IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
October 22, 2014 Session Heard at Nashville

IN RE: ESTATE OF HELEN B. GOZA

Direct Appeal from the Probate Court for Shelby County
No. D-10137 Kathleen N. Gomes, Judge

No. W2013-02759-COA-R3-CV - Filed December 19, 2014

This is an appeal from a probate court's order admitting a will in solemn form. The appellant filed a motion to alter or amend the order and a motion to set aside the order, contending in both that it initiated a will contest prior to the court's order admitting the will. The probate court determined that the appellant lacked standing to contest the will and therefore denied the motions. We affirm.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Probate Court Affirmed

BRANDON O. GIBSON, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Larry E. Parrish, Memphis, Tennessee, for the appellant, Estate of John J. Goza.

Kenneth P. Jones and M. Matthew Thornton, Memphis, Tennessee, for the appellee, SunTrust Bank, N.A.

MEMORANDUM OPINION[1]

I. BACKGROUND AND PROCEDURAL HISTORY

This is approximately the sixth appeal involving the disposition of the assets of Helen

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[1]Rule 10 of the Tennessee Rules of Appellate Procedure provides:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

B. Goza, who died in 2001. It is, however, the first appeal related to the admissibility of a document Ms. Goza executed in 1999 titled "Last Will and Testament of Helen B. Goza." An extensive review of the related cases is not necessary to our disposition of this matter. For a more detailed discussion of the facts underlying the related appeals, see this Court's opinion in *Morrow v. SunTrust Bank*, No. W2010-01547-COA-R3-CV, 2011 WL 334507 (Tenn. Ct. App. Jan. 31, 2011).

Prior to her death, Helen Goza executed a series of documents directing the disposition of her assets through a perpetual trust following her death and the death of her mentally handicapped son, John Goza. On August 16, 1991, Ms. Goza created a living trust, of which she and John were named beneficiaries (the "Helen B. Goza Trust"). Ms. Goza executed a will on the same day ("1991 Will"). The 1991 Will provided that any assets of Ms. Goza's estate not otherwise accounted for in a subsequent codicil should pour over into the Helen B. Goza Trust at her death. The 1991 Will did not leave any property to John Goza.

In March and April 1999, Ms. Goza executed two amended trust agreements. The March 1999 Agreement provided that if John Goza were to survive Ms. Goza, the trustee should set aside a portion of the Helen B. Goza Trust as a separate trust for the benefit of John during his lifetime, with the balance to be distributed to a separate perpetual trust for the benefit of charitable organizations providing services to the mentally handicapped. The April 1999 Agreement provided that at John's death, the balance of his separate trust should also go into the perpetual trust.

On March 9, 1999, Ms. Goza also executed a document titled "Last Will and Testament of Helen B. Goza," in which she revoked all prior wills and codicils ("1999 Will"). In pertinent part, the 1999 Will also stated:

> I hereby give, devise and bequeath the rest and remainder of my estate including any void or lapsed legacies or devises, to the Trustee of the Helen B. Goza Trust under that certain agreement dated August 16, 1991, as same may from time to time be amended, to be added to the principal of such trust estate as an integral part thereof and to be held, administered and distributed in accordance with all of the terms, conditions, and limitations set forth in said trust agreement. **In the event that said trust is not in existence at the date of my death or if the bequest to the trustee thereof is ineffective for any reason, then the balance of the trust estate shall be distributed to the trustee named in the Helen B. Goza Trust, to be held, administered and distributed under and pursuant to the terms thereof**, which terms

> are incorporated herein by reference. The transfer and delivery of said portion of my estate to the trustee of the Helen B. Goza Trust and its receipt therefor shall constitute a full acquittance for all assets so delivered and my Personal Representative shall have no further duties hereunder.

(emphasis added).

Helen Goza died in May 2001, and John Goza died in September 2007. Since John Goza's death, his estate has engaged in a tremendous amount of litigation with the trustee of the perpetual trust, SunTrust Bank ("SunTrust").[2] Throughout the trust litigation, the Estate of John Goza has maintained that the perpetual trust does not exist because the April 1999 Agreement was not legally sufficient to create it. Accordingly, it contends that Helen Goza's assets passed to John Goza through intestate succession and are now part of his intestate estate. Conversely, SunTrust has argued that the April 1999 Agreement validly effectuated the disposition of Helen Goza's assets into the perpetual trust.

On May 23, 2011, in an effort to hasten the closure of the trust litigation, SunTrust filed a petition in Shelby County Probate Court seeking to admit a copy of Helen Goza's 1999 Will for probate and to be appointed personal representative of her estate.[3] On June 10, 2011, the Estate of John Goza filed an answer objecting to the admission of the 1999 Will and a motion for summary judgment seeking to dismiss SunTrust's petition. The objection to the 1999 Will by the Estate of John Goza was rooted in its belief that the Helen B. Goza Trust ceased to exist at Ms. Goza's death and that the separate trust for John Goza and perpetual trust were never created. The Estate of John Goza argued that if all references to the Helen B. Goza Trust were removed from the 1999 Will, it lacked the requisite distributive intent to be submitted to probate. Additionally, in response to an allegation in SunTrust's petition, the Estate of John Goza denied that Helen Goza was of sound mind and disposing memory at the time she signed the 1999 Will. Around this time, concurrent litigation regarding the existence of the perpetual trust was appealed from the probate court.[4] The

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[2]See this Court's past opinions in *In re Estate of Goza*, No. W2012-01745-COA-R3-CV, 2013 WL 4766544 (Tenn. Ct. App. Sept. 4, 2013), *perm. app. denied.* (Tenn. Jun. 13, 2014), *In re Estate of Goza*, 397 S.W.3d 564 (Tenn. Ct. App. 2012), and *Morrow v. SunTrust Bank*, No. W2010-01547-COA-R3-CV, 2011 WL 334507 (Tenn. Ct. App. Jan. 31, 2011).

[3]The parties agree that the original 1999 Will document cannot be found and that the document presented to the probate court is a true copy of the original signed writing.

[4]Though it is not stated explicitly in the record, we can surmise that the appellate proceedings in the (continued...)

probate court did not conduct a hearing on the petition or the motion for summary judgment.

On January 16, 2013, SunTrust filed an amended petition seeking to admit Helen Goza's 1999 Will to probate in solemn form and to be appointed personal representative of her estate. This time, the Estate of John Goza did not file any answer or response to the motion. The probate court held a hearing on the amended petition and other pending matters on May 13, 2013. The John Goza Estate declined to argue its objections to the admission of the 1999 Will but instead asked the probate court to review the filings accompanying the John Goza Estate's June 2011 motion for summary judgment.

On June 6, 2013, the probate court entered an order admitting the 1999 Will to probate in solemn form and appointing SunTrust as personal representative of the Estate of Helen Goza. Shortly thereafter, the John Goza Estate filed an "Amended Notice of Will Contest," a Rule 60.02[5] motion seeking to set aside the June 6, 2013 order as void, and a motion to alter or amend pursuant to Rule 59.04.[6] In its motions, the Estate of John Goza primarily argued that the probate court did not have subject matter jurisdiction to enter the June 6, 2013 order because the John Goza Estate's June 2011 motion for summary judgment was, in substance, notice of a will contest that temporarily divested the probate court of that authority.[7]

SunTrust responded, contending that the Estate of John Goza lacked standing to contest the 1999 Will because John Goza was not a beneficiary under the 1991 Will.[8] Additionally, SunTrust noted that a will admitted to probate in solemn form cannot be challenged in a later will contest and argued that because the June 2011 motion for summary judgment was not a will contest, the Estate of John Goza did not contest the 1999 Will until

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[4](...continued)
trust litigation explain the long gap in filings related to admission of the 1999 Will.

[5]In pertinent part, Rule 60.02 of the Tennessee Rules of Civil Procedure provides as follows:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: . . . (3) the judgment is void . . . .

[6]Rule 59.04 of the Tennessee Rules of Civil Procedure provides that:

> A motion to alter or amend a judgment shall be filed and served within thirty (30) days after the entry of the judgment.

[7]The Estate of John Goza relied on *In re Estate of Boote*, 198 S.W.3d 699 (Tenn. Ct. App. 2005).

[8]SunTrust relied on *Keasler v. Estate of Keasler*, 973 S.W.2d 213 (Tenn. Ct. App. 1997).

after it had been admitted to probate in solemn form. Finally, SunTrust argued that because the Estate of John Goza did not contend that it had initiated a will contest until after the court entered an order admitting the 1999 Will in solemn form, it waived that argument.

On September 3, 2013, the probate court heard the pending motions. It ruled that because John Goza was not a beneficiary of the 1991 Will, his estate lacked standing to challenge the 1999 Will. The court dismissed each of the John Goza Estate's pending motions. The probate court entered an order reflecting its ruling on October 31, 2013. The Estate of John Goza timely filed a notice of appeal to this Court.[9]

II. DISCUSSION

The Estate of John Goza contends on appeal that the probate court erred in admitting the 1999 Will to probate in solemn form. It argues that the June 2011 motion for summary judgment was, in substance, notice of a will contest that divested the probate court of its authority to enter an order admitting the 1999 Will to probate in solemn form. In response, SunTrust argues that the probate court did not err in admitting the 1999 Will because the Estate of John Goza lacks standing to challenge it. The question of whether the Estate of John Goza had standing to challenge the 1999 Will is a threshold question and is dispositive.

The Estate of John Goza argues in its brief that the probate court had no subject matter jurisdiction to rule on the issue of standing after it filed its purported notice of a will contest in June 2011; however, the only authority the Estate relies on in making this assertion is *In re Estate of Boote*, which we find distinguishable and unpersuasive.

In *In re Estate of Boote*, a case upon which the John Goza Estate heavily relies, this Court stated that, "[a]s soon as the *probate court* is made aware of a contest, it must halt the in solemn form probate proceedings and determine whether the person seeking to contest the will has standing to pursue a will contest." 198 S.W.3d 699, 714 (Tenn. Ct. App. 2005) (emphasis added); *see also Jolley v. Henderson*, 154 S.W.3d 538, 543 (Tenn. Ct. App. 2004) ("Standing should be determined by the probate court as a part of the process of deciding whether a certifiable contest exists.") (quoting *Rassas v. Schaefer*, No. 89-266-II, 1990 WL 263, at *8 (Tenn. Ct. App. Jan. 5, 1990)). We find no merit in the John Goza Estate's statement that the probate court lacked subject matter jurisdiction to address standing.

In its order of October 31, 2013, the probate court found that the Estate of John Goza

[9]The Notice of Appeal, filed on November 27, 2013, represented that The Estate of Helen B. Goza was appealing the probate court's order. On December 2, 2013, The Estate of John J. Goza (hereinafter "Estate of John Goza" or "John Goza Estate") filed an Amended Notice of Appeal, noting that the Estate of John J. Goza was the appellant.

lacked standing to contest the admission of the 1999 Will. Whether a party seeking to challenge a will has standing to do so presents a question of law, which we review *de novo* on appeal. *Jolley*, 154 S.W.3d at 541. "Standing to pursue a will contest is limited to those who would benefit under the terms of another will or codicil or the laws of intestate succession if the will contest is successful." *In re Estate of Boote*, 198 S.W.3d at 714. A party seeking to contest a will lacks standing to do so if he or she would not take a share of the decedent's estate under a previous will if the contested will were set aside. *Jennings v. Bridgeford*, 403 S.W.2d 289, 290 (Tenn. 1966).

The probate court found that the Estate of John Goza lacked standing to contest the 1999 Will because even if the 1999 Will were set aside, it would not benefit because John Goza was not a beneficiary of the 1991 Will. On appeal, the Estate of John Goza argues that the probate court's reasoning is undermined by the fact that the 1991 Will has not been admitted to probate and therefore has no legal effect. Tennessee courts have rejected this argument. The Tennessee Supreme Court has held that for the limited purpose of establishing lack of standing, the validity of a prior will is not required to be established by probate. *Jennings*, 403 S.W.2d at 290; *Cowan v. Walker*, 96 S.W. 967, 970 (Tenn. 1906). A party has no standing to challenge a will when an earlier will is valid on its face, is not challenged as being improperly executed, and does not leave anything to the party attempting to challenge the later will. *Jennings*, 403 S.W.2d at 291-92. Ms. Goza's 1991 Will has not been challenged as being invalid on its face or improperly executed. Additionally, it does not leave any property to John Goza. Because the Estate of John Goza would not benefit even if the 1999 Will was set aside, the probate court did not err in finding that the John Goza Estate lacked standing to contest the 1999 Will.

Based on our resolution of the foregoing issue, we need not address whether the John Goza Estate's June 2011 motion for summary judgment and related filings constituted notice of a will contest.

III. HOLDING

The judgment of the probate court is affirmed. Costs on appeal are taxed to the appellant, the Estate of John J. Goza, and its surety, for which execution may issue if necessary.

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BRANDON O. GIBSON, JUDGE