In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00219-CV

IN THE ESTATE OF SHEILA LOUIS CANTRELL

On Appeal from the County Court
Hardin County, Texas
Trial Cause No. 8893

MEMORANDUM OPINION

Appellant Garry W. Cantrell, a prisoner appearing pro se, appeals from an order granting probate of a will as a muniment of title that was filed after the death of his wife, Sheila Louis Cantrell. In December 2007, James Michael Chandler, Jr. filed an application to probate Sheila Louis Cantrell's will as a muniment of title. Cantrell filed timely opposition, which he later amended. Cantrell's opposition alleged that Sheila died without a valid will, that the alleged will did not meet the statutory requirements of sections 57 and 59A of the Texas Probate Code, that Sheila's signature was forged, that Sheila was not of sound mind and was under undue influence, and that an administration of Sheila's

estate was necessary. Cantrell also filed a counterclaim alleging that Sheila's estate should compensate him for his economic contributions to Sheila's estate during their marriage.

Pursuant to section 34A of the Texas Probate Code, the trial court appointed Cantrell an attorney ad litem on September 10, 2008, to represent his interest in the probate. *See* TEX. PROB. CODE ANN. § 34A (Vernon 2003). Cantrell filed a bench warrant motion on April 21, 2009, wherein he requested the ability to personally attend the final probate hearing to oppose the application to probate Sheila's will and to testify that the alleged will was not authentic. The trial judge denied Cantrell's request on April 21, 2009.

On April 24, 2009, Chandler filed a sworn proof of death and affidavit supporting the other facts necessary for probating the will as a muniment of title. Therein, Chandler stated that Sheila left a valid, written will. In support of the application, he filed two affidavits with the trial court swearing to Sheila's handwriting and signature on the will. On April 24, 2009, the trial court held an evidentiary hearing on the application to probate the will as a muniment of title and thereafter signed an order admitting the will to probate as a muniment of title.[1] While the trial court did not make findings of fact and conclusions of law, the court's order provides that it found that the allegations set forth in the

[1] The transcript of the evidentiary hearing was not made part of the appellate record and thus is not considered for purposes of this appeal.

application were true, including that Sheila left a valid will, that all of the necessary proof required for the probate of her will was provided to the court, and that Sheila's will was entitled to probate.

Chandler also presented the trial court with an inventory, appraisement and list of claims detailing the value of Sheila's estate. The trial court signed an order approving this inventory, appraisement and list of claims without objection from Cantrell on April 23, 2009.

In seven issues, Cantrell argues that the trial court erred by: (1) finding Sheila's will valid and not forged; (2) failing to replace Cantrell's attorney ad litem when requested; (3) denying Cantrell's request for a bench warrant; (4) failing to remove the estate administrator; (5) failing to properly apply the laws of community property to the property of the estate; (6) failing to find fraud by the administrator in his alleged concealment of insurance policies; and (7) failing to make a determination that Cantrell should be allowed to live in the trailer on the land where the trailer currently sits.

Standard of Review

The trial court did not issue findings of fact and conclusions of law. In a nonjury trial, the appellate court must draw "every reasonable inference and intendment supported by the record" in favor of the trial court's judgment. *Black v. Dallas County Child Welfare Unit*, 835 S.W.2d 626, 630 (Tex. 1992) (citing *Carter v. William Sommerville &*

Son, Inc., 584 S.W.2d 274, 276 (Tex. 1979); *Amos v. Sengleman*, 183 S.W.2d 1008, 1010 (Tex. Civ. App.—Galveston 1944, writ ref'd w.o.m.)).

Will Execution Formalities and Forgery

In his first issue, Cantrell challenges the trial court's finding that Sheila's will was executed in conformity with the requirements of sections 57 and 59 of the Texas Probate Code. *See* TEX. PROB. CODE ANN. §§ 57, 59 (Vernon 2003). In particular, he contends that the alleged will was executed improperly because neither Sheila nor the witnesses signed or initialed the first page of the alleged will. He further argues that the will is invalid because the witnesses were not aware of its contents. Finally, Cantrell argues that Sheila's signature on the will is a forgery.

"To admit a will to probate, a trial court must find that the will is valid under the probate code." *Guthrie v. Suiter*, 934 S.W.2d 820, 829 (Tex. App.—Houston [1st Dist.] 1996, no writ). Section 59(a) of the Probate Code provides:

> (a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator.

TEX. PROB. CODE ANN. § 59(a). In this case the trial court signed an order stating:

> Decedent left a Will dated March 5th, 2006, executed with the formalities and solemnities and under the circumstances required by law to make it a valid Will; that from the sworn testimony in open Court of two of the subscribing witnesses (each being above the age of fourteen years) to the

> Will, it appears that Decedent declared said Will to be her last; that on the date said Will was made, Decedent had attained the age of eighteen (18) years and was of sound mind; that said Will was not revoked by Decedent[,] . . . that all of the necessary proof required for the probate of said Will has been made[.] . . .

The Probate Code does not require a testatrix or the witnesses to sign each page of a valid will. *See id.* Further, the Probate Code does not require the witnesses to know the content of a will. *Id*. Cantrell submitted no evidence to the trial court to contradict the trial court's findings that the submitted will was valid and met all necessary requirements. As evidence that Sheila's will was forged, Cantrell offers little more than a list of his own suspicions that lead him to conclude that the will might be a forgery. Such suspicions are insufficient to reverse the trial court's findings. *See Black*, 835 S.W.2d at 630. We overrule issue one.

Access to Court

In his third issue, Cantrell argues that the trial court erred in denying his request for a bench warrant. We review a trial court's ruling on a bench warrant request for an abuse of discretion. *In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003). '"A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to any guiding rules or principles.'" *Gordon v. Sebile*, 311 S.W.3d 190, 192 (Tex. App.—Beaumont 2010, no pet.) (quoting *Bowie Mem'l Hosp. v. Wright,* 79 S.W.3d 48, 52 (Tex. 2002)).

Litigants may not be denied access to the courts simply because they are inmates. *See Hudson v. Palmer*, 468 U.S. 517, 523, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984). "A

prisoner in Texas has a constitutional right of access to the courts, but only a qualified right to appear personally at a civil proceeding." *Dodd v. Dodd*, 17 S.W.3d 714, 717 (Tex. App.—Houston [1st Dist.] 2000, no pet.), *disapproved of in part on other grounds by In re Z.L.T.*, 124 S.W.3d at 166. The prisoner's right of access to the courts entails not so much his personal presence, but rather his opportunity to present evidence and participate in the proceedings. *In re D.D.J.*, 136 S.W.3d 305, 313-14 (Tex. App.—Fort Worth 2004, no pet.); *Dodd*, 17 S.W.3d at 717. The trial court must weigh the inmate's right of access to the courts against the protection of our correctional system's integrity. *Z.L.T.*, 124 S.W.3d at 165. Following *Stone v. Morris*, 546 F.2d 730, 735-36 (7th Cir. 1976), courts of appeals in Texas have recognized a variety of factors that trial courts should consider when deciding whether to grant an inmate's request for a bench warrant: (1) the cost and inconvenience of transporting the prisoner to the courtroom; (2) the security risk the prisoner presents to the court and public; (3) whether the inmate's claims are substantial; (4) whether the matter's resolution can reasonably be delayed until the inmate's release; (5) whether the inmate can and will offer admissible, noncumulative testimony that cannot be effectively presented by deposition, telephone, or some other means; (6) whether the prisoner's presence is important in judging his demeanor and credibility; (7) whether the trial is to the court or a jury; and (8) the inmate's probability of success on the merits. *Z.L.T.*, 124 S.W.3d at 165-66. A key factor the trial court considers is whether the inmate is represented by counsel or is proceeding pro se. *Armstrong v. Randle*, 881 S.W.2d 53,

57 (Tex. App.—Texarkana 1994, writ denied). The inmate requesting a bench warrant has the burden to identify with sufficient specificity the grounds for establishing his or her right to relief. *Z.L.T.*, 124 S.W.3d at 166.

In *Z.L.T.*, the inmate did not state why his appearance in court was necessary to preserve his constitutional right. *Id.* While the inmate did list the *Stone* factors in his request, "he failed to provide any factual information showing why his interest in appearing [in the trial court] outweighed the impact on the correctional system." *Id*. The only pertinent information the inmate provided was that he was located more than 200 miles from the trial court. *Id*. The Texas Supreme Court held that the trial court did not abuse its discretion in denying the inmate's request for a bench warrant because the inmate did not meet his burden. *Id*.

Similarly, Cantrell failed to provide the trial court with any factual information showing why his interest in appearing in court outweighed the impact on the correctional system. The only pertinent information in the application for bench warrant is that Cantrell wanted to testify as to the non-authenticity of the will. The trial court's denial did not bar Cantrell from proceeding by affidavit or deposition or other effective means. Cantrell provides no argument as to why he could not protect his interests through these alternative means. Cantrell provided the trial court with no other information to enable the court to consider the *Stone* factors. *See Z.L.T.*, 124 S.W.3d at 166; *Stone*, 546 F.2d at 735-36. Moreover, here, Cantrell was represented by counsel at the hearing. Cantrell

failed to sufficiently specify the grounds that would have entitled him to relief. The trial court did not act arbitrarily and unreasonably in denying Cantrell's request for a bench warrant and therefore did not abuse its discretion. *See Gordon*, 311 S.W.3d at 192. We overrule issue three.

Preservation of Error

We find Cantrell failed to preserve issues two, four, five, six, and seven for review. In Cantrell's second issue, he argues that the trial court erred in failing to grant his request for the trial court to replace his attorney ad litem. He further argues that he was denied proper assistance of counsel due to various inadequacies of his trial counsel. Our review of the record does not show that Cantrell preserved this complaint for review. To preserve a complaint on appeal, the record must show that the appellant made the complaint to the trial court by a timely request, objection, or motion and that the trial court ruled on the request, objection, or motion either expressly or implicitly, or that the trial court refused to rule and the party objected to the refusal. TEX. R. APP. P. 33.1(a). The appellant's complaint on appeal must be the same as the complaint presented to the trial court. *Sefzik v. Mady Dev., L.P.*, 231 S.W.3d 456, 464 (Tex. App.—Dallas 2007, no pet.). The record before us does not reflect that Cantrell requested the trial court to replace his appointed attorney ad litem. Further, there is no evidence in the record of the allegations Cantrell makes regarding his attorney's inadequate assistance. Finally, it is well established that the doctrine of ineffective assistance of counsel does not extend to purely civil cases. *See,*

e.g., Green v. Kaposta, 152 S.W.3d 839, 844 (Tex. App.—Dallas 2005, no pet.); *Cherqui v. Westheimer St. Festival Corp.,* 116 S.W.3d 337, 343 (Tex. App.—Houston [14th Dist.] 2003, no pet.). We overrule issue two.

In Cantrell's fourth issue he argues that the trial court erred in failing to remove the administrator; in his fifth issue, he argues that the property laws of Texas were not properly applied by the trial court; in his sixth issue, Cantrell argues that the estate administrator committed fraud in concealing the existence of insurance policies; and in his seventh issue, Cantrell asks the court to declare ownership to certain community property and insurance proceeds. The appellate record does not reflect that Cantrell presented these complaints to the trial court. Cantrell may not raise these issues for the first time on appeal; accordingly, we overrule these issues. *See* TEX. R. APP. P. 33.1(a). Having overruled each of Cantrell's seven issues, we affirm the trial court's judgment.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on July 29, 2010
Opinion Delivered August 19, 2010

Before McKeithen, C.J., Gaultney and Kreger. JJ.