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Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000175-MR

ROY DAVID PROCTOR

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KEN M. HOWARD, JUDGE
ACTION NO. 14-CI-00582

ESTATE OF ROY FLOYD PROCTOR;
ROY FLOYD PROCTOR LIVING TRUST,
SHARON DARLENE MALITO, TRUSTEE

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; JOHNSON AND JONES, JUDGES.

JOHNSON, JUDGE: Roy David Proctor (“David”), filed a declaratory action in the Hardin Circuit Court, seeking a declaration of his rights concerning various actions taken by his father, Roy Floyd Proctor (“Floyd”), prior to his death,

alleging that Floyd's decisions were the product of undue influence, fraud and exploitation. After reviewing the record in conjunction with the applicable legal authorities, we AFFIRM the Order of the Hardin Circuit Court.

BACKGROUND

Floyd and his wife, Doris Jean Proctor, who predeceased Floyd, had two children, David and Sharon Darlene Malito ("Darlene"). As early as 1998, Floyd and David worked together in several different businesses. In 2010, Floyd gave a Power of Attorney ("POA") to Darlene, which was to be effective should Floyd become disabled. In 2011, Floyd was diagnosed with Myasthenia Gravis, but continued to work in his various business interests and work with David. Beginning in 2013, Floyd began taking various actions concerning his estate. In June 2013, he deeded a house located at 225 Proctor Drive, to Darlene, who had lived there since 1981. In October 2013, Floyd executed the Roy Floyd Proctor Living Trust. In January 2014, Floyd executed a Durable Business POA in favor of Darlene and transferred his one-third interest in the Hardin Plaza, LLC, to the Trust to be administered by Darlene.

In February 2014, David filed an action in the Hardin District Court seeking to have Floyd declared disabled and requesting that he be appointed Floyd's guardian. In addition, David initiated a request to the Adult Protective Services ("APS"), to begin an investigation into Floyd's care and well-being. After completing its investigation, the final result was a determination that David was exploiting Floyd financially. As a result of its investigation, the APS issued a

Prevention Plan disallowing David access to Floyd, which plan remained in place until Floyd's death on June 28, 2015.

On March 28, 2014, David filed a declaratory action in the Hardin Circuit Court naming numerous defendants, including Floyd, the Roy Floyd Proctor Living Trust, and Darlene. David alleged undue influence, exploitation, and fraud on the part of Darlene in regard to the establishment of the Trust; the deed transferring the house to Darlene; Floyd's grant of the business POA to Darlene; and the transfer of the Hardin Plaza property into the Trust. In addition, David's original complaint alleged conversion and unjust enrichment of certain property involved in David's business. On July 25, 2014, Floyd filed an answer and counterclaimed against David. On December 9, 2014, the court entered an order dismissing David's claims of conversion and unjust enrichment, leaving only the claims in the declaratory action and Floyd's counterclaims against David to be determined.

In September 2014, David and Floyd signed a one (1) year renewal of a loan to the business for fourteen thousand eighty dollars (\$14,080.00). On September 18, 2014, the Hardin District Court dismissed David's petition seeking to have Floyd declared disabled.

Floyd died prior to the trial on the remaining issues. A trial was held from October 26, 2015, to November 4, 2015. The court determined that while some issues would be tried by a jury, other issues would be tried by the court with an advisory jury. The issues to be tried by the jury were the counterclaims filed by

the Trust against David. Those issues contained in David's initial pleading seeking a declaratory action were to be ruled upon by the court with the jury acting as advisory. The jury found for David on all counterclaims filed by the Estate/Trust against him. In its advisory capacity, the jury determined that the Trust and its Amendment were invalid due to undue influence, but found that Floyd's grant of the business POA, his deed to Darlene for the house, and his transfer of his property of the LLC to the Trust were valid.

In the court's final judgment: it upheld the jury verdict concerning the counterclaims against David; granted the Estate/Trust's motion for a directed verdict; and issued a judgment notwithstanding the verdict of the jury on the issue of undue influence. The court ruled there was no direct or circumstantial evidence at trial that Darlene exerted any undue influence on Floyd in the making of the Trust or its Amendment.

It is from the court's final judgment of January 14, 2016, that David filed this appeal.

STANDARD OF REVIEW

The standard of review on appeal from a declaratory judgment is whether such judgment was clearly erroneous. *Uninsured Employers' Fund v. Bradley*, 244 S.W.3d 741, 744 (Ky. App. 2007) (citing *American Interinsurance Exchange v. Norton*, 631 S.W.2d 851, 852 (Ky. App. 1982)).

ANALYSIS

The issues raised by David on appeal concern whether the court erred in ruling on the issue of undue influence rather than send the issue to the jury for determination. We conclude that the court had the authority to determine this issue without submitting it to a jury, or impaneling an advisory jury, because the pleadings in this case requested a declaratory judgment, which only a court can render. Kentucky Revised Statutes (“KRS”) 418.040.

In David’s original complaint he asserted claims under KRS 418.040, seeking a declaration of his rights concerning Floyd’s establishment of the Trust, the Trust Amendment, the deed transferring the house to Darlene, Floyd’s business POA to Darlene, and the transfer of Floyd’s interest in the shopping center to the Trust. “[A] declaratory judgment action is not a claim for damages, but rather it is a request that the [party’s] rights under the law be declared.” *Commonwealth v. Kentucky Retirement Systems*, 396 S.W.3d 833, 838 (Ky. 2013).

A declaratory action requests a declaration of rights and not damages, and therefore is tried by the court without a jury. KRS 418.040 provides:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the **court** may make a binding declaration of rights, whether or not consequential relief is or could be asked.

(Emphasis added).

In this case, the court heard all of the evidence and made the ultimate decision concerning David’s rights in regard to his declaratory action. The court

concluded that David's claims of exploitation, fraud, and undue influence were not supported by the facts of the case. In its forty-three page opinion, the court analyzed all of the evidence produced by the parties and determined that there was no direct or circumstantial evidence Darlene exerted undue influence over Floyd in the making of the Trust or its Amendment, the deed, the POA to Darlene, or the property transfers relying upon the standard set forth in *Bye v. Mattingly*, 975 S.W.2d 451, 457 (Ky. 1998). The court noted that Floyd made adequate provisions for David in the trust document assuring that any distribution of trust funds to Darlene included an equal distribution to David. The court in its order stated that David's evidence consisted of his subjective speculation about what occurred. We find no error in the court's reasoning or its application of the law.

The court chose to impanel an advisory jury for the proceedings pursuant to Kentucky Rules of Civil Procedure ("CR") 39.03. The impaneling of an advisory jury under a declaratory action is well within a court's discretion. CR 39.03 states:

In all actions not triable of right by a jury the court upon motion or of its own initiative may try an issue with an advisory jury; or the court, with the consent of all parties noted of record, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

In this case, the court impaneled a jury in an advisory capacity for all issues set out in David's declaratory action. The use of an advisory jury is entirely discretionary with the court and is not binding upon the court. *Averitt v. Bellamy*,

406 S.W.2d 410, 412 (Ky. 1966). The court, in this case, used the same impaneled jury to try all issues under Floyd's counterclaim, which did not seek a declaratory action. We find no error in the court's use of the impaneled jury in the proceedings as both advisory and as determinative of specific issues in this case.

Because David sought relief via a declaratory action, the ultimate decision was the court's, not the jury's, to make. The court was not required to issue a directed verdict on the issue of undue influence, nor was it required to grant a judgment notwithstanding the verdict because the jury's opinion was only advisory; the trial court was free to enter any judgment it determined proper irrespective of the jury's recommendation. Simply because the court may have applied an incorrect process in rendering its final decision, the process does not make the court's decision erroneous. While we do not agree that the issue of undue influence is an issue in equity, we are fully cognizant that David sought a declaratory judgment, which is triable in a bench trial not a jury trial. Even where a court reaches its judgment using the wrong process, we may affirm a correct result upon any ground supported by the record. *Wells v. Commonwealth*, 512 S.W.3d 720, 722 (Ky. 2017). In this case, the court utilized a different mechanism to reach its ultimate decision, a decision which under KRS 418.040 is reserved to the court. We find no error.

CONCLUSION

Based upon the foregoing, we AFFIRM the January 14, 2016 Judgment of the Hardin Circuit Court.

KRAMER, CHIEF JUDGE, CONCURS.

JONES, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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Elizabethtown, Kentucky

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