Rel: September 30, 2020

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1180200

Laurie Ann Ledbetter and Warren Lewis Ledbetter

v.

William Russell Ledbetter

Appeal from Elmore Circuit Court
(CV-17-900012)

PARKER, Chief Justice.[1]

Laurie Ann Ledbetter ("Laurie Ann") and Warren Lewis Ledbetter ("Warren") sued their brother, William Russell

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[1]This case was originally assigned to another Justice on this Court. The case was reassigned to Chief Justice Parker on June 17, 2020.

Ledbetter ("Russell"), alleging that he improperly used money placed in an oral trust by their deceased mother, Lois Ann Ledbetter ("Lois"). The Elmore Circuit Court entered a summary judgment in favor of Russell. Laurie Ann and Warren appeal, contending that they presented substantial evidence of the existence and terms of the oral trust. We agree and reverse.

I. Facts

Lois died on August 5, 2015. She was survived by her three children, Russell, Laurie Ann, and Warren. Her estate included a lake house in Eclectic ("the lake house"), and there was a $500,000 life-insurance policy on her life ("the policy"). With respect to these two assets, Lois's will stated:

> "I give, devise and bequeath, subject to the conditions stated below, [the lake house] to my son, [Russell].
>
> "... This bequest is made subject to any and all mortgage indebtedness against [the lake house]. As a condition of receiving this bequest, [Russell] shall be responsible for ... such mortgage indebtedness. I specifically note that I have identified [Russell] as the beneficiary of a $500,000.00 life insurance policy on my life. It is my intent that he use the proceeds from this life insurance policy to pay such mortgage indebtedness. Any life insurance proceeds over and above such mortgage indebtedness, if any, shall be and become the property of [Russell]."

Lois expressly excluded Laurie Ann and Warren from the will, stating that "[i]t is my direction that they not share in or receive any part of my Estate. The exclusion of my son ... and my daughter ... is not out of any spite, negative intent, or lack of love for my son and daughter."

Laurie Ann and Warren tried, unsuccessfully, to contest the will. In the course of the will contest, Laurie Ann and Warren learned that the beneficiary of the policy was listed as "William R. Ledbetter, Trustee of The Lois Ann Ledbetter Family Irrevocable Trust dated August 19, 1998," not Russell individually. They also learned that Russell had claimed the life-insurance proceeds and had deposited them in his personal checking account and that he had used the proceeds to pay various estate and personal expenses, including mortgage payments on the lake house.

Laurie Ann and Warren then sued Russell in the Elmore Circuit Court, alleging that Lois had created The Lois Ann Ledbetter Family Irrevocable Trust ("the Trust") for their benefit and asserting claims of breach of fiduciary duty, conversion, fraudulent misrepresentation, deceit, and fraudulent suppression. Because no signed trust document was

found and an unsigned trust document referred to an "oral agreement" between Lois and Russell, Laurie Ann and Warren alleged that the Trust was an oral trust. Russell moved for a summary judgment, arguing that an oral trust must be proved by clear and convincing evidence and that Laurie Ann and Warren did not have such evidence. In response, Laurie Ann and Warren submitted the following evidence.

One of Lois's attorneys, Paul Johnson, testified in deposition that Lois and Russell visited him in August 1998. At the time, Johnson's practice was to have his clients create an oral trust before applying for life insurance benefiting the trust. After the insurance application was accepted, Johnson would refer the client to another attorney to memorialize the oral trust in a written trust document. Although he could not recall specifically, Johnson stated that that appeared to be what he did in this case and that he would not have submitted the application for life insurance if Lois had not created a valid oral trust.

Laurie Ann and Warren also submitted Lois's life-insurance application, dated August 22, 1998. The application listed Lois as the insured and the grantor and listed "William

R. Ledbetter, Trustee of the Lois Ann Ledbetter Family Irrevocable Trust dated August 19, 1998," as sole owner and beneficiary. The application was signed by Lois as the insured and by Russell as the trustee of the Trust. The application was accompanied by a trust certification, the purpose of which was to verify a trustee's authority to act on behalf of a trust. The certification stated that the Trust had been created on August 19, 1998, and that it was "in full force and effect" at the time the application was filed. Lois and Russell signed the trust certification. Additionally, Laurie Ann and Warren submitted evidence that Russell, as trustee, applied for a tax-identification number for the Trust and made at least the initial premium payment on the policy.

Next, Laurie Ann and Warren submitted an unsigned trust document, prepared by Holt Spier, another of Lois's attorneys, titled "The Lois Ann Ledbetter Family Irrevocable Insurance Trust Agreement." Its preamble stated: "This Instrument is an agreement of trust between Lois Ann Ledbetter ... (referred to in this Instrument as the 'Grantor') and William R. Ledbetter (referred to in this Instrument as the 'Trustee') .... This instrument reflects an oral agreement between the Grantor and

the Trustee effective as of August 19, 1998." In addition to provisions concerning administration of the trust and distribution of the corpus and income, the trust document provided:

> "The Grantor and any other person shall have the right at any time to make additions to the Trust Fund by ... designation of the Trustee as the beneficiary of the proceeds of life insurance policies or any other benefits payable by reason of a person's death .... In the absence of contrary instructions by the person making the additions to the Trust Fund, the additional property shall be divided into equal shares for each of the Grantor's children for whom a separate trust under this instrument is then in existence and transferred to the trustee of each of those separate trusts."

No signed copy of the trust document was found.

Laurie Ann and Warren also submitted Spier's handwritten notes from his meetings with Lois. The first page of notes was apparently taken during an estate-planning meeting with Lois in December 1998. Although nearly illegible, the notes clearly stated: "Lois Ann Ledbetter Irrevocable Family Trust dated August 19, 1998[.] Policy in place[.] Keep Warren's share in trust and Laurie's share [illegible]." The second page of notes was dated March 1, 1999, and did not expressly

reference the Trust. However, under the heading "ILiT"[2] were the words "Give Warren 40% of ILiT[,] 30% to Laurie[,] 30% to Russ." Farther down the page was a second section headed "ILiT," with the notation: "40% to Warren - in trust w/ Russ as tee[,] 30% to Laurie outright[,] 30% to Russ outright."

Finally, Laurie Ann and Warren submitted an affidavit of (C. 1530.) Barbara Allen, a longtime friend of Lois's. Allen testified that she visited Lois about a month before Lois died and that, during that visit, Lois discussed her estate plans. According to Allen, Lois "stated that there was a life insurance policy of $500,000.00 that was to be equally split between Warren, Laurie and Russell Ledbetter[]." Allen noted that she had not specifically asked Lois about her will or a trust.

After a hearing, the trial court entered a summary judgment in favor of Russell without stating a rationale.

II. Standard of Review

> "Summary judgment is appropriate only when 'there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.' Rule 56(c)(3), Ala. R. Civ. P. A court considering a motion for summary judgment

[2]"ILiT" was apparently an acronym for "irrevocable life-insurance trust."

> will view the record in the light most favorable to the nonmoving party; will accord the nonmoving party all reasonable favorable inferences from the evidence; and will resolve all reasonable doubts against the moving party.
>
> "An appellate court reviewing a ruling on a motion for summary judgment will, de novo, apply these same standards applicable in the trial court."

Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000) (citations omitted).

Under the Alabama Uniform Trust Code, proponents of an oral trust must prove its creation and terms by clear and convincing evidence. See § 19-3B-407, Ala. Code 1975. "[W]hen the law imposes the higher burden of proof of clear and convincing evidence as to a particular claim or factual issue, the nonmovant must present evidence at the summary-judgment stage that would qualify as clear and convincing evidence if accepted and believed by the fact-finder." Phillips v. Asplundh Tree Expert Co., 34 So. 3d 1260, 1266 (Ala. Civ. App. 2007); see also Ex parte McInish, 47 So. 3d 767, 776 (Ala. 2008) ("'"[S]ubstantial evidence in the context of a case in which the ultimate standard for a decision is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly establish [the existence of] the fact sought to be proved.

Thus, even if a trial judge reaches his or her own conclusion that the evidence presented does not clearly and convincingly establish [the subject fact], it is not for him or her to act upon that factual determination, but to determine instead whether the actual fact-finder could reasonably make a different finding based upon the same evidence."'" (quoting KGS Steel, Inc. v. McInish, 47 So. 3d 749, 761-62 (Ala. Civ. App. 2006) (Murdock, J., concurring in result), quoting in turn Gary v. Crouch, 923 So. 2d 1130, 1142 (Ala. Civ. App. 2005) (Murdock, J., concurring in result))).

III. Analysis

Laurie Ann and Warren argue that, taken as a whole, the evidence they submitted constituted substantial evidence of the creation and terms of the Trust. Russell argues that Lois's will, which does not mention a trust, is authoritative evidence that she did not intend to create a trust. He also argues that each of the other items of evidence was too weak, standing alone, to constitute clear and convincing evidence of the existence and terms of an oral trust. We agree with Laurie Ann and Warren.

As discussed above, proponents of an oral trust are required to prove its creation and terms by clear and

convincing evidence. See § 19-3B-407, Ala. Code 1975. A trust is created when a settlor "transfer[s] ... property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death." § 19-3B-401. The "terms of a trust" are defined as "the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding." § 19-3B-103(19).

Here, Johnson, the attorney Lois and Russell visited in August 1998, testified regarding his consistent use of oral trusts in preparing clients to apply for life insurance. Lois's life-insurance application specified that Russell was to be the beneficiary of the insurance "as trustee." The trust certification stated that Russell was the trustee of the Trust. The unsigned trust document stated that it reflected an oral agreement between Lois and Russell. Attorney Spier's notes from his meetings with Lois indicated that the Trust had been created on August 19, 1998, and was intended to benefit Laurie Ann, Warren, and Russell. Drawing all inferences in favor of Laurie Ann and Warren as the summary-judgment nonmovants, we conclude that a fact-finder could reasonably

have found, by clear and convincing evidence, that an oral trust was created.

As for the terms of the Trust, the unsigned trust document provided for equal distribution among the three children.[3] Allen's affidavit regarding her conversation with Lois reflected the same equal split. Based on these items, a fact-finder could reasonably have concluded that Laurie Ann and Warren proved, by clear and convincing evidence, that Lois manifested an intent that the Trust benefit the three children equally. It is true that Spier's handwritten notes from his March 1999 meeting with Lois referenced a trust being split among the children 40%-30%-30%. However, that evidence merely created an issue of fact as to Lois's intent regarding the

[3]The dissent, relying on Tierce v. Macedonia United Methodist Church of Northport, 519 So. 2d 451 (Ala. 1987), argues that the unsigned trust document was not "stand-alone evidence ... [of] the terms of the Trust." ___ So. 3d at ___. However, in addition to being a plurality opinion, Tierce is inapposite. In that case, there was no issue of whether the unsigned trust document was evidence of the terms of an existing oral trust. See 519 So. 2d at 454 ("[I]t is uncontradicted that the inter vivos trust described [in the unsigned trust document] was never actually established by the decedent."). Instead, the part of Tierce relied on by the dissent addressed whether a pour-over provision in the decedent's will successfully devised property to an otherwise nonexistent trust. See id. at 453-56.

precise distribution. It was not the province of the trial court to resolve that issue of fact on a motion for a summary judgment. See Ex parte McInish, 47 So. 3d at 778 ("[W]eighing the evidence is solely a function of the trier of fact.").

Accordingly, Laurie Ann and Warren submitted substantial evidence from which a fact-finder could reasonably have concluded that they established, by clear and convincing evidence, the creation and terms of an oral trust benefiting them. Therefore, we reverse the summary judgment and remand this case for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Wise, Bryan, Mendheim, and Stewart, JJ., concur.

Bolin, J., concurs in the result.

Mitchell, J., dissents.

Sellers, J., recuses himself.

MITCHELL, Justice (dissenting).

To survive summary judgment, Laurie Ann Ledbetter and Warren Lewis Ledbetter were required to present clear and convincing evidence of both the existence of an oral trust -- the Lois Ann Ledbetter Family Irrevocable Trust ("the Trust") -- and the terms of the Trust. See § 19-3B-407, Ala. Code 1975. I agree with the main opinion that Laurie Ann and Warren brought forward clear and convincing evidence from which a jury could find that the Trust exists. But they also alleged that the Trust required its proceeds to be distributed equally to each of them and to their brother William Russell Ledbetter; in my view, Laurie Ann and Warren failed to support that allegation with clear and convincing evidence. Accordingly, I believe that the summary judgment entered by the trial court was appropriate.

Laurie Ann and Warren submitted three items of evidence to support their allegation that the Trust proceeds were to be divided equally among Lois's three living children: (1) an unsigned trust agreement; (2) an affidavit by Lois's longtime friend Barbara Allen describing a conversation between her and Lois in 2015 ("the 2015 affidavit"); and (3) the name of the

Trust. These items do not amount to clear and convincing evidence of what Laurie Ann and Warren allege.

First, Laurie Ann and Warren submitted an unsigned trust agreement, which was allegedly drafted for Lois and purported to divide the Trust proceeds equally among her living children. The parties have not cited, nor have I found, any cases in Alabama in which a court accepted an unsigned trust agreement as evidence of the terms of an irrevocable oral trust. But it has been held in other circumstances that an unsigned trust instrument is not dispositive evidence of the creation of a trust or its terms. In Tierce v. Macedonia United Methodist Church of Northport, 519 So. 2d 451 (Ala. 1987), a putative trust beneficiary sued a settlor's estate and asserted that it had rights to alleged trust proceeds based upon (1) a provision in an executed will contemplating the creation of a trust instrument and (2) an unsigned trust agreement. In ruling against the putative beneficiary, this Court, in a plurality opinion, held that the existence of an unsigned trust instrument, without proof it was created at the same time as the executed will, was not evidence that a trust was created or probative of the terms of a trust. Id. at 456-57.

Applying the principle from Tierce, a jury in this case would not be entitled to regard the division of the proceeds set forth in the unsigned trust agreement -- which was drafted approximately four months after the Trust was allegedly created -- as stand-alone evidence that the terms within that agreement were, in fact, the terms of the Trust. See also In re Estates of Gates, 876 So. 2d 1059, 1064 (Miss. Ct. App. 2004) (explaining that, "until execution, the thoughts and written notes and drafts [of wills and trust agreements] remain merely possibilities, subject to alteration or total abandonment by the creator of the interests"). And there is no contemporaneous testimony or other evidence to confirm that the unsigned trust agreement accurately set forth the terms of the Trust. Thus, the unsigned trust agreement should be given no weight in determining the terms of the Trust.

Second, Laurie Ann and Warren offer the 2015 affidavit as evidence of Lois's alleged intentions to divide the Trust proceeds equally among her children. But the 2015 affidavit says nothing about Lois's intentions at the time the oral trust was allegedly created; nor does it reference a trust. Those are critical omissions. Evidence offered in support of the allegation of equal distribution must show that Lois

intended that distribution in 1998; but the 2015 affidavit does not provide any relevant information about that allegation. See Thurlow v. Berry, 249 Ala. 597, 604, 32 So. 2d 526, 532 (1947) (observing that "[i]t has been authoritatively stated that the intent and purpose of the settlor of the trust is the law of the trust"). Instead, the 2015 affidavit simply relates Lois's alleged desire for the distribution of the proceeds of her life-insurance policy in 2015 -- 17 years after she had allegedly disclaimed ownership of the policy and placed it in the Trust.

Finally, Laurie Ann and Warren assert that the name of the Trust, the "Lois Ann Ledbetter Family Irrevocable Trust," is evidence indicating that Lois intended for the proceeds of the Trust to benefit Lois's three children equally, not Russell exclusively. But Lois was survived by not only her children, but also at least one grandchild who received a disposition in Lois's will. A trust entitled "Lois Ann Ledbetter Family Irrevocable Trust" could have been intended to benefit some or all of those individuals, or even other family members. Therefore, the name of the Trust, even when paired with the other items of evidence offered by Laurie Ann and Warren, does not constitute clear and convincing evidence

that Lois intended for her living children to receive a distribution in equal measure to each other.

Notably, none of the evidence submitted by Laurie Ann and Warren includes testimony from any individual who would have had firsthand knowledge of the Trust's terms. Paul Johnson, Lois's financial advisor and an attorney, does not dispute the existence of a trust, but he also does not recall whether the proceeds of such a trust were to be divided equally. Russell, the purported trustee, testified that he was not in the room when Lois discussed the terms of the Trust with Johnson and W. Holt Spier III, another of Lois's attorneys; that Lois did not inform him that the Trust had been finalized; and that he believed Lois intended for the life-insurance proceeds to be used to pay off the mortgage on Lois's lake house. And Spier, the attorney who drafted the unsigned trust agreement, has not stated that the unsigned trust agreement reflects Lois's finalized intentions for the proceeds of the Trust. Thus, there is no testimony about what Lois intended in 1998 for the terms of the Trust to be.

The failure to provide clear and convincing evidence is underscored by the fact that Laurie Ann and Warren have themselves provided counterevidence showing that Lois intended

to make an altogether different distribution of the Trust proceeds. See Laurie Ann and Warren's brief, p. 5. The record includes handwritten notes from a meeting attended by Lois, Johnson, and Spier to discuss drafting a trust agreement. Those notes, written by Spier, reference terms of an irrevocable life-insurance trust (commonly referred to as an ILiT) but do not contemplate that the proceeds would be equally distributed among the siblings. Rather, under the heading "ILiT," the notes say: "Give Warren 40% of ILiT, 30% to Laurie, 30% to Russ[ell]." The main opinion describes Spier's notes as merely conflicting evidence that creates a genuine issue of material fact, but they are more than that. The notes, taken by the same attorney who drafted the unsigned trust agreement, demonstrate how Laurie Ann and Warren are unable to make a consistent presentation of what the terms of the Trust were. This discrepancy in Laurie Ann and Warren's own evidence -- did Lois intend to make an equal distribution or a 40/30/30 split? -- falls far short of the quantum of proof necessary to support an oral-trust claim.

In enacting § 19-3B-407, the Legislature sought to discourage the filing of oral-trust claims that lack clear and convincing evidence. In my view, the evidence put forward by

Laurie Ann and Warren does not clearly and convincingly establish that Lois intended for the proceeds of the Trust to be distributed equally to each of them and their brother. See Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008) (holding that clear and convincing means evidence that will produce in the mind of the fact-finder "a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion"). For that reason, I believe the summary judgment in favor of Russell was appropriate, and I would affirm. I respectfully dissent.