

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-964

Filed: 16 April 2019

Catawba County, No. 16 CVS 1469

CHINA LASHAE SWINT, a minor child, by and through her Guardian ad Litem,  
SUSANNAH L. BROWN, Plaintiffs,

v.

JOHN DOE, ADMINISTRATOR OF THE ESTATE OF ARON JOHNSON, JR.;  
LYDIA WILLIAMS, TERRIE COVINGTON; VERDIE MAE DEGREE; SARAH  
JASCSON; SELMA PHILLIPS; KATIE SARRATT; and DEEGEE HERNDON,  
Defendants.

Appeal by Defendants from order entered 8 June 2018 by Judge Nathaniel J.  
Poovey in Catawba County Superior Court. Heard in the Court of Appeals 27  
February 2019.

*Morgan Law, PLLC, by William E. Morgan, for Plaintiffs.*

*The Law Firm of John C. Hensley, Jr. P.C., by Michael J. Greer, for Defendants.*

DILLON, Judge.

Defendants Lydia Williams, Verdie Mae Degree, Sarah Jackson, Selma  
Phillips, and Katie Sarratt (the “Defendants”) appeal from an order granting  
Plaintiffs’ motion for summary judgment.

I. Background

Plaintiff China Swint, a minor child, commenced this action to establish that  
Aron Johnson, Jr., now deceased, was her father. Ms. Swint seeks to establish the

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paternity of Mr. Johnson in this action so that she can assert a right of inheritance in a pending special proceeding, docket number 15-E-734, regarding the administration of Mr. Johnson's estate.

In December 2014, Mr. Johnson passed away, leaving no will. In 2015, within a year of Mr. Johnson's death, the special proceeding for the administration of his estate referenced above was commenced. Over the course of the next year, relatives of Mr. Johnson litigated issues concerning the proper administration of his estate.

At the time of Mr. Johnson's death, Ms. Swint was an adolescent minor. In June 2016, Ms. Swint, through her guardian ad litem, commenced this present action seeking a judgment establishing Mr. Johnson's paternity and a declaration that she is, therefore, entitled to rights of inheritance under our Intestate Succession Act.

Defendants, all relatives of Mr. Johnson, answered, denying Ms. Swint's paternity claim.

Ms. Swint and one of the Defendants filed cross-motions for summary judgment. After a hearing on the matter, Ms. Swint's motion for summary judgment was granted and the Defendant's motion for summary judgment was denied. Defendants timely appealed.

II. Analysis

Defendants argue that the trial court erred in granting Ms. Swint's motion for summary judgment.

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We review a trial court's ruling on a motion for summary judgment *de novo*. *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470, 597 S.E.2d 674, 693 (2004). Summary judgment is proper when "there is no genuine issue as to any material fact and . . . any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2018).

In her complaint, Ms. Swint essentially sought (1) an order establishing Mr. Johnson's paternity and (2) a declaration that Ms. Swint has the right to inherit from Mr. Johnson's estate. For the following reasons, we conclude that the trial court did not err in granting summary judgment for Ms. Swint on her claim to establish paternity: the evidence before the trial court established Mr. Johnson's paternity as a matter of law. However, we further conclude that the trial court erred in granting Ms. Swint summary judgment on her claim for a declaration that she is entitled to inherit from Mr. Johnson, as that issue must be resolved by the clerk in the special proceeding regarding Mr. Johnson's estate.

A child born out of wedlock may be entitled to rights of inheritance from her putative father if she establishes his paternity. Specifically, N.C. Gen. Stat. § 29-19 provides that "a child born out of wedlock shall be entitled to take by, through and from . . . [a]ny person who has been finally adjudged to be the father of the child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16[.]" N.C. Gen. Stat. § 29-19(b)(1) (2016).

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Chapter 49-14 allows for a child to bring an action to establish paternity even where the putative father has already died and an estate proceeding has been commenced. Specifically, Section 49-14 provides that where a proceeding for the administration of the estate of the putative father has been commenced within a year of his death, a separate action to establish paternity may be maintained if commenced “[w]ithin the period specified in [Section] 28A-19-3(a) for presentation of claims against an estate[.]” N.C. Gen. Stat. § 49-14(c)(3) (2016). Here, the special proceeding was brought within a year of Mr. Johnson’s death *and* Ms. Swint commenced this present action to establish Mr. Johnson’s paternity within the time required for the presentation of claims against Mr. Johnson’s estate.<sup>1</sup> Therefore, we conclude that Ms. Swint has followed the proper procedure to establish Mr. Johnson’s paternity and in a timely fashion.

We further conclude that Ms. Swint was entitled to summary judgment on her claim establishing Mr. Johnson as her father. Section 49-14 requires that “[i]f the action to establish paternity is brought more than three years after birth of a child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test.” N.C. Gen.

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<sup>1</sup> Section 28A-19-1(b) allows for claims against an estate to be presented simply *by filing an action against the decedent’s personal representative*, as was done here by the filing of this present action. N.C. Gen. Stat. § 28A-19-1(b) (2016). We note that Defendants have never asserted that Ms. Swint’s claim was untimely and that it does appear from the record that Ms. Swint’s claim was timely filed.

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Stat. § 49-14(d) (2016). Here, Ms. Swint complied with Section 49-14(d) by presenting a DNA test, establishing Mr. Johnson's paternity at a probability of 99.99%. Further, Ms. Swint offered the affidavit of her mother in which her mother stated that she had sexual relations with Mr. Johnson nine months before Ms. Swint's birth and that she did not have sexual relations with anyone else within a year of Ms. Swint's birth. And Ms. Swint offered the affidavit of a woman who was Mr. Johnson's domestic partner for a time after Ms. Swint's birth who essentially stated that Mr. Johnson considered Ms. Swint to be his daughter and acted consistently with this belief.

There is no evidence in the record contradicting the evidence offered by Ms. Swint. Therefore, the trial court did not err in granting summary judgment on Ms. Swint's claim establishing Mr. Johnson's paternity.

We, however, reverse the portion of the summary judgment order which declares that Ms. Swint is entitled to take from Mr. Johnson's estate. A trial court is only entitled to declare rights on matters within its jurisdiction. N.C. Gen. Stat. § 1-253 (2018) ("Courts of record within their respective jurisdictions shall have the power to declare rights . . .[.]"). And it is within the exclusive jurisdiction of the clerk in a special proceeding to administer estates. *See* N.C. Gen. Stat. § 28A-1-3 (2018) (providing the clerk with jurisdiction to administer estates); *Morris v. Morris*, 245 N.C. 30, 32, 95 S.E.2d 110, 112 (1956) (stating that the clerk's original jurisdiction over the administration of estates is exclusive). The issue of Ms. Swint's right to

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inherit is more properly one to be decided by the clerk in the pending special proceeding. We note that the clerk must treat Ms. Swint as Mr. Johnson's legitimate child, as his paternity has now been established in this present action. *See* N.C. Gen. Stat. § 29-19 (2018). However, it is an issue for the clerk presiding in the special proceeding to determine whether Ms. Swint is not otherwise disqualified to inherit from Mr. Johnson's estate.<sup>2</sup>

AFFIRMED IN PART, REVERSED IN PART.

Judge INMAN concurs.

Judge COLLINS concurs in result by separate opinion.

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<sup>2</sup> A clerk may determine that an otherwise lawful heir is disqualified from inheriting. For example, if it is determined that the heir caused the death of the deceased, the heir may be disqualified. *See* N.C. Gen. Stat. § 31A-4 (2018). We note that there is no evidence before us that Ms. Swint is in any way disqualified from inheriting from Mr. Johnson's estate, but that determination must be made by the clerk based on the evidence presented in the special proceeding.

COLLINS, Judge, concurring.

I concur in the majority opinion, but write separately to explain how the Complaint, which does not specifically cite N.C. Gen. Stat. § 49-14 as a basis for Plaintiff's paternity claim, is legally sufficient to bring the claim to the court's attention.

Plaintiff's Complaint specifically mentions N.C. Gen. Stat. §§ 29-18 and 29-19 as the legal bases for her paternity and inheritance claims. Section 29-18, which concerns the inheritance rights of legitimated children, is not available to Plaintiff, as the record nowhere reflects that she is a legitimated child. The record does reflect that Plaintiff is a child born out of wedlock, however, and as mentioned, a child born out of wedlock may take from a decedent under section 29-19 if the child gets a judgment that the decedent was the child's parent.

As Defendant Williams noted in her motion for summary judgment, posthumous determination of paternity may only be effected by N.C. Gen. Stat. § 49-14. The Complaint does not specifically cite section 49-14 as a basis for Plaintiff's paternity claim, but courts have held that a plaintiff's failure to cite the correct statutory basis for a claim is not fatal to the claim so long as the claim brought is legally sufficient and brought to the court's attention. *See Garrison v. Garrison*, 87 N.C. App. 591, 596, 361 S.E.2d 921, 925 (1987) ("The failure to state a particular rule number as a basis for a motion is not a fatal error so long as the substantive grounds

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*COLLINS, J., concurring.*

and relief desired are apparent and the opponent of the motion is not prejudiced thereby.”).

Defendants can claim no surprise here, since (1) Plaintiff expressly sought a determination of paternity in her prayer for judgment, (2) the Complaint mentions section 49-14 as a possible basis for Plaintiff’s section 29-19 claim, and (3) Defendant Williams discussed section 49-14 in her motion for summary judgment to the trial court. Because Plaintiff’s paternity claim is legally sufficient, the correct statutory basis for Plaintiff’s paternity claim was before the trial court, and Defendants were aware of the proper statute (and therefore capable of contesting the claim),<sup>3</sup> I agree that we may construe the Complaint as having sought—and the trial court as having granted—a declaratory judgment under section 49-14 that Mr. Johnson was Plaintiff’s father.

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<sup>3</sup> In contesting Plaintiff’s motion for summary judgment, Defendants could have provided the trial court with sworn evidence controverting the DNA test report as contemplated by Rule 56(e), or petitioned the trial court to allow them to take depositions or discovery in order to seek evidence they might use to controvert the DNA test report as contemplated by Rule 56(f), but did neither.