

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE MATTER OF
WILLARD L. LOCH

: Orphan's Court Division
:
: No. 41-10-0498

OPINION AND ORDER

Before the Court is Muncy Bank and Trust's (Bank's) petition for reformation of a trust. A hearing was held on the petition on December 13, 2011. The parties were given the opportunity to file any briefs and responsive briefs by January 20, 2012 and February 3, 2012, respectively. The relevant facts follow.

On May 4, 2010, Willard Loch (Decedent) created a will where he gave his entire estate to an irrevocable supplemental needs trust to benefit his daughter, Faith Loch (Faith), who is 51 years old and has been mildly to moderately retarded for her entire life. Decedent had two other children – a daughter, Debra Gallagher (Debra); and a son, Timothy Loch. The will specifically directs that these children were not to receive anything from Decedent's estate due to their lack of contact with him. Apparently, the disinherited children became estranged from their father following an automobile accident in which Decedent's wife and the children's mother was killed and Decedent was the driver of the vehicle. Decedent and Debra's relationship was further strained when Debra was appointed as Faith's guardian and moved Faith out of Decedent's home.

At the same time that the will was prepared on May 4, 2010, Decedent also created the Loch Family Supplemental Needs Trust (the Trust) with the assistance of Attorney John Smay. The Trust provided for the care of Faith during her lifetime. Article 3.1 of the Trust was to provide for the distribution of any remaining funds following Faith's

death; however, that provision literally has a blank space which is not filled in.

Decedent passed away on July 20, 2010. Sometime after Decedent's death, Maggie Aderholdt, a trust officer with the Bank, reviewed the Will and the Trust and noticed that Article 3.1 of the Trust was incomplete. She contacted Attorney Smay who provided her with a list of successor beneficiaries. On June 20, 2011, Bank filed the Petition for Reformation, seeking to reform the Trust to include the list of successor beneficiaries.

The evidence presented at the hearing on December 13, 2011, established that Attorney Smay met with Decedent and his companion, Marilyn Bear, for several hours on May 4, 2010. Various documents were prepared on that day, including the Will, the Trust, and two powers of attorney. Decedent was clear that he wanted a trust for Faith to be the sole beneficiary upon his death; he did not want his other children to inherit anything. When asked about successor beneficiaries in the event any money was remaining in the Trust after Faith's death, Decedent had some difficulty deciding. He left Attorney Smay's office with Ms. Bear to get something to eat and think some more about who he wanted to name as successor beneficiaries. When they returned later in the afternoon, Decedent provided to Attorney Smay a list of charities that he wanted to be named as the successor beneficiaries. Attorney Smay's staff typed up the list of beneficiaries. Decedent reviewed the typed list and was happy with it. Unfortunately, Attorney Smay or his staff failed to incorporate the list into paragraph 3.1 of the Trust document or attach it as an exhibit thereto. The list of successor beneficiaries was admitted as Petitioner's Exhibit 3. Although there was a minor discrepancy between the testimony of Attorney Smay and Ms. Bear regarding whether Decedent gave Attorney Smay the names of the beneficiaries orally or in writing and there was a typographical error in the spelling of Decedent's last name, Attorney Smay and Ms.

Bear agreed that the charities listed in Petitioner's Exhibit 3 were supposed to be named as the successor beneficiaries of the Trust.

DISCUSSION

Reformation of a trust to correct a mistake is authorized by Pennsylvania's Probate, Estates and Fiduciaries Code, which states:

The court may reform a trust instrument, even if unambiguous, to conform to the settlor's probable intention if it is proved by clear and convincing evidence that the settlor's intent as expressed in the trust instrument was affected by a mistake of fact or law, whether in expression or inducement. The court may provide that the modification have retroactive effect.

20 Pa. C.S. §7740.5. Mistakes in expression usually are caused by scrivener's errors. 20 Pa. C.S. §7740.5, UNIFORM LAW COMMENTS. A mistake of expression occurs when the terms of the trust misstate the settlor's intention, fail to include a term that was intended to be included, or include a term that was not intended to be included. Restatement (3d) of Property, Will and Other Donative Transfers, §12.1. It is well settled in Pennsylvania law that the mistake of a scrivener in preparing a deed or other writing may be established by parol evidence and the instrument reformed accordingly. In re La Rocca Trust, 411 Pa. 633, 192 A. 2d 409 (1963).

In the case at bar, there was a mistake of expression in that the list of successor beneficiaries was intended to be included in the Trust, but due to a scrivener's error, it was not included therein. The evidence clearly established that Decedent created a list of charities that he wanted to be named as successor beneficiaries and he provided that list to his attorney. It is equally clear that the attorney or his staff made a clerical error and the list of charities were not included paragraph 3.1 of the Trust document, incorporated by

reference, or attached to the Trust document. Not only did the attorney admit the error committed by his office, but Ms. Bear, Decedent's long-time friend and companion who had no stake in the outcome of this case, convincingly testified regarding how Decedent created the list and provided it to his attorney, as well as Decedent's connection to or affiliation with each charity or key individuals who were associated with the charity.

It is equally clear that Decedent did not want Ms. Gallagher or her brother to receive any of his property, as evidenced by paragraph III of his Will, which stated: "I acknowledge that I have two (2) other surviving children, **DEBRA A. GALLIGHER**, of Allentown, Pennsylvania and **TIMOTHY L. LOCH**, of Indian Mountain Lake, Penn Forrest Township, Pennsylvania, to whom I leave nothing as they have had no contact with me." Therefore, the Court finds that Bank has established by clear and convincing evidence that Decedent intended that the charities listed in Petitioner's Exhibit 3 would be named as the successor beneficiaries in the Trust and the reason they were not included was due to a scrivener's error.

Accordingly, the following Order is entered:

ORDER

AND NOW, this ____ day of April 2012, the Court GRANTS the Petition for Reformation of a Trust. The Trust is reformed so that paragraph 3.1 of the Trust shall include as successor beneficiaries the list of charities contained in Petitioner's Exhibit 3.

By The Court,

Marc F. Lovecchio, Judge

cc: Stephen C. Sholder, Esquire
Fred Holland, Esquire
John Smay, Esquire
Work file