STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of OLIVER DIXON, Deceased.

CHRISTOPHER GULA and PAMELA GULA,

Appellants,

v

ELREECE HOLLIS,

Appellee.

UNPUBLISHED
April 23, 1999

No. 205841
Macomb Probate Court
LC No. 95-005435 SE

Before: Hood, P.J., and Holbrook, Jr., and Whitbeck, JJ.

PER CURIAM.

Appellants Christopher and Pamela Gula appeal as of right from the probate court's order denying their motion to compel the personal representative of the estate to file an amended inventory and allowing the claim of appellee Elreece Hollis ("Hollis") against the estate for two acres of real property. We affirm.

I. Basic Facts And Procedural History

Oliver Dixon died on March 19, 1995, leaving a will that was subsequently admitted to probate. The personal representative of the estate filed an inventory of assets that listed only two items of non-cash personal property, which together were valued at $600. The bulk of the $124,690 estate consisted of a twenty-acre parcel of real property, having upon it one brick house and one "little yellow house."

Hollis submitted a claim against the estate for the "little yellow house" and the surrounding two-acre tract of land. Hollis asserted the decedent had promised to convey this property to him in exchange for his performing work and making expenditures pertaining to the property. In support of this claim, Hollis produced a document, which read in pertinent part:

> I, Oliver Dixon, hereby state and acknowledge that I am transferring to Elreece Hollis of 1914 Ethel Street, Detroit, Michigan 48217, a certain two acre parcel of land, having one residential house upon the land, commonly referred to as 6411 Oakville Waltz Road, located in the City of Carlton, Township of Exeter, County of Monroe, State of Michigan 48117. Said land is bounded on the north side by Oakville Waltz Road and continually to the south, until an [sic] parcel of two acres is made. My notarized signature below acknowledges that I will deed the said property to you.

The document was dated May 12, 1993, and bore what purported to be the decedent's notarized signature. The document had been filed at the Monroe County Register of Deeds.

Following a hearing on the issue, the probate court held that this document was not a deed, as Hollis contended. Rather, the probate court found that the language "I will deed the said property" indicated not a present conveyance, but a promise to convey in the future. The probate court reserved for trial the issue of whether this promise was supported by valid consideration.

Appellants filed a $1,000,000 claim for "[a]n unliquidated personal injury claim" against the estate stemming from a 1994 automobile accident, which was pending in the Monroe Circuit Court.[1] Believing that several items of personal property had been converted by Hollis and omitted from the inventory, the appellants filed a motion to compel the personal representative to file an amended inventory. Appellants also contended that pursuant to MCL 700.544(1); MSA 27.5544(1), the representative should be held personally liable for the breach of his fiduciary duties.

At trial, evidence was introduced that the estate had entered into an agreement with Hollis whereby Hollis would clean up and maintain the property and pay all of the estate's bills. In return, Hollis could dispose of any non-inventoried personalty as he saw fit. The probate court found that although certain items should have been included in the inventory, the value of these items was equal to or less than the value of services provided and expenditures made by Hollis. Therefore, because the estate had suffered no loss, the probate court denied appellants' motion.

II. Sufficiency Of The Evidence

Appellants argue that the probate court's findings regarding the value of the non-inventoried assets of the estate are against the great weight of the evidence. We disagree. This Court will not set aside a probate court's findings of fact unless they are clearly erroneous. MCR 2.613(C); *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994). A court's finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Estes, supra* at 208. We give special deference to the trial court's findings when they are based upon its assessment of the witnesses' credibility. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

In finding that the value of the omitted property was $1,000, the probate court noted that it was relying on the testimony of a particular witness whom it deemed the most familiar with the property owned by the decedent at the time of his death. This witness described many of these items as "falling

apart," "junk," or "deteriorated." We recognize that there was substantial conflict in the trial regarding the identification and value of the personal property in the estate.[2] However, deferring to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it," MCR 2.613(C), we are not left with the definite and firm conviction that a mistake has been made. *In re Estes, supra* at 208.

III. Liability of the Personal Representative

Appellants contend that the probate court erred in finding that the personal representative is not liable under MCL 700.544(1); MSA 27.5544(1). We disagree. The statute provides for the liability of a fiduciary to an interested party for "any loss to the estate" caused by certain breaches of the fiduciary's duty. The uncontroverted testimony indicates that the representatives of the estate believed that the costs associated with the cleanup and maintenance of the property would be higher than any amount that could be obtained from the sale of the personalty in the estate. Further, the evidence shows that Hollis was authorized to dispose of the property as he saw fit, in return for his services to the estate; and that Hollis did, in fact, perform these services and pay all of the bills of the estate for a two-year period. Therefore, we conclude that the probate court's finding that there was no loss to the estate is not clearly erroneous.

IV. Conveyance to Hollis

Appellants argue that the probate court erred when it allowed Hollis to testify as to his alleged agreement with the decedent. Specifically, they assert that MCL 600.2166; MSA 27A.2166, the so-called "dead man's statute," precluded admission of the testimony. We disagree. MCL 600.2166; MSA 27A.2166 has been superseded by MRE 601, which provides that every person is competent to testify unless the court finds otherwise, or except as otherwise provided in the rules of evidence. *In re Backofen Estate*, 157 Mich App 795, 801; 404 NW2d 675 (1987). We hold that the dead man's statute is, therefore, simply irrelevant, and the probate court was not thereby precluded from allowing Hollis' testimony.

Additionally, appellants contend that the probate court erred in admitting into evidence the conveyance document, because it was not authenticated and because there is no evidence that the signature on the instrument is that of the decedent. We again disagree. "A . . . court's decision to admit evidence is within its sound discretion and will not be disturbed absent an abuse of discretion." *Chmielewski v Xermac, Inc*, 457 Mich 593, 613-614; 580 NW2d 817 (1998). The document, a certified copy of a public record from the Monroe County Register of Deeds, was self-authenticating pursuant to MRE 902(4). Furthermore, absolutely no evidence was presented to support the contention that the signature on the conveyance document was not that of the decedent. Therefore, we hold that the probate court did not abuse its discretion in deeming the document authenticated and admitting it into evidence.

Finally, appellants argue that the probate court erred in finding that because adequate consideration existed to support the decedent's promise to convey the two-acre parcel, the estate was therefore required to convey the property to Hollis. We disagree. While two witnesses stated that they

had never seen Hollis working on the property, the probate court apparently believed Hollis' testimony that over the years he done considerable work for the decedent and had rendered several payments on decedent's behalf. The credibility and weight of trial testimony is a matter for the trier of fact to resolve. See *Zeeland Farm Services, Inc, v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). Furthermore, "[c]ourts will not ordinarily inquire into the adequacy of consideration." *Moffit v Sederlund*, 145 Mich App 1, 11; 378 NW2d 491 (1985). We hold, therefore, that the probate court did not clearly err in finding that an agreement existed and that the decedent's promise to convey was in return for the services performed and expenditures made by Hollis.

Affirmed.

/s/ Harold Hood
/s/ Donald E. Holbrook, Jr.
/s/ William C. Whitbeck

[1] Judgment in this lawsuit was entered against the estate on October 15, 1997, awarding the Gulas $325,000.

[2] For instance, two witnesses described almost all of the property as "junk," while another witness stated that the household furnishings alone were worth $5,000. One witness testified that the decedent owned certain valuable farm equipment and tools, while two others testified that he owned no valuable tools and that he often borrowed tools and equipment from his neighbors.