IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-599

No. COA20-757

Filed 2 November 2021

Iredell County, No. 18 E 729

IN THE MATTER OF THE ESTATE OF: MICHAEL ROGER CHAMBERS

Appeal by Petitioners from order entered 9 July 2020 by Judge Mark E. Klass in Iredell County Superior Court. Heard in the Court of Appeals 25 May 2021.

David P. Parker, PLLC, by David P. Parker and W. Carey Parker, for the Petitioners-Appellants.

Lassiter & Lassiter, P.A., by T. Michael Lassiter, Jr., for the Respondent-Appellee.

GRIFFIN, Judge.

¶ 1 Petitioners Angela Chambers, Lisa Phillips, and Terry Chambers appeal an order entered by the trial court granting summary judgment in favor of Respondent Rachel Chambers, denying Petitioners' motion for summary judgment, and dismissing Petitioners' petition for Revocation of Letters of Administration after finding that Michael Chambers ("Decedent") was adjudged the father of Respondent in a civil action. Petitioners contend that (1) the trial court erred in concluding that Decedent was adjudged as Respondent's father, and that (2) the letters of administration should be revoked because Respondent is not the rightful heir to

Decedent's estate. We affirm.

I. Factual and Procedural History

¶ 2 Respondent was born 1 February 1996 in Rowan County to Veneta Ann Cowan with Decedent listed as the father on her birth certificate. Decedent and Ms. Cowan never married, and Respondent is a child born out of wedlock. Respondent lived with her mother until 2009 when the Rowan County Department of Social Services ("RCDSS") filed a petition alleging that Respondent was a neglected juvenile as defined in N.C. Gen. Stat. § 7B-101(15). On 9 June 2009, the Rowan County District Court entered an order (the "7B Order"), in which it determined Respondent to be a neglected juvenile, listed Decedent as Respondent's father, and granted full custody of Respondent to Decedent. Decedent did not contest paternity, was never under oath, and did not participate in a DNA test to establish paternity.

¶ 3 On 2 June 2018, Decedent died intestate. Respondent applied for Letters of Administration on 23 July 2018. On 16 January 2019, Petitioners filed a petition with the Clerk of Superior Court requesting Revocation of Letters of Administration to Respondent (the "Petition") based upon their assertion that Respondent was born out of wedlock and was never properly established as a legitimate heir to Decedent's estate. On 12 November 2019, the Clerk of Superior Court entered an order denying Petitioners' petition. The Clerk found that the 7B Order listing Decedent as the Respondent's father was an adjudication sufficient to establish legitimacy under N.C.

Gen. Stat. § 29-19(b)(1).

¶ 4 On 19 November 2019, Petitioners appealed the order denying their Petition to the Iredell County Superior Court. Petitioners filed a motion for summary judgment on 29 May 2020. Respondent filed a motion for summary judgment on 1 June 2020. On 9 July 2020, the Superior Court granted summary judgment for Respondent by concluding that Respondent had satisfied N.C. Gen. Stat. § 29-19(b)(1) and (b)(2) to qualify as the rightful heir to Decedent's estate and dismissed Petitioners' appeal and Petition. Petitioners gave timely written notice of appeal.

II. Analysis

¶ 5 Petitioners contend the trial court erred in granting summary judgment in favor of Respondent and dismissing their Petition on the grounds that Respondent is not the rightful heir to Decedent's Estate and the Letters of Administration should be revoked accordingly. Petitioners allege that Respondent has not satisfied the provisions of either N.C. Gen. Stat. §§ 29-19(b)(1) or 29-19(b)(2) to qualify for intestate succession as a child born out of wedlock. We address Petitioners' arguments in turn.

A. Standard of Review

¶ 6 The standard of review of an appeal from summary judgment is *de novo*. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). "[A]n appeal *de novo* is an appeal in which the appellate court uses the trial court's record but reviews the

evidence and law without deference to the trial court's rulings." *Templeton Props. LP v. Town of Boone*, 234 N.C. App. 303, 310, 759 S.E.2d 311, 317 (2014) (citation and quotation marks omitted). "Under *de novo* review, we examine the case with new eyes." *Id.*

¶ 7 "[Summary judgment] is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *Jones*, 362 N.C. at 573, 669 S.E.2d at 576 (quoting *Forbis v. Neal*, 361 N.C. 519, 523-524, 649 S.E.2d 382, 385 (2007)). For summary judgment, "the trial judge must view the presented evidence in a light most favorable to the nonmoving party." *Dalton v. Camp*, 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001) (citing *Coats v. Jones*, 63 N.C. App. 151, 303 S.E.2d 655, *aff'd*, 309 N.C. 815, 309 S.E.2d 253 (1983)). In considering a motion for summary judgment, "the party moving for summary judgment bears the burden of establishing the lack of any triable issues." *Id.* (citing *Boudreau v. Baughman*, 322 N.C. 331, 368 S.E.2d 849 (1988)).

¶ 8 Neither party in this case argues that any triable issues of fact existed in the Record, and neither party contends that summary judgment was inappropriate. Petitioners argue, rather, that the trial court erred in its legal determinations. Therefore, we review solely the correctness of the trial court's legal determination at the summary judgment stage.

B. Civil Actions Establishing Paternity under N.C. Gen. Stat. § 29-19(b)(1)

¶ 9 Petitioners allege the trial court erred in concluding as a matter of law that Decedent had been adjudicated as Respondent's father in a 7B Order which established her as a legitimate child for the purpose of intestate succession pursuant to N.C. Gen. Stat § 29-19(b)(1). We disagree and hold that the trial court did not err in finding that the adjudication of paternity in the 7B Order satisfied the requirements of N.C. Gen. Stat. § 29-19(b)(1).

¶ 10 Children born out of wedlock are "children of parents not married to each other," and are, by default, treated as legitimate children of their mother for the purpose of intestate succession. N.C. Gen. Stat. § 49-1 (2019); N.C. Gen. Stat. § 29-19(a) (2019). In contrast, children born out of wedlock are not automatically able to take from their father's estate. *See* N.C. Gen. Stat. § 29-19(b) (2019).

¶ 11 Instead, a child born out of wedlock, who has not been legitimated under law, is legally unable to take from their father through intestate succession unless they have fulfilled one of the provisions under N.C. Gen. Stat. § 29-19(b). N.C. Gen. Stat. § 29-19(b). Under N.C. Gen. Stat. § 29-19(b)(1),

> [f]or purposes of intestate succession, a child born out of wedlock shall be entitled to take by, through and from: (1) [a]ny person who has been finally adjudged to be the father of the child pursuant to the provisions of G.S. 49-1 through

49-9 or the provisions of G.S. 49-14 through 49-16.

N.C. Gen. Stat. § 29-19(b)(1). N.C. Gen. Stat. §§ 49-1 through 49-9 are not applicable in this case. They outline provisions for criminal actions against the father regarding nonpayment of child support. N.C. Gen. Stat. §§ 49-1–9 (2019). N.C. Gen. Stat. §§ 49-14 through 49-16 outline provisions for civil actions determining paternity. In particular, N.C. Gen. Stat. § 49-14 states that "[t]he paternity of a child born out of wedlock may be established by *civil action* at any time prior to such child's eighteenth birthday." N.C. Gen. Stat. § 49-14 (2019) (emphasis added).

¶ 12 In *State v. Adams*, the North Carolina Supreme Court held that juvenile proceedings involving the filing of a petition alleging abuse and neglect commences a civil action. *State v. Adams*, 345 N.C. 745, 748, 483 S.E.2d 156, 157 (1997). For juvenile abuse and neglect proceedings under Chapter 7B, the trial court will determine paternity if it is at issue and needs to be established. N.C. Gen. Stat. §§ 7B-506(h)(1) (2019); 7B-800.1(a)(3) (2019); 7B-901(b) (2019). An establishment of paternity in an abuse, neglect, and dependency proceeding under Chapter 7B is binding in future proceedings. *In re V.B.*, 239 N.C. App. 340, 344, 768 S.E.2d 867, 870 (2015). Although the law states that paternity can be established in juvenile proceedings, there is no specifically outlined procedure to establish paternity. *See* N.C. Gen. Stat. §§ 7B-506(h)(1); 7B-800.1(a)(3); 7B-901(b). This Court has previously held that stipulation by parties in a previous court action was a judicial

determination of all issues of paternity. *See Rice v. Rice*, 147 N.C. App. 505, 508, 555 S.E.2d 924, 926 (2001) (holding that Plaintiff's previous admission of children as his own in a court judgment determined all issues of paternity and was barred from being relitigated in the plaintiff's motion for proof of paternity due to *res judicata*); *see also Helms v. Landry*, 194 N.C. App. 787, 791–92, 671 S.E.2d 347, 350–52 (2009) (Jackson J. dissenting), *rev'd* for reasons stated in dissent, 363 N.C. 738, 686 S.E.2d 674 (2009).

¶ 13 In this case, Petitioners argue that "[N.C. Gen. Stat. §] 29-19(a) Paternity" can be "established by Final Court Order under [N.C. Gen. Stat.] Chapter 49 Only," and that "Orders under Chapter 7B Juvenile Code Do Not Automatically Convey Intestate Succession under [N.C. Gen. Stat. §] 29-19(b)(1)." Although orders entered under Chapter 49 and orders entered under Chapter 7B have a different purpose, both can establish paternity. The statute does not limit which chapter under which paternity must be established to allow intestate succession. Petitioners ask that this Court insert this limitation into the statute by claiming that only civil actions under Chapter 49 satisfy section 29-19(b)(1) through section 49-14.

¶ 14 We are not persuaded by Petitioners' argument that this limitation belongs in section 49-14. There is no language in the statute nor illustrated intent of the legislature that would place this limitation on the establishment of paternity. *See* N.C. Gen. Stat. § 49-14(a). This Court has continuously shown its unwillingness to alter or add to the language of statutes enacted by the legislature. *Estate of Stern v.*

Stern, 66 N.C. App. 507, 510, 311 S.E.2d 909, 911 (1984) ("Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give it its plain and definite meaning, and are without power to interpolate, or superimpose, provisions or limitations not contained therein.").

¶ 15 Prior to 1973, children born out of wedlock were unable to inherit from their fathers unless they were legitimated. *See Jolly v. Queen*, 264 N.C. 711, 715, 142 S.E.2d 592, 595 (1965) ("In this case [the defendant] has taken no steps to legitimate the son whose custody he now claims. . . . Therefore, under our intestacy laws, the child cannot inherit from his father or his father's relatives."). In 1973, the General Assembly enacted subsections 29-19(b), (c), and (d), which provide methods for children born out of wedlock to take from their fathers through intestate succession. This illustrates the legislature's intent to increase the ability for children born out of wedlock to inherit from their fathers even where the children were not formally legitimated. *Sanders v. Brantley*, 71 N.C. App. 797, 799, 323 S.E.2d 426, 427 (1984) ("Our holding is consistent with the trend towards abolishing obstacles to the inheritance rights of illegitimate[children]."); N.C. Gen. Stat. §§ 29-19, 49-14. In accordance with this movement towards accessibility for children born out of wedlock, this Court has held that "[section] 49-14, being a remedial statute, not a penal statute, is to be construed liberally so as to assure fulfillment of the beneficial goal for which it was enacted." *Joyner v. Lucas*, 42 N.C. App. 541, 546, 257 S.E.2d 105, 108 (1979).

In this case, Decedent held himself out as Respondent's biological father, consented to such designation in the court of law, and cared for Respondent for much of her life. This Court will not impose in this case a limitation to a statute that was enacted as a means of providing relief and access to children born out of wedlock. Therefore, the trial court did not err in concluding as a matter of law that Decedent was adjudged to be the father of Respondent in a prior civil action under N.C. Gen. Stat. §§ 49-14 and 29-19(b)(1).

¶ 16 Petitioners also argue that the 7B Order failed to strictly comply with the requirements of N.C. Gen. Stat. § 29-19(b)(2) and therefore does not constitute a written acknowledgment establishing paternity under the statute. *See* N.C. Gen. Stat. § 29-19(b)(2) (2019) (allowing a child born out of wedlock to take from their father in intestate succession where "[the father] ha[d] acknowledged himself during his own lifetime and the child's lifetime to be the father of the child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either he or the child resides"). Because we hold above that the 7B Order sufficiently established Decedent to be Respondent's father under N.C. Gen. Stat. § 29-19(b)(1) and affirm the trial court's order on those grounds, we decline to address Petitioners' second argument.

III. Conclusion

¶ 17 For the foregoing reasons, we hold that the trial court did not err in granting summary judgment in favor of Respondent as a matter of law and in dismissing Petitioners' Petition for Revocation of Letters of Administration. The trial court's order is affirmed.

AFFIRMED.

Chief Judge STROUD and Judge HAMPSON concur.

Report per Rule 30(e).