



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00718-CV

IN THE ESTATE OF AMINTA PEREZ-MUZZA

From the County Court at Law No. 2, Webb County, Texas
Trial Court No. 2007-PB-7000089-L2
Honorable Victor Villarreal, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 29, 2018

AFFIRMED

This appeal stems from the proceedings surrounding the estate of Aminta Perez-Muzza. Following Ms. Perez-Muzza's death in 2007, the will was admitted into probate and her nephew, Rolando Peña was named the independent executor of the estate. Several relatives subsequently filed a will contest leading to multiple hearings, orders, judgments, and appeals. On October 19, 2016, the trial court granted Veronica G. Peña's motion for summary judgment thereby setting aside its previous order admitting the 2007 will to probate. Approximately one year later, on October 12, 2017, the trial court granted Veronica's amended application to determine heirship and to appoint an administrator of the estate.

In his appeal, Rolando raises three issues: (1) the trial court lacked jurisdiction to hear the matter because Veronica's suit was moot; (2) the trial court's finding of a need or necessity for an

administration of the estate is against the overwhelming preponderance of the evidence; and (3) the trial court's finding that Graciela Gonzalez Sharnhornst is a suitable person to serve as an administrator of the estate is against the overwhelming weight of the evidence. We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal represents the fourth time this court has addressed the will executed by Aminta Perez-Muzza several months prior to her death in 2007. Because more detailed versions of the facts have been set forth in previous opinions, we limit the facts and procedural history as necessary for this opinion.

- October 13, 2007 Webb County Court at Law No. 2 signed an order admitting the 2007 will to probate. The will devised all of Perez-Muzza's real and personal property to her nephew, Rolando, and named him the independent executor of her estate.
- December 10, 2009 Veronica filed a will contest alleging wrongful decree of distribution and interference with inheritance rights.

The trial court dismissed and reinstated the case several times.

- March 13, 2013 Finding Veronica did not receive proper notice, this court reversed the trial court's order and the cause was remanded for further proceedings. *See In re Estate of Perez-Muzza*, No. 04-12-00178-CV, 2013 WL 979128 (Tex. App.—San Antonio March 13, 2013).
- October 10, 2013 Trial court dismissed Veronica's lawsuit contesting the will for lack of standing.
- July 16, 2014 Finding the trial court abused its discretion when it dismissed the will contest as a sanction, this court reversed the trial court's order and remanded the cause for further proceedings. *See In re Estate of Perez-Muzza*, 446 S.W.3d 415 (Tex. App.—San Antonio 2014, pet. denied).
- August 9, 2016 This court reversed the judgment of the trial court and the cause was remanded for further proceedings.
- October 19, 2016 Trial court granted Veronica's motion for summary judgment thereby setting aside its previous order admitting the purported will to probate.

- November 18, 2016 Rolando filed notice of appeal regarding the trial court’s denial of his motion for summary judgment based on the affirmative defense of laches; the trial court proceeded forward with the remaining issues.
- August 8, 2017 Veronica filed her amended application to determine heirship and to appoint an administrator for the estate.
- October 2, 2017 Rolando filed an opposition to the appointment of letters testamentary and to Veronica’s application to determine heirship and appointment of administrator.
- October 12, 2017 Trial court appointed Graciela Gonzalez Sharnhornst Administrator of the Estate of Aminta Perez-Muzza and further ordered that the clerk of court issue letters of administration upon filing of an oath.
- May 16, 2018 This court concluded Rolando did not meet his burden of producing competent summary judgment evidence to raise a genuine issue of material fact regarding his laches affirmative defense. *See In re Estate of Perez-Muzza*, No. 04-16-00755-CV, 2018 WL 2222218 (Tex. App.—San Antonio May 16, 2018).

On appeal, Rolando contends (1) Veronica’s suit is moot; (2) the trial court’s October 12, 2017 finding of a need or necessity for administration is against the overwhelming preponderance of the evidence; and (3) the trial court’s October 17, 2017 finding that Graciela Gonzalez Sharnhornst is a suitable person to serve as an administrator of the estate is against the overwhelming weight of the evidence.

Because this court previously overruled Rolando’s suggestion of mootness set forth in issues one and two,¹ we turn to the question of Sharnhornst’s suitability to serve as an administrator of the estate.

¹ *See* this court’s order dated March 14, 2018, filed in cause number 04-16-00755-CV, *In the Estate of Aminta Perez-Muzza*, denying Appellant Rolando Peña’s Suggestion of Mootness. Additionally, we overrule any argument contained within Rolando’s issue two, related to the trial court’s finding of need and necessity. *See* TEX. R. APP. P. 38.1(i) (requiring appellate brief “contain a succinct, clear, and accurate statement of the arguments made in the body of the brief”); *see also Lockett v. State*, 16 S.W.3d 504, 505 n.2 (Tex. App.—Houston [1st Dist.] 2000, pet. ref’d) (holding that conclusory statement supported by neither argument nor authority presents nothing for our review).

SUITABLE PERSON TO SERVE AS ADMINISTRATOR OF THE ESTATE

A. Standard of Review

“The trial court is given broad discretion in determining whether an individual is suitable to serve as an executor or administrator.” *Pine v. DeBlieux*, 360 S.W.3d 45, 47 (Tex. App.—Houston [1st Dist.] 2011, pet. denied); *see also In re Estate of Gober*, 350 S.W.3d 597, 599 (Tex. App.—Texarkana 2011, no pet.); *In re Estate of Gaines*, 262 S.W.3d 50, 55 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *In re Guardianship of Bayne*, 171 S.W.3d 232, 235 (Tex. App.—Dallas 2005, pet. denied). An appellate court will not disturb a trial court’s determination of an administrator’s suitability absent an abuse of discretion. *Pine*, 360 S.W.3d at 47. The trial court abuses its discretion if its determination that the applicant is unsuitable is arbitrary or unreasonable. *Gober*, 350 S.W.3d at 599; *Cire v. Cummings*, 134 S.W.3d 835, 838–39 (Tex. 2004). “The mere fact that a trial court may decide a matter within its discretionary authority in a different manner than an appellate court in a similar circumstance does not demonstrate that an abuse of discretion has occurred.” *Gober*, 350 S.W.3d at 599; *accord Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 242 (Tex. 1985).

B. Arguments of the Parties

Rolando contends the evidence conclusively establishes Sharnhornst’s unsuitability because of her animosity toward Rolando and because of her personal interests adverse to the interests of Rolando and the paternal kindred of Perez-Muzza. Veronica counters the record contains credible evidence that Sharnhornst will subordinate her personal interests to the interests of the estate in connection with fulfilling her duties as administrator.

C. Qualified Person in the Appointment of an Administrator

A person is statutorily disqualified from serving as an executor of an estate if that person is “[a] person whom the court finds unsuitable.” *Gober*, 350 S.W.3d at 599 (quoting TEX. PROBATE

CODE ANN. § 78(e)). The term “unsuitable” is not defined in the Texas Probate Code, leaving the “implication that the trial court has discretion in making that determination.” *Id.* (quoting *In re Estate of Boren*, 268 S.W.3d 841, 846 (Tex. App.—Texarkana 2008, pet. denied)); *see also Olguin v. Jungman*, 931 S.W.2d 607, 609 (Tex. App.—San Antonio 1996, no writ). “No comprehensive, discrete explanation exists delineating the attributes which make someone unsuitable” to serve as an administrator. *See Olguin*, 931 S.W.2d at 610.

The Texas Supreme Court has long recognized that an individual asserting a claim under or against an estate is not unsuitable to serve as an administrator merely because of that claim. *See Boyles v. Gresham*, 309 S.W.2d 50, 51 (1958); *see also* TEX. PROB. CODE ANN. § 77 (West 2009) (setting forth both surviving spouse, next of kin, and others presumably who will benefit under the will as suitable administrators); *Olguin*, 931 S.W.2d at 610 (reiterating that “individual claiming under the will or asserting a claim against the estate is not unsuitable merely by virtue of that assertion”).

C. Evidence Before the Trial Court

On October 4, 2017, the trial court heard testimony from Graciela Sharnhornst. Sharnhornst testified she had been employed as a revenue officer with the Internal Revenue Service for almost thirty years and she held a Master’s Degree in Accounting. Sharnhornst further explained that her employment with the IRS required her to conduct forensic accounting, which meant she analyzed financial information to determine an individual’s ability to pay and whether the financial documents the individual filed supported their statements to the IRS. She explained that preparing her cases for the IRS requires documenting everything and every step she takes in an investigation. In doing so, Sharnhornst testified she regularly utilized spreadsheets and copies of financials to make her recommendations. She explained that as part of her training, she created

a back-up of each document so that a third party can determine the bases and accuracy of her calculations.

Veronica's counsel questioned Sharnhornst about her ability to remain fair and impartial. Sharnhornst opined that her employment with the IRS required her to abide by a strict set of rules of conduct. She averred that more than anything, the conduct code mandates she be fair and impartial and treat everyone with respect. Sharnhornst acknowledged she was Ms. Perez-Muzza's first cousin on her mother's side, she was a party to the lawsuit, and that she had originally given Veronica's attorney her power of attorney to "handle" the lawsuit. During cross-examination, Sharnhornst further conceded her pleadings averred Rolando intended "to deprive the plaintiffs of their inheritance rights and property which they would have inherited from Aminta Perez-Muzza."

Sharnhornst explained the power of attorney was signed "10 years ago and we were all busy and [the attorney] was supposed to do everything." She explained that the family had "always been fair with each other so I [had] no reason not to think that [the attorney] was going to be unfair with anybody in our family." Sharnhornst further averred she could be fair in her dealings with Rolando Peña. She explained that she did not view being administrator of the estate as being about her individually. To the contrary, Sharnhornst explained the administration of the estate is about everyone that is involved—that includes everyone on both sides. Sharnhornst was adamant that if she were appointed, she would be involved with everything being distributed. She would represent all of the heirs, known and unknown, paternal and maternal, "mak[ing] absolutely sure" that the "dollar is going to be split up the way it should be."

The attorney ad litem on behalf of the unknown heirs opined that although he initially had reservations with the trial court appointing an administrator related to any of the individuals or representatives, he supported Sharnhornst's appointment as administrator of the estate. He acknowledged counsel's argument that an individual "can wear more than one hat," and appear

individually and as the administrator of an estate. For him, it was a question of integrity; and the ad litem felt that Sharnhornst's position with the IRS and the integrity needed in that position, overrode any concerns he had with Sharnhornst's name on the opposing side on the pleadings.

The trial court took the matter under advisement and, on October 12, 2016, granted Veronica's application and appointed Sharnhornst as administrator of the estate.

D. Conclusion

The testimony before the trial court was uncontroverted. Sharnhornst holds a Master's Degree in Accounting and works for the IRS. Her job responsibilities require her to understand complex accounting and break down multiple transactions to find their origin. Sharnshornst's employment also requires her to match up financial statements with payment histories and determine future abilities to pay. These are technical skills far beyond the skills required for the appointment of an administrator of an estate.

Additionally, although Sharnhornst is an individual party in the lawsuit, that alone does not disqualify her. *See Boyles*, 309 S.W.2d at 52; *Oguin*, 931 S.W.2d at 610. She was questioned extensively about her ability to be fair to all parties. She acknowledged her apparent conflict of interest and assured the trial court she could remain fair and impartial and explained she was required to do so every day as part of her employment. *Cf. Pine*, 360 S.W.3d at 51 (concluding personal interests were so adverse all parties could not be fairly represented); *Olguin*, 931 S.W.2d at 610 (determining persons asserting a claim against property or claiming it as their own to the exclusion of the estate are generally deemed unsuitable because of the conflict). We are mindful that the trial court is the sole judge of the credibility of the witnesses. *See Slicker v. Slicker*, 464 S.W.3d 850, 857 (Tex. App.—Dallas 2015, no pet.) (reiterating the probate court acts as the factfinder and is the sole judge of witness credibility). Here, the trial court had the opportunity to assess Sharnhornst's credibility in the face of questions about her ability to put the estate's interests

above her own, to set aside any potential bias and to remain fair and impartial, to determine whether her personal interests were not so adverse that all parties could be fairly represented, and whether Sharnhornst was suitable to serve as an administrator of the estate.

Based on a review of the entire record, there is sufficient evidence to support the trial court's determination that Sharnhornst was suitable to serve as the administrator of the estate. Under the facts and circumstances of this case, we cannot say the trial court abused its discretion in appointing Graciela Gonzalez Sharnhornst as administrator of the estate. *See Pine*, 360 S.W.3d at 47.

Patricia O. Alvarez, Justice