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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re ESTATE OF ROBERT LEWIS FEIK,) Appeal from the Circuit Court
Deceased) of Lee County.
)
) No. 05—P—33
(Mary S. Feik, as Administrator of the Estate)
of Robert Lewis Feik, Petitioner; Mary S.)
Feik, Individually, Respondent-Appellant;)
Mendota Museum and Historical Society,)
Respondent-Appellee; Robin M. Vest,)
Kevin Feik, Amcore Investment Group, N.A.,)
as Purported Trustee of a Trust under)
the Sixth Clause of the Will of Robert)
Lewis Feik, Mary S. Feik, as Purported)
Trustee under the Fifth Clause of the Will of)
Robert Lewis Feik, Annapolis Rotary Club,)
Goodwill Industries of the Chesapeake, a/k/a)
Baltimore Goodwill, The Salvation Army,)
a/k/a Annapolis Salvation Army, Christian)
Lewis Feik, Lisa Madigan, Attorney General,)
Respondents; First National Bank in Amboy,) Honorable
as Special Administrator of the Estate of) Ronald M. Jacobson,
Robert Lewis Feik).) Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: We hold that the second clause of decedent's will was a residuary clause, giving Mary an interest only in the property remaining *after* satisfaction of the specific gifts. We resolved decedent's ambiguous will by reading one clause as a residuary clause

that was to take effect only after the specific gifts in other clauses; that reading was the only one that gave effect to all clauses. We affirmed the judgment of the trial court.

Mary Feik, the appellant here and the widow of decedent, Robert Lewis Feik, challenges the trial court's ruling that the sixth clause in decedent's will should be read to give an interest in a farm to the Mendota Museum & Historical Society (the Museum). Mary asserts that the second clause gave her a fee-simple interest in the farm, and that the sixth clause was too unclear to reduce that interest. We disagree. We hold that the second clause was a residuary clause, giving Mary an interest only in the farm property remaining *after* satisfaction of the specific gifts. We therefore affirm.

Before reviewing the facts and contentions, we must address an issue that we ordered to be taken with the case. Mary filed a motion in this court in which she asks us to strike the "Facts" portion of the Museum's appellate brief. Mary asserts that the section fails to satisfy the requirements of Illinois Supreme Court Rule 341(h)(6) (eff. Sept. 1, 2006), in that it is argumentative and fails to cite pages in the record. As Mary recognizes, an appellee is not required to include a statement of facts in his or her brief, but may do so if he or she deems the appellant's statement to be insufficient. See Ill. Sup. Ct. R. 341(i) (eff. Sept. 1, 2006). Although the first section of the Museum's brief has a heading "Facts," the facts related are much the same as in Mary's brief, but they are used to argue for the correctness of the trial court's decision. Thus, the section does not serve as a Rule 341(h)(6) statement of facts, but rather as a portion of the argument. Despite the section's label, the section is an appropriate part of the Museum's argument and, once recognized for what it is, not misleading. Accordingly, we deny Mary's motion to strike the section.

We start with a brief description of the proceedings sufficient only to identify the parties and proceedings involved here before we describe decedent's will and detail the proceedings in the trial court.

After decedent's named executor declined the office, a Maryland court appointed Mary to serve as the independent administrator of decedent's estate. She filed a petition for ancillary administration in Lee County (the location of part of the farm), and the trial again appointed her to serve as independent administrator. She then filed a petition seeking construction of decedent's will and appointment of a special administrator. The court appointed the First National Bank in Amboy as the special administrator. When she filed her petition, Mary served or sought service on seven corporations and individuals with a potential interest in the estate: the Museum, Robin M. Vest, Kevin Feik, Annapolis Rotary Club, Goodwill Industries of the Chesapeake, a/k/a Baltimore Goodwill, The Salvation Army, a/k/a Annapolis Salvation Army, and Christian Lewis Feik. Mary also obtained service on two purported or possible trustees. The first was herself, as the will stated that she was to "manage[]" \$50,000 that was "to be placed in a trust" for the benefit of decedent's granddaughters Sarah Feik and Amanda Feik; Mary declined to serve. The second possible trustee was Amcore Investment Group, N.A.; the will stated that the farmland was to "remain in trust at the Amcor [*sic*] Bank in Mendota" during Mary's life. Later, however, all parties agreed that no such trust existed. Mary also served Illinois Attorney General Lisa Madigan. Mary individually and the Museum were the only active participants in the trial court proceedings and are the only participants in this appeal.

The record reflects that decedent executed a will on July 22, 2001. The first clause directed the payment of his debts and funeral expenses. The second clause stated as follows:

“I hereby give, devise and bequeth [*sic*] my half of the 1324 Harmony Lane, Annapolis, MD 21401 property to my daughter, Robin M. Vest for her personal benefit. The balance of my property, real and personal and mixed, or of whatever kind, character and description, wheresoever situated, which I may own or have right to dispose of at the time of my decease, absolutely, unequivocally and in fee simple to my beloved wife, Mary S. Feik.”

The third clause nominated an executor.

The fourth clause stated that, should Mary predecease decedent, he gave “all of the property mentioned in Paragraph ‘SECOND’ of this Will and Testament above, absolutely, unequivocally and in fee simple, to my daughter, Robin M. Vest, and assigns forever.”

The fifth clause stated that \$50,000 was to be “placed in a trust” for the benefit of Sarah and Amanda Feik.

The sixth clause stated as follows:

“Upon my death, my 75% of the Feik farm in Illinois shall remain in trust at the Amcor [*sic*] Bank in Mendota, Ill. [to] provide benefits for my wife Mary, who owns the remaining 25%. The farm trust shall be managed by the Mendota AMCORE bank. The operation of the farm is to remain with the Pierce family unless there is a major shift that would force a change. Upon my death, the farm is to remain in this trust. The management is to remain as it was. The bank on occasions changes the farm managers, and that will remain. The present farm operators, the Pierces will remain unless there is some major shift that would force a change.

The income from the farm will be sent to my wife, Mary Feik. Upon the death of Mary S[.] Feik, the farm shall be donated to the City of Mendota Museum & Historical Society presently managed by Verona Whitmore. A key criteria that holds during all periods of the farm operation is that is [*sic*] shall remain known and for the records as the Feik Farm.”

The seventh clause made gifts of \$5,000 each to the “Annapolis Rotary Club, Baltimore Goodwill, [and] Annapolis Salvation Army.” The eighth clause made a gift to one of decedent’s sons, and the ninth clause disinherited decedent’s other son.

Decedent died on June 15, 2004. Decedent and Mary had owned a one-half interest in the farm property in joint tenancy, so that, on decedent’s death, Mary had become the sole owner of that half interest by operation of law. The other one-half interest in the farm property was owned by decedent; this one-half interest is at issue in this appeal. His will was admitted to probate in Maryland. On May 25, 2005, Mary, as the administrator appointed by the Maryland court, filed her petition for ancillary administration in Lee County. She next filed her petition for construction of the will; she asserted that the will was ambiguous regarding whether decedent’s one-half interest in the farm should pass under the second clause or the sixth clause. In this petition, she also sought the appointment of a disinterested special representative.

Mary individually, the Museum, Amcore Investment Group, the Attorney General, and Kevin L. Feik all filed appearances. The court appointed the First National Bank in Amboy to serve as special administrator. Mary filed a notice that she declined to serve as trustee under the fifth clause of the will.

Mary and the Museum filed briefs in support of their conflicting interpretations of the will. Mary argued that the governing rule of construction was one stating that, where a testator has given absolute title in real estate to a beneficiary, only clear and explicit language elsewhere in a will could reduce the interest. Application of that rule, she argued, required a reading in which the farm passed under the second clause. Because (as all conceded) no trust had ever existed, the sixth clause was surplusage. The Museum argued that any interpretation of the second clause that gave Mary a fee-simple interest in decedent's share of the farm would wipe out not just the gift to the Museum, but also the gifts to his children and grandchildren. This, it asserted, would be contrary to decedent's clear intent. Mary replied that the second clause took precedent over the sixth only because the language of the sixth clause was ambiguous.

On November 25, 2008, the court conducted an evidentiary hearing. Mary testified that decedent, an engineer, had drafted his own will. Verona Whitmore testified that she had been executive vice president and trust officer at Mendota National Bank, and had remained in that position when the bank became a part of Amcore Bank. The bank had an agreement by which it managed the farm; trust department personnel did the actual management. As trust officer, Whitmore knew that, during her tenure, the bank had not held the farm in trust. However, in conversation, decedent had referred to the management agreement as a trust.

On June 16, 2010, the trial court issued an order in which it construed the will. It found that the will as a whole was ambiguous. “[A]scertain[ing] the testator's intention from the will,” it ruled that decedent had intended to give Mary a life interest in the farm's income, but the rest of his interest to the Museum. It ordered that Mary receive a life estate in that part of decedent's interest

that passed under the will. The court also found that no just reason existed to delay enforcement or appeal of the order.

Mary timely appealed; her arguments on appeal are similar to those she made to the trial court. She relies primarily on the rule in *Edgar County Children's Home v. Beltranena*, 402 Ill. 385 (1949), which, in simplified form, states that, when a testator has given absolute title to a beneficiary in one clause of a will, only clear and explicit language elsewhere in the will can reduce that interest. She argues that clause two gave her absolute title to decedent's interest in the farm and that, because clause six is incapable of implementation as written, it is not clear, and thus should not be read to reduce her interest.

Because we hold that decedent intended clause two to function as a residuary clause, we deem the rule in *Beltranena* to be inapplicable. Clause two never gave Mary an interest, so no interest existed for clause six to reduce.

When a trial court construes a will without resort to extrinsic evidence, our review is *de novo*. *Hopper v. Beavers*, 362 Ill. App. 3d 913, 917 (2005). Here, although the trial court heard testimony, its order reflects that it "ascertain[ed] the testator's intention from the will." We thus take it that the trial court used extrinsic evidence only to decide whether clause six could be implemented as decedent intended. There appears to be no dispute that decedent did not establish a trust during his lifetime. Therefore, despite the evidentiary hearing that took place, our review of the will provisions is *de novo*.

"The first purpose in construing a will is to determine the testator's intention *from the will as a whole* and to give it effect, unless doing so would be contrary to law or public policy." (Emphasis added.) *Feder v. Luster*, 54 Ill. 2d 6, 10-11 (1973). Because the will as a whole is the

object of construction, we start not with an attempt to reconcile clause six with clause two, but with an examination of the overall structure of gifts decedent intended.

As we said, clause two, or rather its second subclause, functions best in the will as a residuary clause. For convenience, we reprint it here, divided into those subclauses:

“[1] I hereby give, devise and bequeath my half of the 1324 Harmony Lane, Annapolis, MD 21401 property to my daughter, Robin M. Vest for her personal benefit. [2] The balance of my property, real and personal and mixed, or of whatever kind, character and description, wheresoever situated, which I may have right to dispose of at the time of my decease, absolutely, unequivocally and in fee simple to my beloved wife, Mary S. Feik.”

Because the phrase, “[t]he balance of my property,” immediately follows the gift of the interest in the house, the natural assumption is that it means “the balance [remaining after the gift of the house],” the reading that conflicts with the other gifts. However, if we read the phrase as “the balance [*remaining after the specific gifts*],” the subclause functions a standard residuary clause, disposing only of that property remaining after the satisfaction of the other gifts.

As written, clause two conflicts not just with the gift to the Museum, but with every other gift in the will. Adding words to a will is an interpretive technique that a court can properly apply to avoid repugnancy between clauses of a will. See *In re Estate of Julian*, 227 Ill. App. 3d 369, 377-78 (1991) (“Where the language of a will is ambiguous, the court will apply the rules of construction to ascertain the testator’s presumed intent. When applying the rules of construction, a court may insert or delete words in order to arrive at that intent.”). Here, ambiguity exists because of the apparent conflict between the second subclause and the specific gifts as a class. Thus, addition of words is proper. Furthermore, “[e]very word, phrase and clause in a will should be given effect,

if possible, and where one construction of a will would render a portion of it meaningless and another construction would give effect to all provisions and all language, the construction giving effect to the latter construction will be adopted.” *Feder*, 54 Ill. 2d at 11. Therefore, the reading with the added words is a favored one because it gives effect to both subclause two and to all of the specific gifts.

Mary asserts that the rule in *Beltranena* supports treating clause six as merely precatory. We disagree. The *Beltranena* court held that, when language in an earlier part of a will makes a gift of an “estate of inheritance,” a court should not read language later in the will to reduce that estate of inheritance to a lesser estate unless the later language shows with certainty that the testator intended such a reduction. *Beltranena*, 402 Ill. at 387; see also *In re Estate of Powers*, 117 Ill. App. 3d 1087, 1090 (1983) (restating the same rule). Parenthetically, we note that an “estate of inheritance” is one that the holder can pass to heirs. *Harris v. Harris*, 130 W. Va. 100, 110, 43 S.E.2d 225, 230 (1947). Thus, if an early clause in a will gives a beneficiary a fee-simple estate in a property, a later clause should not be read to reduce the fee-simple estate to a life estate unless the later clause is “clear and explicit” (*Beltranena*, 402 Ill. at 387). This rule is inapplicable to a residuary clause, which grants nothing until all of the specific gifts are satisfied.

Furthermore, clause six, taken alone, is as clear as any other part of the will. Decedent directed that the income of the trust holding the interest in the farm go to Mary for her life, with the interest to go to the Museum on her death. The difficulties associated with the clause stem not from any lack of clarity in the words but from what appears to be a mistaken assumption about decedent’s legal interest in the farm. Misdescription of property is not the same problem as lack of clarity. See,

e.g., *In re Estate of Klinker*, 80 Ill. App. 3d 28, 31 (1979) (discussing misdescription of real property). Misdescription is not something that the rule in *Beltranena* addresses.

To the extent that Mary argues that clause six represents a failed attempt by decedent to devise some nonexistent beneficial interest in a trust to the Museum, we reject the argument. See Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) (noting that, when a party fails to argue an issue or to provide relevant citations, he or she forfeits it); *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010).

For the reasons we have stated, we affirm the judgment of the circuit court of Lee County.

Affirmed.