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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-252

No. COA20-489

Filed 1 June 2021

Rowan County, No. 19-CVS-1529

AMANDA C. SOLOMON, as Executrix of the Estate of Kent Anderson Cundiff,

Plaintiff-Appellant,

v.

DAWN LORRAINE CUNDIFF, Defendant-Appellee.

Appeal by Defendant from order entered 27 February 2020 by The Honorable Anna Mills Wagoner in Rowan County District Court. Heard in the Court of Appeals 9 March 2021.

Shumaker, Loop, & Kendrick, LLP, by Lynn F. Chandler, for Plaintiff-Appellant

Burns, Day, & Presnell, PA, by James J. Mills, for Defendant-Appellee.

CARPENTER, Judge.

I. Factual and Procedural Background

¶ 1

Amanda C. Solomon (“Plaintiff”) is the Executrix of the Decedent’s estate. Dawn Lorraine Cundiff (“Defendant”) is the surviving spouse of Kent Anderson Cundiff (“Decedent”). Following the death of her husband, Defendant exercised her right to receive a statutory elective share of the Decedent’s estate pursuant to N.C.

Gen. Stat. §30-3.1 (2019). On 10 May 2019, Defendant’s counsel filed a petition for elective share and included a certificate of service indicating that a copy was sent to Plaintiff’s counsel, pursuant to N.C. Gen. Stat. §30-3.4(b) (2019).

¶ 2 On 19 July 2019, Plaintiff instituted a separate action in Rowan County superior court by the filing of a complaint seeking declaratory judgment, alleging the petition for elective share was improperly executed. On 19 September 2019, Defendant filed an answer asserting an absolute right to elective share and affirmative defenses, including compliance with all statutory requirements.

¶ 3 On 2 January 2020, Plaintiff filed a motion for judgment on the pleadings asserting Defendant was not in compliance with N.C. Gen. Stat. §30-3.4(e1). Defendant responded with a motion for judgment on the pleadings and motion for summary judgment asserting the petition for elective share was proper.

¶ 4 The trial court heard arguments on 21 January 2020 on both parties’ motions for judgment on the pleadings and Plaintiff’s motion for summary judgment. The trial court denied all motions in its 22 January order. Parties together filed a joint motion for reconsideration on 27 February 2020. The joint motion asserted the elective share issue was a question of law for the court to decide and asked the trial court to reconsider both parties’ motions.

¶ 5 In its 27 February 2020 order, the trial court determined it lacked jurisdiction to rule on the motion for judgment on the pleadings because the clerk of superior

court had not yet made a determination “with regard to the Elective Share.” Plaintiff filed notice of appeal on 23 March 2020.

II. Issues

¶ 6 Plaintiff argues the trial court erred by (1) determining it lacked subject matter jurisdiction to rule on Plaintiff’s motion for declaratory judgment until the clerk of superior court delivered a decision regarding the elective share claim and (2) denying Plaintiff’s motion for judgment on the pleadings.

III. Jurisdiction

¶ 7 Appeal lies in this Court as a matter of right pursuant to N.C. Gen. Stat. § 7A-27(b)(3) (2019).

IV. Analysis

¶ 8 Plaintiff contends the trial court erred in determining it lacked subject matter jurisdiction to hear Plaintiff’s motion for declaratory judgment until such a time as the clerk of superior court delivered a decision regarding Defendant’s entitlement to an elective share, and therefore improperly refused to rule on the motion. We disagree.

¶ 9 “Whether a trial court has subject-matter jurisdiction is a question of law, reviewed *de novo* on appeal.” *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). Subject matter jurisdiction “involves the authority of a court to adjudicate the type of controversy presented by the action before it.” *Haker-Volkening*

v. Haker, 143 N.C. App. 688, 693, 547 S.E.2d 127, 130, *disc. review denied*, 354 N.C. 217, 554 S.E.2d 338 (2001).

¶ 10 N.C. Gen. Stat. §30-3.4(f) (2019) gives exclusive jurisdiction to the clerk of superior court of the county in which the primary administration of a decedent's estate lies to "determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse." The effect of this procedural requirement is to withhold jurisdiction to rule on the declaratory judgment from the trial court until such time as the clerk of superior court has heard the claim for the elective share. N.C. Gen. Stat. § 30-3.4(f). Jurisdiction therefore rests with the clerk of superior court to determine the validity of the elective share and to make a determination on the filing. The trial court's conclusion that it lacked subject matter jurisdiction was proper in light of the governing statute.

¶ 11 Plaintiff further contends the trial court erred by denying Plaintiff's motion for judgment on the pleadings. Because we hold the trial court lacked subject matter jurisdiction to proceed with the matter until such a time as the clerk of superior court delivered a decision regarding Defendant's entitlement to an elective share, we do not reach this issue.

V. Conclusion

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Opinion of the Court

¶ 12 We hold the trial court properly declined to hear Plaintiff's declaratory judgment action until such a time as the clerk of superior court delivered a decision regarding Defendant's entitlement to an elective share. The issues complained of on appeal in this action are improper in a separate declaratory judgment action.

AFFIRMED.

Judges STROUD and DIETZ concur.

Report per Rule 30(e).