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2011 IL App (4th) 110380-U

Filed 12/9/11

No. 4-11-0380

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of MURIEL A. REYNOLDS,)	Appeal from
Deceased,)	Circuit Court of
CHARLES V. KEMP, JR., MICHAEL E.,)	Adams County
DOWNING, and PATRICIA DOWNING,)	No. 09P37
Objectors-Appellants,)	
v.)	
KATHY IRVIN, as Executrix of the Estate of)	
MURIEL A. REYNOLDS; and FAITH (FIRST))	Honorable
PRESBYTERIAN CHURCH OF QUINCY,)	Chet W. Vahle,
ILLINOIS,)	Judge Presiding.
Respondents-Appellees.		

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, rejecting the objectors' argument that the probate court erred by finding that the testator's clear intent was that the residue of her estate should go to her church, which had undergone a name change prior to her death.
- ¶ 2 In April 2009, the trial court entered an order admitting Muriel L. Reynolds' will to probate and appointing corespondent, Kathy Irvin, as executrix of Reynolds' estate.
- ¶ 3 In April 2010, objectors, Charles V. Kemp, Jr., Michael E. Downing, and Patricia Downing, Reynolds' second-cousins, filed a claim contesting the distribution of the residue of Reynolds' estate to corespondent, Faith Presbyterian Church of Quincy, Illinois. Shortly thereafter, Faith Presbyterian Church responded by filing a "Motion to Dismiss Objections to Current Report and Proposed Interim Distribution." Over the next several months, the parties

filed several motions related to their respective positions that culminated in a November 2010 trial court order in which the court rejected objectors' challenge.

¶ 4 Objectors appeal, arguing that the trial court erred by rejecting their challenge to the distribution of the residue of Reynolds' estate to Faith Presbyterian Church. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 Although the objectors failed to include Reynolds' will as part of the record in this case, the parties appear to agree that in August 1996, Reynolds executed a will that left the residue of her estate upon her death to "First Presbyterian Church, Quincy, Illinois." In January 2009, Reynolds died.

¶ 7 In April 2009, the trial court entered an order admitting Reynolds' will to probate and appointing Irvin as executrix of Reynolds' estate.

¶ 8 In April 2010, objectors, Reynolds' second-cousins and next of kin, filed a claim, contesting the interim distribution of \$500,000 to Faith Presbyterian Church. Objectors alleged that at the time of Reynolds' death, "First Presbyterian Church, Quincy, Illinois," did not exist because it had been dissolved and, therefore, the residue of Reynolds' estate should have been distributed intestate to them. As the basis for their assertion, objectors relied upon the minutes from a meeting conducted by the First Presbyterian Church's parent organization, the Presbytery of Great Rivers Assembly, in which the Presbytery referred to the "dissolution" of the First Presbyterian Church.

¶ 9 Faith Presbyterian Church responded by filing a "Motion to Dismiss Objections to Current Report and Proposed Interim Distribution," in which it explained that in January 2008,

"First Presbyterian Church, Quincy, Illinois, an Illinois religious corporation" legally changed its name to "Faith Presbyterian Church of Quincy, Illinois, an Illinois religious corporation" to change its affiliation from the Presbytery to affiliation with the Evangelical Presbyterian Church.

¶ 10 Over the next several months, the parties filed several motions related to their respective positions. Following an October 2010 hearing on those motions, the trial court entered an order rejecting objectors' challenge, as follows.

"On October 14, 2010, *** the parties appeared for a hearing on the Motion to Dismiss Objections to Current Report and Proposed Interim Distribution, the Response thereto, the Reply in Support of Motion to Dismiss, the Response to the Reply, and the Sur-reply. Arguments were made and the court took the matter under advisement, with an opportunity for the parties to address questions raised by the court. The court has now considered the pleadings, applicable statutes, the authorities presented, and the arguments of the interested parties, and being fully advised in the premises, finds that the authorities presented and the arguments made by the objectors are well presented and certainly worthy of discussion, but they are not persuasive. The Motion to Dismiss should be granted and the Objections overruled.

A 'church' is generally thought to be much more than a denomination, alone, a religious corporation, alone, or the congre-

gation, alone, or the pastor or building, alone. It is a combination of all these wrapped in a chosen faith. Faith Presbyterian Church *** is the same denomination, the same corporation, the same congregation with the same pastor in the same building at the same location as it was when it was named First Presbyterian Church and affiliated with Great Rivers Presbytery. The only differences now are the name change and the elimination of affiliation with the *** Presbytery in favor of affiliation with the Evangelical Presbyterian Church, which are governing/doctrinal bodies, after First Presbyterian Church had some differences with [the Presbytery].

The agreement between First Presbyterian Church and [the] Presbytery allowed the peaceful separation of the two entities without any dissolution of the congregation or its corporate structure. In fact, the Presbytery acknowledged that any bequests or gifts to First Presbyterian Church should be bequeathed or given to Faith [Presbyterian Church]. This fact is not insignificant[] because it shows the attitude and intent of the Presbytery as to whether or not it had dissolved the First Presbyterian Church, as the objectors argue had happened. In any event, it is debatable whether [the Presbytery] could actually dissolve First Presbyterian Church, an Illinois corporation, but the point is moot after the agreement was reached, despite the fact that some of the language

choices in the agreement could be argued to suggest that First Presbyterian Church was dissolved and no longer exists. However, those language choices were dealing with the affiliation between the two entities, and not with dissolution of the congregation or its religious corporation.

The court should always attempt to carry out the will of the testator to the extent possible under the law and the facts. There is a presumption against allowing the estate to pass through intestacy when a reasonable construction of the will can avoid it. Implied in this presumption is the proposition that if the testator wanted her estate to pass according the laws of intestacy, she could have stated that in her will. Because of her disability, *** Reynolds could not have changed her will if she had wanted to after Faith [Presbyterian Church] left the *** Presbytery. We are thus left to attempt [to] determine whether the object of her generosity exists in a form that renders it reasonably identifiable as the same entity.

This court believes the reasonable construction of the will provision voicing *** Reynolds' intent is that she wanted to make a gift to this church, which was composed of this denomination, this congregation[,], with this pastor[,], at this building[,], in this location. When she wrote her will, the church was named First Presbyterian Church and affiliated with [the] Presbytery. The

name and doctrinal affiliation changes by the corporate entity should not defeat that intent where it has been reasonably shown that Faith Presbyterian Church and First Presbyterian Church are the same charitable entity, the same church. The authorities cited and the arguments advanced by Faith [Presbyterian Church] are adopted by the court. The court greatly appreciates the efforts of counsel to frame the issues and brief the law."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Objectors argue that the trial court erred by rejecting their challenge to the distribution of the residue of Reynolds' estate to Faith Presbyterian Church. Specifically, objectors contend that because the Presbytery "dissolved" First Presbyterian Church—which it has authority to do—prior to Reynolds' death, her gift to First Presbyterian Church had lapsed and should be distributed intestate to them. We disagree.

¶ 14 Initially, we note that objectors point out that this case "comes before the Court on a somewhat opaque procedural posture"—namely, that respondents filed what they titled a "Motion to Dismiss" in response to objectors' objections to the current report and proposed interim distribution. Objectors further explain that although the trial court's order purports to grant respondents' motion to dismiss, that order "appears to take the matter as a hearing on the merits of the [o]bjections," which the court's order on the motion for reconsideration reinforces. We agree with objectors on this point and encourage counsel to be careful to properly title future motions to reflect that they are filing a *response* to an objector's objection. Accordingly, we

address objectors' argument as a challenge to the court's denial of their objections to the current report and proposed interim distribution.

¶ 15 The interpretation of a will is a question of law that this court reviews *de novo*. *In re Estate of Overturf*, 353 Ill. App. 3d 640, 642, 819 N.E.2d 324, 327 (2004). The ultimate purpose of will interpretation is, of course, to ascertain, and, if possible, give effect to the intention of the testator. *Overturf*, 353 Ill. App. 3d at 642, 819 N.E.2d at 327. However, when, as here, the probate court conducts a hearing and makes factual determinations, "all reasonable presumptions are made in favor of the trial court, the appellant has the burden to affirmatively show the errors alleged, and the judgment will not be reversed unless the findings are clearly and palpably contrary to the manifest weight of the evidence." *In re Estate of Vail*, 309 Ill. App. 3d 435, 438, 722 N.E.2d 248, 251 (1999). A court's determination is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on the evidence, or when the opposite conclusion is clearly evident from the record. *In re Estate of Michalak*, 404 Ill. App. 3d 75, 96, 934 N.E.2d 697, 717 (2010).

¶ 16 When the language of a will is clear and unambiguous, extrinsic evidence may not be admitted to vary that language. *Estate of Hurst v. Hurst*, 329 Ill. App. 3d 326, 338, 769 N.E.2d 55, 64 (2002). "However, where latent ambiguities exist in the will, extrinsic evidence will be considered to determine the testator's intent." *Hurst*, 329 Ill. App. 3d at 338, 769 N.E.2d at 64. " 'A latent ambiguity occurs when the will appears clear on its face but some fact external to the will reveals that a description of a bequest or of a legatee in the will is inadequate to determine who or what was intended by the testator.' " *Hurst*, 329 Ill. App. 3d at 338-39, 769 N.E.2d at 64 (quoting *Cousse v. Estate of Efston*, 262 Ill. App. 3d 419, 424, 633 N.E.2d 815,

818 (1994)).

¶ 17 In this case, the alleged latent ambiguity in Reynolds' will was the name "First Presbyterian Church, Quincy, Illinois," which appears clear on its face. Objectors, however, claim that the name is unclear because of the *external fact* that First Presbyterian Church no longer exists, it having been dissolved at the time of Reynold's death and renamed "Faith Presbyterian Church." Technically, objectors are correct that an entity by the name "First Presbyterian Church, Quincy, Illinois," no longer existed at the time of Reynolds' death. However, as the trial court explained in its well-reasoned written order, that latent ambiguity did not change Reynolds' clear intent that the residue of her estate pass testate to that church, her church, Faith Presbyterian Church. That church, Reynolds' church, did not change its denomination, congregation, pastor, building, or location. Quite simply, it was the same church with a new name.

¶ 18 Accordingly, we reject objectors' assertion that the trial court erred by rejecting their challenge to the distribution of the residue of Reynolds' estate to Faith Presbyterian Church.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's judgment.

¶ 21 Affirmed.