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2012 IL App (3d) 110411-UB

Order filed March 28, 2012
Modified Upon Denial of Rehearing May 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE JAMES F. GRAY TRUST dated January)	Appeal from the Circuit Court
3, 2003, by its Trustees, JAMES F. KIRK)	of the 12th judicial Circuit,
and ATG TRUST COMPANY,)	Will County, Illinois.
)	
Plaintiff-Appellee,)	
)	
v.)	
)	
THE CHURCH @ SOUTHLAND,)	
)	Appeal No. 3-11-0411
Defendant-Appellant,)	Circuit Nos. 09-P-147
)	10-CH-2261
and)	
)	
THE STONE CHURCH OF PALOS)	
HEIGHTS, and THE ILLINOIS ATTORNEY)	
GENERAL,)	
)	Honorable Jeffrey J. Allen,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting Stone Church's motion for summary judgment as the settlor failed to comply with the signature requirement of the

trust's amendment provision.

¶ 2 Appellant, The Church @ Southland (Southland), brings this appeal following the entry of an order granting appellee's, The Stone Church of Palos Heights (Stone Church), motion for summary judgment. The dispute between the parties involves the interpretation of a trust created by James Gray. In granting appellee's motion for summary judgment, the circuit court of Will County found that Stone Church is entitled to 5% of the residue of Mr. Gray's estate. Southland appeals, claiming summary judgment was inappropriate as several issues of material fact existed that could only be resolved via trial.

¶ 3 **FACTS**

¶ 4 James Gray, as settlor and trustee, signed a document titled the "James F. Gray Trust" on January 3, 2003. The document is known as the Gray Trust. Article 2, section 2.1 of the Gray Trust (section 2.1) states as follows:

"Right to Amend or Revoke. I reserve the right from time to time to amend or revoke this instrument in whole or in part by instrument (other than my Will) signed by me, referring to this instrument, and delivered to the trustee during my life. If I revoke this instrument, the trustee shall deliver the trust estate to me or as I direct."

¶ 5 The Gray Trust directs that, upon Mr. Gray's death, certain tangible and real property be distributed to Karen Bowman should the two be married at the time of Mr. Gray's death. It further directs that the residue of the trust estate be distributed as follows: 10% to the Moody Bible Institute; 10% to the Christian Hills Church; and 80% to Karen Bowman. Mr. Gray later

married Karen Bowman. The Gray Trust named James Gray as trustee. It further stated that when Mr. Gray, "cease[d] to act as trustee, Guaranty Trust Company of Chicago, Illinois *** and James F. Kirk *** shall be co-trustees."

¶ 6 On July 6, 2006, Mr. Gray executed an amendment to the Gray Trust. In this first amendment, Mr. Gray changed the bequests of the residue of the trust estate, directed that 5% of the residue be distributed to Stone Church, and further directed that 95% of the residue be distributed to his wife, Karen Gray. For reasons which will become clear, we find it advisable to reproduce a copy of the first amendment. The first amendment appears as follows:

**FIRST AMENDMENT TO TRUST AGREEMENT
KNOWN AS THE "JAMES F. GRAY TRUST Dated January 3, 2003"**

I, JAMES F. GRAY, of the Village of Frankfort, County of Will, and State of Illinois, having previously made a Living Trust Agreement known as the "JAMES F. GRAY TRUST" and dated the 3rd day of January, 2003 hereby makes and creates the First Amendment to the Trust Agreement and pursuant to the original Trust Agreement, hereby comes and amends and makes the following changes with regard to its existing Living Trust Agreement.

That I hereby amend and change Page 2, Article 3, Paragraph 3.4 by removing sub-paragraphs (a), (b) and (c) and substitute therein sub-paragraphs:

(a) Five Percent (5%) of said balance to the Scone Church currently located in Palos Heights, Illinois; and

(b) Ninety Five Percent (95%) to Karen Gray.

That I make no further amendments to this Trust at this time.

This Declaration of Trust was signed by me and accepted as Trustee, on this 6th day of July, 2006 at Tinley Park, Illinois.


JAMES F. GRAY

ACCEPTED:


JAMES F. GRAY
Trustee

FWJC 01242011
C000107

¶ 7 The record contains another version of the first amendment, hereinafter referred to as the second amendment. As will be seen below, in the second amendment, Stone Church located in Palos Heights is crossed out and replaced by the handwritten words, "Southland Church" of "Orland Park." The second amendment also contains, in handwriting, the date "1/7/09" and the initials "JFG" in three different locations: one next to the "1/7/09" date, and the other two under each signature of James F. Gray found on the document.

**FIRST AMENDMENT TO TRUST AGREEMENT
KNOWN AS THE "JAMES F. GRAY TRUST Dated January 3, 2003"**

I, JAMES F. GRAY, of the Village of Frankfort, County of Will, and State of Illinois, having previously made a Living Trust Agreement known as the "JAMES F. GRAY TRUST" and dated the 3rd day of January, 2003 hereby makes and creates the First Amendment to the Trust Agreement and pursuant to the original Trust Agreement, hereby comes and amends and makes the following changes with regard to its existing Living Trust Agreement.

That I hereby amend and change Page 2, Article 3, Paragraph 3.4 by removing sub-paragraphs (a), (b) and (c) and substitute therein sub-paragraphs:

- (a) Five Percent (5%) of said balance to the ~~Stone Church~~ currently located in ~~Palos Heights~~ Illinois; and *Southland Church*
Orland Park
- (b) Ninety Five Percent (95%) to Karen Gray.

1/7/09 JFG

That I make no further amendments to this Trust at this time.

This Declaration of Trust was signed by me and accepted as Trustee, on this *6th* day of *July*, 2006 at Tinley Park, Illinois.

J F Gray

JAMES F. GRAY
JFG

ACCEPTED:
J F Gray

JAMES F. GRAY
Trustee
JFG

CB00109 RYJC 01242011

¶ 8 On January 23, 2009, Mr. Gray died. The circuit court of Will County admitted Mr. Gray's will to probate on March 17, 2009: case No. 09-P-147. Mr. Gray's will names James Kirk and Guaranty Trust Company as coexecutors. At the time of Mr. Gray's death, Guaranty Trust Company was known as ATG Trust Company (ATG). The circuit court appointed Kirk and ATG as "co-independent executors "of Mr. Gray's estate.

¶ 9 On April 12, 2010, Kirk and ATG filed a petition for judicial determination of beneficial rights with the chancery division of the circuit court of Will County: case No. 10-CH-2261. The petition asked the court to determine whether Stone Church or Southland was entitled to 5% of the residue of the trust estate. Both churches were named as defendants and the Illinois Attorney General was also joined as a defendant. On a motion of the successor trustees, the chancery case and probate case were consolidated.

¶ 10 Eventually, Stone Church filed a motion for summary judgment, claiming it was entitled to 5% of the residue of the Gray Trust. On March 29, 2011, the circuit court found no material issue of fact existed, that the alleged second amendment did not comply with the amendment requirements of the Gray Trust and, as such, granted the motion for summary judgment. Southland filed a motion for reconsideration which the circuit court denied. This timely appeal followed.

¶ 11 ANALYSIS

¶ 12 The sole issue raised on appeal is whether the trial court erred in granting Stone Church's motion for summary judgment. Southland argues that several issues of material fact existed which could only be determined through trial. These factual disputes include: (1) whether the second amendment is "an instrument" within the meaning of section 2.1 of the Gray Trust; (2)

whether the second amendment was signed by Mr. Gray; and (3) whether the second amendment was properly delivered to Mr. Gray, as trustee, during Mr. Gray's lifetime. Southland further claims that summary judgment is not an appropriate avenue to resolve claims in which "the core issue of the proceedings was the intent of the settlor." Lastly, Southland argues the record contains no evidence or pleadings to support the order granting Stone Church's motion for summary judgment.

¶ 13 We "review appeals from summary judgment rulings *de novo*." *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009). Summary judgment is appropriate only when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc*, 238 Ill. 2d 455, 460-61 (2010). Whether the circuit court properly granted summary judgment in favor of Stone Church turns on the interpretation of section 2.1 of the Gray Trust. "In interpreting trusts, which are construed according to the same principles as wills, the goal is to determine the settlor's intent, which the court will effectuate if it is not contrary to law or public policy." *Citizens National Bank of Paris v. Kids Hope United, Inc.*, 235 Ill. 2d 565, 574 (2009). It has long been held that, under "Illinois law, intent is to be ascertained, if possible, from the instrument itself." *Ford v. Newman*, 77 Ill. 2d 335, 338 (1979).

¶ 14 While the parties quarrel over whether the second amendment is an "instrument," we find section 2.1's signature requirement more relevant to the disposition of this matter. Again, section 2.1 allows for amendment of the trust: (1) by instrument other than will; (2) signed by James Gray; (3) referring to the Gray Trust; and (4) delivered to James Gray during his life. Section 2.1

is clear that any amendment, to be effective, must satisfy each of these requirements.

Specifically, section 2.1 states that any amendment can only take the form of an "instrument (other than my Will) signed by me ***." "Where a method of exercising a power of modification is described in the trust instrument, the power can be exercised only in the manner described." *Northwestern University v. McLoraine*, 108 Ill. App. 3d 310, 317 (1982) (citing *Parish v. Parish*, 29 Ill. 2d 141 (1963)).

¶ 15 The parties acknowledge that for any amendment to be effective, including obviously the second amendment, it had to comply with section 2.1's signature mandate and, therefore, be "signed" by Mr. Gray. It is plain to us that inherent in this condition is the requirement that Mr. Gray's signature postdate or be contemporaneous with the amendment. To interpret section 2.1's signature requirement in any other manner would allow for absurd results. Such an interpretation would allow the Gray Trust to be amended by notations on one of Mr. Gray's canceled checks, assuming it bore his signature, as long as the document referred to the trust. We are positive, as was the trial court, that section 2.1 does not allow for amendment of the Gray Trust where Mr. Gray signs a piece of paper on July 6, 2006, then allegedly makes a few scribbles 2½ years later, on January 7, 2009: none of which are his signature. We hold that as a matter of law, these notations, placed on a document signed 2½ years earlier, simply fail to comply with section 2.1's signature requirement.

¶ 16 Again, the parties agree that Mr. Gray never signed (in the traditional sense) the second amendment on January 7, 2009, or any date thereafter. Southland argues that the notations and initials placed on the document, at the very least, raise a question of fact regarding whether they constitute a signature sufficient to satisfy section 2.1. We disagree. We find there is simply no

genuine issue of material fact as to whether the alleged second amendment complies with section 2.1's signature requirement. Therefore, the trial court properly granted Stone Church's motion for summary judgment.

¶ 17 Citing to *Montgomery Ward & Co., Inc. v. Wetzel*, 98 Ill. App. 3d 243 (1981), and *Giannetti v. Angiuli*, 263 Ill. App. 3d 305 (1994), Southland argues that "summary judgment is particularly inappropriate where" the settlor's "motive, intent or subjective feelings" are at issue. *Montgomery Ward* involves a dispute between a lessee and lessor regarding tax overpayments and holds little relevance to the matter at hand. *Montgomery Ward*, 98 Ill. App. 3d at 247.

¶ 18 The *Giannetti* plaintiff filed a complaint for breach of contract and conversion. *Giannetti*, 263 Ill. App. 3d at 306. Defendant counterclaimed and, eventually, the parties filed cross-motions for summary judgment. *Id.* The *Giannetti* court acknowledged that when parties file cross-motions for summary judgment they invite the court "to decide issues thus presented as a question of law and the entry of summary judgment for one party or the other may be proper." *Id.* at 312. However, the court stated that the dispute turned on whether one party waived "strict compliance with a contractual provision" resulting in forfeiture which it found involved "a question of fact" noting "such a question is unsuitable for disposition by way of summary judgment." *Id.* at 313. We find nothing in *Giannetti* persuasive to the matter before us.

¶ 19 Finally, Southland argues that summary judgment was inappropriate as "the pleadings of the parties were not under oath, and the record did not otherwise contain any evidence to support summary judgment." Southland cites *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263 (1992).

¶ 20 In *Loyola Academy*, our supreme court noted that "the circuit court granted summary

judgment but did not make the order final and appealable. Thus, the issue of whether the trial court properly granted summary judgment is not before this court." *Id.* at 272. The *Loyola Academy* court clearly stated that the "only issue before this court is whether the trial court abused its discretion when it denied plaintiff leave to amend its complaint." *Id.* at 266. *Loyola Academy* does not support Southland's argument.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed