Affirmed and Memorandum Opinion filed August 22, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00519-CV

IN THE ESTATE OF VERA L. JACKSON, DECEASED

On Appeal from the Probate Court No. 1
Harris County, Texas
Trial Court Cause No. 439,979

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

Appellants Andrei Carriere and Dominique Jolivette-Gentry (collectively, "appellants") raise two challenges to the trial court's order admitting the will of Vera L. Jackson to probate as a muniment of title. First, appellants assert that appellee Francois Carriere, Sr., who presented the will for probate, was in default because he presented the will more than four years after Jackson's death. Second, appellants argue the trial court should not have admitted the will to probate as a muniment of title because Jackson's estate had outstanding debts, including federal income tax obligations. We affirm.

Background

Siblings Francois, Andrei, and Dominique are the nephews and niece of Vera L. Jackson; Jackson had no spouse or children of her own, and her nephews and niece are her only heirs-at-law. Francois lived with Jackson for about thirty years before Jackson's death on April 20, 2010, and Jackson "acted as" Francois's mother. For the last three months or so of her life, Jackson resided in a nursing home.

Andrei and Dominique never lived with Jackson. In December 2004, Jackson executed a fill-in-the-blank will in which she conveyed her entire estate to Francois. After Jackson executed the will, the will was "filed away" in Jackson's house. Francois knew of the existence and contents of the will.

In 2006, Jackson executed a warranty deed to her home, located on Calumet Street in Houston (the "Calumet property"), in favor of Francois and gave him the deed. Francois stored the warranty deed at the Calumet property, which he and his wife shared with Jackson. Both at the time of Jackson's death and at the hearing on this matter, Francois and his family lived at the Calumet property.

Approximately four years after Jackson's death, Francois attempted to take out a loan against the Calumet property to pay property taxes. The title company informed him that the deed Jackson executed for the Calumet property "didn't have enough information on it" and suggested that he probate the will. On May 19, 2015, over five years after Jackson's death, Francois filed an application to probate the will as a muniment of title and notified Andrei and Dominique of the application. Andrei and Dominique opposed Francois's application, asserting that he negligently failed to probate the will within the four-year statutory limitations period.[1]

[1] *See* Tex. Est. Code § 256.003(a) (providing that, with certain exceptions not applicable here, "a will may not be admitted to probate after the fourth anniversary of the testator's death

The trial court held an evidentiary hearing on Francois's application to probate Jackson's will as a muniment of title on June 6, 2016. Francois testified to the above-described matters and stated that the estate owed no debts at the time of Jackson's death, as far as he knew. He explained that he and his wife had obtained a loan against the Calumet property to pay off around $90,000 in past-due property taxes. He also stated that there could be a "house note" associated with the Calumet property. He acknowledged that he did not file any federal income tax returns on Jackson's behalf and that he was not aware whether Jackson's nursing home bills had been paid. Francois also agreed that he never made any effort to calculate the value of Jackson's estate after her death, although he testified that the Calumet property was likely worth around $500,000. Francois knew that he had been named as the executor of Jackson's will, but he claimed that he did not know he had any responsibilities, legal or otherwise, as such. Francois did not know that he needed to probate the will within a certain time period; he believed that the house was his property because he had the will and the deed. Francois further testified that Jackson had assisted Andrei in Andrei's music career and helped Dominique with Dominique's modeling career. Francois stated that Jackson no longer had a relationship with Andrei or Dominique and that Jackson had "written them off." Finally, in addition to Francois's testimony, the three witnesses to Jackson's will testified and proved up the will.

At the end of the evidentiary hearing, the trial court took the matter under advisement. On June 13, the trial court signed an order admitting Jackson's will to probate as a muniment of title. Appellants timely noticed their appeal from the trial court's order.

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unless it is shown by proof that the applicant of the will was not in default in failing to present the will for probate on or before the fourth anniversary of the testator's death").

Analysis

Appellants challenge the trial court's order admitting the will to probate as a muniment of title on the grounds that: (1) there is factually insufficient evidence that Francois was not in default for failing to probate the will within the applicable time period; and (2) the trial court was prohibited from admitting the will to probate because Jackson's estate owed unpaid debts at the time of Jackson's death.[2] We address each issue in turn.

A. Admission of Will to Probate

A will may be admitted to probate on or after the four-year anniversary of the testator's death only if "it is shown by proof that the applicant for probate of the will was not in default in failing to present the will for probate" during that period. Tex. Est. Code § 256.003(a). Whether a proponent of a will is in default for not presenting the will within four years of the testator's death is ordinarily a fact question for the trial court. *In re Estate of Rothrock*, 312 S.W.3d 271, 274 (Tex. App.—Tyler 2010, no pet.). And we review a trial court's findings of fact, express or implied, for legal and factual sufficiency by the same standards applied in reviewing the sufficiency of the evidence supporting a jury's finding. *See In re Estate of Perez*, 324 S.W.3d 257, 260 (Tex. App.—El Paso 2010, no pet.).

Here, appellants challenge only the factual sufficiency of the evidence to support the trial court's admission of the will to probate. We review the factual

[2] In the issues presented section of their brief, appellants also assert that Francois, as executor, was not entitled to have the will admitted to probate as a "convenience" to prevent the estate from being passed through intestate succession. However, appellants present no argument or authority in support of this issue; thus, the issue presents nothing for our review and we overrule it. *See* Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."); *Valdes v. Whataburger Rests., LLC*, No. 14-16-00222-CV, 2017 WL 2602728, at *6 (Tex. App.—Houston [14th Dist.] June 15, 2017, no pet h.) (mem. op.).

sufficiency of the evidence supporting a finding by considering and weighing all the evidence in a neutral light. *Matter of Estate of Hammack*, No. 12-15-00246-CV, 2016 WL 1446083, at *2 (Tex. App.—Tyler Apr. 13, 2016, no pet.) (mem. op.) (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986)). We will set aside the trial court's judgment only if it is so contrary to the weight of the evidence as to be clearly wrong and unjust. *Id.* But we are not a fact finder, and we may not pass on the credibility of witnesses or substitute our judgment for that of the fact finder. *See id.* (citing *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998)). With this standard in mind, we next review the applicable legal principles concerning admission of the will to probate.

The proponent bears the burden to show that he was not in default in failing to present a will for probate within the proper time. *Rothrock*, 312 S.W.3d at 274. As used in this statute, "default" means "failure to probate a will due to the absence of reasonable diligence on the part of the party offering the instrument." *See Schindler v. Schindler*, 119 S.W.3d 923, 929 (Tex. App.—Dallas 2003, pet. denied) (construing predecessor to section 256.003).[3]

Although mere ignorance of the law cannot excuse failure to comply with the statute, *see Brown v. Byrd*, 512 S.W.2d 753, 757 (Tex. Civ. App.—Tyler 1974, no writ), Texas courts nevertheless have been quite liberal in admitting wills to probate as muniments of title after the statutory four-year period has expired. *See In re Estate of Allen*, 407 S.W.3d 335, 339 (Tex. App.—Eastland 2013, no pet.); *see also Chovanec v. Chovanec*, 881 S.W.2d 135, 137 (Tex. App.—Houston [1st Dist.] 1994, no writ); *Armstrong v. Carter*, 291 S.W. 626, 627 (Tex. Civ. App.—Waco 1927, no writ).

[3] The repeal of the Texas Probate Code and its recodification in the Texas Estates Code resulted in no substantive change. *See* Tex. Est. Code § 21.001.

For example, in *Kamoos v. Woodward*, the San Antonio Court of Appeals held that the proponent's belief that probate was unnecessary, along with her concern about the cost of probating a will, constituted sufficient evidence to support admitting a will to probate as a muniment of title more than four years after the death of the testator. *See Kamoos v. Woodward*, 570 S.W.2d 6, 8-9 (Tex. Civ. App.—San Antonio 1978, writ ref'd n.r.e.). And in *Chovanec v. Chovanec*, 881 S.W.2d 135, Chovanec did not know that he needed to probate his wife's will "because he inherited everything from his wife and he believed the land was his separate property." *Id.* at 137. When potential title problems came to his attention years later, he "immediately offered the will for probate." *Id.* The First Court of Appeals concluded that this evidence "show[ed] more than simply [Chovanec's] ignorance of the law," and concluded it was sufficient to raise a fact issue regarding the applicant's default. *Id.* at 137-38. Finally, in *Estate of Hammerly*, a husband applied to admit a will to probate as a muniment of title eight years after his wife's death. *Hammerly*, 2016 WL 1446083, at *1. The husband knew of the will and its contents, did not consult with anyone following her death, did not know it was necessary to probate the will, and stated he did not have the money to probate the will. *Id.* Despite the husband's knowledge of the will and its contents, the Tyler Court of Appeals concluded that the trial court properly admitted the will to probate as a muniment of title because there was a fact issue on default, which the trial court resolved in favor of admitting the will to probate. *See id.* at *4.

Here, Francois did not believe that he needed to probate Jackson's will because he believed that having the will and the deed to the Calumet property meant that the property was his. These facts are similar to those in *Kamoos*, *Chovanec*, and *Hammerly*, where the will proponents believed that probate was unnecessary. *See Hammerly*, 2016 WL 1446083, at *3-4; *Chovanec*, 881 S.W.2d at 138; *Kamoos*, 570

S.W.2d at 8-9. As soon as Francois discovered a potential defect with the deed to the Calumet property, he offered the will for probate. *See Chovanec*, 881 S.W.2d at 138. Further, as in *Chovanec*, Francois was the sole heir of Jackson's property. *See id.* ("Judy Chovanec died August 10, 1979, leaving a will devising all her property to her husband, appellant."). The trial court, as the fact finder, was the judge of Francois's credibility; it was entitled to credit Francois's testimony.[4] *See Hammack*, 2016 WL 1446083, at *4 ("The evidence in the instant case created a fact issue regarding default. The resolution of that issue was for the trial court."); *Kamoos*, 570 S.W.2d at 9.

In sum, we conclude that trial court's finding that Francois was not in default under section 256.003 of the Texas Estate Code was not so contrary to the weight of the evidence as to be clearly wrong and unjust. Thus, there is factually sufficient evidence to support the trial court's admission of the will to probate.

We overrule appellants' first issue.

B. Will as a Muniment of Title

In challenging a trial court's decision to admit a will to probate solely as a muniment of title, the appellant bears the burden of showing "a clear abuse of discretion" by the trial court. *See Washington v. Law*, 519 S.W.2d 953, 954 (Tex. App.—Houston [14th Dist.] 1975, writ ref'd n.r.e.); *see also In re Estate of Soefje*, No. 04-05-00030-CV, 2006 WL 927360, at *2 (Tex. App.—San Antonio Apr. 12, 2006, no pet.). A trial court abuses its discretion when it acts arbitrarily or unreasonably, without reference to any guiding rules and principles. *See Soefje*, 2006 WL 927360, at *2 (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985)).

[4] Francois was the only witness regarding diligence in presenting the will for probate.

"Probating a will as a muniment of title provides a means to probate a will quickly and cost-efficiently when there is no need for administration of the estate." *In re Estate of Kurtz*, 54 S.W.3d 353, 355 (Tex. App.—Waco 2001, no pet.).

> A court may admit a will to probate as a muniment of title if the court is satisfied that the will should be admitted to probate and the court: (1) is satisfied that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate; or (2) finds for another reason that there is no necessity for administration of the estate.

Tex. Est. Code § 257.001.

In their brief, appellants assert that the trial court should not have admitted the will into probate because "[t]he existence of unpaid debts, namely federal income tax debts[,] . . . rendered the will ineligible for probate by law." But the trial court verified that the only debts associated with Jackson's estate were secured by Jackson's home:

> THE COURT: On the date of death were there debts and expenses?
>
> [Francois]: We found out later there was debts as far as the property taxes.
>
> ***
>
> THE COURT: As we sit here today, are there debts and expenses? Well, let's see, so is there anything else that you are aware of that she owed?
>
> [Francois]: No.
>
> THE COURT: No federal taxes that she owed?
>
> [Francois]: No.
>
> THE COURT: Were her income tax filings complete or made complete?
>
> [Francois]: As far as I know, yes.
>
> THE COURT: And as we sit here today, are there debts — are there taxes owed on the property?
>
> [Francois]: We ended up getting a loan to pay the taxes.

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THE COURT: So tell me, as we sit here today, what was the total amount of taxes, and again, this may not play into all this, but what are the taxes owed on this property? Ball park.

[Francois]: It was ninety thousand.

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THE COURT: So as we sit here today, there was a ninety thousand dollar debt?

[Francois]: We paid the taxes with a loan.

THE COURT: So you have a loan against the property?

[Francois]: Right.

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THE COURT: Any other debts that relate to the property?

[Francois]: Other than maybe a house note, but —

THE COURT: Other than this loan?

[Francois]: That's it.

This excerpt shows that the trial court satisfied itself that there were no unpaid debts, other than those secured by a lien on the real estate. *See id.* Appellants simply have failed to establish that the trial court abused its discretion in admitting Jackson's will to probate as a muniment of title. *See id.*; *see also Kurtz*, 54 S.W.3d at 355 ("One of the purposes of this limited form of probate is to provide continuity in the chain of title to estate properties by placing the will on the public record.").

Accordingly, appellants' second issue is overruled.

Conclusion

Having overruled appellants' issues, we affirm the trial court's order admitting Jackson's will to probate as a muniment of title.

/s/ Kevin Jewell
Justice

Panel consists of Justices Christopher, Busby, and Jewell.