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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JENNA BANSBACH,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 07—CH—1395
	)	
AMY MARIE HOWARD,	)	Honorable
	)	Bonnie M. Wheaton,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Burke and Schostok concurred in the judgment.

**ORDER**

*Held:* Trial court did not err in finding in favor of defendant and against plaintiff where the family settlement agreement entered into between defendant and her mother was invalid and unenforceable.

Plaintiff, Jenna Bansbach, appeals from the judgment of the circuit court of Du Page County finding in favor of defendant, Amy Marie Howard, following a trial without a jury. We affirm.

Plaintiff and defendant are half sisters. Their mother was Mari Bansbach. Howard Rasmussen, Mari's father and the parties' grandfather, established a Jewel Supplementary Retirement

Fund Estate Plan and the Howard Rasmussen Trust prior to his death on January 15, 1993. Howard provided that, upon his death, his wife, Florence, was the beneficiary of the Jewel Plan and the Rasmussen Trust. Upon Florence's death, the trust corpus and the Jewel Plan were to be distributed in equal shares to Mari and her brother, Stephen. If Mari predeceased Florence, the trust and the Jewel Plan were to be divided equally between defendant and Stephen. Howard made no provision at all for plaintiff. Whatever Howard's reason, it does not appear in the record.

On January 11, 1995, defendant and Mari entered into the "Bansbach-Goodwillie Settlement Agreement" (the agreement). Goodwillie was defendant's maiden name. The settlement agreement recited that the consideration was the sum of \$10 "and other good and valuable consideration and in the interest of family harmony, love and affection." The agreement provided that defendant, upon Florence's death, would assign one-half of defendant's shares in the Jewel Plan and the trust to plaintiff. Defendant went to Mari's home to sign the agreement. Present besides Mari and defendant were two friends of Mari's and Mari's lawyer. Defendant testified that she understood that Mari wanted "some assurance" that the money that was coming to Mari through Howard would be shared with plaintiff. Defendant testified that the purpose of the agreement was to give Mari peace of mind. Defendant stated that she was told the agreement was not a legally binding document. According to defendant, there were no disputes between herself and Mari over Mari's wishes.

Mari predeceased Florence, and at Florence's death, the Jewel Plan and the trust corpus were distributed to defendant and Stephen. For a period of time, defendant complied with Mari's wishes and made disbursements to plaintiff, principally for college and related expenses. When asked if she made these disbursements pursuant to the terms of the agreement, defendant said no, she made the

disbursements because that was what Mari wanted. Eventually, defendant ceased making disbursements to plaintiff.

On June 8, 2007, plaintiff filed suit against defendant for an accounting. The original complaint was followed by a first amended and a second amended complaint. The parties proceeded to trial on the second amended complaint. Count I alleged breach of contract as to a third-party beneficiary; count II sought a declaration that defendant had the obligation to comply with the agreement; and count III alleged the imposition of a constructive trust. Defendant denied that the agreement was valid and enforceable.

The evidence at trial consisted of stipulated documents, the parties' testimony, and the testimony of defendant's husband who managed the financial transactions in question. After trial, the trial court issued a written memorandum opinion and order on May 25, 2010. The court held that the enforceability of the agreement was a threshold issue to be resolved before considering other issues. The court found that the agreement was executed to carry out Mari's wishes, not Howard's, who had not provided for plaintiff. The trial court found that Mari's wishes were expressly contrary to Howard's wishes. The trial court further found that at the time the agreement was executed, there was no *bona fide* dispute among rival beneficiaries that could reasonably be expected to deplete the estate and tear the family apart. Finally, the trial court concluded that the agreement was not supported by consideration. The trial court, pursuant to count II of the second amended complaint, declared the agreement to be invalid and unenforceable. The court found in favor of defendant and against plaintiff on counts I and III of the second amended complaint. Plaintiff filed a timely notice of appeal.

Plaintiff contends that the agreement was one to distribute defendant's share of the Jewel Plan and the trust corpus, was supported by adequate consideration, and was favored by public policy. Essentially, plaintiff argues that defendant contracted to give away half of her inheritance.

Defendant first argues that plaintiff has forfeited the issue because she argues for the first time on appeal that the agreement is subject to contract law principles rather than principles relating to family settlement agreements. It appears that plaintiff is merely citing general contract principles rather than raising a new argument since she acknowledges that the agreement was a family settlement agreement. Consequently, we do not deem the argument forfeited. Construction of a contract is a question of law, subject to *de novo* review. *Board of Managers of Hidden Lake Townhome Owners Ass'n. v. Green Trails Improvement Ass'n.*, 404 Ill. App. 3d 184, 190 (2010).

The family-settlement doctrine was established by our supreme court in *Wolf v. Uhlemann*, 325 Ill. 165 (1927):

“Undoubtedly, the members of a family are not privileged to alter the terms and provisions of a will merely for the convenience of the family or for the sole purpose of securing greater individual financial advantages than those specified in the will and intended by the testator. However, the rule is well established that courts of equity favor the settlement of disputes among members of a family by agreement rather than by resort to law. Where there is a reasonable or substantial basis for the belief or assurance that prolonged and expensive litigation will result over the proceeds or distribution of an estate, that the estate will be materially depleted and that the family relationship will be torn asunder, the parties interested

therein are warranted in preventing such *bona fide* family controversy by a settlement agreement.” *Wolf*, 325 Ill. at 183.

In our case, the facts are undisputed. Howard created the Jewel Plan and the Rasmussen Trust and provided for the distribution of those instruments following Florence’s death. As Mari predeceased Florence, upon Florence’s death, the Jewel Plan and the trust corpus were to be distributed to defendant and Stephen in equal shares. Howard made no provision for plaintiff. At the time the agreement was signed, there were no family disputes over the money. Plaintiff contends that there does not have to be a pending dispute. Plaintiff’s position is contrary to *Wolf*’s plain language where our supreme court held that there must be a “reasonable or substantial basis” for the belief or assurance that litigation will threaten the distribution of an estate before the parties are warranted in entering into a family settlement agreement. That litigation must be in the offing assumes the existence of a dispute.

In *In re Estate of McCabe*, 95 Ill. App. 3d 1081 (1981), the court held that, like any other contract, an agreement settling a dispute among family members over a decedent’s estate must be supported by consideration. *McCabe*, 95 Ill. App. 3d at 1084. The mutual concessions of rival claimants for the prevention of litigation may afford valid consideration for the agreement. *McCabe*, 95 Ill. App. 3d at 1084. Thus, there must be rival claimants, a dispute, and concessions of claims. In the present case, at the time the agreement was signed, the potential claimants were Florence, Mari, Stephen, and defendant. The record does not indicate any disputes or ill will among them. Defendant specifically testified that there was no dispute between herself and Mari. Defendant testified that she went to Mari’s home and signed the agreement to assure Mari’s peace of mind.

Consequently, we agree with the trial court's conclusion that the agreement was unsupported by consideration.

Family settlement agreements are encouraged in situations where there is a reasonable or substantial basis for a belief that litigation will result over the proceeds or distribution of an estate, the estate will be depleted, and family relationships will be torn asunder. *Fleisch v. First American Bank*, 305 Ill. App. 3d 105, 108 (1999). However, family settlement agreements cannot be used to accelerate distribution of a trust corpus in contravention of the settlor's express intent. *Fleisch*, 305 Ill. App. 3d at 108. Nor are family members permitted to alter the terms and provisions of a will for the sole purpose of securing greater financial advantages than those specified in the will and intended by the testator. *McCabe*, 95 Ill. App. 3d at 1084. Family settlement agreements are subjected to close scrutiny to determine whether the disputes they purport to resolve are genuine or are threats concocted to subvert the settlor's intent. *Fleisch*, 305 Ill. App. 3d at 108.

Here, contrary to plaintiff's argument, the agreement did not promote public policy because it did not resolve any disputes and it did subvert Howard's express intent. Howard intended that plaintiff get nothing. Mari's sole purpose in having defendant sign the agreement was to secure a financial advantage to plaintiff that Howard never intended. Accordingly, the trial court did not err in holding that the agreement was invalid and unenforceable.

Affirmed.