

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

IN THE MATTER OF THE ESTATE OF : Case No. 18CA6
CLYDE CECIL WRIGHT AKA CLYDE
C. WRIGHT AKA CLYDE WRIGHT, :
DECEASED. :
: DECISION AND JUDGMENT ENTRY
: **RELEASED: 07/16/2019**

APPEARANCES:

Tracy S. Comisford, Tracy S. Comisford Co. LPA, Granville, Ohio for Appellant.

Brent A Saunders, Halladay, Sheets & Saunders, Gallipolis, Ohio for Appellee.

Hess, J.

{¶1} Appellant David C. Wright appeals an order ruling on exceptions to and approving a final inventory in the estate of Clyde C. Wright. David Wright raises one assignment of error in which he contends that the trial court erred in placing the burden upon him as beneficiary to prove that assets identified as estate assets are in fact estate assets. Here the trial court held an inventory hearing pursuant to R.C. 2115.16 concerning an amended inventory to which David Wright filed exceptions. As a party disputing the inventory, David Wright had the burden of going forward with evidence supporting his challenges to the estate's inventory. We overrule his assignment of error and affirm the judgment of the trial court.

I. PROCEDURAL BACKGROUND

{¶2} Rhonda Lynn Sluder, nka Wright, nka Coffee ("Coffee") filed an application for authority to administer the estate of her father, Cecil Wright, in April 2015. Cecil Wright

died in November 2014. Coffee identified herself and her brother, David Wright, as the surviving children. There was no surviving spouse. Several appraisers were appointed to appraise the assets of the estate. In July 2015, Coffee filed an inventory and appraisal as well as a schedule of assets which reflected estate assets totaling \$38,788.08. Both Coffee and David Wright waived notice of the hearing on inventory and neither filed any objections to the inventory. The trial court entered an order approving inventory and appraisal. In October 2015, Coffee filed a fiduciary's account, which included a signed receipt by Coffee and David Wright acknowledging receipt of all the personal property from their father's estate. In December 2015, the trial court issued an entry approving and settling the account.

{¶3} In August 2016, eight months after the estate closed, David Wright filed a motion to vacate the entry approving and settling the account and to reopen the estate on the ground that Coffee breached her fiduciary duty to honestly, faithfully, and properly carry out her duties. Wright contended that he did not receive the property that was bequeathed to him. Coffee opposed the motion on the ground that her fiduciary's account identified the property, stated that it was distributed equally between them, and David Wright signed an acknowledgment of receipt of the property.

{¶4} In November 2016, following discussions at a pretrial hearing, the trial court ordered any funds realized from the sale of the subject stock holdings held pending further order. Additionally, the trial court ordered Coffee to provide a complete accounting of the personal property of the estate, including guns, bows, power equipment, and vehicles.

{¶15} In mid-February 2017, David Wright filed a motion for the removal of Coffee as the fiduciary based on answers Coffee gave in her deposition taken in January 2017.¹ David Wright alleged that Coffee failed to comply with the trial court's November 2016 order to complete an accounting and failed to disclose \$180,000 in cash held in a safe that was property of the estate. In late February 2017, Coffee filed an updated inventory and appraisal and schedule of assets, which reflected a total value of \$134,939.08. Many of the personal property items had estimated values and were marked with asterisks. In March 2017, the trial court held a hearing in which it granted David Wright's motion to remove Coffee as fiduciary and appointed Christopher E. Tenoglia as the Special Administrator for the estate. The trial court also ordered that all proceeds from the sale of stock be placed with Tenoglia.

{¶16} In November 2017 the trial court held a hearing to determine whether to vacate the entry approving and settling the estate and reopen the estate. At that hearing, Coffee's counsel explained that the February 2017 amended inventory included the list of items that David Wright alleged were missing from the original inventory. Coffee marked those items with asterisks and did not provide a valuation because they were not present in Clyde Wright's estate at the time he died. The trial court instructed the parties that it would treat the new items on the February 2017 inventory as contested items and would hold a hearing on the February 2017 inventory to determine whether the contested items should be included in the estate.

{¶17} Following the hearing, the trial court issued an entry denying the request to vacate the entry approving and settling the estate, but granting the request to reopen the

¹ A transcript of Coffee's deposition testimony is not part of the record.

estate. The trial court found that there may have been newly discovered assets that also needed to be administered and re-opened the estate for “the purpose of administering these newly discovered assets, if any.” The court ordered a hearing on the amended inventory and gave the parties until December 22, 2017 “to submit items that they think should be included as newly discovered assets. If none are submitted, the ones suggested on the amended inventory filed on February 22, 2017, shall be the only ones considered.”

{¶18} David Wright submitted the following list of items to be added to the inventory: (1) \$180,000 in cash identified by Coffee in her deposition; (2) a slate pool table of unknown value; (3) a deer mount of unknown value; and (4) numerous trophies of unknown value.

{¶19} In February 2018, the trial court held the inventory hearing. The trial court announced at the start of the hearing, “[T]oday’s hearing is on whether or not there’s newly discovered assets that should be included in the inventory. Is that correct? Everyone’s understanding?” Counsel for David Wright confirmed that was his understanding, “Your Honor * * * indicated it would treat the, at that time recently filed new inventory as sort of newly discovered assets and scheduled a hearing accordingly. So I, I think we’re here on a simple uh, hearing on the assets and depending on the facts as developed here uh, the court and/or the parties will proceed from that point.” In response to a question from Special Administrator Tenoglia about disposition of the assets, the trial court summarized, “I’m going to decide whether or not * * * these alleged newly discovered assets are actually assets of the estate and * * * if they are available. So that’s what I intend.” David Wright’s counsel stated, “I assume that’s one of the things

that we're going to explore is whether these are assets of the estate and what has been their disposition." The trial court responded, "Yes, exactly."

{¶10} Coffee's counsel then responded, "[T]here was a schedule of assets that was filed * * * after [David Wright] made all of these allegations. [W]e did place an asterisk on all of those items that we believe [David Wright] did * * * either take prior to or at the death of his father. [T]he only additional inventory that they have filed was on December 22nd and in that they alleged that there was cash * * * slate pool table, deer mount and * * numerous trophies * * *."

{¶11} After further discussion to determine the scope of the hearing, David Wright's counsel stated that he wanted to cover the items he listed (cash, pool table, deer mount, trophies) as well as most of the things on the February 2017 inventory that Coffee claims David Wright already received before Clyde Wright died.

{¶12} David Wright's counsel presented his case first and called Coffee as his first witness. He walked Coffee through the February 2017 amended inventory item by item. David Wright testified and disputed Coffee's testimony. Teresa Starcher, David Wright's girlfriend, testified concerning the disputed inventory items. David Wright closed his presentation of evidence and Coffee presented her case. Matthew Coffee, Coffee's husband, corroborated his wife's testimony and stated that he helped David Wright remove a number of the disputed inventory items from Clyde Wright before he died.

{¶13} The trial court issued a judgment entry in which it found that the only items on the amended inventory that were owned by Clyde Wright at the time of his death and should be included in his estate were a bulldozer, 5' scraper blade, brush hog, camper top, 3 sets of golf clubs, 15 garage sale quality bows, and 5 guns. However, the trial court

found that these items were already in David Wright's possession. The trial court found insufficient evidence that Clyde Wright died owning any of the other new items listed in the amended inventory. The trial court found that certain items (El Camino and a lift) were in Coffee's possession but were assets of David Wright and not included in the estate of Clyde Wright. The trial court ordered the Special Administrator: (1) to include the items the court identified (bulldozer, etc.) as assets of the estate; (2) to file a final account reflecting that all of those newly identified assets were distributed to David Wright; and (3) ensure that both David Wright and Coffee have received all of the assets they were to have received in the original accounting.

{¶14} David Wright filed a motion for reconsideration on the ground that the trial court erred in its "implicit holding" that David Wright bore some burden of proof that the assets claimed by the Administrator to be assets of the estate are in fact assets of the estate. He filed his notice of appeal before the trial court addressed his motion.

II. ASSIGNMENT OF ERROR

{¶15} David Wright assigns the following error for review:

- I. THE TRIAL COURT ERRED IN HOLDING THAT A BENEFICIARY OF AN ESTATE BEARS SOME BURDEN OF ESTABLISHING THAT ASSETS CLAIMED BY THE ADMINISTRATOR OF AN ESTATE TO BE ASSETS OF THE ESTATE ARE IN FACT ASSETS OF THE ESTATE.²

III. LAW AND ANALYSIS

A. Standard of Review

² This is the assignment of error set forth in the statement of the assignment of error section of appellant's brief under App.R. 16(A)(3) and it is the one we address. It also appears to be the assignment of error most closely aligned with appellant's argument. The argument section of the brief contains a different assignment of error: "The Court Below Erred In Adjudicating Issues Of 'Ownership' In The Context of a Hearing on the Inventory Where No Exceptions Were Taken to the Inventory."

{¶16} A probate court's determination regarding the inventory and any exceptions thereto is generally reviewed under an abuse of discretion standard. *In re Estate of Shelton*, 154 Ohio App.3d 188, 2003–Ohio–4593, 796 N.E.2d 955, ¶ 8 (11th Dist.); *In re Estate of Scott*, 164 Ohio App.3d 464, 2005–Ohio–5917, 842 N.E.2d 1071, ¶ 2 (2nd Dist.). However, when the issue presents a question of law, we review the probate court's decision de novo. *In re Estate of Shelton* at ¶ 8. Here the issue of whether the trial court applied the appropriate burden of proof to the parties is a question of law we review de novo.

B. The Burden of Proof in a Hearing Contesting Inventory of an Estate

{¶17} David Wright contends that the trial court erred in placing the burden on him as a beneficiary to establish that assets the estate administrator claims are estate assets are in fact estate assets. He argues that Coffee prepared and filed the February 2017 amended inventory, he took no exception to them, and yet the trial court concluded that there was insufficient evidence that decedent died owning any of the new items listed in the amended inventory. He argues that he did not prepare the amended inventory and bore no burden of showing the items listed were items belonging to the estate. He contends he had no notice that he would be called to account for the items for which he had no disagreement and that the trial court erred in permitting Coffee to disavow her own inventory and schedule of assets.

{¶18} The record does not support David Wright's contentions. Coffee filed her amended inventory and schedule of assets with specific asterisk notations on the new items because she contends that those items were distributed to David Wright prior to her father's death. There were several instances in the record prior to the inventory hearing

in which Coffee's counsel stated that Coffee contested the items on the amended inventory she marked with asterisks. After Coffee filed the amended inventory, David Wright filed a notice of additional inventory items he contended were omitted from the original and amended inventory. Though he did not caption his filing "exceptions to inventory," by filing a list of additional items he contended should have been on the inventory list but were wrongfully omitted, he was taking exception to the amended inventory. The parties contentiously disputed what was transferred to David Wright prior to Clyde Wright's death and what were estate assets.

{¶19} The record shows that the trial court made clear the purpose and scope of the February 2018 hearing and counsel for both sides confirmed their understanding. Twice before the presentation of evidence the trial court stated that the purpose of the hearing was to determine which of the new items listed on the February 2017 amended inventory were to be included as assets of the estate. David Wright presented his case first and then Coffee presented hers.

{¶20} Hearings to determine the inventory of an estate are governed by R.C. 2115.16, which provides that the probate court may hold a hearing on the inventory, allow any witness to be examined, and then journalize its findings. David Wright and Coffee were both proper parties to participate in the hearing as both were exceptors to the amended inventory. *Cole v. Ottawa Home & Sav. Assn.*, 18 Ohio St.2d 1, 246 N.E.2d 542, 543 (1969) paragraph one of the syllabus (proper parties to an inventory hearing are the exceptor, the executor, and any other parties who voluntarily appear and are allowed by the court to be made parties to the proceeding). David Wright bore the burden of proof to go forward with evidence to support his challenges to the inventory and Coffee bore

the burden of proof to support her challenges. The law is well-settled that the exceptor, as the party challenging the inventory, has the burden of going forward with evidence challenging the estate's inventory. *In re Estate of Workman*, 4th Dist. Lawrence No. 07CA39, 2008–Ohio–3351, ¶ 14; *In re Estate of Distelhorst*, 2016-Ohio-413, 58 N.E.3d 476, ¶ 20 (4th Dist.) (“Generally, the party disputing the inventory has the burden of going forward with evidence that challenges the estate's inventory”); *see also In re Estate of Boccia*, 11th Dist. Trumbull No. 2007-T-0060, 2008-Ohio-4764, ¶ 29.

{¶21} The trial court did not err in requiring David Wright to prove that the items he sought to be added to the inventory, including those items marked with asterisks and disputed by Coffee, should be included in the estate. At the hearing the trial court required David Wright to prove his challenges to the inventory and required Coffee to prove her challenges to the contested items identified with asterisks. We overrule David Wright's assignment of error and affirm the judgment of the trial court.

IV. CONCLUSION

{¶22} The trial court did not abuse its discretion when it required David Wright, as a party challenging the inventory, to come forward with evidence to support his challenges. We affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.