

North Carolina Trust Co. v. Taylor, 131 N.C.App. 690 (1998)

508 S.E.2d 809

131 N.C.App. 690

Court of Appeals of North Carolina.

NORTH CAROLINA TRUST COMPANY and William G. McNairy,  
Trustees Under the John R. Taylor, Jr. Trust, Plaintiff-appellees,

v.

Eliza P. TAYLOR and Amanda L. Taylor and Virginia Bell Vanstory, Defendant-appellees,

v.

Jonathan R. HARKAVY, Guardian ad litem for Lineal Descendants of Eliza P. Taylor and Amanda L. Taylor,  
and William E. Wheeler, Guardian ad litem for Lineal Descendants of Reid S. Taylor, Sr., Defendant-appellants.

No. COA98-291.

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Dec. 15, 1998.

### Synopsis

Trustees under revocable trust agreement filed complaint seeking declaratory judgment relating to validity and construction of agreement. After appointment of guardians ad litem, and after parties agreed on terms for settlement, the Superior Court, Guilford County, Thomas W. Ross, J., entered judgment resolving all issues precisely as requested in trustees' complaint. Guardians appealed. The Court of Appeals, Smith, J., held that guardians were not parties aggrieved.

Appeal dismissed.

**Procedural Posture(s):** On Appeal.

West Headnotes (7)

#### [1] **Appeal and Error** 🔑 Judgment

Court of Appeals was not bound to review trial court's determination of validity of handwritten changes to trust agreement and trial court's construction of instrument incorporating these changes, which decision resolved all issues precisely as requested in trustees' complaint; issues decided involved purely private interests, as there was no charitable trust involved, and there was no allegation that settlement agreement that parties reached prior to court's decision varied trust's terms.

#### [2] **Appeal and Error** 🔑 Form and requisites in general

Court of Appeals' review is limited to questions that are supported by the arguments made in the brief. Rules App.Proc., Rule 28(b)(5).

1 Case that cites this headnote

#### [3] **Appeal and Error** 🔑 Necessity

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Assignments of error must be brought forward and discussed in the brief in order to properly present questions for review on appeal. Rules App.Proc., Rule 28(b)(5).

[4] **Appeal and Error** 🔑 Briefs and argument in general

**Appeal and Error** 🔑 Citation to facts and legal authority in general

Where an appellant brings forth no argument or authority in their briefs in support of an assignment of error, the assignment of error is deemed abandoned. Rules App.Proc., Rule 28(b)(5).

1 Case that cites this headnote

[5] **Appeal and Error** 🔑 Parties or Persons Injured or Aggrieved

Only parties aggrieved by the lower court's action can appeal. G.S. § 1-271.

1 Case that cites this headnote

[6] **Appeal and Error** 🔑 Who are “aggrieved” in general

Party is “aggrieved,” and can therefore appeal from an order or judgment of the trial division, when that party's rights have been directly and injuriously affected by the court's action. G.S. § 1-271.

1 Case that cites this headnote

[7] **Appeal and Error** 🔑 Who are “aggrieved” in general

Guardians ad litem were not “aggrieved” by trial court's determination of validity of handwritten changes to trust agreement and trial court's construction of instrument incorporating these changes, which decision resolved all issues precisely as requested in trustees' complaint; guardians' claim that trial court's judgment was not supported by its findings actually sought to obtain appellate approval of parties' settlement agreement rather than determination that trial court erred, as guardians failed to demonstrate any injury.

**\*\*810 \*691** Appeal by defendant from judgment entered 16 December 1997 by Judge Thomas W. Ross in Guilford County Superior Court. Heard in the Court of Appeals 26 October 1998.

**Attorneys and Law Firms**

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Opinion

\*692 SMITH, Judge.

On 31 March 1997, North Carolina Trust Company and William G. McNairy, as trustees under the John R. Taylor, Jr. revocable trust agreement (the agreement), filed a complaint seeking a declaratory judgment relating to the validity and construction of the agreement. On 1 April 1997, the court appointed appellants Wheeler and Harkavy as guardians *ad litem* for the lineal descendants \*\*811 of Reid S. Taylor (Wheeler's wards), Eliza P. Taylor, and Amanda L. Taylor (Harkavy's wards). This case was designated an exceptional case pursuant to Rule 2.1 of the General Rules of Practice and assigned to Judge Ross. Before trial began, the parties agreed on terms for settlement. The parties asked Judge Ross to approve the settlement's resolution of validity and construction issues. On 10 November 1997, after a hearing, Judge Ross allowed both guardians *ad litem* to submit written analyses of the issues before him. On 19 December 1997, Judge Ross entered judgment resolving all issues precisely as requested in the trustees' complaint. Defendants appeal.

Each appellant assigns error claiming that the trial court's judgment is not supported by its findings of fact and conclusions of law as adduced from the evidence presented. Appellants make *no* argument in support of their respective assignments of error. Furthermore, based on their briefs, we conclude that appellants are not parties aggrieved. Thus, we dismiss the appeal.

[1] In their briefs, appellants argue that courts in this State “have inherent authority over the property of infants and will exercise this jurisdiction whenever necessary to preserve and protect children's estates and interests.” *Sternberger Foundation v. Tannenbaum*, 273 N.C. 658, 674, 161 S.E.2d 116, 128 (1968) (where our Supreme Court reviewed a judgment approving a contract of settlement, which altered the express provisions of the residuary clause in the testator's will). In *Sternberger*, our Supreme Court held that “[b]ecause of the extreme importance of this matter to the parties *and to the public generally* [sic] the contract of settlement should receive the approval of this Court.” *Id.* at 678, 161 S.E.2d at 131 (emphasis added). However, the instant case is distinguishable from *Sternberger*. Here, the issues decided regard purely private interests. There is no charitable trust involved. Therefore, the public policy considerations present in *Sternberger* are absent. In addition, the settlement in *Sternberger* altered the express terms of the testator's will. Here, however, the trial court merely determined the validity of handwritten \*693 changes to the trust agreement and construed the instrument incorporating these changes. Appellants do not contend that the settlement varied the terms of the Trust. Rather, they assert that the settlement is in the best interests of their respective wards. Thus, we are not bound by *Sternberger* to review the decision of the trial court.

[2] [3] [4] Additionally, Rule 28(b)(5) of the Rules of Appellate Procedure limits our review to questions that are supported by the arguments made in the brief. *See State v. Cohen*, 301 N.C. 220, 270 S.E.2d 416 (1980). Rule 28 requires that “assignments of error be *brought forward and discussed* in the brief in order to properly present questions for review on appeal.” *State v. Samuels*, 298 N.C. 783, 785, 260 S.E.2d 427, 429 (1979) (emphasis added). Where an appellant brings forth no argument or authority in their briefs in support of an assignment of error, the assignment of error is deemed abandoned. *See Taylor v. Nationsbank Corp.*, 125 N.C.App. 515, 481 S.E.2d 358, *disc. review allowed*, 346 N.C. 288, 487 S.E.2d 570, *disc. review denied as improvidently granted*, 347 N.C. 388, 493 S.E.2d 57 (1997). Here, appellants ask this Court to “examine” and “review” the decision of the court below but discuss no grounds to substantiate their assignments of error. As appellants have not brought forth and discussed their assignments of error, they are deemed abandoned.

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[5] [6] [7] Furthermore, we hold that appellants in this case are not parties aggrieved by the decision of the trial court. North Carolina law has long reflected the principle that only parties aggrieved by the action of the lower court can appeal. *See Yadkin County v. High Point*, 219 N.C. 94, 13 S.E.2d 71 (1941). This concept has been codified in section 1–271, which states that “any party aggrieved may appeal.” N.C. Gen.Stat. § 1–271 (1996). A party is aggrieved when its “rights have been *directly and injuriously affected* by the action of the court” and can therefore appeal from an order or judgment of the trial division. *Culton v. Culton*, 327 N.C. 624, 625, 398 S.E.2d 323, 324 (1990) (emphasis added). Here, appellants claim that the trial court’s judgment is not supported \*\*812 by its findings and conclusions. Appellants’ briefs, however, indicate that this argument is a pretext, designed to obtain appellate approval of the settlement agreement rather than a determination that the trial court erred. In his brief, appellant Harkavy states that this Court should *affirm* the trial court’s judgment, which he feels is in the best interest of his wards. From his apparent satisfaction with the judgment, we conclude that appellant Harkavy is not a party aggrieved by the trial court’s decision. Similarly, appellant Wheeler fails to argue that his ward’s interests \*694 were directly and injuriously affected. Rather, he seeks “to put future potential litigation to rest and to provide a final adjudication of the issues raised,” (validity and construction). Appellants’ failure to demonstrate any injury resulting from the decision of the trial court compels us to determine that they are not parties aggrieved. Consequently, we dismiss their appeal.

Appeal dismissed.

EAGLES, C.J., and TIMMONS–GOODSON, J., concur.

**All Citations**

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