STATE OF MICHIGAN

COURT OF APPEALS

SUZANNE BROWNELL, Personal Representative of the Estate of STANLEY S. POREDA, Deceased,

Appellant,

v

SCOTT POREDA,

Appellee.

UNPUBLISHED
April 22, 1997

No. 192051
Clinton Probate Court
LC No. 94-023104-IE

Before: Taylor, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Appellant Brownell appeals as of right, in her capacity as devisee under the decedent's will, from an opinion and order holding that the proceeds from two policies of life insurance, which were paid to appellee Scott Poreda as sole beneficiary, were the sole property of Poreda, and ordering Brownell to return a portion of the proceeds that she improperly disbursed to herself as a devisee. We affirm.

Brownell first claims that the probate court erred in finding that both Brownell and Poreda believed that the disputed insurance proceeds had to be probated and that they were operating under a mutual mistake of law when they treated the disputed proceeds as part of the estate. Brownell also claims that the probate court erred in finding that Poreda gave the insurance proceeds to the estate because Brownell instructed him to do so and not because of voluntary compliance with a purported death bed directive by the decedent that Poreda share the insurance proceeds with Brownell. We disagree. The record shows that the probate court was presented with conflicting evidence. Brownell testified at one point that she believed the policy proceeds were assets of the estate and needed to be "processed" by the estate before distribution. At other times, she claimed she knew otherwise and produced an accountant's letter as evidence that she had been advised the proceeds were not part of the estate; however, letters Brownell sent Poreda after she received the accountant's letter still made reference to the necessity of Poreda sending her the proceeds as soon as he received them so that she

could "process" them. Poreda consistently testified that he was unaware of a purported death bed directive by the decedent that he should share the proceeds with Brownell, and that he would never have sent the proceeds to Brownell to be "processed" by the estate but for the fact that Brownell advised him that he must do so as they were assets of the estate. Brownell claimed Poreda heard the decedent's death bed directive when all three were together in the decedent's hospital room; however, Brownell admitted that Poreda took no part in her conversation with the decedent and that she could not be sure that Poreda overheard them. Although the decedent made a will right before he died and after he allegedly made the directive, it did not mention sharing the insurance proceeds. A factual finding by a trial court sitting in a bench trial is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Tuttle v Highway Dep't*, 397 Mich 44, 46; 243 NW2d 244 (1976). This Court is not left with a definite and firm conviction that the probate court committed a mistake when it made these factual determinations.

Brownell also claims that the probate court erred in failing to find that Poreda voluntarily gave the proceeds to the estate with the knowledge that he was not legally required to do so and that therefore, he could not recover the proceeds. Further, Brownell claims the probate court erred in failing to find that Poreda was estopped from recovering the proceeds because of alleged detrimental reliance on Brownell's part based on her assumption that Poreda was voluntarily acting in conformity with the decedent's purported death bed directives. We disagree. As noted above, the probate court found that Poreda gave the proceeds to the estate because Brownell told him he had to, not because he voluntarily chose to share them with her. Further, Brownell failed to show changed conditions on which a detrimental reliance claim could be premised. *Kern v City of Flint*, 125 Mich App 24, 28; 335 NW2d 708 (1983). Under the circumstances, it was not inequitable for the probate court to order Brownell to repay monies she improperly disbursed to herself from the estate.

Brownell next claims that the probate court's opinion and order was against the great weight of the evidence, and that the court failed to address the legal issue of mutual mistake on which the opinion and order was based, in violation of MCR 2.517. We disagree. The probate court minimally, but adequately, set forth in its opinion its factual findings and conclusions of law as required by MCR 2.517. The probate court found that both parties thought it was necessary to probate the insurance proceeds. There is nothing on the record to indicate that the probate court was not aware of the issues presented or that it incorrectly applied the law. Remanding for a more specific reference as to whether an agreement existed on which the doctrine of mutual mistake could be premised would not further facilitate appellate review of this matter. MCR 2.517; *People v Armstrong*, 175 Mich App 181, 184; 437 NW2d 343 (1989). That the court cited only hornbooks and failed to cite Michigan case law is not inadequate where the court did not apply any incorrect legal principles and Brownell suffered no apparent prejudice as a result of her counsel's waiver of oral argument and briefs on the issue of mutual mistake.

Finally, the probate court's characterizations of Brownell as a "quasi-stepmother" to Poreda and of the decedent's purported death bed directive as "mere precatory words" were not

against the great weight of the evidence, nor were minor typographical errors in the opinion evidence of an inattention to evidence.

Affirmed. Appellee, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Clifford W. Taylor
/s/ Harold Hood
/s/ Roman S. Gribbs