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NO. COA01-1605

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

HOWARD JOHNSON, BILLIE JACKS,
ALWAYNE GARRETT, and
JUDITH SWISHER,

Plaintiffs

v.

Cherokee County
No. 00 CVS 67

ELIZABETH WILDER and
JERRY JOHNSON, as Personal
Representative of the Estate
of Marie Bolt,

Defendants

Appeal by defendants from judgment entered 2 August 2001 by Judge J. Marlene Hyatt in Cherokee County Superior Court. Heard in the Court of Appeals 18 September 2002.

Melrose, Seago and Lay, P.A., by Randal Seago, for plaintiffs-appellees.

McKeever, Edwards, Davis & Hays, P.A., by Ronald M. Cowan, for defendant-appellant Elizabeth Wilder; and W. David Sumpter, III, for defendant-appellant Jerry Johnson.

WALKER, Judge.

By deed dated 27 June 1992, Marie Bolt conveyed title to a tract of land located in Cherokee County to herself and her daughter, defendant Elizabeth Wilder, as joint tenants with the right of survivorship. Each of Ms. Bolt's other four children previously had been given property owned by the family. Through a

residuary clause in her will, Ms. Bolt provided that her personal property should be divided equally among her five children.

On 20 June 1996, Ms. Bolt purchased a double-wide mobile home measuring 27 feet by 66 feet and located it on the tract she owned in joint tenancy with her daughter. Ms. Bolt had a concrete slab poured on the tract in preparation of the site for the mobile home. The mobile home was delivered in two sections, each of which was equipped with a hitch on the front, four axles and wheels. Each half of the mobile home was supported underneath by I-beams, which rested on pillars of concrete blocks but were not attached to them. The mobile home was secured by metal straps attached to the I-beams and anchored by screws in the concrete slab. Ms. Bolt also constructed a concrete block wall to enclose the underpinning of the mobile home and a front porch which was attached to the roof. Although the wheels and axles had been removed, there was evidence that the mobile home could be moved.

Ms. Bolt registered the mobile home in her name with the North Carolina Department of Motor Vehicles (DMV). One of Ms. Bolt's children, plaintiff Billie Jacks, applied for a duplicate title to the mobile home in a document which purported to contain Ms. Bolt's notarized signature on 9 February 2000, nine months after Ms. Bolt's death on 6 May 1999. A duplicate title for the mobile home was issued on 25 February 2000.

Plaintiffs filed a complaint seeking a declaratory judgment to determine whether the mobile home was Ms. Bolt's personal property that would pass through the residuary clause in her will. The

trial court heard the matter without a jury. After plaintiffs and defendants presented evidence, the trial court made findings that (1) Ms. Bolt was the owner of the mobile home at her death and (2) the mobile home was not attached permanently to the land since it could be removed. The trial court entered a declaratory judgment concluding that the mobile home was personal property.

When actions are tried without a jury, the trial court is required to make findings and state its conclusions based on such findings. N.C. Gen. Stat. § 1A-1, Rule 52(a)(1)(2001). The question of sufficiency of the evidence to support the trial court's findings may be appealed. N.C. Gen. Stat. § 1A-1, Rule 52(c); *Cardwell v. Henry*, 145 N.C. App. 194, 549 S.E.2d 587 (2001). The trial court enjoys significant discretion in making its findings which will be found insufficient only in the case of abuse of discretion amounting to an arbitrary and unreasonable decision. *Thorpe v. Perry-Riddick*, 144 N.C. App. 567, 570, 551 S.E.2d 852, 855 (2001). Thus, the appellate court is bound by the trial court's findings if any evidence exists to support such findings, despite the presence of some evidence to the contrary. *Cardwell*, 145 N.C. App. at 195-96, 549 S.E.2d at 588, (*quoting Chicago Title Ins. Co. v. Wetherington*, 127 N.C. App. 457, 460, 490 S.E.2d 593, 596 (1997), *disc. review denied*, 347 N.C. 574, 498 S.E.2d 380 (1998)). If the trial court's findings do not support its legal conclusions, the appellate court must remand the matter to the trial court for further consideration. *Rock v. Hiatt*, 103 N.C. App. 578, 583-84, 406 S.E.2d 638, 641-42 (1991).

In this appeal, defendants contend that the trial court lacked sufficient evidence to find that Ms. Bolt was the owner of the mobile home and that the mobile home was not permanently attached to the land. The record reveals there was evidence that Ms. Bolt held a certificate of title to the mobile home which was registered with the DMV in her name alone. Further, the mobile home was secured by straps attached to the I-beams under the structure but was not permanently attached to the concrete slab, concrete pillars nor concrete block wall. The mobile home could be moved without significant damage to the structure itself or to the tract of land by removing the porch and the concrete blocks in the underpinning wall, which were not attached to the mobile home itself. Thus, we find sufficient evidence in the record to support the trial court's findings, which must bind this Court in the absence of abuse of discretion.

Defendants further argue that the trial court's findings were insufficient to support its conclusion that the mobile home was Ms. Bolt's personal property because it became a real fixture attached to the land. Real fixtures are those which become inseparable from the land and are considered part of the real property due to permanent annexation. *Hughes v. Young*, 115 N.C. App. 325, 328, 444 S.E.2d 248, 250, *disc. review denied*, 337 N.C. 692, 448 S.E.2d 525 (1994); *Webster's Real Estate Law in North Carolina*, § 2-2 (5th ed. 1995). However, where the chattel retains its own character and is not permanently annexed to the property, it remains personal property. *Webster's*, § 2-2. The controlling test to determine the

nature of a fixture on real property is "the intention with which the annexation is made." *Little v. National Service Industries, Inc.*, 79 N.C. App. 688, 692, 340 S.E.2d 510, 513 (1986) (citation omitted). There is no evidence that Ms. Bolt ever listed the mobile home as an addition to the real property or that county ad valorem taxes had been paid on the real property with the mobile home included in the assessment. In addition, the evidence shows that the mobile home could be moved despite Ms. Bolt's additions, and there is insufficient evidence to indicate that she intended the mobile home to be permanently annexed to the land. Because the trial court found that the mobile home was not permanently attached to the land, the findings adequately support the conclusion that the mobile home remained personal property. The defendants' assignments of error are overruled.

Affirmed.

Judges McGEE and HUNTER concur.

Report per Rule 30(e).