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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-571

Filed 20 February 2024

Lenoir County, No. 17-SP-195

JOHN S. DAVIS, III, Petitioner,

v.

ANN DAVIS CREWS, JAN ANTOINE DAVIS and the INTERNAL REVENUE SERVICE, Respondents.

Appeal by respondents from order entered 29 September 2022 by Judge Imelda J. Pate in Lenoir County Superior Court. Heard in the Court of Appeals 6 February 2024.

White & Allen, P.A., by John P. Marshall, for petitioner-appellee.

Fox Rothschild LLP, by Kip D. Nelson, for respondents-appellants.

THOMPSON, Judge.

Respondents Ann Davis Crews and Jan Antoine Davis appeal from the trial court's order granting petitioner's motion to enforce a settlement agreement. On appeal, respondents argue that the trial court erred in finding a valid settlement agreement, or, in the alternative, that their attorney had authority to enter into the settlement agreement on their behalf. After careful review, we reverse and remand.

I. Factual Background and Procedural History

Petitioner John S. Davis III (petitioner) and respondents Ann Davis Crews and Jan Antoine Davis (respondents) are siblings. Following the death of their father in 2013, petitioner and respondents inherited, *inter alia*, real property (the property) as tenants in common.

At some point after 2013, the Internal Revenue Service (IRS) placed two liens on a portion of the property because petitioner had failed to disclose income on his tax returns, hence the IRS being party to the present case. In November 2017, petitioner brought an action against respondents, seeking partition of the property that the three siblings had inherited from their father. Respondents “opposed the partition request based on the siblings’ agreement not to partition the property”

On 23 June 2021, a hearing was held in Lenoir County Superior Court on the siblings’ agreement not to partition the real property in their lifetime, wherein the trial court adjourned the hearing to allow for the parties to attempt to reach a settlement agreement. Between September 2021 and April 2022, the parties engaged in a series of negotiations to reach a settlement.

While the settlement negotiations were underway, respondents’ attorney filed a motion to withdraw as counsel of record on 9 February 2022, due to respondents “not be[ing] timely in responding to important deadlines and not providing needed specific authority [counsel] need[ed] to deal with their legal matter in an effective

manner.” The court allowed respondents’ counsel’s motion to withdraw by order entered 2 June 2022.

On 11 July 2022, petitioner filed a motion to enforce the settlement agreement in Lenoir County Superior Court. The matter came on for hearing on 19 September 2022; and by order entered 29 September 2022, the trial court granted petitioner’s motion to enforce the settlement agreement, “conclud[ing] that a binding settlement was reached as evidenced by the [n]egotiations and [s]ettlement” and that “the [s]ettlement is valid and enforceable” From this order, respondents filed timely written notice of appeal.

II. Discussion

A. Standard of review

“[A] motion to enforce a settlement agreement is treated as a motion for summary judgment for purposes of appellate review[.]” *Culbreth v. Manning*, 277 N.C. App. 221, 227, 860 S.E.2d 232, 236 (2021) (citation omitted). “[O]ur standard of review of an appeal from summary judgment is de novo.” *Id.* (citation and brackets omitted).

B. Statute of frauds

Respondents contend that the trial court erred in granting petitioner’s motion to enforce the settlement agreement because “a writing signed by [respondents] was required under the [s]tatute of [f]rauds.” We agree.

DAVIS V. CREWS

Opinion of the Court

“A compromise and settlement agreement terminating or purporting to terminate a controversy is a contract, to be interpreted and tested by established rules relating to contracts.” *Harris v. Ray Johnson Constr. Co.*, 139 N.C. App. 827, 829, 534 S.E.2d 653, 654 (2000). Moreover, a “contract to devise real estate is within the statute of frauds.” *Neal v. Wachovia Bank & Trust Co.*, 224 N.C. 103, 106, 29 S.E.2d 206, 208 (1944). N.C. Gen. Stat. § 22-2, which governs the statute of frauds, requires that:

All contracts to sell or convey lands . . . or any interest in or concerning them . . . shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

N.C. Gen. Stat. § 22-2 (2023).

Upon our careful review of the e-mail correspondence and negotiations between the parties’ attorneys from September 2021 to April 2022, we conclude that any purported agreement entered into by the parties did not satisfy the statute of frauds. Indeed, the final e-mail pursuant to settlement negotiations, dated 4 April 2022, *does not* contain the signature, in writing, of either respondent, nor that of their attorney of record at that time. The e-mail, which purports to accept petitioner’s 9 March 2022 offer, simply includes the name “Woody” in the same typeface as the remainder of the e-mail. The 4 April 2022 e-mail stands in stark contrast to the previous rounds of offers and counteroffers between the parties, which were all affixed with the handwritten signature of the parties’ attorneys.

This is precisely the situation that the statute of frauds seeks to avoid, as it is impossible to tell, without a written signature, precisely who typed the name “Woody” in the 4 April 2022 e-mail purporting to accept the petitioner’s offer. As former Chief Justice Martin (at the time, Justice Martin) noted in *Powell v. City of Newton*, “evidence of land-title ought to be as sure as human ingenuity can make it” and “it is the purpose of the statute of frauds . . . to compel [parties] to create testimonials of their intentions which are certain and enduring.” *Powell*, 364 N.C. 562, 572, 703 S.E.2d 723, 730 (Martin, J. concurring) (citation omitted).

For the aforementioned reason, we conclude that the trial court erred in concluding that “a binding settlement was reached” because the purported settlement agreement was not signed by the respondents nor “by some other person by [the]m thereto lawfully authorized[,]” as is required by the statute of frauds. N.C. Gen. Stat. § 22-2. In light of our disposition, we need not address respondents’ remaining argument that their withdrawing attorney was without authority to enter into the settlement agreement on their behalf.

III. Conclusion

The trial court erred in concluding that a valid settlement agreement had been reached because the purported settlement agreement did not satisfy the statute of frauds as is required for any contract to sell or convey land in North Carolina. For this reason, the order of the trial court is reversed.

REVERSED AND REMANDED.

DAVIS V. CREWS

Opinion of the Court

Judges STROUD and GRIFFIN concur.

Report per rule 30(e).