

Judgment rendered June 26, 2019.  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

No. 52,718-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

\* \* \* \* \*

SUCCESSION OF JOHN L. ROBINSON

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Appealed from the  
Twenty-Sixth Judicial District Court for the  
Parish of Bossier, Louisiana  
Trial Court No. 20840

Honorable R. Lane Pittard, Judge

\* \* \* \* \*

BODENHEIMER, JONES & SZWAK, LLC  
By: David A. Szwak

Counsel for Appellant,  
Jana Elliott, Independent  
Co-Executrix of the  
Succession of John L.  
Robinson

LAW OFFICE OF DANIEL FARRIS, LLC  
By: Daniel Farris

Counsel for Appellee,  
Mandi D. Collins Pracht

\* \* \* \* \*

Before WILLIAMS, GARRETT, and STEPHENS, JJ.

## **GARRETT, J.**

Jana Elliott, as co-executrix of the succession of John L. Robinson, appeals a trial court judgment which denied her motions for summary judgment and declaratory judgment to enforce a no-contest clause in their father's will against her sister, Mandi D. Collins Pracht. We affirm the trial court judgment.

### **FACTS**

Mr. Robinson was married to Dora Mae Robinson. They had five children: Sherry Dee Neace, Jana Leigh Elliott, Merla Renee Hill, Mandi Darlene Collins Pracht, and Krista Dione McClure. In June 2013, Mrs. Robinson died in Kansas, where she and her husband resided. Mr. Robinson subsequently moved to Louisiana, where he executed a notarial will on June 21, 2016.

In late 2017, Mr. Robinson was in failing health. The record suggests that, at this point in time, there was apparently considerable animosity between his children. While he was in hospice, Mandi and Sherry sought a judgment of interdiction naming them as his curatrices. The judgment was signed on November 21, 2017, but retracted on November 27, 2017.

Mr. Robinson died in Bossier City on December 4, 2017. In his will, Mr. Robinson stated that there were no forced heirs. He left Jana his real estate, rights in related insurance policies, and furniture. He gave his truck to Merla. He disinherited Sherry and made cash bequests of varying amounts to each of his four other children. The bequest to Mandi was \$30,000. The remainder of the estate was split between Jana and Merla, who were also named co-executors. The will contained the following no-contest (or "in terrorem") clause:

**ELEVENTH:** If any beneficiary under this will shall contest, obstruct, oppose or otherwise resist the probate of or validity of this will or any trust at any time created by me, or shall start or join in any proceeding tending to avoid or set aside any provision of this will or any trust, such beneficiary thereby shall forfeit all bequests and rights conferred upon such beneficiary under this will and any trust, and this will and any trust shall be given effect in all respects as if such beneficiary had predeceased me without issue.

On January 4, 2018, Jana and Merla filed a petition for filing and execution of a notarial testament and for confirmation of co-executors. The court confirmed them as co-executors the following day.

On January 12, 2018, Rita Bacot filed a document styled "Claim" in the succession proceedings that she signed as attorney for Mandi and Sherry. The document recited that it was filed in compliance with La. C.C.P. art. 3245. It asserted that Mandi and Sherry were heirs of their late mother, whose estate was never properly divided after her death. The claim estimated that her estate, which consisted of two houses in Kansas, bank accounts, vehicles, and other assets, was valued at approximately \$500,000. Approximately one month later, Bacot filed a motion to withdraw from the case, which was granted on February 26, 2018.

On March 7, 2018, Jana and Merla filed a rule to show cause why the claim should not be dismissed. They asserted that the claim was meritless because Kansas recognized the legal concept of "joint tenancy," whereby their mother's property would have automatically succeeded to her husband. At their request, an attorney, Jeremy Babers, was appointed to represent Sherry, as they asserted she was an absentee defendant.

Various documents were filed in the record in March and April 2018. They included a letter dated March 21, 2018, from Mandi and Sherry to the attorney representing the co-executors, in which they sought payment of

\$7,757.10 in legal fees related to an interdiction of Mr. Robinson in which they had been named as curatrices. Another letter with the same date was sent to the same attorney by Mandi in which she stated that she had not been contacted by Jana or Merla regarding her inheritance. She asserted that her attorney had advised her that there was a shared interest in their mother's estate. Mandi stated that this was not a challenge to their father's will. Attached to this letter was a copy of a Facebook exchange purportedly between Jana's son and Mandi's daughter. During the course of this contentious conversation, which occurred on November 23, 2017, Jana's son declared, "You're [sic] Mom just forfeited her inheritance." As a result of this exchange, Mandi stated in her letter that the impression was given that she had lost her inheritance because of her curatrix appointment.

On April 19, 2018, Babers informed the court that he had located Sherry in Kentucky and that she told him that she did not want any further correspondence about the case and that she did "not want to take this through the courts." In a letter dated May 4, 2018, Sherry wrote to the trial judge and advised that she did not wish to pursue her mother's estate. She said she had consulted two Kansas attorneys who had advised her as to joint tenancy. She stated that Bacot, her former lawyer, should have advised her and Mandi about joint tenancy and that they would not have pursued the matter if they had been fully informed. Sherry further stated that she and Mandi conceded their father's right to their mother's estate. In a separate letter to Babers, Sherry again conceded that her mother's estate was legally her father's property.

In the meantime, Jana had filed a petition for determination of descent in the Kansas court, which rendered a decree of descent on April 24, 2018,

stating that Mr. Robinson was entitled to 100 percent of the property he owned in joint tenancy with his late wife.

On May 17, 2018, the rule to show cause was heard in open court. According to the minutes, Mandi withdrew “any claims against the estate of the succession of Dora Robinson.” A consent judgment was signed on August 23, 2018, which stated that Mandi agreed to “dismiss all claim against the succession of John L. Robinson.”

On July 19, 2018, Jana, as independent co-executrix, filed a petition for declaratory judgment striking the legacy to Mandi for violating the no-contest clause in their father’s will. She alleged that Mandi filed a baseless claim against the succession and that she acted “to contest, obstruct, oppose and resist the succession and terms and validity” of their father’s will and that she formally withdrew same in open court on May 17, 2018.

Mandi filed an answer on August 20, 2018, in which she denied violating the no-contest clause. She alleged that she only sought to enforce her rights to her mother’s estate and that she withdrew this claim when she learned of her error in asserting it. Mandi maintained that her actions were not an attack on the validity of her father’s will or a contest, obstruction, opposition or resistance to the succession.

On August 27, 2018, Jana filed a motion for summary judgment, alleging the same facts as in her petition for declaratory judgment. In support of her motion, Jana filed a lengthy affidavit in which she asserted additional actions by Mandi prior to their father’s death, including the filing of the interdiction proceeding. She also stated that Mandi took papers from their father’s house in a “hunt” for his will.

In her opposition to the motion for summary judgment, Mandi described several of the statements in Jana's affidavit as "non-material falsehoods." Mandi filed her own affidavit in which she stated that she asserted the claim in her father's succession on the advice of her previous attorney and that she withdrew that claim when she learned that her father had automatically succeeded to her mother's property by virtue of Kansas's joint tenancy law. She denied obstructing, opposing or resisting the probate and validity of her father's will, as well as any other actions that would have violated the no-contest clause. She further stated that, had she been correct that she was entitled to inherit from her mother, her siblings would have benefited equally. She admitted obtaining an ex parte temporary interdiction because she disagreed with how Jana was handling their father's affairs. She further stated that money she withdrew from her father's account was placed in a separate account created for herself and her father to prevent Jana from exhausting all of his funds and that no funds were ever withdrawn from that account. Mandi admitted trying to locate their father's will and other documents necessary to conduct and manage his affairs. She also specifically denied other claims of family discord made in Jana's affidavit.

On October 15, 2018, a hearing was held on the motion for summary judgment.<sup>1</sup> After hearing arguments, the trial court ruled that Mandi's actions did not violate the no-contest clause because she was not challenging

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<sup>1</sup> At the beginning of the hearing, Jana's counsel stated that there were no contested pertinent facts and that her affidavit presented "some additional facts" to give the court background. Jana's counsel admitted that there would be no difference in the evidence at trial on the petition for declaratory judgment and that there was only a purely legal issue of interpretation of the no-contest clause. The trial court granted the request of Jana's counsel to admit her affidavit and take judicial notice of the suit record. After the trial court ruled and during a discussion of whether the resulting judgment would be designated as a final judgment, Jana's counsel conceded stipulating that no additional evidence was necessary for trial on the declaratory judgment.

the validity of the will. Instead, the court concluded, she was seeking a determination of what property should be included as part of the estate, just as if she were traversing a detailed descriptive list. Accordingly, it denied Jana's motions for summary judgment and declaratory judgment. On October 25, 2018, the trial court signed a judgment which denied Jana's motion for summary judgment. It also denied her petition for declaratory judgment and dismissed her claims with prejudice at her cost. The trial court designated the judgment as a final judgment.

Jana appealed.

## **LAW**

### ***Summary Judgment***

Appellate courts review motions for summary judgment *de novo*, using the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Peironnet v. Matador Res. Co.*, 12-2292 (La. 6/28/13), 144 So. 3d 791. The motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. *Schultz v. Guoth*, 10-0343 (La. 1/19/11), 57 So. 3d 1002. The procedure is favored and shall be construed to secure the just, speedy, and inexpensive determination of actions. La. C.C.P. art. 966(A)(2). A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3).

### ***Declaratory Judgment***

La. C.C.P. art. 1871 provides that courts of record within their respective jurisdictions may declare rights, status, and other legal relations

whether or not further relief is or could be claimed. The declaration shall have the force and effect of a final judgment or decree. A declaratory judgment may be reviewed as other orders, judgments, and decrees. La. C.C.P. art. 1877; *Whitaker Const. Co. v. Larkin Dev. Corp.*, 34,297 (La. App. 2 Cir. 12/6/00), 775 So. 2d 571, *writ denied*, 01-0068 (La. 3/16/01), 787 So. 2d 312.

Appellate courts review a district court's decision to grant or deny a declaratory judgment using the abuse of discretion standard. *Ark-La-Tex Safety Showers, LLC v. Jorio*, 48,478 (La. App. 2 Cir. 12/18/13), 132 So. 3d 986; *Whitaker Const. Co. v. Larkin Dev. Corp.*, *supra*.

#### ***In Terrorem or No-Contest Clause***

The intent of the testator is paramount in interpreting the provisions of a will. If the language of the will is clear, it must be carried out according to its written terms. See La. C.C. art. 1611(A). The court's function is to construe the will as written, without adding words to any controversial parts under the guise of interpreting the testator's intent. *Succession of Laborde*, 2017-1334 (La. App. 1 Cir. 5/31/18), 251 So. 3d 461.

A testator who leaves no forced heirs is free to dispose of his estate to whomever and in any manner he wishes and to impose any conditions on his bequests, as long as they contain nothing contrary to law or good morals. See La. C.C. arts. 1519, 1528; *Succession of Laborde*, *supra*.

An "in terrorem clause," also called a "no-contest clause," is a testamentary provision providing for the revocation of a bequest if a legatee contests the validity of the will. *In re Succession of Scott*, 2005-2609 (La. App. 1 Cir. 11/3/06), 950 So. 2d 846, *writ denied*, 06-2813 (La. 1/26/07), 948 So. 2d 176.

No-contest clauses are not expressly prohibited by Louisiana law.

*Succession of Laborde, supra.*

In both *Succession of Rouse*, 144 La. 143, 80 So. 229 (1918), and *Succession of Rosenthal*, 369 So. 2d 166 (La. App. 4 Cir. 1979), writ denied, 371 So. 2d 1345 (La. 1979), enforcement of a no-contest clause in the decedent's will was sought.

In the *Rouse* case, the decedent's children from his first marriage sued his succession and their stepmother for a settlement of the community formerly existing between their late mother and the decedent. The supreme court held:

This is not a suit to fix the rights of his heirs in the Succession of Maj. Rouse, or to contest the will of Maj. Rouse, and the provision in that will declaring a forfeiture of inheritance by plaintiffs for contesting that will has no application or effect here.

In the *Rosenthal* case, the widow and the nephew of the decedent were the principal legatees under the terms of the decedent's will; the widow was also the executrix. After the nephew filed a rule to set aside a judgment of possession and then opposed a final tableau of distribution filed by the widow, she sought to enforce a no-contest clause against him. The trial court denied her motion to have the nephew's legacy declared forfeited. The appellate court affirmed, finding that the nephew had not attacked the will, but rather he had taken appropriate action to have the will properly administered. The appellate court further held that the nephew was entitled to call upon the executrix to perform her duties properly and that his actions were not an attack on the will as contemplated by the testator.

## DISCUSSION

Despite some conflicting allegations of familial disharmony in their respective affidavits, the parties agree that there are no disputed issues of material fact that would prevent rendition of summary judgment. Thus, we are presented with the legal issue of the applicability of the no-contest clause in Mr. Robinson's will to the facts of the instant case. The initial issue to be resolved is whether the no-contest clause was triggered by the actions of a beneficiary.

Based upon our *de novo* review of the record and the jurisprudence, we conclude that the claim filed by the attorney on behalf of Mandi did not trigger the provisions of the no-contest clause. We find the *Rouse* and *Rosenthal* cases to be controlling. *Rouse*, in particular, addresses a similar set of circumstances wherein children of a deceased father sought to resolve, in his succession, inheritance matters involving property owned by the father with their mother, who predeceased him. In the instant case, Mandi's claim did not seek to "contest, obstruct, oppose or otherwise resist the probate of or validity of this will." Nor did she "start or join in any proceeding tending to avoid or set aside any provision of this will."<sup>2</sup> Like the *Rouse* children, she was addressing potential inheritance rights to property owned by her late mother.

Consequently, we agree with the trial court that summary judgment in Jana's favor was not warranted. Furthermore, we find no abuse of discretion

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<sup>2</sup> See *Succession of Laborde, supra*, wherein a no-contest clause was successfully enforced against a daughter who filed a motion to nullify her father's will and convert the proceeding to an intestate succession proceeding.

in the trial court's denial of Jana's motion for declaratory judgment and its dismissal of her claims against her sister, Mandi D. Collins Pracht.

### **CONCLUSION**

We affirm the trial court judgment which denied the motions for summary judgment and declaratory judgment filed by Jana Elliott and dismissed, with prejudice, her claims against Mandi D. Collins Pracht.

Costs of this appeal are assessed against the appellant, Jana Elliott.

**AFFIRMED.**