

SECOND DIVISION  
SEPTEMBER 27, 2011

1-10-1105

**NOTICE:** This order was filed under Supreme Court 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

MARY M. CORRADO TRUST, THOMAS	)	Appeal from the
MIERKIEWICZ, Trustee,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 07 M2 002831
	)	
CHARLES MOSIER,	)	Honorable
	)	Stuart Palmer,
Defendant-Appellee.	)	Judge Presiding.

---

JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Karnezis and Connors concurred in the judgment.

**ORDER**

¶1 *Held:* The trial court improperly admitted extrinsic evidence at trial because two trusts executed by the settlor were not ambiguous on their face regarding whether the settlor intended to revoke all previous trusts.

¶2 This appeal arises from a September 23, 2008 order entered by the circuit court of Cook County, which denied plaintiff-appellant Thomas Mierkiewicz's motion for summary judgment, and also arises from the March 19, 2010 order entered by the circuit court, which found in favor of the

defendant, Charles Mosier. On appeal, the plaintiff, Thomas Mierkiewicz, as trustee of the Mary M. Corrado Trust, argues that: (1) the trial court erred in finding that the March 2001 and October 2001 trusts were ambiguous regarding Mary Corrado's intent to revoke or amend any prior trusts; (2) the trial court improperly admitted extrinsic evidence at trial regarding Mary Corrado's intent to revoke or amend prior trusts; and (3) the trial court erred in finding that Mary Corrado intended that the October 2001 trust revoke all prior trusts. For the following reasons, we reverse the judgment of the circuit court of Cook County, and remand the matter for further proceedings.

¶3

### BACKGROUND

¶4 On June 8, 1990, Mary Corrado (Mary), established a trust known as the Mary M. Corrado Trust (1990 Trust) in which she specified, *inter alia*, the terms relating to the disposition of her trust assets, a specific bequest of real estate, and successor co-trustees. The 1990 Trust named NBD Trust Company of Illinois (NBD) and Mary's niece, Diane Carlson, as successor co-trustees of the 1990 Trust, and contained a provision that allowed Mary the right to amend or revoke the 1990 Trust in whole or in part during Mary's lifetime. On that same day, June 8, 1990, Mary executed a "deed in trust," which conveyed real property located at 1530 Seward Street in Evanston, Illinois (the Evanston property), to the 1990 Trust. Several days later, the deed was recorded in the Cook County Recorder of Deeds office.

¶5 On March 15, 1993, Mary executed an amendment to the 1990 Trust, which was prepared by her attorney John Shepard (Attorney Shepard), and which modified the named beneficiaries and share distributions of the trust assets and residue. The amendment also changed the successor co-trustees to NBD and the plaintiff, Thomas Mierkiewicz (Thomas). Further, the amendment

explicitly noted that the 1990 Trust shall continue in "full force and effect" in all other respects. On that same day, March 15, 1993, Mary also executed a "last will and testament" (1993 Will), which provided that all of Mary's assets and the residue of her estate, "excluding any property over which [Mary] may have power of appointment at [her] death," would be bequeathed to the 1990 Trust upon her death. The 1993 Will named NBD and Thomas as co-executors of the will.

¶6 On May 18, 1993, Mary executed a second amendment to the 1990 Trust, by amending the named beneficiaries and share distributions of the trust assets and residue. On June 16, 1997, Mary executed a third amendment to the 1990 Trust, which modified the named beneficiaries and share distributions of the residue of the trust estate.

¶7 On October 13, 1997, Mary executed a fourth amendment to the 1990 Trust, by deleting the entirety of Article III of the 1990 Trust and substituting it with the following language:

"SPECIFIC BEQUESTS

1. If at the time of my death, I own a 1972 Chevrolet Malibu automobile, I direct that it be distributed to my nephew, Thomas R. Mierkiewicz.

2. If at the time of my death, I own personal and household effects, including but not limited to, furniture, appliances, paintings, pictures, books, collections, clothing, jewelry, kitchen pots and pans, utensils, dishes, sterling silver and the like, I direct that they all be distributed to my nephew, Joseph Mierkiewicz."

The fourth amendment also deleted paragraphs 1, 2 and 3 of Article IV of the 1990 Trust, as well

as changes made by the first, second and third amendments relating to those paragraphs, and substituted them with the following provisions:

"1. Distribution of Residue. All the rest, remainder and residue of the trust estate shall be distributed as follows:

(a) Distribution to Josephine Mierkiewicz Five Percent (5%) thereof to my sister, JOSEPHINE, if she survives me;

(b) Distribution to Thomas R. Mierkiewicz. Forty-five Percent (45%) thereof to my nephew, THOMAS R. MIERKIEWICZ, if he survives me;

(c) Distribution to Joseph Mierkiewicz. Thirty-five Percent (35%) thereof to my nephew, JOSEPH MIERKIEWICZ, if he survives me;

(d) Distribution to [Sonta] Bux. Fifteen Percent (15%) thereof to my cousin, [SONTA] BUX, if she survives me.

If any of the beneficiaries named above should predecease me, then the share he or she would have received if he or she had survived me, shall be distributed among the surviving beneficiaries in the same relative proportions as set forth above."

The fourth amendment explicitly noted that the 1990 Trust shall continue in "full force and effect" in all other respects. The second, third and fourth amendments to the 1990 Trust were drafted by the law firm of Cleveland and Bernstein. Each of the four amendments to the 1990 Trust expressly

referenced the 1990 Trust and Mary's right to amend or modify it.

¶8 On March 14, 2001, Mary executed a "declaration of living trust" (March 2001 Trust), which provided that, upon her death, certain personal property be delivered to Josephine Mierkiewicz, Patricia Mierkiewicz, Diane Carlson, and the defendant, Charles Mosier (Charles). The March 2001 Trust named Sonta Bux, Rose Mary Underhill and Charles as successor trustees, and further provided that all residue and remainder of the trust estate be distributed to the following individuals: Joseph Mierkiewicz (20%); Patricia Mierkiewicz (15%); Diane Carlson (5%) and Charles (60%).

¶9 On October 22, 2001, Mary executed another "declaration of living trust" (October 2001 Trust), which named Charles as the sole successor trustee upon Mary's death, and which provided that all residue and remainder of the trust estate shall be distributed to Charles. Neither the March 2001 Trust nor the October 2001 Trust listed the Evanston property as an asset of the trust, nor did they reference the 1990 Trust. Neither the March 2001 Trust nor the October 2001 Trust contained language regarding the revocation or amendment of any prior trusts. Both the March 2001 Trust and the October 2001 Trust reserved Mary's right to transfer additional property to the trusts by deed, assignment or will.

¶10 On that same day, October 22, 2001, Mary also executed a "last will and testament" (2001 Will), which revoked all previous wills that Mary had executed. The terms of the 2001 Will provided that all of Mary's assets and the residue of her estate—whether real, personal or mixed property—"except as otherwise in this [w]ill specifically provided and excepting any property over which [she] [has] a power of appointment," would be bequeathed to the October 2001 Trust upon her death. The 2001 Will named Charles as the sole executor of the will. The March 2001 Trust,

October 2001 Trust and the 2001 Will were all prepared by attorney Thomas Molitor (Attorney Molitor).

¶11 In December 2006, Mary died without ever having been married and without any children.

¶12 On December 5, 2007, Thomas, as a nephew of Mary and successor trustee of her 1990 Trust, filed a complaint against Charles, who was also Mary's nephew. The complaint alleged that Charles was in wrongful possession of the Evanston property and sought a court order to evict Charles.

¶13 On June 18, 2007, JPMorgan Chase Bank, which had "succeeded to the trust business of NBD," declined, in writing, to act as a successor co-trustee of the 1990 Trust.

¶14 On February 7, 2008, Thomas filed a first amended complaint for declaratory relief (first amended complaint), alleging that the March 2001 Trust and the October 2001 Trust were separate trusts and not amendments to the 1990 Trust, and that the title of the Evanston property continued to be held by the 1990 Trust. The first amended complaint further requested that the trial court enter an order declaring that the 1990 Trust and its four subsequent amendments were not subject to the provisions of the March 2001 Trust and the October 2001 Trust; that the March 2001 Trust and October 2001 Trust were separate and independent trusts; that Thomas, as trustee of the 1990 Trust, was the proper title holder to the Evanston property; and that Charles should be evicted from the property.

¶15 On July 14, 2008, Thomas filed a motion for summary judgment, requesting that the trial court enter an order granting the declaratory relief outlined in the first amended complaint.

¶16 On September 23, 2008, the trial court denied the motion for summary judgment, finding that

the March 2001 Trust and October 2001 Trust were ambiguous as to Mary's "intent concerning amendment or revocation of previous trusts." The trial court further found that the provisions contained in the March 2001 Trust, October 2001 Trust and the 1990 Trust were "facially inconsistent with each other," and thus were "inconsistent with [Thomas'] contention that there [were] three coexistent trusts." The trial court then held that it would allow extrinsic evidence to be presented at trial regarding this issue.

¶17 On March 18, 2010, a two-day bench trial commenced during which several witnesses testified. In support of his position, Thomas presented the testimony of himself, Attorney Shepard, and Attorney Molitor. Defense witnesses included Charles, Jane Mosier and Sonta Bux.

¶18 On March 19, 2010, the trial court ruled in favor of Charles, stating the following:

"It is the declaratory judgment of this [c]ourt that it was the intent of Mary Corrado to leave all of her assets to Charles Mosier and others by way of a trust executed in March of 2001 and then ultimately to Charles Mosier alone by way of the trust executed in October of 2001 \*\*\*.

The [c]ourt finds that the [October 2001 Trust], \*\*\* effectively revoked all prior trusts and that the [October 2001 Trust] \*\*\* is the sole remaining operative trust and that the property at 1530 Seward in Evanston shall be deemed the property of that trust."

The trial court further granted Charles leave to file "any motion and proposed document the

execution of which is deemed necessary to effectuate this judgment."<sup>1</sup>

¶19 On April 19, 2010, Thomas filed a notice of appeal before this court.

¶20 On May 14, 2010, in response to the trial court's grant of leave to file any document deemed necessary to effectuate its March 19, 2010 judgment, Charles filed a "first amended answer and counter complaint," which requested, *inter alia*, that the trial court find in favor of Charles and execute a judicial deed naming Charles as the trustee of Mary's trust.

¶21 On June 25, 2010, this court granted Thomas' motion for leave to file an amended notice of appeal and to extend the time to file the record on appeal.

¶22 On July 6, 2010, Thomas filed an amended notice of appeal before this court, appealing from the trial court's September 23, 2008 and March 19, 2010 orders.

¶23 ANALYSIS

¶24 We determine the following issues: (1) whether the trial court erred in finding that the March 2001 Trust and the October 2001 Trust were ambiguous regarding Mary's intent to revoke or amend any prior trusts; (2) whether the trial court erred in admitting extrinsic evidence at trial regarding Mary's intent to revoke or amend any prior trusts; and (3) whether the trial court erred in finding that Mary intended that the October 2001 Trust revoke all prior trusts.

---

<sup>1</sup>At trial, the trial court noted that Thomas' complaint requested it to declare that the Evanston property was the property of the 1990 Trust. The trial court remarked to defense counsel, however, that Charles had not asked for any relief in the form of a counterclaim, such as "a request to reform the [d]eed," and that a judgment by the trial court in favor of Charles simply denied the requests outlined in Thomas' complaint. Thus, the trial court granted Charles leave to file "any motion and proposed document the execution of which is deemed necessary to effectuate this judgment."

¶25 We first determine whether the trial court erred in finding that the March 2001 Trust and the October 2001 Trust were ambiguous regarding Mary's intent to revoke or amend any prior trusts, which we review *de novo*. See *Herlehy v. Marie V. Bistersky Trust Dated May 5, 1989*, 407 Ill. App. 3d 878, 889, 942 N.E.2d 23, 34 (2010) (a trial court's construction of a trust instrument is reviewed under a *de novo* standard).

¶26 As an initial matter, we note that the resolution of the issues in the instant appeal requires this court to not only review the trial court's March 19, 2010 ruling in favor of Charles, but also its September 23, 2008 order denying Thomas' motion for summary judgment. Although a trial court's denial of a motion for summary judgment is not a final judgment, a reviewing court may review all interlocutory orders that constitute a "procedural step in the progression leading to the entry of the final judgment from which an appeal has been taken." See generally *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023, 911 N.E.2d 541, 547 (2009) (an appeal from a final judgment draws into issue all previous interlocutory orders that produced the final judgment); *Resurgence Financial, LLC v. Kelly*, 376 Ill. App. 3d 60, 62, 875 N.E.2d 679, 681-82 (denial of a motion for summary judgment is not a final order). As discussed, the trial court's September 23, 2008 order found that the March 2001 Trust and October 2001 Trust were ambiguous as to Mary's "intent concerning amendment or revocation of previous trusts," which then provided the basis for the trial court to admit extrinsic evidence at trial.

¶27 Turning to the merits of the appeal, Thomas argues<sup>2</sup> that the trial court incorrectly ruled that

---

<sup>2</sup>On April 19, 2011, this court entered a *sua sponte* order finding that "this case is taken for consideration on the record and appellant's brief only" because Charles had failed to file a

the March 2001 Trust and the October 2001 Trust were ambiguous as to Mary's intent to revoke or amend any prior trusts. He contends that the March 2001 Trust and the October 2001 Trust did not amend or revoke the 1990 Trust because they contained no language regarding the 1990 Trust or the revocation or amendment of any prior trusts, and failed to make any mention whatsoever to the Evanston property in question. Instead, he argues that the title to the Evanston property belonged to the 1990 Trust. He maintains that rather than confining itself to the four corners of the trusts, the trial court incorrectly construed three different trusts together—the 1990 Trust, March 2001 Trust and October 2001 Trust—in finding an ambiguity with respect to Mary's intent to revoke or amend any prior trusts. Thomas further argues that the clear and unambiguous language of the March 2001 Trust and the October 2001 Trust showed that Mary did not intend to revoke or amend her prior trusts by executing the 2001 trusts.

¶28 "Trust agreements are construed in the same manner as contracts and subject to the same limitation that they will not be enforced if contrary to public policy." *Herlehy*, 407 Ill. App. 3d at 891, 942 N.E.2d at 35. In construing a will or a trust instrument, a court must "ascertain the intent of the drafter" and give effect to that intent. *National City Bank of Michigan/Illinois v. Northern Illinois University*, 353 Ill. App. 3d 282, 287, 818 N.E.2d 453, 458-59 (2004). The intention of the settlor of a trust, in drafting the trust instrument, is "ascertained by examining the entire trust and by giving to the words employed their plain and ordinary meaning." *Harris Trust and Savings Bank v. Donovan*, 145 Ill. 2d 166, 172, 582 N.E.2d 120, 123 (1991). "Where the trust contains language

---

brief before this court within the time prescribed by Supreme Court Rule 343(a). See Ill. S. Ct. R. 343(a) (eff. Sept. 1, 2006).

that is unambiguous and clear, the intent must be ascertained from that language." *Altenheim German Home v. Bank of America*, 376 Ill. App. 3d 26, 32, 875 N.E.2d 1172, 1177 (2007). However, extrinsic evidence may be admitted to aid the interpretation of a trust instrument where the document is ambiguous and the settlor's intent cannot be obtained. *Peck v. Froehlich*, 367 Ill. App. 3d 225, 232, 853 N.E.2d 927, 934 (2006). "Ambiguity can be found if the language is reasonably or fairly susceptible to more than one interpretation." *Id.*

¶29 In denying Thomas' motion for summary judgment, the trial court found, after construing the language of the 1990 Trust, March 2001 Trust and the October 2001 Trust together, that they were "facially inconsistent" with respect to Mary's specific and residual bequests, last illness expenses, funeral expenses and taxes. The trial court thus found the March 2001 Trust and the October 2001 Trust to be ambiguous as to Mary's "intent concerning amendment or revocation of previous trusts." On appeal, Thomas challenges the method employed by the trial court in finding ambiguity in the 2001 trusts, by arguing that it erred in construing the 1990 Trust, March 2001 Trust and the October 2001 Trust together. Instead, he argues that the plain and ordinary language of the 2001 trusts was clear and unambiguous. Therefore, there is nothing within the four corners of the documents which should have resulted in the trial court considering extrinsic evidence leading it to conclude that Mary intended to revoke or amend the 1990 Trust. We agree.

¶30 In the case at bar, the plain language of the 1990 Trust specifically mentioned the Evanston property and provided directions concerning it. On June 8, 1990, the same day as the establishment of the 1990 Trust, Mary executed a "deed in trust" which conveyed the Evanston property to the 1990 Trust. The deed was then recorded in the Cook County Recorder of Deeds office. The four

subsequent amendments to the 1990 Trust acknowledged the Evanston property in the same manner, such as directing the trustee to sell the real estate upon Mary's death. However, neither the plain language of the March 2001 Trust nor the October 2001 Trust mentioned the Evanston property, nor did they revoke any of the prior trusts. There is no evidence in the record before us that the Evanston property was ever deeded into the March 2001 Trust or the October 2001 Trust, and thus, the 2001 trusts had no effect on the Evanston property which was contained in the 1990 Trust. Nothing in the record suggests that Mary ever took any legal action to move the Evanston property out of the 1990 Trust and into a subsequent trust. This is especially clear since there was ample opportunity for it to be done given the multiple instruments relating to Mary's estate which were drafted after the 1990 Trust was established. While it appears that the extrinsic evidence which the court considered suggests that Mary intended to leave the Evanston property to Charles, we are constrained in our review of the case. The relevant inquiry is whether the trial court had any basis upon which to allow extrinsic evidence. Having answered the question in the negative, no matter how sympathetic Charles' argument may be, we are constrained to the document and cannot consider Charles' personal situation.

¶31 Moreover, we find that the trial court erred in construing together the 1990 Trust, March 2001 Trust and the October 2001 in finding an ambiguity with respect to Mary's intent to revoke or amend prior trusts. In *In re the Estate of Crooks v. Hendricks*, 266 Ill. App. 3d 715, 717, 638 N.E.2d 729, 730 (1994), the decedent, James Crooks, Sr. (James), in 1979, held five parcels of real estate in two land trusts. The Chicago Title & Trust Company (CT & T) held four of the five parcels of land in a trust agreement with James, who was the sole beneficiary. *Id.* James' children from his

first marriage were named as beneficiaries of the CT & T land trust upon his death. *Id.* The fifth parcel of land was held by Hyde Park Bank by a land trust agreement. In July 1979, James executed a will and a revocable trust, which stated that his second wife, Grace, would receive \$15,000 and the residue of the trust would be distributed equally to his children from his first marriage. *Id.* On that same day, James also executed five quitclaim deeds for the five parcels of land held under the CT & T and the Hyde Park Bank land trusts, in an attempt to convey them to the revocable trust. In October 1980, however, James delivered a "letter of direction" to the CT & T trustee, directing the trustee to execute and deliver a deed for the four parcels of land by naming "James Crooks" as the grantee. *Id.* at 718, 638 N.E.2d at 730. Subsequently, the CT & T trustee conveyed the four parcels of land by deed to James, which was then recorded. *Id.* at 718, 638 N.E.2d at 730-31. In March 1989, James died and his will and trust were admitted to probate. *Id.* at 718, 638 N.E.2d at 731. Grace renounced the will and received a surviving spouse's award, and James' children from his first marriage filed an inventory, which omitted the five parcels of real estate. *Id.* Grace then filed an objection to the inventory, arguing that the five parcels of land should have been included as assets in James' estate. *Id.* In response, James' children argued that the July 1979 quitclaim deeds effectively transferred James' beneficial interest in the five parcels of land to the revocable trust. *Id.* The trial court held that the five parcels of land were assets of the estate, and that the quitclaim deeds failed to transfer any legal title to the revocable trust because title to those parcels were held by the land trustee. *Id.* at 720, 638 N.E.2d at 732.

¶32 On appeal, James' children argued that the trial court should have admitted extrinsic evidence concerning James' intent because there were ambiguities in James' will, revocable trust, quitclaim

deeds and the letter of direction. *Id.* The reviewing court affirmed the trial court's ruling, noting that "only documents executed contemporaneously and in a single transaction may be construed together." *Id.* The reviewing court further found that the 1980 letter of direction could not be used "to contradict or create an ambiguity with [James'] will, trust and quitclaim deeds from 1979" because the 1980 letter of direction was not executed contemporaneously with those 1979 documents. *Id.* The reviewing court then found that the 1979 documents and the 1980 letter of direction, when considered in their separate contexts, were not ambiguous. *Id.* The reviewing court, in affirming the trial court's ruling, found that James did not possess legal or equitable title to the five parcels of land when he executed the quitclaim deeds in 1979. Thus, the trial court held that the 1979 quitclaim deeds failed to transfer James' beneficial interests of the real property into the revocable trust, that the CT & T trustee conveyed a deed to James individually, rather than to James in his capacity as trustee of the revocable trust, and that the five parcels of land became assets of his estate upon his death. *Id.* at 725, 638 N.E.2d at 735.

¶33 We find *In re the Estate of Crooks* to be controlling, and conclude that the trial court mistakenly construed all three trusts together in determining that an ambiguity existed with regard to Mary's intent to revoke or amend prior trusts, where only the 1990 Trust and the deed in trust for the Evanston property were executed contemporaneously. Therefore, we find that no ambiguity existed as to whether Mary intended to revoke or amend prior trusts. Accordingly, the trial court improperly denied Thomas' motion for summary judgment and admitted extrinsic evidence at trial. Based on our conclusion that extrinsic evidence was improperly admitted at trial, we need not address whether the trial court's ultimate finding, based on the extrinsic evidence at trial, was against

1-10-1105

the manifest weight of the evidence.

¶34 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County and remand the matter for further proceedings in accordance with the directives set forth in the 1990 Trust and its four subsequent amendments.

¶35 Reversed and remanded.