

Court Affirms A Trial Court's Order Granting A Receiver's Request To Sell Real Property

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In *Estate of Richards*, a probate court entered an order appointing a receiver of estate property. No. 11-23-00031-CV, 2024 Tex. App. LEXIS 8626 (Tex. App.—Eastland December 12, 2024, no pet. history). The receiver filed a motion to approve the sale of real estate due to it being unproductive. A beneficiary objected to the sale and filed a supplemental application for declaratory judgment. She also argued that the sale of a tract of real property would be improper when she had filed pleadings seeking the partition of the property and distribution of estate property. The trial court approved the sale, and the beneficiary appealed.

The court of appeals first held that the appeal was timely, in part because the notice of appeal was filed within the fifteen-day grace period after it was due. The court of appeals also held that the appeal was not moot. The appellant argued that the appeal was moot because the sale was already consummated (the appellant let the property be sold without seeking a stay of the order). The court noted:

The conveyance of property can moot an appeal. Generally, “[w]hen a party appeals an order appointing a receiver or authorizing sale of certain property and the property has been sold, the appeal of the order becomes moot.” The principle behind this general rule is that the trial court is no longer able to afford relief if the property has been conveyed to a third party that was not subject to the jurisdiction of the trial court.

Id. However, the court of appeals held that the appeal was not moot because the sale was to a beneficiary, who was a party to the suit, and that the transaction could therefore be rescinded.

The court then addressed the beneficiary's argument that the trial court erred in ordering the sale when she had a request to distribute the estate pending. Section 360.001(a) of the Estates Code provides that:

At any time after the first anniversary of the date original letters testamentary or of administration are granted, an executor, administrator, heir, or devisee of a decedent's estate, by written application filed in the court in which the estate is pending, may request the partition and distribution of the estate.

Id. (citing Tex. Est. Code Ann. § 360.001). “By their express terms, Sections 360.001 and 360.002 permit a designated class of individuals to *request* the partition and distribution of the estate or a portion of the estate.” *Id.* The receiver argued that this provision did not apply to an independent administration. The court of appeals did not address this issue: “We will assume without deciding that Chapter 360 is applicable to this probate proceeding.” *Id.* The court then held that there was evidence that supported the trial court’s order:

Leinenbach is incorrect in her interpretation of Chapter 360 and the manner in which the trial court applied it with respect to the sale of the Homeplace. Even if one assumes that Chapter 360 is applicable to this proceeding, its provisions do not compel the partition in kind of the Homeplace based upon the mere request of a devisee. Section 360.002(c) provides that the court “may distribute any portion of the estate the court *considers advisable*.” The emphasized language indicates that the probate court has a measure of discretion to determine whether to order the partition in kind of an item of estate property. Additionally, Section 360.102 is prefaced on the following condition: “*If the court determines* that the estate should be partitioned and distributed.” Furthermore, Section 360.151 only requires the appointment of commissioners to partition estate property if “the court has not previously determined that the estate is incapable of partition.” Here, the trial court found that the Homeplace “is not capable of being partitioned in kind.” This finding by the trial court is adverse to Leinenbach’s contention that she was entitled to compel the partition in kind of the Homeplace under Chapter 360. However, Leinenbach has not challenged this finding on appeal or the evidence supporting it. When an appellant does not challenge the trial court’s findings of fact, those findings are binding upon both the party and the appellate court. Accordingly, we overrule Leinenbach’s sole issue on appeal.

Id.

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