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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3408-21

IN THE MATTER OF THE
ESTATE OF ROSE ZAMPINO,
deceased.

Submitted February 27, 2023 – Decided July 21, 2023

Before Judges Smith and Marczyk.

On appeal from the Superior Court of New Jersey,
Chancery Division, Camden County, Docket No.
CP-0265-2021.

Cynthia Kaighn, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this will contest, plaintiff Cynthia Kaighn appeals from the trial court's April 22, 2022 order granting summary judgment in favor of the Estate of Rose Zampino (the Estate). She also appeals the trial court's January 31, 2022 dismissal of her breach of contract claim against the Estate for services rendered to Rose Zampino (decedent). For the reasons that follow, we affirm.

Plaintiff, a former foster child of decedent, moved into her home in 2014 and cared for her until her death on August 2, 2021. Plaintiff alleged that she was the sole caretaker for decedent during that period and that she and decedent reached an oral agreement for plaintiff to move in with decedent and care for her. Plaintiff further alleged that, in consideration for in-home care, decedent agreed to compensate plaintiff at a rate of \$1,000 per week for the rest of decedent's life. Plaintiff contended the Estate owes her \$376,000 for home care services she rendered to decedent.

Decedent's April 17, 2015 last will and testament was probated and her niece, Loretta Arroyo, was named executor. Plaintiff then filed a claim for \$376,000 against the Estate. The Estate filed an action for ejectment, seeking removal of plaintiff from decedent's home. Plaintiff then filed an order to show cause and verified complaint alleging breach of contract and seeking to invalidate decedent's 2015 will. As to the will contest, plaintiff alleged the 2015 will was not signed by decedent and did not reflect her wishes.

The Estate answered and counterclaimed for waste. Plaintiff next moved to set aside the 2015 will and enforce the terms of the alleged oral agreement. The Estate cross-moved to dismiss the complaint for failure to state a claim.

The trial court heard argument and made findings. First the court addressed the breach of contract claim, noting the Estate presented a certification from Sunday Gustin, an adult niece of decedent. Gustin certified regarding statements decedent made to her, specifically that decedent told her she did not want to leave her home to plaintiff after she died and that decedent never "extended any offer for [plaintiff] to live at the residence until [decedent's] death, however long that may be." The trial court stated: "[Gustin's] understanding is that [plaintiff's] commitment to care for the decedent was voluntary with no expectation of payment. And Sunday further states she does not believe decedent was forced to sign the April 17[] will."

The trial court found plaintiff presented no credible evidence of an agreement between her and decedent and dismissed her claim for services. The trial court next considered plaintiff's argument that decedent's 2015 will signature was forged. The court declined to rule on the Estate's motion to dismiss, giving plaintiff forty-five days to obtain a handwriting expert's opinion as to the authenticity of decedent's signature. In its order dated January 31, 2022, the court: dismissed plaintiff's breach of contract claim; ordered plaintiff to vacate decedent's former home; and ordered plaintiff to obtain a handwriting expert by a date certain.

Plaintiff secured a handwriting expert, Curt Baggett, who issued a report on February 10, 2022. After receiving the report, the Estate moved for summary judgment as to the will contest. Plaintiff opposed, and the trial court again made findings.

The court considered the certifications of Robert Borbe, Esq., the attorney who prepared decedent's 2015 will, and two legal secretaries in his office, Pam Scott and Kim Hertzberg, who signed the will as witnesses. They each certified to the fact that decedent was a client of Borbe's, and that decedent had other Estate planning documents prepared and witnessed by the firm, including a power of attorney and an advanced health care directive. The court also considered Gustin's certification that: decedent had discussed the provisions of the 2015 will with Gustin; the will represented decedent's wishes; and that decedent was not forced to sign the will.

The trial court found plaintiff's expert's two-page written report was a net opinion. The court gave weight to the certifications of Borbe, Scott, Hertzberg, and Gustin, and found the will valid. It granted summary judgment for the Estate, dismissing the will contest.

Plaintiff appeals, arguing the court erred by dismissing the breach of contract claim and granting summary judgment on the will contest.

"An appellate court reviews de novo the trial court's determination of the motion to dismiss under Rule 4:6-2(e)." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019) (citing Stop & Shop Supermarket Co., LLC v. Cnty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017)). We conduct a de novo review of an order granting a summary judgment motion, Gilbert v. Stewart, 247 N.J. 421, 442 (2021), applying "the same standard as the trial court under Rule 4:46-2(c)[" State v. Perini Corp., 221 N.J. 412, 425 (2015).

Our de novo review of the entire record supports the trial court's findings of fact and conclusions of law. The evidence was so one-sided that dismissal of plaintiff's breach of contract claim and the grant of summary judgment for the Estate on the will contest was appropriate. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 533 (1995).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION