IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In the Matter of the Estate of:

JAMES R. COMPTON SR., *Deceased*.

MARJORIE COMPTON, *Petitioner/Appellant*,

v.

JAMES COMPTON JR., *Respondent/Appellee*.

No. 1 CA-CV 18-0566
FILED 7-18-2019

Appeal from the Superior Court in Maricopa County
No. PB2015-000486
The Honorable Margaret LaBianca, Judge

AFFIRMED

COUNSEL

Zapata Law PLLC, Chandler
By Julio M. Zapata
Counsel for Petitioner/Appellant

Polsinelli PC, Phoenix
By John R. Clemency, Lindsi M. Weber
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Chief Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Paul J. McMurdie and Judge Samuel A. Thumma joined.

S W A N N, Chief Judge:

¶1 Marjorie Compton appeals the grant of summary judgment in favor of James Compton Jr. ("James Junior"), the personal representative of her husband's estate, denying her claim against his estate. We affirm because the decedent had transferred all his assets to a non-party trust. Further, contrary to Marjorie's contentions, we discern no abuse of discretion in the superior court's award of attorney's fees to James Junior or in its denial of her motion to compel disclosure.

FACTS AND PROCEDURAL HISTORY

¶2 Marjorie and James R. Compton Sr. ("James Senior") married in 1966, remarried in 1971 after a brief divorce, and remained married until James Senior's death. James Junior is James Senior's son from a previous marriage.

¶3 In 1991, Marjorie and James Senior created separate revocable living trusts and transferred their separate property and respective one-half interests in the community property to their individual trusts. James Senior's trust was called the James R. Compton Trust, dated March 8, 1991 (the "Trust"). In March 2014, James Senior amended and restated the Trust, reiterating his 1991 transfer of "[a]ll of my separate property and my undivided one half interest in [the] community property" to the Trust. The amendment removed as co-trustee Marjorie, who was then living separately from James Senior.

¶4 This probate matter began in March 2015 when James Junior challenged the validity of a power of attorney given to James Senior's nephew. In May 2015, James Senior died. After a will contest, the superior court admitted to probate James Senior's last will and testament dated March 19, 2014, and appointed James Junior as personal representative of James Senior's estate (the "Estate"). Meanwhile, Marjorie filed a claim against the Estate asserting a community interest in a family-owned business, Fertilizer Company of Arizona, Inc. (also known as "Fertizona"),

and its related entities and assets (collectively, "Fertizona"). As personal representative, James Junior petitioned the court to disallow any alleged community-property interest by Marjorie in James Senior's home, vehicles, and bank accounts. He also filed an inventory and appraisement stating that no assets were subject to probate because all assets were held in trust. In turn, Marjorie petitioned the court to compel a proper inventory and appraisal, determine the scope of her community interest in the Estate, and allow her claim.

¶5 The parties each filed motions for summary judgment on their competing petitions. The court upheld the sufficiency of the inventory and appraisement and denied both parties' request for declaratory relief on Marjorie's alleged community interest. The court disallowed Marjorie's claim on the ground that "a claim against the Estate for assets not in the Estate cannot be allowed."

¶6 Marjorie unsuccessfully moved for reconsideration and a new trial, and the court awarded attorney's fees against her. She now appeals.

DISCUSSION

I. THE SUPERIOR COURT PROPERLY GRANTED SUMMARY JUDGMENT FOR JAMES JUNIOR BECAUSE THE ESTATE CONTAINED NO ASSETS.

¶7 Marjorie first contends that the superior court erred by granting summary judgment because James Senior's home, vehicles, accounts, and interest in Fertizona all are Estate assets in which she holds a community interest.

¶8 We review the superior court's grant of summary judgment de novo, viewing the facts and all reasonable inferences therefrom in the light most favorable to Marjorie, the party against whom judgment was entered. *See In re Estate of Barry*, 184 Ariz. 506, 508 (App. 1996). Summary judgment is appropriate when "the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990).

¶9 The record supports the denial of Marjorie's motion for summary judgment and the grant of James Junior's motion based on the absence of any assets in the Estate. The Trust reflects that James Senior and Marjorie purposefully and lawfully divided their community property into

separate trusts beginning in 1991. *Cf. In re Estate of Harber*, 104 Ariz. 79, 88 (1969) (holding that "marital partners may in Arizona validly divide their property presently and prospectively by a post-nuptial agreement, even without its being incident to a contemplated separation or divorce"). James Senior expressly restated that transfer when he amended the Trust thirteen years later. The amended Trust also directed that the transfer of assets "shall apply even though 'record' ownership or title, in some instances, may, presently or in the future, be registered in my individual name, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed." The Trust therefore encompasses all of James Senior's assets. In addition, concurrent with the amended Trust, James Senior executed an "Assignment of Personal Property" transferring "all articles of personal and household use," including "all automobiles," to the Trust. James Junior also provided records from the Maricopa County Assessor's Office showing that the Trust owned James Senior's home, tax documents showing that the Trust held an interest in Fertizona entities, and financial statements showing that the Trust owned a retirement account.

¶10 The probate court has jurisdiction over the "[e]states of decedents, including construction of wills and determination of heirs and successors of decedents." A.R.S. § 14-1302. An "estate" is "the property of the decedent." A.R.S. § 14-1201(22); *see also In re Estate of Jones*, 10 Ariz. App. 480, 482 (1969) (explaining that "a probate court has jurisdiction only over the property of the estate of the deceased"). "As it relates to a spouse, the estate includes only the separate property and *the share of the community property belonging to the decedent*." A.R.S. § 14-1201(22) (emphasis added). Marjorie's share of the community property is not part of James Senior's estate, and because James Senior transferred his separate property and his share of the community property into the Trust, there is no property remaining in his Estate.

II. THE SUPERIOR COURT DID NOT HAVE JURISDICTION OVER THE TRUST.

¶11 Marjorie next contends that the superior court had jurisdiction over the Trust and we therefore should vacate and remand "for a determination of the scope of the community assets contained" in the Trust. She contends that because the parties litigated Trust issues, the pleadings should be amended to conform to the evidence presented and argued.

¶12 To bring an action against the Trust, Marjorie would need to name and properly serve the Trust. *See MCA Fin. Grp., Ltd. v. Enter. Bank & Trust,* 236 Ariz. 490, 495, ¶ 12 (App. 2014) (holding that "under basic principles of due process and *in personam* jurisdiction," a court does not have jurisdiction over parties not named and served). The superior-court proceedings involved, and were limited to, the Estate of James Senior. The Trust was not named as a party. Nor was James Junior named in his fiduciary capacity as trustee. The court therefore did not have jurisdiction over the Trust. *See In re Estate of Tomeck*, 45 A.D.3d 1242, 1243 (N.Y. App. Div. 2007) (holding that probate court lacked jurisdiction over trust not named as a party). Though Marjorie could have established such jurisdiction by moving the superior court to amend the pleadings to add the Trust as a party, she did not do so. *See* Ariz. R. Civ. P. 15(a)(2) (providing that "[l]eave to amend must be freely given when justice requires"); Ariz. R. Probate P. 3(A) (providing that civil procedure rules generally apply in probate matters).

III. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY AWARDING ATTORNEY'S FEES.

¶13 Marjorie next contends that the superior court erred by awarding attorney's fees under A.R.S. § 14-1105(A).

¶14 Section 14-1105(A) permits the court to award fees and expenses in favor of an estate against a party who has engaged in "unreasonable conduct." We review the court's decision to grant statutorily authorized attorney's fees for an abuse of discretion. *Vicari v. Lake Havasu City*, 222 Ariz. 218, 224, ¶ 23 (App. 2009).

¶15 The court awarded the personal representative approximately $2,000 in attorney's fees to be paid by Marjorie and her counsel under § 14-1105(A). The award was limited to fees incurred in responding to Marjorie's motion for reconsideration and a new trial. The court made the award after finding that Marjorie had acted unreasonably:

> [I]n light of [Marjorie]'s ample opportunity to discover and produce evidence of her claims prior to filing a motion for summary judgment, to fail to do so and then seek reconsideration and a new trial still without credible evidence appears to the Court to be unreasonable conduct by Marjorie and/her attorney [sic].

¶16 Contrary to Marjorie's suggestion, the superior court was not required to find Marjorie a vexatious litigant before awarding fees under

§ 14-1105(A). Moreover, the record does not support Marjorie's contention that the court awarded fees based on a mistaken belief that the request for a new trial was improper because no trial had been held. The superior court has substantial discretion in determining whether to award sanctions, and the amount of sanctions if awarded. Marjorie has not shown that the superior court abused that discretion.

IV. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY DENYING MARJORIE'S MOTION TO COMPEL DISCOVERY.

¶17 Marjorie finally contends that the superior court erred by denying her motion to compel discovery. We review the denial of a motion to compel for an abuse of discretion. *See Braillard v. Maricopa Cnty.*, 224 Ariz. 481, 497, ¶ 52 (App. 2010).

¶18 Before the superior court appointed James Junior as personal representative, Marjorie moved to compel the Estate to disclose information on Fertizona, including asset lists, balance sheets, income statements, cash flow statements, profit and loss statements, tax returns, financial statements, financing information, and business valuations. The court denied her motion as premature, explaining that neither the special administrator nor the prospective personal representative owed a duty to Marjorie.

¶19 The personal representative must prepare an inventory of the decedent's property within 90 days of his or her appointment. A.R.S. § 14-3706(A). The superior court correctly deemed Marjorie's motion premature, and she never renewed it after James Junior's appointment.[1]

[1] We reject James Junior's suggestion that Marjorie's challenge to the denial of the motion to compel is untimely. On appeal from a final judgment, the appellant may appeal interlocutory orders. A.R.S. § 12-2102(A).

CONCLUSION

¶20 We affirm for the reasons set forth above. James Junior requests attorney's fees on appeal under A.R.S. §§ 44-1105 and 12-349. In exercise of our discretion, we deny his request. We award costs to James Junior upon compliance with ARCAP 21.

AMY M. WOOD • Clerk of the Court
FILED: AA