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NO. COA05-1686

NORTH CAROLINA COURT OF APPEALS

Filed: 21 November 2006

ROBERT S MINOWICZ, JR.,
THOMAS D. MINOWICZ, and
STEVEN J. MINOWICZ,
Plaintiffs,

v.

Cleveland County
No. 05CVS1046

DONNA P. STEPHENS,
Defendant.

Appeal by defendant from order entered 28 September 2005 by Judge C. Preston Cornelius in Cleveland County Superior Court. Heard in the Court of Appeals 10 October 2006.

Michael M. Lakin for plaintiff appellees.

Cerwin Law Firm, P.C., by Todd R. Cerwin, for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from order granting plaintiffs' motion for judgment on the pleadings. We affirm.

FACTS

Robert S. Minowicz, Jr., Thomas D. Minowicz, and Steven J. Minowicz ("plaintiffs") are the sons of Robert S. Minowicz, Sr. ("testator"). Donna P. Stephens ("defendant") and testator were never married, but they lived together prior to his death.

On 11 September 1995, testator executed a last will and testament. A paragraph in the will at issue in this case states:

I will, devise and bequeath to my DONNA PORTER STEPHENS, a life estate in all real property owned by me at the time of my death, with the remainder interest to be held as tenants in common by my three sons, ROBERT S. MINOWICZ, JR., THOMAS DAVID MINOWICZ, and STEVEN JAMES MINOWICZ. During the life of DONNA PORTER STEPHENS, any debt owed on the property devised to DONNA PORTER STEPHENS shall be borne equally by my three sons.

On 3 December 1997, testator died. Testator's will was properly admitted to probate and the estate administered.

Subsequent to testator's death, a dispute arose regarding who was obligated for certain expenses on the property. Some of the expenses at issue included regular maintenance, property taxes, and insurance coverage. Plaintiffs sued defendant and requested, among other things, that the trial court answer two questions: (1) who is obligated to pay taxes on the property, and the expense of ordinary repairs for the property, and (2) is defendant entitled to make permanent improvements to the property and be reimbursed by plaintiffs for those improvements. Defendant counterclaimed requesting the trial court to determine what debts were intended to be paid by plaintiffs when testator declared that during the life of defendant, plaintiffs shall pay any debt owed on the property. Subsequent to defendant's counterclaim, plaintiffs made a motion for judgment on the pleadings. Then, defendant made a motion for judgment on the pleadings. On 28 September 2005, the trial court granted plaintiffs' motion for judgment on the pleadings stating that the court construed the words "debt on the property" contained

in testator's will to refer to two mortgages that were on the property at the time the testator executed the will. The trial court ordered defendant to pay the property taxes, and the cost of ordinary and necessary maintenance and repairs. The court ordered that plaintiffs are responsible for permanent and extraordinary repairs and that defendant is not to have such repairs performed without first consulting plaintiffs and obtaining their consent.

Defendant appeals.

I.

Defendant contends the trial court committed reversible error by granting plaintiffs' motion for judgment on the pleadings, pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure. We disagree.

A motion for judgment on the pleadings is authorized by Rule 12(c) of the North Carolina Rules of Civil Procedure. N.C. Gen. Stat. § 1A-1, Rule 12(c) (2005). "The rule's function is to dispose of baseless claims or defenses when the formal pleadings reveal their lack of merit." *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974). A motion for judgment on the pleadings should not be granted unless "the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.'" *Toomer v. Branch Banking & Tr. Co.*, 171 N.C. App. 58, 66, 614 S.E.2d 328, 334, *disc. review denied*, 360 N.C. 78, 623 S.E.2d 263 (2005) (citations omitted). "In considering a motion for judgment on the pleadings, the trial court is required to view the facts presented in the

pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party.'" *Id.* (citations omitted). We review motions made pursuant to Rule 12(c) *de novo*. *Id.* at 66, 614 S.E.2d at 335.

In the instant case, both parties agree that no material issues of fact remain. The only issue is the interpretation of the provision in testator's will which states that "[d]uring the life of [defendant], any debt owed on the property devised to [defendant], shall be borne equally by [plaintiffs]." This state's courts have often stated the "intent of the testator is the polar star that must guide the courts in the interpretation of a will." *Wing v. Trust Co.*, 301 N.C. 456, 462-63, 272 S.E.2d 90, 95 (1980) (citations omitted). If the terms of a will are set forth in clear, unequivocal and unambiguous language, judicial construction is unnecessary. *Pittman v. Thomas*, 307 N.C. 485, 492, 299 S.E.2d 207, 211 (1983). "When doubt exists as to what the testator intended, resort may be had to the courts for construction of the will.'" *Id.* (citation omitted). The court looks at every provision of the will, weighing each statement, and gathering the testator's intent from the four corners of the instrument. *Holland v. Smith*, 224 N.C. 255, 257, 29 S.E.2d 888, 889-90 (1944). Our Supreme Court has "emphasized that the court's responsibility is 'to place itself as nearly as practicable in the position of the testator' at the time the will was executed." *Pittman*, 307 N.C. at 492, 299 S.E.2d at 211.

Applying the foregoing to the record before us, we conclude the trial judge correctly construed testator's intention. "The same words, or those nearly similar, used under different circumstances and contexts may express different intentions" *Coffield v. Peele*, 246 N.C. 661, 664, 100 S.E.2d 45, 47 (1957). Black's Law Dictionary defines "debt" as "a specific sum of money due by agreement or otherwise." Black's Law Dictionary 432 (8th ed. 2004). We believe testator intended plaintiffs to pay for the debts owed on the property which were secured by the property at the time testator executed his will as they were the specific sums of money that were due by agreement. This is consistent with the trial court's decision that the words "debt on the property" refers to the two mortgages that were on the property at the time testator executed the will.

Unlike the mortgages, the items defendant wants plaintiffs to pay for include mowing expenses, maintenance expenses, home improvements and property taxes. These items are not specific sums of money that we consider debt on the property. We do not believe testator intended to give defendant the power to make improvements on the property and hold plaintiffs responsible for paying for them. Further, we do not believe testator intended to make plaintiffs responsible for the property taxes, and the cost of ordinary and necessary maintenance and repairs.

Accordingly, we disagree with defendant's contention.

Defendant contends the trial court committed reversible error by denying defendant's motion for judgment on the pleadings, pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure. Based on our decision above, we disagree with defendant's contention.

Accordingly, we affirm the trial court.

Affirmed.

Judges McGEE and WYNN concur.

Report per Rule 30(e).