IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

IN THE MATTER OF THE ESTATE OF MARVIN C. ALEXANDER,

GUSSIE L. ALEXANDER,

Appellant,

vs.

JOEY ALEXANDER,

Appellee.

Case No. 121,938

APPEAL FROM THE DISTRICT COURT OF
PAWNEE COUNTY, OKLAHOMA

HONORABLE PATRICK PICKERILL, TRIAL JUDGE

AFFIRMED

Jeremiah Gregory
THE LAW OFFICES OF
JEREMIAH GREGORY, PLLC
Stillwater, Oklahoma

For Appellant

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

In this probate of her husband Marvin's estate, Appellant Gussie L. Alexander appeals the trial court's denial of her motion to reconsider filed after her request for approval of final account, petition for order of distribution of estate and

discharge of personal representative was denied.[1] After review, we affirm the trial court's order.

FACTS AND PROCEDURAL BACKGROUND

On September 2, 2003, Gussie and Marvin C. Alexander executed the Marvin C. and Gussie Lavon Alexander Trust which we quote in relevant part:

> We will transfer to Trustees various assets, and if any life insurance policies or other contracts are transferred, we may make the proceeds of such policies and contracts payable to Trustees for the uses and purposes specified in this Trust Agreement. We hereby transfer to Trustees all of our personal property, including, but not limited to, furniture, jewelry, clothing, lawn equipment and tools. An inventory of items transferred hereto is attached as Schedule A.

Marvin died on February 1, 2021.

Also on September 2, 2003, Gussie and Marvin executed their Mutual and Conjoint Last Will and Testament. According to Gussie's appellate brief, she filed a petition for probate of Marvin's Will on August 4, 2021, and the trial court appointed Gussie personal representative of his estate. On December 20, 2022,

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[1] Appellee Joey Alexander has not filed an entry of appearance on his own behalf or by counsel, nor has he filed an answer brief. "Where there is an unexcused failure to file an answer brief, this Court is under no duty to search the record for some theory to sustain the trial court judgment; and where the brief in chief is reasonably supportive of the allegations of error, this Court will ordinarily reverse the appealed judgment with appropriate directions." *Cooper v. Cooper*, 1980 OK 128, ¶ 6, 616 P.2d 1154. However, reversal is never automatic for failure to file an answer brief. *Hamid v. Sew Original*, 1982 OK 46, ¶ 7, 645 P.2d 496. Despite Appellee's failure to respond, we will determine whether the errors complained of warrant reversal.

Gussie filed an amended inventory and appraisement listing nine financial accounts and eight items of "other personal property" which included vehicles and boats. On December 30, 2022, Gussie filed a final account and petition for order of distribution of estate and discharge of personal representative attaching as Exhibit A the final inventory which listed only financial accounts. According to the docket sheet, on February 1, 2023, the matter came on for hearing, and counsel for Joey Alexander, an heir-at-law, appeared in opposition to the final accounting.

During a later hearing on May 10, 2023, Joey's counsel in addressing this issue asked that Gussie make a full accounting of Marvin's personal property. In this hearing, the trial court stated that Article 2.1 of the Will states that "all of the property which we own at our deaths, both real and personal, of whatever nature and wherever situated including without limitation all property acquired by us after the execution of this will and all property over which we may have a power of appointment, and all lapsed legacies and bequests, we give and devise to the trust." The trial court then said he did not "see any reason for characterization of marital or nonmarital property between these parties" as it is "a contractual disposition of property between Mr. and Mrs. Alexander." The trial court acknowledged that at the time of the hearing, no one had a copy of the Trust to review and he didn't "know what the terms of that trust are."

At the end of the hearing, the trial court denied Gussie's request for final distribution concluding:

> the personal property was not in the trust, it should have been transferred to the trust, but it wasn't apparently and therefore when Mrs. Alexander became personal representative she was required by law to account for all property of the . . . Estate of Marvin Alexander and to disclose on inventory what that property is so that that property can be properly distributed to the trust in this case.

The docket sheet reflects the trial court entered a minute denying approval of the final account and the petition for order of distribution of estate and discharge of the personal representative.

On November 9, 2023, Gussie filed a motion to reconsider this trial court order. She argued that the Trust language clearly transfers all personal property to the Trust. There being no personal property to probate, Gussie asserted a more detailed inventory of these items should not be required. Joey did not file a response brief.

During the January 3, 2024 hearing, Gussie's counsel argued:

> We believe that the trust which was page one which was attached to this motion indicates that the grantors' intent was that all personal property be distributed to the trust. If the personal property was distributed to the trust then there wouldn't be an accounting inventory required of the personal property in the estate because it would all be included in the trust instrument.

> And I am basing there, to be honest, there is [*sic*] no Oklahoma cases on point on this issue but basically what we believe is that the trust document which indicates on page one that all personal property was to be transferred to the trust is indicative of the grantors' intent and should be given evident [*sic*] as an assignment or the same as a bill of sale would have been; but there is no bill of sale in this case, however we would indicate that the trust instrument itself was an assignment of the personal property.

In response, Joey's counsel argued:

> Your Honor, that trust was written in 1993.[2] We don't know when this personal property was bought. We don't know when it was acquired, I guess I should say, but when it was acquired. And if that had been the intent of the settlor, it would have been in the trust or after acquired personal property which it is not. So I think the personal property was cutoff in 1993 unless they can show that it was purchased before that time. Otherwise, I fear that it runs afoul of the statute of frauds.

The trial court confirmed with Gussie's counsel that the "Schedule A" referenced in the Trust was never actually drafted. The trial court stated:

> But this Court's objective in this case is to make sure that everything that was outside of the trust gets into that trust and Mrs. Alexander as part of her responsibilities as personal representative is required to inventory all of these matters including items of personal property.
>
> If it's not certain that it's in that trust, which since they didn't fill out Schedule A it is uncertain, it needs to be verified by her what is the personal property of

[2] The trial court later confirmed the Will and Trust were executed in 2003, not 1993.

> Marvin Alexander, what he owned at the time of his death, and what is going into that trust.
>
> . . . .
>
> I don't see that I can make a conclusion that any property belonged in the trust at the time. Clearly this trust was created but improperly funded. I don't know for a fact that these investments that were placed on the inventory existed before that time but if they did they should have been transferred into the name of the trust. They apparently weren't. There's a list of automobiles, they may have existed in 2003, I don't know the answer to that. The majority are dated were manufactured before 2003 except for one, I think was a 2015 truck.

The trial court subsequently denied Gussie's motion to reconsider.

Gussie appeals this order.[3]

STANDARD OF REVIEW

"Probate proceedings are of equitable cognizance." *In re Estate of Fulks*, 2020 OK 94, ¶ 9, 477 P.3d 1143. "We presume that the trial court's decision is legally correct and we will not disturb the trial court's decision unless it is 'found to be clearly contrary to the weight of the evidence or some governing principle of law.'" *Id.* (quoted citation omitted). We further review questions of law "under a de novo standard of review." *Id.*

[3] Because Gussie originally attached a "court minute" to her petition in error which does not constitute an appealable order, the Supreme Court issued an order on February 5, 2024, directing her to file an amended petition in error with a final order attached in conformance with 12 O.S. §§ 696.2 and 696.3. She did so, and this appeal proceeded.

ANALYSIS

Gussie presses two arguments on appeal: (1) the trial court erred when it decided the language of the Trust alone, with no bill of sale or assignment, was insufficient to transfer the personal property into the Trust, and (2) the trial court erred when it decided the Trust failed to transfer any personal property acquired after execution of the Trust.

Gussie argues the trial court erred in determining the language of the Trust alone, with no bill of sale, was insufficient to transfer the personal property into the Trust. We agree that in order to create a valid trust, there must be real or personal property received by the trust. Title 60 O.S. § 175.6 states:

> A trust may be created by:
> A. A declaration by the owner of property that he holds it as trustee for another person, or for himself and another person or persons; or
> B. A transfer inter vivos by the owner of property to another person as trustee for the transferor or for a third person; or
> C. A transfer by will by the owner of property to another person as trustee for a third person; or
> D. An appointment by one person having a power of appointment to another person as trustee for the donee of the power or for a third person; or
> E. A promise by one person to another person whose rights thereunder are to be held in trust for a third person; or
> F. A beneficiary may be a cotrustee and the legal and equitable title to the trust estate shall not merge by reason thereof. Provided, however, that no trust in relation to real property shall be valid, unless created or declared:

1. By a written instrument subscribed by the trustor or by his agent thereto authorized by writing;
2. By the instrument under which the trustee claims the estate affected.

60 O.S.2021 § 175.6.

This case is similar to *Burbridge v. First National Bank and Trust Company of Oklahoma City*, 1965 OK 191, 415 P.2d 591, where the trust agreement stated it transferred the property as "described in Schedule 'A' hereto attached," yet failed to list or describe the specific property or assets subject to the trust agreement. *Id.* ¶¶ 10-11. The Supreme Court held: "[W]e find that the clear weight of the evidence established that: no property or assets were listed in the trust agreement, or attached thereto as exhibits; that the list of the properties and assets formed no part of the trust agreement; . . . ." *Id.* ¶ 15. The Court affirmed the trial court's decision on this point. *Id.* ¶¶ 15, 23.

We conclude the trial court properly determined the Trust was improperly funded because the personal property to be transferred was never identified in Schedule A and the record does not show any other specific real or personal property transferred into the name of the trust.[4] Also, page 1 of the Trust does not mention any "after-acquired property" provision, but our review is hampered by an

[4] During the motion to reconsider hearing, Gussie's counsel verified with the lawyer who drafted the Trust agreement that the mentioned Schedule A was never drafted.

appellate record that does not include the entire Trust but only pages 1 and 20.[5] During the motion to reconsider hearing, Gussie's counsel agreed with the trial court on the following:

> THE COURT: And obviously one common goal of people who do create a trust is to avoid the probate process and had this trust been properly funded at the time of its creation, I suspect this may not have been even necessary to file this action for probate. But, clearly, there was property left outside of the trust or that pour-over will would never have been needed to be probated, right?
>
> MS. ELLIS: Correct.

As a result, the Trust does not appear to have become operative as to any of the trustors'/trustees' assets when it was created or thereafter until Marvin's death. With the limited record before us, we are unable to find that the trial court's decision is contrary to the weight of the evidence and subject to reversal. The trial court properly denied Gussie's motion to reconsider seeking to change its initial decision. For these reasons, we affirm the trial court's order denying Gussie's motion to reconsider and ordering that she "provide an inventory and accounting for personal property that is in [Marvin's] Estate."

CONCLUSION

After review, we affirm the trial court's decision.

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[5] We further note the appellate record does not contain a copy of the Will discussed throughout the record.

AFFIRMED.

FISCHER, J., concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

I respectfully dissent. The trust includes the following language: "We hereby transfer to Trustees all of our personal property, including but not limited to furniture, jewelry, clothing, lawn equipment and tools." These words of grant unambiguously transferred all the personal property that could be legally conveyed via declaration alone from the trustors to the trustees. This would include, at minimum, all of the non-titled, personal property held by the trustors at the time of the conveyance. I cannot agree with the majority that this language is ineffective to convey, for example, all the tools held by the trustors in 2003. Further, to the extent the trustors obtained new, non-titled personal property after the date of this transfer, that property will be owned by the trustees if it was obtained via trust funds, if any. Thus, but for the more fundamental point below which requires a full reversal, I would reverse the trial court to the extent it found the trust was ineffective for want of funding. The trust was partially funded with those items of personal property that could be legally conveyed via the declaration quoted above. The trial court's determination that the trust failed entirely for want of funding is contrary to law and should be reversed.

More fundamentally, I question whether Joey Alexander had any standing to contest the final account in the first instance. Clearly, as an heir, he had standing to contest the admission of the will. *See* 58 O.S. § 29. However, once the will had been admitted to probate, where the will in question conveyed nothing to him, I question whether Mr. Alexander had any further stake in the case. Put differently, the "person[s] interested," *id.*, at the time a will is entered into probate are not necessarily the same persons that are "interested in the estate," 58 O.S. § 541, at the time of the final accounting. Because Mr. Alexander stands to take nothing from the will whether the requested accounting is completed or not, I would reverse with instructions to approve the final accounting submitted by the personal representative. *See Matter of M.R.*, 2024 OK 28, ¶ 15, 548 P.3d 120, 127 (holding that "standing is a threshold issue" that "at an irreducible minimum" requires "that the party who invokes the court's authority demonstrate '(1) a legally protected interest which must have been injured in fact—i.e., an injury which is actual, concrete and not conjectural in nature, (2) a causal nexus between the injury and the complained of conduct, and (3) a likelihood, as opposed to mere speculation, that the injury will be redressed by a favorable decision.'" (quoting *Cities Serv. Co. v. Gulf Oil Corp.*, 1999 OK 16, ¶3, 976 P.2d 545, 547)).

August 14, 2025