

Affirmed and Memorandum Opinion filed April 18, 2017.



In The
Fourteenth Court of Appeals

NO. 14-15-00494-CV
NO. 14-15-00849-CV

IN THE GUARDIANSHIP OF THE ESTATE OF L. S., A MINOR

On Appeal from the Probate Court No. 1
Harris County, Texas
Trial Court Cause No. 425,238, 407,499, 407,499-401, 407,499-402

M E M O R A N D U M O P I N I O N

Appellant Valentina Sheshtawy brings two appeals from separate causes in the probate court. In her first appeal, Valentina challenges two orders signed by the probate court.¹ One order authorized the guardian of the estate of Valentina's daughter, L.S., to enter into an agreement that settled L.S.'s interest in her

¹ Appellant's first appeal, cause number 14-15-00494-CV, is an appeal from trial court cause number 425,238, in which Valentina argues the probate court abused its discretion when it signed the two orders at issue.

deceased father's estate. The other order declared Valentina a vexatious litigant. Because Valentina has not demonstrated that the probate court abused its discretion when it signed the challenged orders, we overrule Valentina's issues in her first appeal and affirm the two orders.

In her second appeal, Valentina, making the same arguments as in her first appeal, argues that the probate court erred when it denied her motion for new trial on the court's vexatious litigant finding.² Because Valentina has not demonstrated that the probate court abused its discretion when it allowed her motion for new trial to be overruled by operation of law, we overrule her issue and affirm the trial court's order.

BACKGROUND

Adel Sheshtawy died intestate on August 8, 2011. At the time of his death, Adel had two adult children, Nader Sheshtawy and Hanya Sustache, and a minor child, L.S. Valentina is L.S.'s mother.

A. Cause Numbers 407,499, 407,499-401, and 407,499-402 are filed and settled.

After Adel's death, his brother, Farouk Sheshtawy, filed a purported will for probate. A will contest was filed soon thereafter. Valentina eventually filed suit seeking a declaration that she was Adel's common-law wife and was entitled to receive one-third of Adel's estate. This matter was assigned cause number 407,499. The probate court appointed Michael Fuqua the temporary administrator of Adel's estate.

Valentina's allegation that she was Adel's common-law wife with an interest

² Valentina's second appeal, cause number 14-15-00849-CV, is an appeal from trial court cause numbers 407,499, 407,499-401, and 407,499-402. Valentina filed identical briefs in her two appeals except for the issue presented.

in the estate was severed into a separate action and assigned cause number 407,499-401. Nader and Hanya filed an answer and counterclaim challenging Valentina's common-law marriage claim. In response to Nader and Hanya's motion, the probate court appointed Cameron McCulloch L.S.'s attorney ad litem.

Adel had an ownership interest in three companies (Tri-Max Industries, Inc., Drilling Tools, Inc., and Drill Bit Industries), the assets of those companies, and various brokerage accounts. Fuqua filed a petition for declaratory judgment seeking to finalize the ownership of each of these. Farouk, Nader, and Hanya subsequently filed counterclaims and cross-claims. This dispute was assigned cause number 407,499-402. Valentina was not a party to this case.

On December 3, 2013, the parties—Farouk, Nader, Hanya, and L.S., through her guardian ad litem—settled all claims asserted in cause numbers 407,499 and 407,499-402. Among other things, the parties agreed that the purported will filed by Farouk was not valid and Farouk averred that he was unaware of any other will. The same day, the trial court signed an Agreed Final Judgment based on the parties' settlement agreement. Despite not being a party, Valentina filed a single motion for new trial in both 407,499 and 407,499-402 asking the probate court to set aside the agreed final judgment.³ The probate court denied Valentina's motion on February 6, 2014. In the same order, the probate court found that Valentina did not have standing to challenge the December 3 settlement agreement.

On May 28, 2013, the parties⁴ to cause number 407,499-401 signed a Rule 11 and Final Settlement Agreement. The parties agreed, among other things, that (1) Valentina would receive \$145,000 in full and final settlement of all of her

³ This is not the motion for new trial at issue in cause number 14-15-00849-CV.

⁴ The parties included Nader, Hanya, Valentina, and L.S. through her attorney ad litem.

claims to Adel's estate;⁵ (2) Valentina would waive any right she had to serve as L.S.'s guardian in favor of Cameron McCulloch, L.S.'s attorney ad litem, and she agreed that McCulloch would be appointed L.S.'s permanent guardian of L.S.'s estate; and (3) an heirship order would be entered determining Hanya, Nader, and L.S. as Adel's sole heirs. On July 17, 2013 the probate court signed an order approving the agreement. Claiming to be acting as L.S.'s next friend, Valentina filed a motion for rehearing of the trial court's order approving the Rule 11 and Final Settlement Agreement. The probate court denied the motion and found that Valentina did not have standing as L.S.'s next friend to challenge the settlement agreement.

B. Cause Number 425,238 is filed and settled.

On September 16, 2013 McCulloch filed an Application for Appointment of Permanent Guardian of the Estate of L.S. Despite previously agreeing to support McCulloch's application, Valentina opposed McCulloch's appointment. Nader and Hanya supported McCulloch's application, however. The probate court appointed McCulloch the guardian of L.S.'s estate in January 2014.

After his appointment, McCulloch investigated the value of Adel's estate. Once McCulloch had completed his investigation, he negotiated with the other two heirs to separate out and monetize L.S.'s one-third share of the estate. The negotiations resulted in a Family Settlement & Distribution Agreement in which the heirs agreed, among other things, that L.S. would receive a residential property appraised at a minimum value of \$650,000.⁶ Valentina was not a party to this

⁵ Valentina would receive \$45,000 immediately through a loan to Adel's estate from Nader. Valentina agreed that she would use approximately \$20,000 of that amount to purchase a car to transport L.S. The remainder would be funded once the residence where Valentina and L.S. lived was sold.

⁶ During the hearing on the proposed settlement, McCulloch testified that there were

agreement.

McCulloch sought the probate court's authorization to enter into the Family Settlement & Distribution Agreement. The court conducted a hearing and Valentina was allowed to voice her objections to the agreement. Following the hearing, the probate court signed an order authorizing McCulloch to enter into the Family Settlement & Distribution Agreement.

C. The probate court declares Valentina a vexatious litigant and dismisses her claims.

Despite the fact that all four matters before the probate court had been resolved, one by a settlement agreement she had signed, Valentina proceeded pro se to file multiple motions and other pleadings in an attempt to re-litigate issues resolved by the court. These included (1) an effort to undo the probate court's appointment of the administrators of Adel's estate as well as the agreed determination of Adel's heirs;⁷ (2) a request to reverse the probate court's appointment of McCulloch as L.S.'s permanent guardian of her estate; (3) complaints against McCulloch and Fuqua; (4) a request to reverse the probate court's approval of the Rule 11 and Settlement Agreement; and (5) an effort to overturn the probate court's authorization of McCulloch to enter into the settlement and distribution agreement. Valentina also sought discovery from third parties regarding Adel's financial records.

numerous claims against most assets in Adel's estate and the only asset mostly clear of encumbrances and claims was this residential property. L.S. and Valentina lived in this residence. McCulloch further testified that his intent was to sell the property and use the proceeds to (1) pay the \$100,000 remaining due to Valentina under the Rule 11 and Final Settlement Agreement; (2) buy a new residence for L.S. and Valentina; and (3) use the remaining proceeds to fund a trust for L.S.'s benefit. We previously decided an appeal regarding Valentina's challenge to the sale of the residence. *In re Estate of Sheshtawy*, 478 S.W.3d 82 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

⁷ The probate court had previously appointed Nader and Hanya as the co-administrators of Adel's estate.

Valentina's repeated efforts to undo the probate court's final rulings led Nader, Hanya, and McCulloch, on behalf of L.S., to file in each cause number an identical joint motion to declare Valentina a vexatious litigant.⁸ Following a hearing, the probate court granted the motion and signed an order declaring Valentina a vexatious litigant. The order required Valentina to post a \$5,000 surety bond with the court's clerk to secure payment to Nader, Hanya, and McCulloch of their court costs and attorneys' fees. The probate court abated the pending litigation until Valentina posted the bond and ordered that if she did not furnish the bond, it would dismiss all of her pending claims with prejudice. The probate court also prohibited Valentina from filing any further litigation against Nader, Hanya, McCulloch, or Fuqua unless she first obtained permission from the local administrative judge. When Valentina did not post the required bond, the trial court dismissed her pending claims. This appeal followed.

ANALYSIS

Valentina raises three issues in her two appeals. We first address the two issues Valentina raises in her first appeal: appellate cause number 14-15-00494-CV. We then turn to the single issue raised in her second appeal: appellate cause number 14-15-00849-CV.

I. The probate court did not abuse its discretion when it authorized McCulloch to enter into a settlement agreement on behalf of L.S.

Valentina initially challenges the probate court's order authorizing McCulloch to enter into a settlement agreement regarding L.S.'s interest in her father's estate. Valentina argues the probate court abused its discretion when it

⁸ The motion also asked the trial court to impose a temporary injunction and then a permanent injunction prohibiting Valentina from contacting any third party in an attempt to obtain records regarding Adel, his estate, or the assets of the estate. The probate court granted their request and signed a permanent injunction on March 8, 2016.

authorized the settlement because an inventory, appraisement, and list of claims was never completed for Adel's estate. She goes on to argue that the \$500,000 settlement McCulloch negotiated on behalf of L.S. was unfair because some financial records for companies Adel owned or had an interest in indicate his estate was worth more than \$30 million. Finally, Valentina complains that she was not allowed an opportunity to present her opposition to the settlement before the probate court. McCulloch responds that the trial court did not abuse its discretion when it approved the settlement because (1) adequate evidence was presented to support a determination that the settlement was in L.S.'s best interest; and (2) the record establishes that Valentina was allowed the opportunity to present her opposition to the settlement. We agree with McCulloch.

A. Standard of review and applicable law

We review the probate court's decision for an abuse of discretion. *Webre v. Black*, 458 S.W.3d 113, 116–17 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (citing *Epstein v. Hutchison*, No. 01-03-00279-CV, 2004 WL 2612258, at *1 (Tex. App.—Houston [1st Dist.] Nov. 18, 2004, no pet.) (mem. op.)). A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to guiding rules or principles. *Id.* at 117. A trial court has no discretion in determining what the law is or applying the law to the facts; thus, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion. *Id.* In addition, a trial court must have sufficient evidence before it to support the manner in which it exercises its discretion. *See In re Rains*, 473 S.W.3d 461, 469 (Tex. App.—Amarillo 2015, no pet.) (concluding trial court abused discretion by approving structured settlement annuity sale based on insufficient evidence).

The Estates Code authorizes a guardian of an estate to “make a compromise

or settlement in relation to property or a claim in dispute or litigation.” Tex. Estates Code Ann. § 1151.102(c)(4) (West 2014). Before making a settlement, the guardian must consider the settlement to be in the best interest of the estate and then obtain court authorization. *Id.* at § 1151.102(b).

B. Evidence supports the probate court’s authorization to settle L.S.’s interest in Adel’s estate.

The probate court conducted an evidentiary hearing on the proposed settlement during which Fuqua (the temporary administrator) and McCulloch testified. Among other things, Fuqua testified that ownership of Adel’s estate was initially contested by Adel’s brother, Farouk. Fuqua further testified that after substantial litigation Farouk’s claim was settled and that the Third Annual Accounting of Adel’s estate set its value at \$647,030.50. Fuqua explained that the bulk of that value was contained in a single residential property, 12206 Cabo Blanco, Valentina and L.S.’s residence.⁹ Fuqua then addressed the companies in which Adel had an interest. According to Fuqua, the companies were operating on a limited basis since Adel’s death and there were liabilities against them including unpaid payroll taxes and potentially unpaid corporate taxes. The companies were also involved in ongoing litigation.

McCulloch testified regarding his efforts as both L.S.’s attorney ad litem and the guardian of her estate.¹⁰ McCulloch stated that Adel died intestate and as a result his three heirs each inherited an undivided one-third interest in his estate.

⁹ According to Fuqua, the Cabo Blanco property was appraised in 2013 at \$548,500. Fuqua also testified that the value of the property was rising. Fuqua testified that an offer to buy the property for \$650,000 had fallen through as a result of the continuing litigation surrounding Adel’s estate, including a lis pendens Valentina had placed on the property.

¹⁰ Among other things, McCulloch testified that he obtained an appraisal of the value of the Cabo Blanco property as well as the equipment and inventories for the various businesses in which Adel had an interest.

McCulloch testified that because there were a large number of liabilities and claims against certain portions of Adel's estate, some of which might take years to resolve, he sought to separate out and monetize L.S.'s interest in Adel's estate. McCulloch determined that the Cabo Blanco property was the "cleanest" asset in Adel's estate. Therefore he negotiated a settlement that awarded the Cabo Blanco property to L.S. To maximize the value for L.S., McCulloch proposed to sell the Cabo Blanco property, use the proceeds to purchase a smaller residence for Valentina and L.S., pay the remainder of the amount owed to Valentina under the Rule 11 and Final Settlement Agreement, and then place the remainder of the proceeds into a trust for L.S. In McCulloch's view, his proposed settlement freed L.S. from involvement in the ongoing litigation involving Adel's estate and the costs associated with that litigation, provided a residence for L.S. and her mother, and provided for L.S.'s future financial well-being. McCulloch concluded his testimony by stating his opinion that the proposed settlement was in L.S.'s best interest.

Valentina, appearing pro se, was permitted to cross-examine both Fuqua and McCulloch. She also introduced financial records into evidence and was allowed to present her arguments in opposition to the proposed settlement. The probate court subsequently authorized McCulloch to sign the proposed settlement.

The probate court heard evidence, summarized above, regarding Adel's estate, the present value of the estate, the claims against it, the questionable value of the companies Adel had an interest in, the ongoing litigation surrounding the estate, and the prospect that a final resolution of the estate could be years in the future. We conclude that the probate court did not abuse its discretion when it determined that the proposed settlement was in the minor child's best interest and then authorized McCulloch to enter into the proposed settlement on behalf of L.S.

We overrule Valentina’s first issue in appeal number 14-15-00494-CV.

II. The probate court did not abuse its discretion when it declared Valentina a vexatious litigant.

In her second issue, Valentina contends that the probate court abused its discretion when it declared her a vexatious litigant. We review a trial court’s determination that an appellant is a vexatious litigant for abuse of discretion. *Cantu v. Dominguez*, No. 14-08-00156-CV, 2009 WL 3365854, at *4 (Tex. App.—Houston [14th Dist.] Sept. 10, 2009, pet. denied) (mem. op.); *Leonard v. Abbot*, 171 S.W.3d 451, 459 (Tex. App.—Austin 2005, pet. denied). The trial court abuses its discretion by acting arbitrarily, unreasonably, without consideration of guiding principles, or without supporting evidence. *Id.*

Texas law provides a mechanism for a trial court to declare a person to be a vexatious litigant. *See* Tex. Civ. Prac. & Rem. Code Ann. § 11.051 (West 2017). Once a trial court has declared a person to be a vexatious litigant, it can impose limitations on the pro se litigation activities of that person. *Cantu*, 2009 WL 3365854, at *3. Among other reasons, a trial court may find a plaintiff to be a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that

after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined

Tex. Civ. Prac. & Rem. Code Ann. § 11.054(2).

Valentina has not included the reporter's record for the hearing conducted by the probate court on appellees' joint motion to declare her a vexatious litigant. We therefore must presume that the evidence supports the probate court's vexatious litigant determination. *See Willms v. Americas Tire Co.*, 190 S.W.3d 796, 806 (Tex. App.—Dallas 2006, pet. denied) (rejecting argument that trial court abused discretion when it declared plaintiff a vexatious litigant due to lack of reporter's record). We overrule Valentina's second issue to the extent it can be construed as an argument that the probate court abused its discretion because sufficient evidence does not support its vexatious litigant determination.

We turn next to Valentina's contention that the probate court abused its discretion when it declared her a vexatious litigant because it violated her state and federal constitutional rights of access to the courts. This Court and others have rejected this contention repeatedly. *See e.g. In re Potts*, 357 S.W.3d 766, 769 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) (rejecting argument vexatious litigant statute violated constitutional due process rights); *Leonard*, 171 S.W.3d at 457–58 (rejecting contention vexatious litigant statute violated open courts provision of Texas Constitution or equal protection clause of 14th Amendment to United States Constitution). We reject it here for the same reasons stated in these prior opinions. We overrule Valentina's second issue.

III. The trial court did not abuse its discretion when it allowed Valentina's motion for new trial to be overruled by operation of law.

In her second appeal, appellate cause number 14-15-00849-CV, Valentina contends that the probate court abused its discretion when it allowed her motion for new trial to be overruled by operation of law. Valentina's motion argued that the probate court should grant her a new trial on the vexatious-litigant determination because the order violated her state and federal constitutional rights as the mother

of L.S. to use the courts to obtain financial information regarding Adel’s estate and L.S.’s interest in it. With the exception of the issue presented, Valentina uses the same brief that she used in her first appeal, appellate cause number 14-15-00494-CV. Having already determined that the probate court did not abuse its discretion when it declared her a vexatious litigant, we conclude that the same arguments cannot establish an abuse of discretion when the probate court allowed her motion for new trial to be overruled by operation of law.¹¹ We overrule Valentina’s single issue in her second appeal.

CONCLUSION

Having overruled all of the issues raised by Valentina in both appeals, we affirm the probate court’s orders.

/s/ J. Brett Busby
Justice

Panel consists of Justices Busby, Donovan, and Brown.

¹¹ Appellees Nader Shestawy and Hanya Sustache assert on appeal that Valentina does not have standing to bring this appeal. Because she is the person the probate court declared a vexatious litigant and that declaration is the subject of her appeal, we conclude Valentina has standing and deny appellees’ motion to dismiss. *See Sherman v. Boston*, 486 S.W.3d 88, 94 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (“Only the party whose primary legal right has been breached may seek redress for the injury.”).