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2013 IL App (3d) 120138-U

Order filed February 27, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

GALE D. BEEKMAN and DONALD G.)	Appeal from the Circuit Court
BEEKMAN, individually and on behalf of the)	of the 9th Judicial Circuit,
BEEKMAN FAMILY TRUST,)	Fulton County, Illinois,
)	
Plaintiffs-Appellants,)	
)	
v.)	
)	
STEPHEN R. BEEKMAN, WAYNE R.)	
BEEKMAN, SUSAN K. DUEL and MARY)	Appeal No. 3-12-0138
JANE LAYTON,)	Circuit No. 11-CH-49
)	
Defendants-Appellees,)	
)	
and)	
)	
MARJORIE L. BEEKMAN and KAREN J.)	
TIPPEY,)	Honorable
)	Edward R. Danner,
Nominal Defendants.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice Lytton dissented.

ORDER

¶ 1 *Held:* In a case involving the interpretation of a trust's provisions, the circuit court dismissed the plaintiffs' action after finding that the defendants revoked the trust. On appeal, the appellate court affirmed the circuit court's ruling.

¶ 2 The plaintiffs, Gale D. Beekman and Donald G. Beekman, individually and on behalf of the Beekman Family Trust, sued the defendants, Stephen R. Beekman, Wayne R. Beekman, Susan K. Duel, and Mary Jane Layton, for several matters related to the Beekman Family Trust.¹ The plaintiffs claimed that the defendants breached their fiduciary duty as trustees and requested that the circuit court issue a declaratory judgment, construe certain provisions of the Trust agreement, and order an accounting of the Trust's assets. The defendants filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)), alleging, *inter alia*, that the defendants properly revoked the Trust. After a hearing, the circuit court granted the defendants' motion to dismiss with prejudice, and the plaintiffs appealed. On appeal, the plaintiffs argue, *inter alia*, that the court erred when it found that the defendants properly revoked the Trust. We affirm.

¶ 3 **FACTS**

¶ 4 In their 2011 amended complaint, the plaintiffs alleged that Willis F. and Marjorie L. Beekman had seven adult children: (1) Stephen R. Beekman; (2) Wayne R. Beekman; (3) Susan K. Duel; (4) Mary Jane Layton; (5) Karen J. Tippey; (6) Gale D. Beekman; and (7) Donald G. Beekman. In 2000, Stephen convinced his parents to sell the family farm to him and his wife for \$85,000, which the plaintiffs alleged was substantially less than the fair market value of the property. The plaintiffs also alleged that Stephen did not pay the \$85,000.

¹ The children's mother, Marjorie L. Beekman, and one of the children, Karen J. Tippey, were named as nominal defendants.

¶ 5 The complaint further alleged that some of the children objected to the sale of the farm. To avoid a hostile dispute and potential litigation, the Trust was created in 2000. Stephen and his wife agreed to convey the farm to the Trust. Stephen, Wayne, Gale, and Donald were named trustees.

¶ 6 Of relevance to this appeal, the Trust agreement provided:

"1. The trust will be revocable and amendable only by written direction signed by a majority of the then living children of Willis F. Beekman and Marjorie L. Beekman, hereinafter called Parents. As of the date of this agreement, those children are Wayne R. Beekman, Karen J. Tippey, Gale D. Beekman, Donald G. Beekman[,] Stephen R. Beekman, Susan K. Vance and Mary Jane Layton.

2. Trustees will pay the net income of the trust to Parents or the survivor of them for the lifetime of the survivor of them.

3. After the death of the survivor of Parents, the trust net income will be paid in equal shares to the Parents' seven (7) children, the share of any deceased child to go to such beneficiaries as the deceased child shall have lawfully designated.

4. After the death of the survivor of Parents, any of the surviving children of Parents may elect by written notice to the Trustees to be removed as a beneficiary, whereupon the trust shall pay the electing child a sum of money equal to one-seventh (17) [sic] of the then value of the trust principal, the value of trust real estate to be determined by an impartial appraiser selected by the Trustees.

Thereafter the trust income will be paid in equal shares to those of the seven (7) children who have not so elected to be removed as a beneficiary, the share of any deceased non-electing child to go to such beneficiaries as the deceased child shall have lawfully designated.

5. After the death of the survivor of Parents, the trust will continue until terminated by the written direction to terminate signed by a majority of the then living children of Parents, or upon the death of the last surviving child of Parents, whichever first occurs. Upon the termination of the trust, the trust assets will be liquidated and paid over to the then living income beneficiaries in the same proportions as they are then entitled to income."

The Trust agreement was signed by Stephen and his wife, as well as by Wayne, Gale, and Donald.

¶ 7 Sometime after the Trust's creation, the parents transferred funds to the Trust that totaled approximately \$290,000 at the time of the filing of the amended complaint. The father, Willis, died in 2002, but the mother, Marjorie, was still living at the time the amended complaint was filed.

¶ 8 In 2011, Wayne, Stephen, Susan, and Mary Jane executed two amendments to the Trust. In the first amendment, Gale, Donald, and Stephen were removed as trustees, and Mary Jane, Susan, and Wayne were named the new trustees. Further, the new trustees accepted Stephen's offer to purchase the family farm from the Trust for \$80,000, to be paid in 10 annual installments.

¶ 9 The second amendment deleted paragraphs three, four, and five from the Trust agreement

and replaced them with the following:

"3. During the life of Parents or the survivor of them, the trustees may pay as much of the principal to any one or more of Parents or the survivor of them as the trustees from time to time consider necessary for the health, maintenance in reasonable comfort, or education of each person. The trustees may take into account the present and prospective needs of those persons.

4. (a) During the life of Parents or the survivor of them, the trustees shall distribute Trust principal to any one or more of Parents' descendants, and the spouses of Parents' descendants as the Parents of the survivor of the Parents from time to time appoints by written instrument during his or her life.

(b) Upon the death of the survivor of Parents, the Trust shall be distributed to the personal representative of the probate estate of the last Parent to die, to pass according to the terms of the Last Will & Testament of the last Parent to die, or under the laws of intestacy of the State of Illinois if no Will exists.

5. Upon any revocation of the Trust, the Trust assets shall be distributed free of trust to Parents or the survivor thereof, as it is the assets of Parents that funded this Trust from its inception."

¶ 10 The day after the second amendment was executed, Wayne, Stephen, Susan, and Mary Jane executed a revocation of the Trust pursuant to paragraph one of the agreement and stated that, pursuant to paragraph five, all trust assets would be turned over to the mother, Marjorie.

¶ 11 The amended complaint alleged that the family farm was worth substantially more than \$80,000, and claimed that Stephen, Wayne, Susan, and Mary Jane breached their fiduciary duty to the other beneficiaries of the Trust by executing the two amendments and the quitclaim deed conveying the family farm to Stephen, and by revoking the Trust. The plaintiffs also requested a declaratory judgment and construction that the Trust was not revokable during the mother's lifetime, as well as an accounting of the Trust's assets.

¶ 12 The defendants filed a motion to dismiss the complaint pursuant to section 2-619 of the Code, alleging, *inter alia*, that the Trust was properly revoked by the defendants.

¶ 13 On January 25, 2012, the circuit court held a hearing on the defendants' motion to dismiss. After hearing arguments, the court found:

"I don't see any temporal limit within the four corners of the trust agreement as to when the trust agreement is amendable or revocable. The mechanism set out is that the majority of the then living children of Willis and Marjorie have the right to revoke it. I see that on September 21, 2011, there's a purported trust revocation. I don't see a restriction."

¶ 14 Accordingly, the court found that the Trust was properly revoked, and thereby granted the defendants' motion to dismiss. The plaintiffs appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, the plaintiffs argue, *inter alia*, that the circuit court erred when it granted the defendants' motion to dismiss. Specifically, the plaintiffs argue that the court erred when it found that the defendants properly revoked the Trust.

¶ 17 A motion to dismiss filed pursuant to section 2-619 of the Code admits the legal

sufficiency of a complaint, but claims that an outside defense defeats the complaint. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. When faced with such a motion, the circuit court must accept all well-pled facts as true, including reasonable inferences that arise from those facts, but must not accept conclusions as true unless they are supported by specific facts. *Patrick Engineering*, 2012 IL 113148, ¶ 31. A circuit court's decision to dismiss a complaint pursuant to section 2-619 of the Code is reviewed *de novo*. *Patrick Engineering*, 2012 IL 113148, ¶ 31.

¶ 18 When tasked with the construction of a trust, the same principles apply as those that apply to the interpretation of a will. *Ruby v. Ruby*, 2012 IL App (1st) 103210, ¶ 19. The court must ascertain the settlor's intent by looking to the plain and ordinary meaning of the words used in the trust agreement, viewed in the context of the entire document. *Ruby*, 2012 IL App (1st) 103210, ¶ 19. The court should strive to construe the trust in a manner that gives effect to every word, phrase, and clause used in the trust agreement, and avoid constructions that would render any portion of the trust void, insignificant, or meaningless. *Ruby*, 2012 IL App (1st) 103210, ¶ 19. The settlor's intent may be ascertained through a consideration of the circumstances surrounding the creation of the trust, and that intent should be given effect as long as it is not contrary to law or public policy. *Ruby*, 2012 IL App (1st) 103210, ¶ 19. If the trust's language is unambiguous, the trust must be given effect without modifying or creating any new terms. *Ruby*, 2012 IL App (1st) 103210, ¶ 19.

¶ 19 In this case, paragraph one of the Trust agreement provided:

"The trust will be revocable and amendable only by written direction signed by a majority of the then living children of Willis F. Beekman and

Marjorie L. Beekman, hereinafter called Parents. As of the date of this agreement, those children are Wayne R. Beekman, Karen J. Tippey, Gale D. Beekman, Donald G. Beekman[,] Stephen R. Beekman, Susan K. Vance and Mary Jane Layton."

The plaintiffs claim that the Trust could not be revoked until Marjorie died because paragraphs two through five contain temporal limitations, and those paragraphs would be rendered meaningless if paragraph one was construed as allowing revocation prior to Marjorie's death. We are unpersuaded by the plaintiffs' claim.

¶ 20 The Trust's terms are unambiguous. Paragraph one provided no temporal limit on when the Trust could be revoked. Paragraph two provided for the general operation of the Trust. Paragraphs three through five, prior to amendment, provided specific procedures that were to apply if certain conditions were triggered. As amended, paragraphs three and four continued to provide for conditional procedures, and paragraph five provided for the distribution of the Trust's assets upon revocation. Whether the two amendments to the Trust were properly executed is immaterial. The only way to construe this Trust to give effect to all of its terms in either instance is to give paragraph one the effect its plain language suggests—that no temporal limit existed on when the Trust could be revoked.

¶ 21 It is axiomatic that the other paragraphs containing normal operations or conditional procedures would not apply if a revocation was executed. See, *e.g.*, *Black's Law Dictionary* 1321-22 (6th ed. 1990) (defining revocation as "[t]he withdrawal or recall of some power, authority, or thing granted, or a destroying or making void of some will, deed, or offer that had been valid until revoked" and revoke as "[t]o annul or make void by recalling or taking back. To

cancel, rescind, repeal, or reverse, as to revoke a license or will"). Even if the plaintiffs were correct that their claimed temporal limitation should be read into paragraph one, paragraph two and both versions of paragraphs three and four could no longer be given effect if a revocation was executed after Marjorie's death. Moreover, if the plaintiffs were correct, the revocation procedure in paragraph one would be mere surplusage if the old paragraph five applied, or would have to be modified to include a temporal limit if the amended version of paragraph five applied. Neither situation would be appropriate because the language of the Trust is unambiguous. *Ruby*, 2012 IL App (1st) 103210, ¶ 19. Accordingly, because the defendants properly executed a Trust revocation pursuant to the non-temporal paragraph one, we hold that the circuit court properly granted the defendants' motion to dismiss.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Fulton County is affirmed.

¶ 24 Affirmed.

¶ 25 JUSTICE LYTTON, dissenting.

¶ 26 I respectfully dissent from the majority's holding that the circuit court properly granted defendants' motion to dismiss. I would find that the trust document, when read as a whole, is capable of more than one reasonable interpretation. Thus, the trial court should have denied defendants' motion to dismiss.

¶ 27 Here, the majority finds that the trust agreement is unambiguous by relying solely on the language contained in paragraph one. Such an interpretation ignores the rules of construction that apply to a trust.

¶ 28 Provisions of a trust cannot be read in isolation. *Bank of America N.A. v. Carpenter*, 401

Ill. App. 3d 788, 797 (2010). A court should construe a trust "so that no language used by the testator is treated as surplusage or rendered void or insignificant." *Harris Trust & Savings Bank v. Donovan*, 145 Ill. 2d 166, 172 (1991). Every word, phrase and clause in a trust should be given effect, if possible, and where one construction of a trust would render a portion of it meaningless and another would give effect to all provisions and all language, the construction giving effect to the latter will be adopted. *Id.* at 172-73.

¶ 29 Paragraph one of the trust includes language detailing a method for revocation and amendment of the trust. Read in isolation, this paragraph is clear and unambiguous. However, paragraph two contradicts the majority's finding that the trust could be revoked at any time by requiring that the proceeds of the trust be paid during "the lifetime of the survivor[s]" of Willis and Marjorie. Additionally, paragraphs three through five indicate what should happen "after the death of the survivor of" Willis and Marjorie.

¶ 30 Construing paragraph one, as the majority does, to allow for revocation before "the death of the survivor of" Willis and Marjorie would render paragraphs two through five totally meaningless. While paragraph one seemingly allows for unlimited amendment or revocation, paragraphs two through five contain language that limits revocation or amendment. Thus, I find the trust document to be ambiguous.

¶ 31 In determining that the trust agreement was unambiguous, the majority not only ignored portions of the trust document but also the circumstances under which the trust was created. When determining a settlor's intent, the court must analyze both the words used in the document and the circumstances under which they were drafted. *Carpenter*, 401 Ill. App. 3d at 797. Plaintiffs' amended complaint alleges the "circumstances surrounding the execution" of this trust include a

family-wide settlement agreement following the transfer of 136 acres of farmland to Stephen for inadequate consideration. The amended complaint further alleges that the trust was created "to avoid a hostile dispute among the children." Such circumstances suggest that the trust was created to prohibit Stephen from obtaining the farmland for less than adequate consideration, which is exactly what happened after his siblings revoked the trust.

¶ 32 When a trust document is ambiguous, the parties may present extrinsic evidence to assist the trial court in interpreting the conflicting language and ascertaining the intent of the settlor. *First National Bank of Chicago v. Canton Council of Campfire Girls, Inc.*, 85 Ill. 2d 507, 514 (1981). Here, the trial court did not allow the parties to present extrinsic evidence. The trial court erred when granting defendants' motion to dismiss without allowing the parties the opportunity to present extrinsic evidence to aid in the construction of the trust.

¶ 33 For these reasons, I would reverse the trial court's order granting defendants' section 2-619 motion to dismiss and remand for further proceedings.