IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-886

Filed: 17 November 2020

Beaufort County, No. 18-CvS-116

JAMES GREGORY TAYLOR, Individually and in his Capacity as Co-Executor of the Estate of Lloyd R. Taylor, Plaintiff,

v.

VICKI TAYLOR VAUGHAN, Individually and in her Capacity as Co-Executrix of Estate of Lloyd R. Taylor, Defendant.

Appeal by Plaintiff from judgment entered 22 April 2019 by Judge Jefferey Foster in Superior Court, Beaufort County. Heard in the Court of Appeals 14 April 2020.

White & Allen, P.A., by Amanda L. Owens, for the Plaintiff.

W. Gregory Duke for the Defendant.

McGEE, Chief Judge.

James Gregory Taylor ("Plaintiff"), acting individually and in his capacity as co-executor of the estate of Lloyd R. Taylor, appeals from the denial of his motion for summary judgment and the entry of summary judgment on 22 April 2019 in favor of

Vicki Taylor Vaughan ("Defendant"), acting individually and as co-executrix of the estate of Lloyd R. Taylor. We affirm.

I. Background

Lloyd R. Taylor ("Testator") died testate on 10 May 2017, and his last will and testament, dated 17 January 2017, was probated and filed with the Clerk of Court of Beaufort County. A codicil, also dated 17 January 2017, to Testator's will was also probated and filed with the Clerk of Court of Beaufort County. Article III of the will names Plaintiff, Testator's son, and Defendant, Testator's daughter, as co-executor and co-executrix of Testator's estate. Testator's will includes the following provision, among others:

> All of the residue of my estate I will, devise and bequeath unto my beloved wife, JOSEPHINE H. TAYLOR, to her absolutely. Should she predecease me, then and in this event I will, devise and bequeath all other property owned by me in shares unto my two surviving children, James Gregory Taylor and Vicki Taylor Vaughan.

The codicil to the will, dated the same day, included the following provisions, among others:

> ITEM I
>
> The residue of monies and securities at Wells Fargo Bank will be equally divided between James Gregory Taylor and Vicki Taylor Vaughan. The residue of money and CD's at First South Bank will also be equally divided between James Gregory Taylor and Vicki Taylor Vaughan.
>
> ITEM II

> The monthly lease payment from Crown Castle and deposited in checking account at First South Bank shall be equally divided between James Gregory Taylor and Vicki Taylor Vaughan.
>
> ITEM III
>
> To James Gregory Taylor, I give, devise and bequeath the following real estate:
>
> 1. "The Hudson Farm" described as tract #1 in deed from W. Rayvon Taylor and Hope H. Taylor to Lloyd R. Taylor and Josephine H. Taylor and recorded in Book 762, page 682.
>
> 2. Tract #3 "Union Chapel Farm" described in deed from W. Rayvon Taylor and Hope H. Taylor to Lloyd R. Taylor and Josephine H. Taylor and recorded in Book 762, page 682.

Certain other real estate and a tractor were devised to Defendant. The codicil also included the following provision:

> ITEM VI
>
> Regarding other personal property: if there are some particular items that James Gregory Taylor would want, this would be worked out between Vicki Taylor Vaughan and James Gregory Taylor.

At the time of his death, Testator held a Ground Lease Agreement dated 28 June 2006, as amended, with Crown Castle Towers 05 LLC ("Lessee"). Per the lease agreement, Lessee paid Testator $4,800.00 per year in equal monthly installments of $400.00, and the lease provided for increases in rent payment every five years of the lease term. The lease site is located at 88 Carawan Road, Chocowinity, North Carolina, a tract of land devised to Plaintiff pursuant to Item III of the codicil to

Testator's will. Paragraph 17 of the Ground Lease Agreement states: "If during the Lease term, [Testator] sells all or part of [Testator's] Property, of which the Leased Premises is a part, to a purchaser other than Lessee, then such sale and title to said property shall be under and subject to this Agreement and Lessee's rights hereunder." Paragraph 35 of the agreement provides that the agreement "shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto."

Plaintiff commenced this action by filing a complaint on 16 February 2019, requesting that the court "enter an Order granting Plaintiff declaratory judgment determining that Plaintiff is the sole owner of the Lease with Crown Castle Towers 05 LLC and directing the Lessee to pay to Plaintiff all rental payments under the Lease beginning May 10, 2017 and thereafter[.]" Defendant filed her answer and counterclaim on 22 March 2018, asking that the court order "the Plaintiff promptly inform Crown Castle towers of dual ownership of the lease, as set out in the Codicil, Item II, with 50% owned by Plaintiff and 50% owned by Defendant[.]" Plaintiff moved for summary judgment on 9 January 2019. After a hearing, the trial court entered an order denying Plaintiff's motion for summary judgment and entering summary judgment in favor of Defendant. Plaintiff appeals.

II. Standard of Review

We review the interpretation of a will and the entry of summary judgment *de novo*. *Simmons v. Waddell*, 241 N.C. App. 512, 518–19, 775 S.E.2d 661, 670 (2015)

(the interpretation of a will); *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007) (summary judgment). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2019). Summary judgment may be entered against the moving party when the non-moving party is entitled to judgment as a matter of law. *East Carolina Oil Transp., Inc. v. Petroleum Fuel & Term Co.*, 82 N.C. App. 746, 348 S.E.2d 165 (1986), *cert. denied*, 318 N.C. 693, 351 S.E.2d 745 (1987).

III. Analysis

Plaintiff argues that the trial court erred in denying his motion for summary judgment and entering summary judgment in favor of Defendant because "there is no genuine issue of material fact as to his entitlement to all future rent accrued from the Lease." Plaintiff contends Testator bequeathed the land encumbered by the lease to Plaintiff, so the "rent accrued from [the] date of death of the [Testator] forward belongs to the heir that is entitled to the Real Property[,]"—Plaintiff. Defendant argues that Testator's clear intent was to bequeath the monthly lease payments to his children equally and that no genuine issue of material fact exists regarding Defendant's entitlement to one-half the monthly lease payments. We agree with Defendant and conclude that, because Testator's intent is clear and not contrary to

any law or public policy, the trial court did not err in denying Plaintiff's motion for summary judgment and entering summary judgment in favor of Defendant.

"It is an elementary rule . . . that the intention of the testator is the polar star which is to guide the interpretation of all wills, and, when ascertained, effect will be given to it unless it violates some rule of law[ ] or is contrary to public policy." *Pittman v. Thomas*, 307 N.C. 485, 492, 299 S.E.2d 207, 211 (1983) (internal marks and citation omitted). We determine intent "from the four corners of the will and the circumstances attending its execution." *Nelson v. Bennett*, 204 N.C. App. 467, 472, 694 S.E.2d 771, 775 (2010) (citation omitted). "When interpreting a will, every word and clause must, if possible, be given effect and apparent conflicts reconciled[,]" *id.* (internal marks and citation omitted), and we assume that the testator "chose her words carefully and intended to use the language that she used[,]" *id.* at 474, 694 S.E.2d at 776.

We must first determine Testator's intent. The trial court found

> that the language in the will indicates a testamentary intent that the funds received from that lease be divided equally between the two children that take under his will . . . [and] that the will otherwise in all . . . counts[,] taking into consideration the four corners of the will, shows an intent by the testator to divide his property equally between his two children, and that he attempted to do so in all manners with regard to his financial property and with his real property. That the language in Item II is consistent with those other intents of the testator in that it purports to divide the income from the cell tower lease site to the two beneficiaries under the will.

We agree. Item I of Testator's codicil states that "[t]he residue of money and CD's at First South Bank will [] be equally divided between [Plaintiff] and [Defendant]." Item II states that "[t]he monthly lease payment . . . deposited in checking account at First South Bank shall be equally divided" in the same manner. Plaintiff argues that Item II does not refer to *future* lease payments but to the lease payments accrued *prior to* Testator's death, "that rent before the [Testator's] date of death was to be deposited in the First South Bank account specified in the Codicil and split between the parties." This argument ignores an elementary principle of construction in the interpretation of wills: "every word and clause must, if possible, be given effect[.]" *Nelson*, 204 N.C. App. at 472, 694 S.E.2d at 775. Because Item I disposed of all of the residue of "monies[,] securities[,]" and "CD's" in both Wells Fargo Bank and First South Bank, reading Item II as referring only to the lease payments already accrued and deposited in the First South Bank account would render Item II superfluous. This is clear evidence of Testator's intent to divide all future monthly lease payments equally between Plaintiff and Defendant until the termination of the lease.

Having determined Testator's intent, we consider whether giving effect to his intent would violate some rule of law or public policy. *See Pittman*, 307 N.C. 492, 299 S.E.2d 211. Generally, "a devise in perpetuity of the rents and profits, or of the income, of land passes the land itself, in the absence of anything to indicate a contrary

intention." *Halliburton v. Phifer*, 185 N.C. 366, 117 S.E. 296, 296–97 (1923); *accord Ladies Benev. Soc. v. Orrell*, 195 N.C. 405, 142 S.E. 493, 495 (1928) ("We have said that a devise of the income from land ordinarily passed the land, but not always, it is otherwise if the testator expresses or indicates an intention inconsistent with the transfer of the legal title to the beneficiary—that is, if he indicates an intention to separate the income from the principal."). And in interpreting wills, "all rules of construction[ ] must yield to the paramount intent of the testator as gathered from the four corners of the will." *Andrews v. Andrews*, 253 N.C. 139, 143, 116 S.E.2d 436, 440 (1960).

In this case there is a "contrary intention" to that general rule of construction: Testator's clear testamentary intent to divide the lease proceeds equally between his son and daughter. Plaintiff acknowledges that testamentary intent governs this Court's interpretation of a will "unless it violates some rule of law or is contrary to public policy" but does not point to any authority for the proposition that Testator's intent to divide the proceeds from the lease between Plaintiff and Defendant equally would violate any rule of law. *Pittman*, 307 N.C. at 492, 299 S.E.2d at 211 (internal marks and citation omitted); *see also* N.C. R. App. P. 28(b)(6) ("The body of the argument . . . shall contain citations of the authorities upon which the appellant relies."). Nor have we found such authority. Indeed, this Court has encountered similar arrangements without denouncing the same as impermissible. *See, e.g.*,

Hinson v. Hinson, 80 N.C. App. 561, 562, 343 S.E.2d 266, 267 (1986) (resolving question of renunciation of property rights by the plaintiff when the plaintiff was bequeathed certain real property encumbered by a lease which required the plaintiff to "share and share a like with his brother[, the defendant,]" the lease payments). We therefore conclude that Testator's intent to require Plaintiff and Defendant to share equally in the lease payments is not contrary to any rule of law or public policy.

IV. Conclusion

We conclude that Testator's will clearly imparts Testator's intent that Plaintiff and Defendant equally share the rental payments from Union Chapel Farm, and that this intent is not contrary to any rule of law or public policy. The trial court did not err in entering summary judgment in favor of Defendant where there is no genuine issue of material fact regarding Defendant's entitlement to half the lease payments.

AFFIRMED.

Judges BRYANT and BROOK concur.

Report per Rule 30(e).