

STATE OF MICHIGAN
COURT OF APPEALS

In re JOHN F. BRATEK TRUST, Deceased.

MARY BRATEK,

Petitioner-Appellant,

v

MARY AQUILINA,

Respondent-Appellee.

UNPUBLISHED

May 25, 2001

No. 219371

Wayne County Probate Court

LC No. 97-584952-TI

Before: Neff, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Petitioner appeals as of right the probate court order granting summary disposition in favor of respondent. We affirm.

This case arises from a dispute over the language of a trust instrument executed by the decedent, John F. Bratek. Respondent brought a motion for summary disposition under MCR 2.116(C)(10), arguing that the decedent's intent was to give her the house in which they both lived wherein she owned a twenty-five percent interest. The probate court determined that the language of the trust was ambiguous and considered parol evidence to assist it in determining the settlor's intent. Thereafter, the probate court determined that the decedent intended for respondent to receive the house upon his death.

Petitioner, who is the decedent's mother, asserts that the probate court erred by interpreting the trust in a manner that altered the unambiguous language of the trust. Petitioner further asserts that the probate court erred by considering parol evidence. We disagree.

Generally, this Court applies the same rules as the probate court when interpreting the language of a will or trust. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). The primary role of the probate court is to determine and give effect to the settlor's intent as expressed in the language of the trust. *Id.* If a settlor's intent is clear from the language of the trust, then the court must interpret and enforce the language as written. *In re Norwood Estate*, 178 Mich App 345, 347; 443 NW2d 798 (1989), citing *In re Kremlick Estate*, 417 Mich 237,

241; 331 NW2d 228 (1983). However, if the language of a trust is ambiguous, the court is permitted to look outside the four corners of the trust to determine a settlor's intent. *In re Burruss Estate*, 152 Mich App 660, 666; 394 NW2d 466 (1986). If the court considers evidence outside the four corners of the trust, parol evidence is admissible to show the existence of an ambiguity, to show the actual intent of the settlor, or to show the actual intent of a settlor as an aid in interpreting the language of the trust. *In re Kremlick Estate*, 417 Mich 237, 241; 331 NW2d 228 (1983), citing *Goodwin, Inc v Coe Pontiac, Inc*, 392 Mich 195, 209-210; 220 NW2d 664 (1974). A patent ambiguity exists if, on the face of the trust, an uncertainty arises "from the use of defective, obscure[,] or insensible language." *Id.*

The decedent established a trust on August 24, 1994. The opening paragraph of article 9 states:

Upon and subsequent to the death of the Settlor, the Trustee shall distribute the remaining principal and undistributed income, all property received from the Settlor's estate that is to be divided in the same manner as the original Trust, and any other property received as a result of Settlor's death, to the distributees described in this Agreement at such time or times, and in such manner, as the Trustee determines to accomplish the orderly administration of the Trust.

Article 9 of the trust further attempted to establish a separate "marital trust" and "family trust." The pertinent language in article 9 is, "[i]f Settlor should be married to MARY AQUILINA at the time of his death," and "MARY AQUILINA survives the settlor, the trustee shall allocate the assets described above to the trusts, to be known as the Marital Trust and Family Trust."¹ In paraphrase, if the conditional language has been met, the remainder of article 9 requires the trustee to transfer the above described property to a "marital trust" and a "family trust." Under the conditional language, the decedent must have been married to Aquilina at the time of his death and Aquilina must have survived him in order for the trustee to be obligated to transfer the decedent's property to the "marital trust" and "family trust." Under this conditional language, if the condition is not met, both of those trusts would fail. It is undisputed that Mary Aquilina was not married to the decedent at the time of his death.

Article 11 of the trust is entitled "Family Trust" and states:

If this Family Trust owns an interest in a residence occupied by the Settlor and MARY AQUILINA at the time of Settlor's death, then:

1. The Trustee shall distribute Settlor's residence to MARY AQUILINA.

¹ This language is a condition precedent. Because the language of article 9 spans over two and one-half pages in the trust instrument, it has been paraphrased to show what the article requires if the conditional language has been met.

2. The Trustee shall distribute the condominium in which Settlor's mother, MARY E. BRATEK, resides to Settlor's mother, MARY E. BRATEK

3. In the event MARY AQUILINA does not survive Settlor, the balance shall be distributed to Settlor's mother, MARY E. BRATEK.

4. In the event neither MARY AQUILINA nor Settlor's mother shall survive Settlor, the balance shall be distributed to the current Trustee of the MARY AQUILINA TRUST OF AUGUST 3, 1994, as may be further amended.

By article 9's terms, the trustee was not required to allocate the assets described in the first paragraph of article 9 to a marital trust and family trust. An ambiguity exists, therefore, regarding the settlor's intent if under the terms of the original trust the marital and family trust were not funded.

A contract is ambiguous where the language is susceptible to two or more meanings. *UAW-GM v KSL Recreation Corp*, 228 Mich App 486, 491; 597 NW2d 411, lv den 459 Mich 945 (1999). At the November 30, 1998, motion for summary disposition, petitioner conceded that the trust instrument was so ambiguous that it should be rendered void (Tr, 10). Because both parties conceded that the trust is ambiguous, the court properly looked outside the four corners of the instrument to ascertain and give effect to the settlor's intent. *In re Burruss Estate*, 152 Mich App 660, 666; 394 NW2d 466 (1986). One reasonable interpretation is that if the settlor and Mary Aquilina were married at the time of the settlor's death, and Mary Aquilina survived the settlor, then two trusts were to be created – a marital trust and a family trust. If they were not married at the time of the settlor's death *or* if Mary Aquilina had not survived the settlor, then only a family trust was to be created. Another reasonable interpretation is that if the settlor and Mary Aquilina were married at the time of the settlor's death, and Mary Aquilina survived the settlor, then two trusts were to be created – a marital trust and a family trust. If they were not married at the time of the settlor's death *or* if Mary Aquilina had not survived the settlor, then *no* trusts were to be created. The parties may introduce parol evidence to show the settlor's actual intent or to assist the court in interpreting the language of the trust to determine the settlor's actual intent. *In re Kremlick Estate, supra* at 241.

We interpret the first paragraph in article 9 to mean that the trustee is to look to the original trust instrument to determine his distributive intent if the condition in article 9 is not met. Once that has been determined, article 11 directs the trustee to distribute the decedent's residence outright to respondent and the condominium outright to petitioner. This outcome is supported by an affidavit submitted by the attorney who drafted the settlor's estate plan. The drafting attorney discussed intestate succession with the settlor and the settlor indicated that he did not wish his property to pass through intestacy. This shows that the settlor did not intend his petitioner to receive the house by way of his estate plan or by way of intestacy. Petitioner is the settlor's sole remaining heir and would take the house through intestacy if Mary respondent does not receive the gift.

We believe that the property listed under article 11 of the trust was placed there for two distinct purposes. First, if the decedent died without having married respondent, then the bequests listed under article 11 were to be made outright pursuant to the first paragraph of article

9. Under this interpretation, respondent is entitled to the house. Moreover, it is undisputed that the decedent and respondent once owned the home as joint tenants with the right of survivorship and subsequently had it changed to tenants in common because respondent feared that her children would get nothing if she died first.² Second, if the decedent was married to respondent at the time of his death, then the house listed under article 11 “family trust” was to be given to respondent. In that case, the condominium listed under article 11 “family trust” must still be given to petitioner. The list of property under article 11 was put there for these two purposes. It is of no avail that the conditions to establish a “marital trust” and “family trust” were not met because it is clear that the decedent intended for respondent to receive the house and for petitioner to receive the condominium.

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

² Respondent owned twenty-five percent of the house.