

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 18, 2023 Session

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Clerk of the
Appellate Courts

ESTATE OF STACEY BRIAN SANE v. DEBRA SANE

Appeal from the Chancery Court for Cocke County
No. 2021-PR-27 Telford E. Forgety, Jr., Chancellor

No. E2021-01525-COA-R3-CV

This appeal involves a claim by a surviving spouse against the decedent’s estate. After a bench trial, the trial court concluded that the surviving spouse’s petition for specific property, year’s support allowance, and elective share filed more than nine months after the date of the decedent’s death was time barred pursuant to Tennessee Code Annotated section 31-4-102. Further, the trial court held that the surviving spouse was not prevented from timely filing for specific property, year’s support allowance, and elective share by fraud of the personal representative. The surviving spouse appeals. We affirm the ruling of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and KRISTI M. DAVIS, JJ., joined.

Jeffery S. Greene, Newport, Tennessee, for the appellant, Debra Sane.

Ben W. Hooper, III, Newport, Tennessee, for the appellees, Estate of Stacey Brian Sane and Paula S. Sane.

OPINION

I. BACKGROUND

Stacey Brian Sane (“Decedent”) married Debra Sane (“Surviving Spouse”) on November 29, 2016. When Decedent died on February 23, 2020, he was still married to Surviving Spouse.

On the day following Decedent's death, Surviving Spouse accompanied her mother-in-law, Paula Smith Sane ("Personal Representative")¹ to make Decedent's burial arrangements. In March of 2020, Surviving Spouse and Personal Representative met several times to discuss Decedent's guns and real estate. Personal Representative requested at least three times that Surviving Spouse sign a quit claim deed to the house Decedent shared with his wife, as Surviving Spouse's name was not on the deed for the home. Surviving Spouse, however, refused to sign the quit claim deed. Surviving Spouse also refused to allow Decedent's son to retrieve the requested guns.

Prior to June 3, 2020, Surviving Spouse sat down with Personal Representative to review Decedent's will. According to Surviving Spouse, Personal Representative informed her that pursuant to the will, everything went to Personal Representative and her husband. Surviving Spouse later stated that it was her understanding the will left everything to Decedent's son. Surviving Spouse acknowledges that the will she reviewed was the will probated by Personal Representative. She asserts that Personal Representative told her the will was from 2003, before Surviving Spouse married Decedent. According to Surviving Spouse, Personal Representative proposed that they work out distributing the assets without going to probate. Personal Representative told Surviving Spouse that she was not planning to submit the will for probate.

Personal Representative and her husband received, as beneficiaries, the proceeds of a life insurance policy payable by reason of Decedent's death. Out of those proceeds, Personal Representative gave Surviving Spouse a check in the amount of \$51,414.09. The check presented and cashed at Tennessee State Bank on June 3, 2020 had the word "estate" written on the memo line. It appears Personal Representative presented the check with the understanding and expectation that Surviving Spouse would forego any claims she might otherwise assert against the estate. However, after receiving and depositing the check for \$51,414.09, Surviving Spouse went to the Cocke County Clerk's Office, represented to officials there that she was the sole heir of Decedent, and caused title to Decedent's Dodge Dakota truck to be transferred into her name. Surviving Spouse contends that she was entitled to possession of the truck pursuant to Tennessee Code Annotated section 30-2-101(B).

Decedent's will was offered and admitted for probate on February 10, 2021. Surviving Spouse filed a "Petition for Specific Property, Year's Support Allowance, and Elective Share" on February 24, 2021.

After a bench trial, the court held as follows:

The legislature in 2007 took out that provision [of Tennessee Code Annotated section 31-4-102(a)(1)] that said you could file within nine

¹ In February 2021, Paula Smith Sane was named Personal Representative.

months from the date of death, **or six months after the appointment of a personal representative, ... six months after the appointment of the personal representative**, the legislature removed that. What specifically was on the legislature's mind, I don't know, but there was something on their mind when they took that away. It is very clear to the [c]ourt that they meant to narrow, they meant to narrow the time for the filing of those claims, and they did.

... I conclude that what it probably means is that when you get a decedent who dies and his family does not otherwise start a [p]robate proceeding, that the duty is on the—the duty then falls on the surviving spouse to go in and start a probate proceeding within nine months so you can file your claim for an elective share.

The statute itself does not say that but when you take away that provision that allows the filing of a claim for an elective share within six months after the qualification of the personal representative and leave it—just nine months after the date of it, it seems to the Court as probably what that means. That is to say, that the burden is then on the surviving spouse within nine months to file that claim for an elective share.

That was not done here.... The claim for elective share was not filed until just a little over a year after—a year and one day after the date of death. So the claim for an elective share, and the specific property is time barred unless, unless under the case law, [Surviving Spouse] has established that she was prevented by fraud from asserting her right to an elective share within the time allowed under the case law here.

... [Surviving Spouse] has raised the provisions of [Tennessee Code Annotated section] 31-4-103, which provides to enable the surviving spouse to act as personal interest may require, the personal representative shall disclose, upon application, the state and condition of the spouse testator's estate.

... [T]here is no indication here that [Surviving Spouse] made application.... [T]here wasn't a personal representative to make application to until February the 10th, 2021. There wasn't one because nobody qualified at all. ... I confess there's a little bit of confusion there about how you construe those two statutes together.

... I think in this case the question is was [Surviving Spouse] prevented from timely asserting a claim for an elective share in the specific property by fraud. I cannot hold that she was for several reasons.

* * *

I know for sure that [Surviving Spouse] had been shown the will, she testified herself, had been shown the will before that, the will that ultimately was [p]robated that didn't leave her anything. ... So she knew sometime before June 3rd, for sure, that [Decedent] had made a will that purported not to leave her anything, and she had at least five months then left on the nine-month time period for filing this claim for an elective share, during which she could have gone to the courthouse and instituted a [p]robate proceeding and filed her election against the will, and she didn't.

* * *

... Were you prevented by fraud from filing this claim for elective share? I cannot hold that you were. Why? You knew, at least by June 3rd that your husband's purported will completely cuts you out. That should have put you on notice that, look, I've got to do it within nine months.

Number two, you were asked to make a quit claim deed for a piece of property and refused to do it, which indicates to me that [Surviving Spouse] was thinking, look, it's not in my best interest to sign this quit claim deed...

[A]t that time there was at least five months left within the period of time allowed for filing a claim to elect to take against the estate.

* * *

[O]n the issue of fraud, by the time this June 3rd check was given to [Surviving Spouse] and accepted and cashed, she had been asked to sign a quit claim deed and refused because she didn't think it was in her best interest. She accepted this check on June 3rd and cashed it, when it's got this notation on the bottom of it, estate. All of that, all of that should have put her on notice that, look – well, she was on notice....

... [T]he responsibility is on the—is on the surviving spouse to either know the law with respect [to] the time limit or to find it out, and unfortunately for [Surviving Spouse], in this case, she didn't do that within the time limit.

And I cannot, I simply cannot hold that she was prevented from filing that claim for an elective share by fraud because there were too many things there from which she could have concluded, and I think she did conclude that these requests, at least as to the quit claim deed, these requests are something I

don't have to do and just not in my best interest to do it.

So I simply cannot hold that in this case she was prevented by fraud from filing a claim, because she had, that I know of, at least five months within the time period allowed by law—at least five months from the time she should have known that it was in her best interest to make that election and she didn't do it.... [I]f [the law] had not changed, the result of this case today would be otherwise.... I know that the change that [the legislature] made narrowed the time that a surviving spouse has to make that claim, and as a corollary, I conclude that it also puts a burden on the surviving spouse to go out there and institute a [p]robate proceeding within nine months if the other family has not done it....

... [B]y golly, if you are the surviving spouse ... and you want to elect against a will, and your [spouse's] family doesn't start a [p]robate proceeding before nine months, you better do it yourself.... So accordingly, the claim for the elective share in the specific property will be overruled, will be dismissed.

(Emphasis added.). Surviving Spouse filed this timely appeal.

II. ISSUES

The issues raised in this appeal are as follows:

1. Whether the trial court properly concluded Surviving Spouse's petition for specific property, year's support allowance, and elective share filed more than nine months after the date of Decedent's death was time barred pursuant to Tennessee Code Annotated section 31-4-102.
2. Whether the trial court properly concluded Surviving Spouse was not prevented by fraud of Personal Representative from timely filing for specific property, year's support allowance, and elective share.

III. STANDARD OF REVIEW

We review a non-jury case de novo upon the record with a presumption of correctness as to the findings of fact unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). “In order for the evidence to preponderate against the trial court's findings of fact, the evidence must support another finding of fact with greater convincing effect.” *Wood v. Starks*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). We review questions of law de novo with no presumption of correctness. *Bowden*, 27 S.W.3d at 916 (citing *Myint v. Allstate Ins. Co.*, 970 S.W.3d 920, 924 (Tenn. 1998)); *see also In Re Estate of Haskins*, 224 S.W.3d 675, 678 (Tenn. Ct.

App. 2006). We afford deference to the trial court's credibility assessments of the witnesses. *See Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 784 (Tenn. 1999).

IV. ARGUMENT

Tennessee Code Annotated section 31-4-102(a)(1) provides as follows: "The surviving spouse may elect to take the spouse's elective share in decedent's property by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine (9) months after the date of death."² The statute is strictly construed in favor of compliance with the statutory time period. *In re Estate of Jones*, 183 S.W.3d 372, 377 (Tenn. Ct. App. 2005). The same time limitation applies to the filing of a petition for specific property and year's support allowance. Tenn. Code Ann. §§ 30-2-101(d) and 30-2-102(g).

In this action, it is undisputed that Surviving Spouse did not file a petition for the elective share within nine months after the date of Decedent's death.

Surviving Spouse asserts in her defense that Personal Representative did not strictly comply with Tennessee Code Annotated section 31-4-103, which requires the Personal Representative to disclose the state and condition of the spouse-testator's estate to enable the surviving spouse to act as his or her personal interest may require. Surviving Spouse contends that Personal Representative was not honest with Surviving Spouse regarding probate of Decedent's will.³ Surviving Spouse argues that Personal Representative cannot benefit from the statute of limitations after not complying with the provisions of the statute. She contends the legislature did not intend that a personal representative "can sit on the will until the time to file elective share has passed."

Personal Representative disclosed to Surviving Spouse the condition of Decedent's estate and met the requirements of Tennessee Code Annotated section 31-4-103, as she provided Surviving Spouse information reasonably necessary to make her decision of whether to file a petition for specific property, year's support allowance, and elective share in a timely manner. Prior to June 3, 2020, approximately four months after Decedent's death and well within the nine-month period set forth in Tennessee Code Annotated section 31-4-102(a)(1), Surviving Spouse was shown the will by Personal Representative. Surviving Spouse sat down with Personal Representative and reviewed Decedent's will

² The current version of Tennessee Code Annotated section 31-4-102 became effective July 1, 2007. The prior version of the statute required the surviving spouse to file the elective share petition within nine (9) months after the date of death **or within six (6) months after the appointment of the Personal Representative, whichever limitation last expires**. Under the prior statute, Surviving Spouse's claim would be good.

³ After discussions fell apart over the settlement of the real estate, Personal Representative filed the will.

both at her⁴ house and at the home of Personal Representative. Therefore, at least by June 3, 2020, it was clear to Surviving Spouse that the will did not leave her anything. At that point in time, Surviving Spouse had at least five months left in the nine-month time period to file the petition for specific property, year's support allowance and elective share, but she failed to do so.

As noted by the trial court, if a surviving spouse is prevented from filing her claim for an elective share by fraud, then the time limit will not bar a claim. Surviving Spouse was not misled or given erroneous information about the condition of the estate. By June 3, 2020, Surviving Spouse possessed the information reasonably necessary to decide whether to take the spouse's elective share in Decedent's property by filing in the court a petition for the elective share. Shortly after Decedent's death, in March of 2020, Surviving Spouse and Personal Representative met several times and had a conversation about Decedent's guns and real estate. Personal Representative asked Surviving Spouse at least three times to sign a quit claim deed to the house Surviving Spouse shared with Decedent during their marriage, as her name was not on the deed for the home. Surviving Spouse refused to sign the quit claim deed. Also, in March 2020, Surviving Spouse was asked by Personal Representative if Decedent's son could come and retrieve Decedent's guns. Surviving Spouse refused. Therefore, by at least June 3, 2020, four months after the death of Decedent, Surviving Spouse was armed with the information necessary to decide whether to claim the elective share. Her argument that fraud occurred on the part of Personal Representative which prevented her from timely petitioning for elective share is without merit.

Surviving Spouse in this action simply did not comply with the statutory requirements to properly petition for an elective share. As the trial court pointed out, it is the responsibility of a surviving spouse to either know the law with respect to the nine-month time limit or to find it out. Unfortunately for Surviving Spouse, in this case, she did not file within the time limit. The trial court properly concluded Surviving Spouse's petition was time barred under Tennessee Code Annotated section 31-4-102(a)(1).

V. CONCLUSION

The judgment of the trial court is affirmed and the case remanded. Costs of the appeal are taxed to the appellant, Debra Sane.

JOHN W. MCCLARTY, JUDGE

⁴ Surviving Spouse refers to Decedent's real property as "her" house. However, the house she refers to as hers is, in fact, the house of Decedent.