

STATE OF MICHIGAN
COURT OF APPEALS

In re ALBERT J. SMITH TRUST.

PATRICIA WALZ,

Petitioner-Appellant,

v

ESTATE OF MARGARET E. SMITH, Deceased

Respondent-Appellee.

UNPUBLISHED

January 22, 1999

No. 207387

St. Clair County Probate Court

LC No. 96-096339

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

PER CURIAM.

In this matter of trust interpretation, petitioner appeals as of right from the trial court's order granting respondent's motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court discerned no issue of material fact because it found the words of the trust to be clear and unambiguous. We disagree and therefore reverse.

This Court reviews a trial court's grant of summary disposition de novo to determine whether there is any genuine issue of material fact that would prevent entry of judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). In doing so, this court must "consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party." *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). This Court is liberal in finding a genuine issue of material fact. *Marlo Beauty Supply, Inc v Farmers Ins Group*, 227 Mich App 309, 320; 575 NW2d 324 (1998).

Our Supreme Court has stated the following regarding judicial review of testamentary documents:

A fundamental precept which governs the judicial review of wills is that the intent of the testator is to be carried out as nearly as possible. As with other legal documents, the 'intent' is to be gleaned from the will itself unless an ambiguity is present.

The law is loath to supplement the language of such documents with extrinsic information. This is especially so in the case of testamentary documents because the maker is not available to provide additional facts or insight.

However, presence of an ambiguity requires a court to look outside the four corners of a will in order to carry out the testator's intent. Accordingly, if a will evinces a patent or latent ambiguity, a court may establish intent by considering two outside sources: (1) surrounding circumstances, and (2) rule[s] of construction. [*In re Kremlick Estate*, 417 Mich 237, 240; 331 NW2d 228 (1983), citing *In re Butterfield Estate*, 405 Mich 702, 711; 275 NW2d 262 (1979).]

These general rules also apply to the interpretation of trust documents. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985).

Whether the words of a particular instrument are ambiguous is a question of law, but the actual interpretation of the ambiguity is a question of fact. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). In addition, facts extrinsic to the instrument may be relied upon to prove a latent ambiguity. *In re Kremlick*, *supra* at 241; *In re McPeak Estate*, 210 Mich App 410, 412; 534 NW2d 140 (1995).

In *Kremlick*, the Supreme Court held that there was no patent ambiguity in the term “Michigan Cancer Society,” as it appeared in the will at issue. However, in determining whether the will might contain a latent ambiguity, the Court considered an affidavit of the executrix of the estate, observing that “[t]his is the very kind of information that may be used both to establish an ambiguity and to help resolve it. Appellants should have been given the opportunity to do that.” *In re Kremlick*, *supra* at 241.

In this case, a careful reading of the second paragraph of the trust and of the affidavits filed by the parties reveals an ambiguity. Subparagraph (B) of the second paragraph awards the monthly payments from the trust to Albert Smith’s spouse, Margaret Smith, “*during her lifetime or until the assets of the Trust are completely expended, whichever comes first*” (emphasis added). Subparagraph (C) provides:

In the event sufficient funds are not available to make the monthly payments called for hereunder, *the amounts unpaid shall remain an obligation of the Trust and shall be paid immediately as funds become available.* [Emphasis added.]

However, subparagraph (D), distributes “*any balance remaining*” in the trust at the time of Margaret Smith’s death to petitioner, Albert Smith’s daughter, or to petitioner’s children if she is not then alive.

Petitioner states in her affidavit that the parties to the agreement, of which she was one, intended to give Margaret Smith an interest in the land contract only while she was living, and to entitle petitioner to the balance of the trust without first paying any amount owed to Margaret Smith in her lifetime. Respondent argues that subparagraph (B) of the trust required payment to Margaret Smith unless the

assets of the trust were “*completely* expended,” and that any unpaid amounts remained an obligation of the trust, pursuant to subparagraph (C). The trial court agreed with respondent.

The trial court’s ruling represents an attempt to resolve the ambiguity in the trust, rather than an evaluation of the possible existence of ambiguity. Indeed, the court’s analysis begs the question whether the trust *could* be interpreted as extinguishing the spouse’s interest in the trust proceeds at her death. Because we find that the trust is capable of such an interpretation, petitioner met her burden of proving that a genuine issue of material fact existed.¹ Like the appellants in *Kremlick*, petitioner should be given the opportunity to present further evidence of ambiguity and establish the parties’ true intent in negotiating the trust instrument.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Jane E. Markey

¹ In her prayer for relief, petitioner asks this Court to enter an order granting summary disposition in her favor. We decline to do so, because the existence of a genuine issue of material fact precludes the grant of summary disposition to either party.