, and a motion is proper under MCR 2.116(C)(9) where the opposing party has failed to state a valid defense.

In this case, petitioner sought to probate certain documents under MCL 700.2503 as a will. Therefore, petitioner had the burden to show by clear and convincing evidence that the decedent intended the documents to constitute her will. Here, the probate court erred when it granted petitioner’s motion for summary disposition in part based on its conclusion that the deeds were “writings that have testamentary intent.” Specifically, the probate court did not apply the clear and convincing evidence standard to determine whether Leach had testamentary intent. Instead, as the court aptly noted, there remained questions of fact regarding the circumstances surrounding the execution of the documents. The resolution of those questions is necessary before the court can arrive at a conclusion regarding Leach’s intent. In particular, there were no witnesses, decedent was suffering from chronic congestive heart failure and mitral valve disease; the documents were executed on the eve of decedent’s death while she was in hospice care and they were drafted by petitioner, the beneficiary. Further, petitioner had the decedent sign the documents without securing any witnesses to the signing. The only evidence offered in support of the documents was petitioner’s affidavit wherein he asserted that Leach intended to leave the property to him.

Moreover, while the language of the documents themselves was pertinent to Leach’s intent, the effect of such language necessarily depends on Leach’s capacity at the time the documents were executed. The probate court appears to have distinguished between decedent’s intent to create a will and her capacity to do the same. However, regardless of whether a finding as to capacity is distinct from a finding of intent, the questions raised by the probate court concerning decedent’s capacity were similarly relevant to whether decedent had testamentary intent. For example, decedent may have been heavily medicated and in poor health. The affect of the drugs and decedent’s health would have necessarily impacted both her capacity *and* her intent. Similarly, the fact that petitioner prepared the documents and had Leach sign them on the eve of her death may have affected her intent to create a will. Further, even assuming that the resolution of intent and capacity involves separate findings, as discussed above, the probate court did not find by clear and convincing evidence that decedent intended the documents to be testamentary in nature, nor did petitioner offer such evidence.

In sum, the probate court should have held an evidentiary hearing to address the unresolved questions of fact surrounding the execution of the documents, which in turn would have allowed the court to determine whether there was clear and convincing evidence that Leach intended the documents to be her will. Therefore, remand for further proceedings is appropriate.

Respondents contend that the nature of the documents shows they were deeds; however, resolution of that issue is contingent on the probate court’s finding of whether there is clear and

convincing evidence that Leach intended the documents to be her will. Without a record resolving this question, we cannot reach a conclusion as to the nature of the documents.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Neither party having prevailed in full, neither may tax costs. MCR 7.219(A).

/s/ Amy Ronayne Krause

/s/ Stephen L. Borrello

/s/ Michael J. Riordan