

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

Matthew J. Younes and	:
Julie R. Younes and	:
Ryan T. Younes and	:
Charles T. Evenden III and	: ORPHANS COURT DIVISION
Deborah Evenden,	:
 Petitioners	: NO. 41-03-0101
	:
v.	:
	:
Judy Lach as Trustee	:
of the Mary Jane Evenden	:
Grandchildren Gift Trust	:
and the Mary Jane Evenden	:
Living Trust,	:
 Respondent	:

OPINION AND ORDER

Before this Honorable Court, is the Motion of Petitioners Matthew J. Younes, Julie R. Younes, and Ryan T. Younes (“Younes”), wherein they argue that the Mary Jane Evenden Living Trust Agreement (“Living Trust”) are ambiguous, requiring parol evidence to aid interpretation.

Background

On August 19, 1996, the Decedent, Mary Jane Evenden (“Decedent”) signed both a will and a trust agreement. The Will was designed as a pour-over will, where upon the Decedent’s death, all after-tax assets were to be transferred or poured over into the Living Trust. The Decedent subsequently executed a Codicil on April 24, 2001. The Decedent died on February 8, 2003. Shortly after, pursuant to the Trust Agreement, Charles Thomas Evenden III and Deborah Evenden (“Evendens”) began receiving regular trust payments from former Trustee Judy Lach.

On April 11, 2008, the Court heard argument on Petitioner Evendens' Motion for Disbursement. At that time, Counsel for the Younes alleged that they may have been entitled to half of the Living Trust upon the decedent's death. To support this contention, they argue that the Living Trust and Codicil documents when read together are ambiguous and thus require parol evidence, in the form of the scrivener, Steven Moff, Esq.'s testimony to aid in interpretation. Counsel for the Evendens' argues to the contrary that the Living Trust Agreement and Codicil are not ambiguous. The Court ordered Counsel for both Petitioners to file briefs in support of their arguments.

The Younes' allege in their brief that the intent of the Decedent cannot be ascertained with reasonable certainty and therefore, parol evidence should be admitted. The Younes' make two arguments to support their contentions: first, the provisions of the Codicil create ambiguity as to the identities of the intended beneficiaries of the trust; and second, the language of the Codicil read concurrently with the original Trust Agreement creates an ambiguity as to the calculation and timing of the division of the trust assets and the manner and timing of the distribution of the divided trust assets. In opposition, the Evendens argue the intentions of the Decedent are definitively ascertainable by the plain language of the Will, the Living Trust Agreement, and the Codicil.

The following are the portions of the Living Trust Agreement at issue:

CREATION

This Trust agreement creates one (1) trust to hold the title to the property of the above-named creator. This Trust shall be known as the **Mary Jane Evenden Living Trust**.

Successor Beneficiaries

Upon the death of the Trustor Beneficiary, the beneficiaries of the Trust are Charles Thomas Evenden III, the son of Trustor, hereinafter called "Son Successor Beneficiary";

and Matthew Joseph Younes, Julie Rose Younes, and Ryan Thomas Younes, the grandchildren of the Trustor, hereinafter called “Grandchildren Successor Beneficiaries”; all hereinafter called “Successor Beneficiaries.”

Division

Upon the death of a Successor Beneficiary, and after any specific distributions have been made, the Trustee shall divide the balance of the trust estate to the Trust as then constituted into separate shares so as to provide a fifty (50%) share to Son Successor and a fifty (50%) percent share to Grandchildren Successor Beneficiaries, to be divided equally between them. Each full or partial share of the trust property held in trust shall constitute and be held, administered, and distributed by the Trustee as a separate trust.

Distribution

Upon the death of the Trustor, the Trustee shall distribute that part of the property allocated to the Son Successor Beneficiary, upon the son Successor Beneficiary’s written request, to the Son Successor Beneficiary outright as soon as is practicable.

Upon a Grandchild Successor Beneficiary of the Trustor attaining the age of twenty-one (21) years, the Trustee shall distribute that part of the property allocated to the Grandchildren Successor Beneficiaries outright as soon as is practicable.

Living Trust Agreement, pgs. 2-11. Next, according to the Codicil, the unnumbered paragraph on page 2 of the Trust agreement entitled “Successor Beneficiaries” was replaced with the following paragraph:

Upon the death of Trustor Beneficiary, the beneficiaries of the Trust are the children of Thomas and Susan Evenden, hereinafter called “Son and Daughter-in-law Successor Beneficiaries”; and Matthew Joseph Younes, Julie Rose Younes, and Ryan Thomas Younes, the grandchildren of the Trustor; hereinafter called “Grandchildren Successor Beneficiaries”; all hereinafter called “Successor Beneficiaries”.

2. “Son and Daughter-in-law Beneficiaries”, as defined above, shall replace “Son Successor Beneficiary” wherever it appears in said document.

...

5. On page 10 of said document, the unnumbered section entitled “Distribution”, the first paragraph shall be replaced with the following:

Upon the death of the Trustor, the Trustee shall determine the current fair market value of the assets within the trust (after all assets are transferred to said trust as a result of the

death of the Trustor). The Trustee is then to determine what is 5% (five percent) of said Trust value and the equivalent of said value shall be paid to Deborah Evenden in twelve equal monthly installments for a period of fifteen years starting the month after the death of the Trustor. Upon the expiration of said 15 (fifteen) year period or the death or divorce of Deborah Evenden from Charles Thomas Evenden III, whichever ever comes first, the remaining principal and undistributed income shall be distributed to the two groups of beneficiaries as provided in the trust. By way of example, but not of limitation, if the Trust had a value of \$100,000 after the assets were transferred to said Trust after the death of the Trustor Deborah Evenden would receive \$416.66 per month for 15 years (\$5,000 divided by 12 equal monthly installments for 15 years).”

Discussion

In Pennsylvania it is “a cardinal rule that a will is to be construed according to the intent of the testator.” In re Estate of Hamilton, 312 A.2d 373, 374 (Pa. 1973). See also Estate of Taylor, 391 A.2d 991, 994 (Pa. 1978). “[W]here there is no ambiguity in the terms used, the intent of a testator must be gathered from the terms of the will itself and cannot be changed or explained by parol[.]” In re Kemerer's Estate, 96 A. 654 (Pa. 1916) (and cases cited therein).

If the intent of the testator can be ascertained it “is the true test to be applied to the construction of a will, and mere differences in the use of words are by no means controlling.” In re Solms' Estate, 98 A. 596, 597 (Pa. 1916) (and cases cited therein). “An obvious mistake must not be permitted to defeat the otherwise clearly expressed intention of testator, nor can words of ambiguous meaning overcome the intentions of testator as expressed clearly in other parts of the will[.]” German Estate, 1951 Pa. D. & C. Dec. LEXIS 121 (Lehigh, 1951) (citing McKeehan v. Wilson, 53 Pa. 74, 76 (1866)).

Lack of Ambiguity as to the Identities of the Intended Beneficiaries

The Younes first argue that the Codicil is ambiguous, because it refers to “the children of Thomas and Susan Evenden, hereinafter called ‘Son and Daughter-in-law Successor

Beneficiaries’”. This is an obvious error as Gail Susan Younes (Susan) is Thomas Evenden’s (“Thomas”) long-deceased sister. Susan is obviously not the Decedent’s daughter-in-law and Thomas and Susan did not have children together. This obvious mistake does not “defeat the otherwise clearly expressed intention of . . .” the Decedent. German Estate, 1951 Pa. D. & C. Dec. LEXIS 121. The Court finds the intent of the Decedent clear that “Son and Daughter-in-law Successor” is meant to refer to her son and daughter-in-law, Thomas and Deborah Evenden. The alternative interpretation proposed by the Younes would mean that the Evenden’s children were also intended beneficiaries. However, the Evenden’s children are not named anywhere in the original Living Trust Agreement or the Codicil. Only Thomas and the children of Susan Evenden (the Younes) are named as beneficiaries. Therefore, the Court finds that no parol evidence is needed to determine the intent of the Decedent, as such intent is clear.

Lack of Ambiguity as to Division and Distribution of the Trust Assets

The Younes’ second argument is that the language of the Codicil read concurrently with the Living Trust Agreement creates an ambiguity as to the calculation and timing of the division of the trust assets, and the manner and timing of the distribution of the divided trust assets. Specifically, they argue that it is unclear how to read the Codicil Distribution paragraph together with the Division paragraph in the original Living Trust Agreement. The Younes also argue that the Decedent intended for the trust assets to be divided into two trusts. In opposition, the Evendens’ argue that when read together the Will, the Living Trust Agreement, and the Codicil leave no doubt as to the Decedent’s intent.

After a review of the Will, the Living Trust Agreement, and the Codicil, the Court finds that the Decedent’s intentions were quite clear, and therefore, parol evidence is not admissible.

First, according to the Will, upon the Decedent's death, all assets are to be transferred to the Living Trust. The Codicil then directs the Trustee to determine five percent of the trust value and pay that amount to "Deborah Evenden in twelve monthly installments for a period of fifteen years." Upon the expiration of fifteen years, or upon the death or divorce of Deborah Evenden from Thomas, "which ever comes first, the remaining principal and undistributed income shall be distributed to the two groups of beneficiaries as provided in the trust." It is clear from this language that the 50/50 split in the Division paragraph of the Living Trust Agreement is not modified by the Codicil. The Codicil only changes when the 50/50 split will occur.

The Court also finds that the Decedent only intended for one trust to be created, the Living Trust. The Codicil repeatedly refers to a "Trust" into which all assets should go, not "Trusts." This indicates that the "Trust" referred to in the Codicil is the Living Trust. Therefore, it is clear from the Codicil that the Decedent intended for Deborah to receive five percent of the value of the Living Trust each year for 15 years, after which the remainder is to be divided, providing fifty percent for the Evendens and fifty percent for the Younes.

ORDER

AND NOW, this _____ day of May 2008, after argument on Petitioner Younes position that the Trust Agreement and Codicil are ambiguous, requiring parol evidence to aid interpretation, the Court finds both the Trust Agreement and Codicil are clear and unambiguous.

By the Court,

Nancy L. Butts, Judge

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