



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00315-CV

IN THE MATTER OF THE ESTATE OF ROSEMARY ALLEN ROACH, DECEASED

On Appeal from the County Court at Law No. 1
Potter County, Texas
Trial Court No. 30148-1, Honorable W. F. (Corky) Roberts, Presiding

May 3, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and PIRTLE, J. and HANCOCK, S.J.¹

Appellant, Tom L. Roach III, appeals his removal as independent executor of the estate of Rosemary Allen Roach on the motion of Susan Roach and Sheri Roach Brosier (collectively, "appellees"). Because Tom failed to address an independent ground upon which the trial court removed him as independent executor, we will affirm the judgment of the trial court.

¹ Mackey K. Hancock, Justice (Ret.), Seventh Court of Appeals, sitting by assignment.

Factual and Procedural Background

The issues that are presented to this Court by the present appeal relate to the manner in which Tom, as independent executor of Rosemary's estate, interacted with two businesses that he owns or controls. Specifically, Tom owns and controls Roach Oil Company, which owns and controls Ashtola Exploration Company, Inc. During her life, Rosemary had business dealings with both companies that resulted in her estate owning a claim against Roach Oil and owing continuing obligations to Ashtola.

The claim against Roach Oil arose when, in April of 1997, Roach Oil issued a promissory note to Rosemary in the principal amount of \$600,000, bearing interest at 6.24% per annum. The note was payable in equal monthly installments with the final installment due on April 1, 2002. However, Roach Oil did not make payments as required under the note and Rosemary did not enforce the note during her lifetime. At the time of Rosemary's death, the note passed to her estate with Roach Oil owing a principal amount of approximately \$200,000. This note was included as an asset of the estate in Tom's inventory. As independent executor, Tom took no action to collect on the note and, rather, distributed the note to the beneficiaries. This distribution divided the claim amongst the beneficiaries and increased the time and financial burden required for the beneficiaries to pursue their claims.

Ashtola served as the operator of oil and gas properties owned by Rosemary. Its compensation was set by the accounting terms of a joint operating agreement. However, both during her life and after her passing, Ashtola separately charged

Rosemary for overhead expenses which appear to exceed the charges that were authorized by the joint operating agreement.

In March of 2016, appellees filed their motion to remove Tom as independent executor of Rosemary's estate. The trial court heard the motion and entered an order removing Tom as independent executor of the estate. It is from this order that Tom appeals.

Tom presents two issues by his appeal. His first issue contends that the trial court erred by concluding that the Roach Oil promissory note created a conflict of interest because the note was barred by the statute of limitations. Tom's second issue contends that there was insufficient evidence to establish that the overhead charges made by Ashtola created a material conflict of interest that rendered Tom incapable of discharging his duties to Rosemary's estate. Both of Tom's issues challenge the trial court's removal of Tom as independent executor under Texas Estates Code section 404.0035(b)(5), which authorizes removal when an independent executor becomes incapable of properly performing his fiduciary duties due to a material conflict of interest. See TEX. EST. CODE ANN. § 404.0035(b)(5) (West 2014).² However, neither of these issues address the trial court's removal of Tom under section 404.0035(b)(3), which authorizes removal when an independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of his duties. See section 404.0035(b)(3).

² Further reference to provisions of the Texas Estates Code will be by reference to "section ___."

Gross Misconduct or Mismanagement

We do not address Tom's arguments regarding whether his business holdings created a material conflict of interest that made him incapable of performing his fiduciary duties as independent executor because Tom fails to address the independent ground that he was guilty of gross misconduct or mismanagement that was found by the trial court.³

An appellant must challenge all independent bases or grounds that fully support a complained of ruling or judgment. *Oliphant Fin. LLC v. Angiano*, 295 S.W.3d 422, 423-24 (Tex. App.—Dallas 2009, no pet.); *Britton v. Tex. Dept. of Criminal Justice*, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.). “If an independent ground fully supports the complained-of ruling or judgment, but the appellant assigns no error to that independent ground, we must accept the validity of that unchallenged independent ground, and thus any error in the grounds challenged on appeal is harmless because the unchallenged independent ground fully supports the complained-of ruling or judgment.” *Oliphant Fin. LLC*, 295 S.W.3d at 424 (citing *Britton*, 95 S.W.3d at 681). Removal of an independent executor of an estate may be ordered by a court if

³ Curiously, in a footnote contained in his brief, Tom states,

It is significant to note that Tom's Sisters did not allege[] nor did the Trial Court bas[e] its decision on allegations[] that Tom was guilty of gross mismanagement or gross misconduct in the performance of his duties as independent executor of Rosemary's Estate. See Estates Code § 404.0035(b)(3). Thus[,] the only basis for review of the Trial Court's decision is the purported conflicts of interest.

However, review of the record reflects that appellees' motion for removal of independent executor expressly includes a section contending that the trial court should remove Tom as independent executor because he is guilty of gross misconduct and/or gross mismanagement in the performance of his duties. In addition, the trial court's order granting appellees' motion finds that Tom engaged in gross misconduct and gross mismanagement by failing to pursue claims under the Roach Oil note and causing Ashtola to overcharge Rosemary and the estate. Further, Tom challenges the gross misconduct or mismanagement grounds in his application for reinstatement as independent executor. Clearly, the gross misconduct or gross mismanagement ground is properly before this Court.

the independent executor, *inter alia*, is proven to have been guilty of gross misconduct or gross mismanagement in performance of his duties, see section 404.0035(b)(3), or becomes incapable of properly performing his fiduciary duties due to a material conflict of interest, see section 404.0035(b)(5). The trial court's finding that Tom engaged in gross misconduct and gross mismanagement by failing to pursue claims under the Roach Oil note and causing Ashtola to overcharge Rosemary and the estate is an independent ground that fully supports the trial court's removal of Tom as independent executor. As such, any error resulting in the trial court's finding of a material conflict of interest is harmless and we must affirm the trial court's removal of Tom as independent executor on the unchallenged ground that he was guilty of gross misconduct or gross mismanagement.

Because one of the independent grounds that fully supports the trial court's removal of Tom as independent executor has not been challenged by Tom, we need not address the evidence supporting this ground. See *Oliphant Fin. LLC*, 295 S.W.3d at 424; *Britton*, 95 S.W.3d at 681. However, we note that the trial court found that Tom had committed gross misconduct or mismanagement related to appellees' claims that Ashtola charged the estate for overhead expenses that were not authorized by the joint operating agreement. Appellees presented evidence that Ashtola separately charged the estate for overhead expenses which, under the terms of the joint operating agreement, are included within the payment for services made under the contract. In other words, Ashtola double billed for these overhead expenses while Tom was independent executor of the estate. Tom does not dispute that Ashtola charged the estate more than was authorized by the joint operating agreement. Rather, Tom simply

contends that these overcharges were not material and, therefore, do not present a conflict of interest that renders Tom incapable of performing his fiduciary duties as independent executor of the estate. As such, there is evidence in the record that supports the trial court's conclusion that Tom committed gross misconduct and mismanagement by allowing Ashtola to overcharge the estate.

Conclusion

Because Tom failed to challenge an independent ground that supports the trial court's ruling, we affirm the judgment of the trial court.

Mackey K. Hancock
Senior Justice