IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-532

No. COA 21-460

Filed 2 August 2022

Mecklenburg County, No. 17-CVD-1275

REBECCA HILL, Personal Representative of the Estate of CARLYLE HERBERT HILL, III, Plaintiff,

v.

LINDA DURRETT, Defendant.

Appeal by Defendant from judgment entered 27 January 2021 by Judge Sean Smith in Mecklenburg County District Court. Heard in the Court of Appeals 8 March 2022.

The Law Office of William L. Sitton, Jr., by William L. Sitton, Jr., for Plaintiff-Appellee.

Plumides, Romano & Johnson, P.C., by Richard B. Johnson, for Defendant-Appellant.

INMAN, Judge.

¶ 1 Linda Durrett appeals from the trial court's order annulling her marriage to Carlyle Hill. After careful review, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 The evidence in the record tends to show the following:

¶ 3 Carlyle Hill and Linda Durrett were married in a friend's backyard on 6 June 2015. They separated fourteen months later, on 17 August 2016. They had no children together.

¶ 4 The parties' marriage ceremony was officiated by Deborah A. Plante, also known as "Azera Moonhawk," a friend of Ms. Durrett. Ms. Plante is not a magistrate, an ordained minister, or a minister authorized by a church to perform weddings. Ms. Plante obtained a Certificate of Ministry from the Universal Life Church via a mail-order service.

¶ 5 On 4 August 2016, Ms. Durrett filed an *ex parte* complaint for domestic violence protective order, which was dismissed. Four days later, on 8 August 2016, Ms. Durrett filed an involuntary commitment action against Mr. Hill. As a result, Mr. Hill was taken into custody, examined, and released without commitment. On 17 August 2016, Ms. Durrett filed a second *ex parte* complaint for domestic violence protective order, which the trial court granted. Mr. Hill was ousted from his home as a result.

¶ 6 The next day, Mr. Hill filed a verified complaint in Mecklenburg County for divorce, equitable distribution, and interim distribution. The trial court ordered interim distribution on 14 September 2016, awarding Mr. Hill the marital home, evicting Ms. Durrett, and requiring her to return jewelry and keys to a truck. Both parties agree the items distributed to Mr. Hill in the interim distribution were his

separate property and were not subject to equitable distribution.

¶ 7 Mr. Hill later filed a separate complaint seeking to annul the marriage, alleging it was void based on Ms. Plante's insufficient ordination.

¶ 8 While both actions were still pending, Mr. Hill died, and his estate (the "Hill Estate") was substituted as party in the annulment action.

¶ 9 The Hill Estate filed a motion for summary judgment in the annulment action, which was heard on 26 October 2017. On 3 November 2017, the trial court granted the motion for summary judgment and ordered an annulment.[1] Ms. Durrett appealed the summary judgment order, and, on 19 March 2019, this Court vacated the annulment and remanded for further proceedings on the basis that annulment actions may be resolved only through trial and not on summary judgment. *Hill v. Durrett*, 264 N.C. App. 367, 374, 826 S.E.2d 470, 475 (2019).

¶ 10 In January 2021, the annulment action came on for a bench trial. Over Ms. Durrett's objections, Mr. Hill's former attorney, Mr. Hicks, testified to statements Mr. Hill made prior to his death regarding the marriage ceremony, which had led Mr. Hicks to investigate whether the marriage was valid. Specifically, Mr. Hicks testified:

> So that day Mr. Hill was expressing frustration about the situation and he explained to me, "I did not get married in my own church where I'm an elder. I got married in friend's

[1] It appears that the trial court originally entered its order on 3 November 2017 and then—for reasons undisclosed in the record—issued a subsequent order on 9 November 2017 that was substantively identical to the order entered on 3 November 2017.

> backyard by one of [Ms. Durrett's] friends." And there was a document required to get the marriage done, and—so that—so that [Ms. Durrett's] friend could do the marriage.
>
> Mr. Hill did not recall who the person was. He didn't recall anything about the—what denomination they may have been from. And so I went to the Register of Deeds and started investigating a marriage license.
>
> . . . .
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> I went and looked at the marriage license, found Ms. Plante's name . . . .
>
> . . . .
>
> So at that point, I started doing research with respect to Ms. Plante to find out where she was a reverend, and ultimately could not find anything.

Mr. Hicks further testified he subpoenaed Ms. Plante for evidence of her qualifications to conduct a marriage, and that she produced a certificate from the Universal Life Church.

¶ 11 Ms. Durrett testified she told Mr. Hill "that as far as I knew, Reverend Plante was a minister that could marry us." Ms. Durrett testified Ms. Plante was a "Reiki master,"[2] that she had attended several Reiki ceremonies involving Ms. Plante, and that she trusted and believed she was a validly ordained minister. According to the record evidence, Ms. Plante referred to herself with the title "Reverend." Ms. Durrett

[2] Reiki "is an eastern form of energy healing medicine. It's based on the same philosophy as Tai Chi and acupuncture."

claimed she asked Ms. Plante "if she had the credentials under the current law, that she was qualified to marry [Mr. Hill] and me."

¶ 12 On remand, Ms. Durrett did not dispute the marriage was voidable and that grounds for annulment existed. But she argued the divorce action that Mr. Hill first filed and the prior entry of the interim distribution order judicially and equitably estopped Mr. Hill, and later the Hill Estate, from pursuing an annulment. The trial court rejected those defenses and entered judgment annulling the marriage on 27 January 2021. Ms. Durrett appeals.

II. ANALYSIS

A. Hearsay

¶ 13 Ms. Durrett first argues that the trial court abused its discretion when it admitted Mr. Hicks' testimony recounting Mr. Hill's statements about how the marriage ceremony came about, and that the trial court erroneously based several findings of fact on the testimony. Specifically, Ms. Durrett contends the evidence of what Mr. Hill stated to Mr. Hicks was improperly admitted under Rule 804(b)(5), the catch-all rule for admission of hearsay testimony when the declarant is unavailable. *See* N.C. Gen. Stat. § 8C-1, Rule 804(b)(5) (2021).

¶ 14 We agree with the Hill Estate that the challenged testimony was not hearsay and the trial court's findings of fact are supported by competent evidence.

¶ 15 "The trial court's determination as to whether an out-of-court statement

constitutes hearsay is reviewed de novo on appeal." *State v. Castaneda*, 215 N.C. App. 144, 147, 715 S.E.2d 290, 293 (2011). "However, even when the trial court commits error in allowing the admission of hearsay statements, one must show that such error was prejudicial in order to warrant reversal." *In re M.G.T.-B.*, 177 N.C. App. 771, 775, 629 S.E.2d 916, 919 (2006). "The well-established rule is that findings of fact by the trial court supported by competent evidence are binding on the appellate courts even if the evidence would support a contrary finding." *Scott v. Scott*, 336 N.C. 284, 291, 442 S.E.2d 493, 497 (1994). A trial court's unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). "Where there is competent evidence to support the court's findings, the admission of incompetent evidence is not prejudicial." *In re McMillon*, 143 N.C. App. 402, 411, 546 S.E.2d 169, 175 (2001) (citation omitted).

¶ 16 " 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2021). Put differently, a statement is hearsay when it is introduced to prove the facts recounted in the out-of-court statement. As our Supreme Court has observed:

> When evidence of such statements by one other than the witness testifying is offered for a proper purpose other than to prove the truth of the matter asserted, it is not hearsay

> and is admissible. Specifically, statements of one person to another are admissible to explain the subsequent conduct of the person to whom the statement was made.

State v. Coffey, 326 N.C. 268, 282, 389 S.E.2d 48, 56 (1990) (quotation marks and citation omitted).

¶ 17 Mr. Hicks' testimony falls within this category and is not hearsay. The challenged statements explain why Mr. Hicks began investigating Ms. Plante's credentials and ultimately filed the annulment action on behalf of Mr. Hill despite having previously filed an initial action for divorce. Mr. Hill's statements to Mr. Hicks were not offered to prove where or by whom the marriage ceremony was held. *Id.*

¶ 18 Regardless, the findings Ms. Durrett challenges are supported by other evidence in the record. Ms. Durrett challenges findings 10, 14, 15, 20, 21, 30, 31, and 33. Findings of Fact 10 and 15 find Mr. Hill did not know Ms. Plante ahead of the ceremony and did not know her qualifications. These findings are supported by other evidence in record, namely Ms. Durrett's testimony that she was solely responsible for finding Ms. Plante as the officiant and that she did not research Ms. Plante's qualification prior to the ceremony. We have no authority to second guess reasonable inferences drawn by the trial court. *See, e.g., Wornstaff v. Wornstaff*, 179 N.C. App. 516, 519, 634 S.E.2d 567, 569 (2006) ("While different reasonable inferences could be drawn from the evidence presented, we must defer to the trial judge's determination of which reasonable inferences should have been drawn."). Competent evidence

supports findings 10 and 15.

¶ 19 Finding of Fact 14 determined that Mr. Hill and Mr. Hicks had not discussed the legal requirements for wedding officiants before they filed the divorce and equitable distribution action. This finding is supported by Mr. Hicks' testimony that he did not discuss the subject with Mr. Hill until November 2016, after the divorce and equitable distribution suit had been filed. This finding is thus supported by competent evidence.

¶ 20 Finding of Fact 20 determined that Mr. Hill "mentioned to Hicks that the wedding ceremony did not take place at his church and that the officiant who performed the wedding had ordered a certificate online in order to do so." The finding does not recount Mr. Hicks' testimony with perfect accuracy, as it does not appear from the transcript that the testimony referenced a statement by Mr. Hill that Ms. Plante obtained her Universal Life Church ordination online. But this erroneous portion of the finding is not material to the conclusions reached by the trial court. Ms. Durrett testified that the ceremony was held in a friend's backyard and admitted in her answer that Ms. Plante obtained the ordination by mail-order. The material portion of the challenged finding of fact is supported by sufficient evidence.

¶ 21 Finding of Fact 21 recounts the advice Mr. Hicks gave Mr. Hill about the legal requirements for wedding officiants. Like Mr. Hicks' testimony relaying Mr. Hill's statements to him, this testimony explains Mr. Hicks' actions and supports the trial

court's finding in this regard. Finding of Fact 21 is thus supported by competent evidence in the record.

¶ 22 Finding of Fact 30 finds Mr. Hill was under significant duress at the time he filed the divorce and equitable distribution action. In the two weeks prior to filing suit, Ms. Durrett sought to have Mr. Hill involuntarily committed, caused him to be taken into custody and submitted to psychiatric examination before he was released, and filed two actions for domestic violence protective orders against him, one of which prohibited him from returning to his home. We conclude the trial court's finding that Mr. Hill acted under significant duress is supported by reasonable inferences from this competent evidence. *See Wornstaff*, 179 N.C. App. at 519, 634 S.E.2d at 569.

¶ 23 Finding of Fact 31 states that in Mr. Hill's divorce and equitable distribution action he "made the allegation that he was married to Defendant innocently and inadvertently." This finding is supported by reasonable inferences from the competent evidence, the same evidence that supports Findings of Fact 10, 14, 15, 21, and 30, as well as Mr. Hicks' direct testimony that he recommended Mr. Hill file the annulment action because of their late discovery that Ms. Plante was not a validly qualified officiant. The trial court's finding as to Mr. Hill's state of mind in alleging marriage during the divorce and equitable distribution action is thus supported by competent circumstantial evidence of record. *Id.* at 519, 634 S.E.2d at 569.

¶ 24 Finding of Fact 32 finds Ms. Durrett was not prejudiced by the interim

equitable distribution order, nor by Mr. Hill's later assertion that the marriage was invalid. This finding is supported by Ms. Durrett's admission that the property allocated to Mr. Hill by the trial court in the interim distribution action was his separate property, therefore entitling him to it regardless of his marital status.[3]

¶ 25 Ms. Durrett did testify that she paid for repairs to the house and that her furniture was in the home, but "[t]he trial judge has the authority to believe all, any, or none of [Ms. Durrett's] testimony." *Sharp v. Sharp*, 116 N.C. App. 513, 530, 449 S.E.2d 39, 48 (1994) (citation omitted). Additionally, there was no assertion or testimony at trial that Ms. Durrett could not pursue a claim against the Hill Estate for the return of this property as property belonging to her. The trial court's finding that Ms. Durrett did not suffer any prejudice by the interim distribution and subsequent claim of annulment is supported by competent evidence.

B. Judicial Estoppel

¶ 26 Ms. Durrett next argues the trial court erred in rejecting her judicial estoppel defense and granting the claim for an annulment. We disagree.

¶ 27 Application of judicial estoppel to a civil claim is discretionary and thus subject to the abuse of discretion standard. *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 38, 591 S.E.2d 870, 894 (2004).

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[3] Ms. Durrett suggests she was prejudiced in that Mr. Hill's home was returned to him "earl[ier] in the proceedings[.]"

¶ 28 Judicial estoppel is a flexible doctrine that exists "to protect the integrity of the judicial process[.]" *Id.* at 28, 591 S.E.2d at 888. Its purpose is to prevent parties "from asserting a legal position inconsistent with one taken earlier in the same or related litigation." *Price v. Price*, 169 N.C. App. 187, 191, 609 S.E.2d 450, 452 (2005) (citation omitted). "[T]he circumstances under which judicial estoppel may appropriately be invoked are . . . not reducible to any general formulation o[r] principle." *Whitacre P'ship*, 358 N.C. at 28, 591 S.E.2d at 888. Instead, the doctrine requires consideration of several discretionary factors:

> First, a party's subsequent position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding might pose a threat to judicial integrity by leading to inconsistent court determinations or the perception that either the first or the second court was misled. Third, courts consider whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Id. at 29, 591 S.E.2d at 888-89 (citations and quotation marks omitted). Our Supreme Court also "expressly guides our trial courts to consider whether a party's prior position was innocently asserted[,]" stressing "that it may be appropriate to resist application of judicial estoppel when a party's prior position was based on inadvertence or mistake." *Id.* at 34, 591 S.E.2d at 891-92 (quotation marks omitted).

¶ 29 We conclude the trial court's findings of fact, which are supported by competent evidence as described above, demonstrate the trial court did not abuse its discretion in declining to judicially estop the claim by Mr. Hill, and eventually by the Hill Estate, to annul the marriage. We do not view the two actions as clearly inconsistent given they both sought to end whatever existed between the parties. The trial court's interim distribution of Mr. Hill's separate property would not lead to inconsistent results regardless of whether the annulment was either granted or denied. Finally, competent evidence supports the trial court's finding that Mr. Hill innocently and inadvertently asserted the existence of a marriage in the equitable distribution action. Given that trial courts are required to consider the innocence, mistake, or inadvertence of a party in making inconsistent assertions even when elements sufficient to invoke judicial estoppel are met, *id.*, we cannot conclude the trial court abused its discretion in declining to judicially estop Mr. Hill's annulment claim.

C. Equitable Estoppel

¶ 30 Finally, Ms. Durrett argues the trial court erred in annulling the marriage because the Hill Estate is equitably estopped from seeking the annulment. We disagree.

¶ 31 We review a trial court's judgment rejecting a defendant's affirmative defense of equitable estoppel only to determine "whether competent evidence exists to support [the trial court's] findings of fact and whether the conclusions reached were proper in

light of the findings." *Lewis v. Edwards*, 147 N.C. App. 39, 48, 554 S.E.2d 17, 23 (2001) (citation and quotation marks omitted).

¶ 32 Ms. Durrett relies on *Mayer v. Mayer*, 66 N.C App. 522, 311 S.E.2d 659 (1984), and *Duncan v. Duncan*, 232 N.C. App. 369, 754 S.E.2d 451 (2014), in arguing the trial court was required to apply the doctrine of equitable estoppel here. This Court in *Mayer* held the husband was equitably estopped from denying the validity of his marriage due to his wife's invalid divorce from her previous husband, where

> (a) he participated in her procurement of the invalid divorce; (b) all parties relied upon the divorce's validity until [second husband] abandoned [wife]; and (c) a contrary result would create a marriage at will by [second husband], who could end the marital relationship at any time he desired, and yet prevent [wife] from avoiding the obligations of her remarriage.

Id. at 531, 311 S.E.2d at 665-66.

¶ 33 In *Duncan*, the couple held a second legal marriage ceremony upon discovering that their first marriage, officiated by a Universal Life Church minister and purported Cherokee medicine man who was not qualified to perform marriages, was invalid. 232 N.C. App. at 370, 754 S.E.2d at 453. In the parties' divorce proceedings, the husband alleged the marriage only lawfully commenced at the second ceremony. *Id.* at 370-71, 754 S.E.2d at 453. We held the husband was estopped from denying the earlier date since "both Plaintiff and Defendant were equally negligent in relying on [the first officiant's] credentials." *Id.* at 378, 754 S.E.2d at 458.

¶ 34 In this case, unlike *Mayer* and *Duncan*, competent evidence supports the trial court's finding that Mr. Hill did not directly and culpably participate in the conduct giving rise to the voidability of the marriage. When Mr. Hill asked Ms. Durrett if Ms. Plante was qualified to perform the ceremony, Ms. Durrett told him Ms. Plante "was a minister that could marry us." Further, Ms. Plante was Ms. Durrett's friend and not Mr. Hill's, and the parties determined Ms. Durrett would be responsible for finding the couple's officiant. In light of the trial court's finding and the supporting evidence, we cannot conclude the trial court erred in determining the Hill estate was not equitably estopped from seeking the annulment. *See, e.g.*, *Hurston v. Hurston*, 179 N.C. App. 809, 815, 635 S.E.2d 451, 454 (2006) (holding that while a husband challenging the validity of his marriage to his wife was negligent in trusting that his wife's prior marriage had been ended by lawful divorce decree when it had not, he was not *culpably* negligent for the invalid divorce and could therefore challenge the validity of the marriage).

III. CONCLUSION

¶ 35 For the foregoing reasons, the trial court's judgment annulling Mr. Hill's and Ms. Durrett's marriage is

AFFIRMED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).