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NO. COA05-883

NORTH CAROLINA COURT OF APPEALS

Filed: 7 March 2006

ETHEL MARIE BEST, ADMINISTRATIX OF THE ESTATE OF KENDRICK RASHON BEST,
Plaintiff,

v. Wilson County
No. 04 CVS 416

KENNETH RAY MOODY,
Defendant.

Appeal by defendant from order entered 2 March 2005 by Judge Thomas D. Haigwood in Wilson County Superior Court. Heard in the Court of Appeals 9 February 2006.

Taylor Law Office, by W. Earl Taylor, Jr., for plaintiff-appellee.

Farris and Farris, P.A., by Joseph N. Quinn, Jr., for defendant-appellant.

TYSON, Judge.

Kenneth Ray Moody ("defendant") appeals from the trial court's order finding that he forfeited all rights to intestate succession of any part of the estate of Kendrick Rashon Best ("decedent"). We affirm.

I. Background

Plaintiff-mother and defendant-father are the unmarried natural parents of decedent. Decedent was born to the parties on 21 September 1985. Decedent died as a result of injuries from an

automobile accident on 3 February 2002, unmarried and without children. Plaintiff was appointed as the administratrix of decedent’s estate. Plaintiff filed a civil action on behalf of decedent’s estate for decedent’s wrongful death.

On 10 March 2004, plaintiff filed a complaint for declaratory judgment in Wilson County Superior Court to determine if defendant is a person entitled to recover a portion of the proceeds from the wrongful death action. The trial court found as follows:

> 9. Kendrick Rashon Best never lived in the household of the defendant.
>
> 10. The defendant did not know the date of birth of Kendrick Rashon Best.
>
> 11. The defendant did not know that Kendrick Rashon Best was a junior in high school at the time he was killed.
>
> 12. The defendant did not know any of the teachers of Kendrick Rashon Best at the time of his death.
>
> 13. The defendant had received Social Security Disability since 1988 and had attempted to work on an “off and on” basis.
>
> 14. The Social Security Administration determined that payments to Ethel Marie Best for Kendrick Rashon Best on behalf of the defendant should have been stopped in July, 1999 and that Ms. Best was required to pay back $6,073.00 of monies received for Kendrick Rashon Best.
>
> 15. Since July, 1999, the defendant provided no substantial financial support for Kendrick Rashon Best.
>
> 16. Since 1988, the defendant, other than Social Security Disability Benefits, provided no substantial support for Kendrick Rashon Best.

> 17. The defendant did not pay any monies towards the funeral of Kendrick Rashon Best.
>
> 18. There was never a court order awarding or denying custody or visitation of Kendrick Rashon Best to the defendant.
>
> 19. Prior to receiving Social Security Disability, the defendant was $3,387.00 behind in court ordered child support.
>
> 20. The defendant willfully neglected and refused to perform the natural and legal obligations of parental care and support.
>
> 21. The defendant willfully withheld his presence, his care, and failed to exercise opportunities to display parental affection for Kendrick Rashon Best.

22. The defendant willfully failed to lend support and maintenance to Kendrick Rashon Best.

> 23. The defendant willfully failed to establish a father-son relationship with Kendrick Rashon Best and willfully failed to take advantages of opportunities to exercise meaningful visitation with Kendrick Rashon Best and become a presence in his life.

The trial court concluded as a matter of law that defendant "willfully abandoned the care and maintenance of Kendrick Rashon Best prior to his death pursuant to N.C.G.S. 31A-2." The court ordered that "defendant shall lose all rights to intestate succession of any part of the Estate of Kendrick Rashon Best including any right to participate in the wrongful death recovery on behalf of the Estate of Kendrick Rashon Best." Defendant appeals.

II. Issue

The issue on appeal is whether the trial court erred in concluding defendant willfully abandoned the care and maintenance

of decedent prior to his death and thereby ordering defendant shall lose all rights to the estate of decedent.

III. Standard of Review for Non-Jury Trial

> In an appeal from a judgment entered in a non-jury trial, our standard of review is whether competent evidence exists to support the trial court's findings of fact, and whether the findings support the conclusions of law. The trial judge acts as both judge and jury and considers and weighs all the *competent* evidence before him. The trial court's findings of fact are binding on appeal as long as competent evidence supports them, despite the existence of evidence to the contrary. When competent evidence supports the trial court's findings of fact and the findings of fact support its conclusions of law, the judgment should be affirmed in the absence of an error of law.

Resort Realty of the Outer Banks, *Inc*. *v*. *Brandt*, 163 N.C. App. 114, 117, 593 S.E.2d 404, 407-408 (2004) (internal citations and quotation marks omitted) (emphasis in original).

IV. Willful Abandonment

Defendant asserts the trial court erred in ordering defendant to forfeit all rights to the estate of decedent and argues no evidence shows defendant willfully abandoned decedent pursuant to N.C. Gen. Stat. § 31A-2 (2003). We disagree.

N.C. Gen. Stat. § 31A-2 (2003) provides:

> Any parent who has wilfully abandoned the care and maintenance of his or her child shall lose all right to intestate succession in any part of the child's estate and all right to administer the estate of the child, except --
>
> (1) Where the abandoning parent resumed its care and maintenance at least one year prior to the death of the child and continued the same until its death; or

> (2) Where a parent has been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent has substantially complied with all orders of the court requiring contribution to the support of the child.

"The proceeds of a settlement for wrongful death of a child are subject to the provisions of G.S. 31A-2 even though such proceeds are not assets of the estate of the deceased child." *Lessard v. Lessard*, 77 N.C. App. 97, 100, 334 S.E.2d 475, 477 (1985), *aff'd*, 316 N.C. 546, 342 S.E.2d 522 (1986) (citing *Williford v. Williford*, 288 N.C. 506, 219 S.E.2d 220 (1975)).

Our Supreme Court has defined abandonment as:

> [A]ny wilful or intentional conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child. [Citations omitted.] Wilful intent is an integral part of abandonment and this is a question of fact to be determined from the evidence.
>
> . . .
>
> Abandonment has also been defined as wilful neglect and refusal to perform the natural and legal obligations of parental care and support. It has been held that if a parent withholds his presence, his love, his care, the opportunity to display filial affection, and wilfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child.

Pratt v. Bishop, 257 N.C. 486, 501, 126 S.E.2d 597, 608 (1962) (citations omitted).

Competent evidence in the record shows the trial court's findings of fact are supported by competent evidence even though other competent evidence in the record would support contrary findings. *Resort Realty of the Outer Banks, Inc.*, 163 N.C. App. at 117, 593 S.E.2d at 407-408 (2004).

Our Supreme Court considered the issue of wilful abandonment in *In re Lunsford*, 359 N.C. 382, 610 S.E.2d 366 (2005). The trial court in *In re Lunsford* concluded the defendant was precluded from inheriting from the decedent under N.C. Gen. Stat. § 31A-2 on the ground that he had wilfully abandoned the decedent during her minority. *Id.* at 384, 610 S.E.2d at 368. The trial court made the following findings:

> 12. From the date of separation of [the petitioner] and [the respondent], [the respondent] visited with [the decedent] sporadically on his own initiative.
>
> 13. Sometimes, . . . [the respondent's] mother, who had an established relationship with [the decedent], occasionally picked up her granddaughter for a visit, and . . . [the respondent] would occasionally spend time with his daughter then.
>
> 14. As [the decedent] grew older, either [the decedent] or [the respondent] would initiate phone calls, visits, or other relational contact.
>
> 15. These limited visits between [the decedent] and [the respondent] usually coincided with lulls in [the respondent's] alcoholism and/or an increase in the emotional stability of his private life.
>
> 16. Just before [the decedent's] untimely death, [the respondent] attended [her] high school graduation and both had initiated plans for furthering their father-daughter relationship.
>
> 17. Throughout [the decedent's] minority,[the respondent] occasionally offered to pay [the petitioner] for some of the care and maintenance of [the decedent]. However, [the petitioner] refused all such offers.
>
> 18. At one point, after one such request, [the petitioner] did suggest [the respondent] buy [the decedent] some clothes [the decedent]

> wanted, to which [the respondent] readily complied.

Id. at 385, 610 S.E.2d at 368-69. Our Supreme Court held the trial court's findings of fact supported its conclusion that the respondent wilfully abandoned the care and maintenance of the decedent under N.C. Gen. Stat. § 31A-2. *Id.* at 387-88, 610 S.E.2d at 370. The Court stated:

> Even assuming that [the decedent] refused to accept [the respondent's] occasional offers of financial assistance, the trial court could reasonably have concluded that [the respondent's] sporadic contacts with his daughter over a seventeen-year period failed to reflect the degree of "presence," "love," "care," and "opportunity to display filial affection" that defines non-abandoning parents.

Id. at 388, 610 S.E.2d at 370.

The fact that the respondent and the decedent had "some relationship" in *Lunsford* did not preclude our Supreme Court from upholding the trial court's conclusion that the respondent had wilfully abandoned the decedent. *Id.* at 391, 610 S.E.2d at 372. "[A]bandonment requires neither continuous absence nor an utter lack of concern on the part of the abandoning parent. . . . [A] child's physical and emotional needs are constant, and a parent's duties to care for and maintain a child cannot be discharged on an *ad hoc*, intermittent basis." *Id.* at 390-91, 610 S.E.2d at 372 (citations omitted).

Our Supreme Court's decision in *In re Lunsford c*ontrols the result in this case. Even though competent evidence in the record shows defendant and decedent maintained contact and "some

relationship," the trial court is not precluded from concluding defendant wilfully abandoned his son. *Id.* at 391, 610 S.E.2d at 372. The trial court's findings of fact are supported by competent evidence in the record, despite other competent evidence being presented that would support a contrary conclusion. *Resort Realty of the Outer Banks,* 163 N.C. App. at 117, 593 S.E.2d at 407-408 (2004). We are bound by the trial court's findings of fact. *Id.* In light of our Supreme Court's decision in *In re Lunsford*, the trial court's findings of fact support its conclusion that defendant wilfully abandoned decedent and is not entitled to share in decedent's estate. This assignment of error is overruled.

V. Conclusion

Even though respondent presented competent evidence to support a conclusion to the contrary, the trial court's findings of fact are supported by competent evidence in the record. The trial court's findings of fact support its conclusions of law. The trial court's order is affirmed.

Affirmed.

Judges HUDSON and GEER concur.

Report per Rule 30(e).