



For the reasons discussed herein, we affirm the ruling of the circuit court.

¶ 3

### BACKGROUND

¶ 4 The Trust was created by Marvin A. Perkins and Rosemary Perkins on February 28, 1998. Rosemary died on October 19, 2000, leaving Marvin as the sole settlor and trustee of the Trust. Marvin subsequently amended the Trust several times before he died on January 16, 2006. It is the fifth and last amendment to the Trust (Fifth Amendment), made by Marvin on September 17, 2004, which is at issue on appeal.

¶ 5 The Fifth Amendment specifies that the only property in the Trust was Marvin's "residence and land, and the furniture and furnishings in the residence, located at 1542 Troy-O'Fallon Road, Troy, IL 62294." Marvin's purpose for the Fifth Amendment is stated in the preamble as follows:

"In the Fourth Amendment, I named my son, John F. Perkins, my successor trustee. I have since become concerned that my son, John F. Perkins, may not be as considerate toward my daughter, Mary A. Timms, and her two children, after my death, as I now desire. Consequently, I have decided to amend the trust agreement again for the purpose of giving to my daughter, Mary A. Timms, a life estate (defeasible upon the occurrence of certain events), in my residence and land which now constitute the sole trust property."

¶ 6 The provision of the Fifth Amendment that grants a life estate to Timms reads:

"A life estate in my residence and land, and in the furniture and furnishings in the residence, located at 1542 Troy-O'Fallon Road, Troy, IL 62294, to my daughter, Mary A. Timms, so long as she (a) is domiciled in the residence, and (b) is a single person, and (c) does not co-habit with a man, which life estate shall be defeased and terminated, however, should my daughter, Mary A. Timms, move from the residence and establish another domicile, or should she marry, or should she co-habit with a

man[.]"

¶ 7 In addition to Timms, Marvin had eight other children, including Gregory, all to whom he granted an undivided one-eighth fee simple remainder interest in his residence, land, and in the furniture and furnishings of the residence.

¶ 8 Timms and her two children lived with Marvin during the final years of his life. Upon Marvin's death in early 2006, his son, John F. Perkins (John), became the successor trustee of the Trust. Timms, in accordance with her life estate, continued to live in Marvin's house (Trust Property).

¶ 9 It appears that sometime in 2008, the house sustained storm damage. Timms was unable to obtain funds from John as the trustee to repair the house, so she filed suit against him. As a result, the two entered into a confidential settlement agreement on March 24, 2009, from which John agreed to resign as trustee and consented to Timms being appointed as trustee thereafter.

¶ 10 On April 23, 2011, the house was damaged by a fire. Timms and her children, who were living there at the time, were uninjured, but she claims that the house was "rendered uninhabitable." Approximately a year earlier, Timms had obtained a homeowner's insurance policy covering the house, so after the fire, insurance proceeds were available to allow her to rebuild another house on the Trust Property. Timms chose to rebuild, and therefore, the house needed to be demolished to construct a new house on the land.

¶ 11 On July 13, 2011, while Timms was in the initial stages of rebuilding, her brother, Gregory, on behalf of himself and the Trust, filed suit against her as well as a petition seeking a temporary restraining order (TRO). That same day, the circuit court entered an *ex parte* temporary restraining order against Timms, enjoining her from entering onto the Trust Property or removing any item of property from it. The circuit court set a hearing for July 22, 2011, to determine whether the TRO should extend to a preliminary injunction.

¶ 12 Timms moved to dissolve the TRO on July 22, 2011, the same day of the hearing. The circuit court heard evidence from both parties and decided to extend the TRO for an additional 21 days in order to allow the parties to submit briefs on the status of Timms's life estate. The extended TRO also allowed Timms to continue the demolition of the house to prevent the site from becoming a nuisance and to avoid violating any city ordinances or regulations. Further, Timms's son was allowed to continue constructing a shed on the Trust Property. The circuit court reset a hearing for August 12, 2011, to determine the status of the life estate.

¶ 13 During the interim, the parties filed their respective briefs, with the plaintiffs moving for a partial summary judgment for a finding that, as a matter of law, Timms's life estate had been terminated based on the terms of the Fifth Amendment, upon the destruction of the house. Timms responded in opposition. At a hearing on August 19, 2011, after reviewing the briefs and hearing oral argument, the circuit court determined that the life estate had not, in fact, been terminated and entered a handwritten order that same day, denying the plaintiffs' motion for partial summary judgment. The order also required Timms to submit a plan for rebuilding a house on the Trust Property for the circuit court's approval.

¶ 14 Later, Timms moved for an order pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), as she had good reason to believe that the plaintiffs would appeal the final judgment and wanted to be able to move forward with rebuilding. On December 16, 2011, the circuit court entered a Rule 304(a) order, after which, the plaintiffs filed this interlocutory appeal. We now affirm the decision of the circuit court.

¶ 15 ANALYSIS

¶ 16 The sole issue on appeal is whether the circuit court erred when it denied the plaintiffs' motion for partial summary judgment, finding that the destruction of the house did not terminate the life estate granted to Timms by the Fifth Amendment. "Summary judgment is

appropriate only where '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.' " *Maxit, Inc. v. Van Cleve*, 231 Ill. 2d 229, 235 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2004)). Because we take a fresh look at the record on *de novo* review, we may affirm a circuit court's ruling for any reason we find appearing on the record, regardless of whether it applied a similar rationale. *Hess v. Flores*, 408 Ill. App. 3d 631, 636 (2011).

¶ 17 The plaintiffs assert that the provision of the Fifth Amendment granting Timms a life estate in the Trust Property clearly makes the life estate conditional upon Timms being "domiciled in the residence." The plaintiffs argue that the plain language of the Fifth Amendment clearly reflects that "residence" refers to the house located on the Trust Property in which Marvin lived before he passed away. The April 2011 fire damaged the house and ultimately led to its destruction, and therefore, because the "residence" no longer exists, Timms can no longer be domiciled in that particular residence; hence, the plaintiffs believe that Timms's life estate has been terminated as a matter of law.

¶ 18 Conversely, Timms argues that the term "residence" does not simply refer to the specific house on the Trust Property that existed when the Fifth Amendment was drafted. Timms further asserts that to interpret the provision as the plaintiffs advocate would directly contravene Marvin's purpose and intent in granting her a life estate. The parties acknowledge that the language of the Fifth Amendment fails to specifically address the possibility that the residence might one day be destroyed or otherwise rendered uninhabitable. Timms seems to proffer that legal documents cannot be drafted to foresee every possible occurrence, whereas the plaintiffs believe that this omission supports their view that the life estate was specific to Marvin's house and the destruction of his house and building a new house results in the termination of the life estate.

¶ 19 Interpreting trusts follows the same principles and guidelines used to interpret wills, which is to first determine the intent of the settlor at the time the instrument was executed. *Citizens National Bank of Paris v. Kids Hope United, Inc.*, 235 Ill. 2d 565, 574 (2009) (citing *First National Bank of Chicago v. Canton Council of Campfire Girls, Inc.*, 85 Ill. 2d 507, 513 (1981)). Words are ascribed their plain and ordinary meaning, viewed in the context of the entire document. *Id.* (citing *Campfire Girls*, 85 Ill. 2d at 514).

¶ 20 Marvin's intent in amending the Trust for the fifth time was clearly expressed in the preamble: to give Timms a life estate in both his residence and land because he was concerned that his son John, as successor trustee, may not treat her and her children as kindly after Marvin's death. In other words, Timms and her children lived with Marvin before his death and he intended for her and her children to be able to continue living there after his death if she chose to do so, rather than having the Trust Property immediately distributed to the other named beneficiaries.

¶ 21 The provision granting Timms a life estate is divided into what the plaintiffs call the "phrase of condition" and the "phrase of defeasance and termination." Examining the provision, we observe that there are three conditions which comprise the conditional phrase: (1) Timms is domiciled in the residence, (2) Timms is unmarried, and (3) Timms does not cohabit with a man. Additionally, there are three events which comprise the defeasance and termination phrase: (1) Timms moves from the residence and establishes another domicile, (2) Timms marries, or (3) Timms cohabits with a man.

¶ 22 The phrase of condition and the phrase of defeasance and termination appear to mirror each other, in like order. For example: Timms receives a life estate so long as she is a single person, but the life estate shall terminate should she marry; or Timms receives a life estate so long as she does not cohabit with a man, but the life estate shall terminate should she cohabit with a man.

¶ 23 The only corresponding portions of the phrase of condition and phrase of defeasance and termination which do not mirror each other exactly is the one at issue on appeal: Timms receives a life estate in the Trust Property so long as she is domiciled in the residence, but the life estate shall terminate should she move from the residence and establish another domicile. When coupled together, we note that the terminating event provides context to aid in interpreting the condition. Plainly read, the event which triggers termination of the life estate is Timms moving from the residence and establishing another domicile. The plain language does little to support the plaintiffs' position that Marvin only wanted Timms in that *particular* house. There are no statements within the Fifth Amendment in which Marvin expresses a particular sentimentality or other attachment to his "residence" to lend credence to the notion that if the current house were to no longer exist, the life estate would be terminated. Rather, a finding that the life estate did not terminate upon the unforeseen and accidental destruction of the house due to a fire aligns with Marvin's stated intent to provide Timms and her children with a home to live in for the duration of her life.

¶ 24 The parties additionally focus on the definitions of the terms "residence" and "domicile." Black's Law Dictionary defines "residence" as: "The place where one actually lives, as distinguished from a domicile \*\*\*[. Residence] usu[ally] requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. \*\*\* A house or other fixed abode; a dwelling \*\*\*." Black's Law Dictionary (9th ed. 2009). It also defines "domicile" as, "The place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." Black's Law Dictionary (9th ed. 2009).

¶ 25 While Marvin specifically granted Timms a life estate in "*my* residence," which refers to the house that was later destroyed by a fire, we note that his residence, land, and

furnishings were all that comprised the Trust Property and, thus, all that he had to grant at the time. Timms was domiciled in the residence until the fire destroyed it, and evidence presented during the hearing shows that she intends to rebuild and return to live at the same location. She testified that she had not permanently moved anywhere nor did she intend to be domiciled elsewhere. Therefore, by living in the house before it burned down and maintaining her domicile there, Timms abided by the conditions of the life estate until she no longer was able to do so, for reasons out of her control. However, the triggering event of terminating the life estate—that she move and establish *another* domicile—has not occurred, and therefore, while "Marvin's residence" is no longer part of the Trust Property, Timms still has a life estate in the land upon which she can rebuild a new home with the insurance proceeds and continue to be domiciled there. She simply no longer has a life estate in Marvin's residence because it no longer exists, which raises another point.

¶ 26 The plaintiffs urge us to put particular interpretational emphasis on the phrasing of "*my* residence," as stated in the life estate provision, so that if Marvin's residence ceases to exist, Timms can no longer meet the condition of being domiciled within it in order to maintain the life estate. Yet, if we abide by this interpretation, it then renders the corresponding portion of the termination phrase meaningless, as Timms can also never terminate the life estate by moving from the residence once the residence has ceased to exist.

¶ 27 The "and establish another domicile" portion of the phrase of defeasance and termination is also important to mention. Not only must Timms move, but she must also establish another domicile, which, according to its definition, means a true and permanent home. This requirement appears to provide a safeguard against situations in which Timms may be temporarily required to reside elsewhere. "In construing a written instrument, its letter should be controlled by its spirit and purpose, bearing in mind that the terms employed are servants and not masters of an intent, and are to be interpreted so as to subserve, and not

to subvert, such intent." *Pieszchalski v. Oslager*, 128 Ill. App. 3d 437, 447 (1984). Remaining cognizant of this principle of construction, we find that the circuit court was correct in its decision that the destruction of house on the Trust Property did not terminate Timms's life estate.

¶ 28

#### CONCLUSION

¶ 29 For these reasons, we find that the plain language interpretation of the provision granting Timms a life estate in the Trust Property supports a finding that the destruction of the house by a fire did not terminate her life estate, as this produces the most rational result reflecting Marvin's intent as the settlor. We hereby affirm the circuit court's denial of the plaintiffs' motion for partial summary judgment.

¶ 30 Affirmed.