2019 IL App (4th) 180733-U

NO. 4-18-0733

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 31, 2019
Carla Bender
4th District Appellate
Court, IL

In the Matter of:	)	Appeal from
	)	Circuit Court of
THE EDITH THORP METZ TRUST; and THE O.T. METZ TRUST, under the Will of ORLANDO THORP METZ, Deceased.	)	Sangamon County
	)	No. 15CH298
	)	
ADELE COREY MEYER,	)	
Appellant,	)	
v.	)	
PNC BANK N.A., as Trustee of the Edith Thorp Metz Trust, and as Trustee of the Orlando Thorp Metz Trust,	)	
	)	
	)	Honorable
	)	John M. Madonia,
Appellee.	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court properly found (1) Adele had standing to challenge her mother, Beulah Metz's settlement and release of claims against her husband, O.T. Metz's estate, (2) Beulah's settlement and release of all claims against O.T. Metz's estate barred Adele from receiving the undisposed assets of O.T. Metz's estate and Edith Metz's estate by intestate succession, and (3) the intentions of the trust creator became irrelevant upon the failure of the trust.

¶ 2 Adele Corey Meyer, appeals the judgment of the trial court finding Edith Thorp Metz's trust and Orlando Thorp (O.T.) Metz's trust failed and finding Adele excluded by waiver from receiving any corpus of either trust because her mother, Beulah Corey Metz, entered a settlement and release of all claims against O.T.'s estate.

¶ 3 On appeal, Adele argues (1) she had standing to challenge Beulah's settlement and release with O.T.'s estate as Beulah's sole heir, (2) Beulah's settlement and release with the executors of O.T.'s estate did not preclude her from receiving a part of Edith's estate or O.T.'s estate as the sole heir of Beulah through intestate succession, and (3) Edith's trust agreement showed her intent to distribute the corpus of the trust to the heirs of her children, O.T. and Catherine Ann Mazet, in the event a failure of issue occurred whereby she no longer had any living descendants. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 1950, Edith created an irrevocable trust designating herself as grantor and the Illinois National Bank of Springfield, Illinois (now PNC Bank), as trustee. Edith died intestate in Springfield in June 1953. While Edith's husband predeceased her, her two children, O.T. and Catherine, survived her.

¶ 6 In July 1968, O.T. died testate in Springfield. At the time of his death, he was married to Beulah but left behind no children. Beulah died in May 1991 survived by Adele, her daughter from a previous marriage. No will existed upon Beulah's death, nor was a probate estate opened. Beulah's sole heir-at-law is Adele.

¶ 7 Catherine died in Arizona in July 1998. Catherine died testate as to tangible personal property but intestate as to the residue of her estate. At the time of Catherine's death, her husband predeceased her but her two children, Bruce Wagner Mazet (Bruce) and Robert Mazet III (Robert), survived her. Under Arizona's rules of intestate descent and distribution (A.R.S. § 14-2103), at the time of Catherine's death, her living heirs-at-law were Bruce and Robert.

¶ 8 Bruce died testate in October 2003 in Arizona. Bruce left the residue of his estate to the California Institute of Integral Studies (CIIS). Bruce never married and had no children. After Bruce died, CIIS via Bruce's estate entered into a settlement agreement releasing its interest in and to Catherine's estate. Bruce's estate closed in April 2013.

¶ 9 Robert died testate in April 2013. Conservators of Arizona, serves as appointed personal representative of Robert's estate, and his probate estate is open and pending in Maricopa County, Arizona. Robert left the residue of his property in various percentages to Melodee Franco, and 10 other residuary legatees. Robert never married and had no children.

¶ 10 A. Edith's Trust

¶ 11 Under article IV of Edith's trust agreement, Edith directed the net income from the trust be paid to her children, O.T. and Catherine, in equal shares for their natural lives. Upon the death of either child, his or her income share was payable to the other for the remainder of his or her life. Upon the death of the last survivor of her children, Edith directed the trustee to "divide the corpus of said Trust Estate into equal shares and pay the net income from each share, respectively, to the then living lawful issues of each of said children, per stirpes, for twenty-one years thereafter ***." Edith's trust agreement then stated, "Unless terminated by failure of issue of both of said children, as hereinafter provided, said Trust shall terminate upon the expiration of twenty-one years following the date of decease of the last child and the entire corpus of said Trust shall be distributed according to the basis upon which the net income therefrom is being paid at such time to the lawful issue of said children, [O.T.] and Catherine." The last paragraph of article IV of Edith's trust provided: "Should both of said children upon their decease leave no living issue, then, and in such event, said Trust shall terminate upon the death of the last

surviving child and said Trustee shall distribute one share of the corpus of said estate to the lawful heirs of [O.T.] and one share of said estate to the lawful heirs of Catherine."

¶ 12 Catherine died after O.T., survived by two sons, Bruce and Robert. However, Bruce and Robert both died without issue prior to the expiration of the 21-year term of the trust. Edith's trust corpus and accumulated net income since Robert's death totaled $4.7 million.

¶ 13 B. O.T.'s Trust

¶ 14 O.T. executed a will in January 1967 and a codicil thereto in July 1967. Under the terms of O.T.'s will and codicil, he bequeathed the residue of his property to the Illinois National Bank of Springfield (now PNC Bank) as trustee. In the codicil, he refers to Beulah as his "intended wife," as he was not yet married as of July 17, 1967. With the exception of a lifetime annuity to Beulah, O.T. made no provision for Beulah in his will and devised the remainder of his estate be held in trust for his nephews, Bruce and Robert. Upon the death of O.T.'s last surviving nephew, O.T. ordered the net income shall be paid to the lawful issue of his nephews, then living, per stirpes, for a period of 21 years thereafter, at which time the trust shall terminate and distribute to those receiving income thereof. O.T.'s will is silent in regards to his intent as testator, as to the distribution of his trust under circumstances where Bruce and Robert died without issue. O.T. left his Lake Springfield home and personal effects to Catherine.

¶ 15 In July 1967, the same date O.T. executed his codicil, O.T. and Beulah entered into an ante-nuptial agreement in which Beulah "agreed to accept the sum of $750 per month during her natural life in consideration of forfeiting any rights or interests of any nature that she might acquire on account of [her marriage to O.T.]."

¶ 16 O.T.'s trust corpus and accumulated net income since Robert's death totaled $1.6 million.

¶ 17 C. Beulah's Settlement and Release

¶ 18 Following O.T.'s death, Beulah retained counsel to engage in settlement discussions with the executors of O.T.'s estate in lieu of renouncing O.T.'s will, which if successful would have "entitled her by statute to one-half of [O.T.'s] estate." In discussing a settlement, Beulah's counsel set forth issues relating to (1) O.T.'s purported representations to Beulah that he wanted to leave Beulah their Lake Springfield residence and his airplane, and would increase the $750 monthly annuity; (2) the validity of the ante-nuptial agreement; and (3) the full value of O.T.'s estate, which "may be over $800,000," a figure that was "higher than the figure used in the [ante-nuptial] agreement."

¶ 19 On April 10, 1969, Beulah settled with O.T.'s executors and estate for a lump sum cash payment of $50,000, plus the lifetime annuity, with O.T.'s executors to prepare a corresponding petition to the court and a release for Beulah's signature. O.T.'s executors agreed to file a joint tax return with all taxes paid from the estate.

¶ 20 On April 16, 1969, O.T.'s executors petitioned the Sangamon County probate court to compromise the disputed claim between Beulah and O.T.'s estate. The executors informed the court that the parties reached a settlement of Beulah's claims against O.T.'s estate for the sum of $50,000, with the lifetime annuity to remain in effect during Beulah's natural life. The executors asked the court to authorize the settlement of Beulah's claims "for the sum of $50,000, as settlement in full of any and all claims which the said [Beulah] may have had, now has, or hereafter may have against the Estate of O.T. Metz, Deceased." The attorney and one of the executors of O.T.'s estate, George B. Gillespie signed an affidavit verifying the petition.

¶ 21 On April 16, 1969, the probate court entered its order approving the parties' settlement (Sangamon County Probate Division case No. 68-P-530). The order states in relevant part:

> "NOW, THEREFORE, IT IS ORDERD, ADJUDGED AND DECREED THAT:
>
> 1. The Executors of the aforesaid Estate shall forthwith pay to [Beulah], the sum of $50,000 *** upon execution of a Release by [Beulah] of any and all claims against the Estate of O.T. Metz, in full.
>
> 2. It is further ordered that the annuity payable to [Beulah], in the sum of $750.00 per month remain in full force and effect during her natural life.
>
> 3. It is ordered that [Beulah] is forever barred from asserting any claims against the foregoing Estate, its executors, or beneficiaries, arising out of the foregoing Estate or any interest therein."

¶ 22 With the settlement approved by the court, Beulah signed a "Release" on April 18, 1969, in which she acknowledged her acceptance of $50,000 in lieu of renouncing O.T.'s will. The Release, filed August 7, 1969, stated in pertinent part:

> "WHEREAS, the Undersigned, [Beulah], the widow of [O.T.], Deceased, is willing to accept the sum of [$50,000] in lieu of renouncing the Last Will and Testament of [O.T.], and in satisfaction of any and all claims or demands against [O.T.] in his

lifetime or against the Executors of his Estate since his death, after full and complete knowledge and opportunity of knowledge concerning all of the facts arising out of any rights or claims that [Beulah] might have after consulting with her attorneys.

NOW, THEREFORE, and in consideration of the payment to [Beulah] of the sum of $50,000, the receipt of which is hereby acknowledged, [Beulah] does hereby remise, release, acquit and forever discharge the Executors and the Estate of O.T. Metz, deceased *** from any and every claim ***, legal or equitable, arising out of or connected with the administration of the Estate of [O.T.] or [O.T.'s Will], or any of the devises and legacies made under [O.T.'s Will].

Specifically, but not by way of limitation, [Beulah] hereby releases and forever agrees not to renounce [O.T.'s Will] and hereby ratifies and approves and accepts all that has been done or caused to be done by the Executors of [O.T.'s] Estate, and releases and conveys to [O.T.'s Estate] all of her interest in the Estate *** of whatever name or nature of the same may be and wherever so situated, except for the lifetime annuity *** in the sum of $750 per month, which shall remain in full force and effect during [Beulah's lifetime].

* * *

[Beulah] hereby ratifies the Ante-Nuptial Agreement heretofore entered into between [Beulah] and O.T. Metz."

¶ 23 D. Trial Court Proceedings

¶ 24 In July 2015, PNC Bank, as trustee of Edith's trust and O.T.'s trust, filed a "Petition for Instructions, Approval of Accounts and Other Relief." Here, we consider the construction of Edith's trust (count I) and the construction of O.T.'s trust (count II). While PNC's petition did not name any parties, they served numerous interested parties with process and those parties entered their appearances.

¶ 25 Ultimately, the trial court granted several motions for judgment on the pleadings, in part, and incorporated that ruling into a final order resolving counts I and II of PNC's petition by construing Edith's trust and O.T.'s trust.

¶ 26 E. Trial Court's Final Order

¶ 27 The trial court found that Edith's trust failed upon Robert's death without issue prior to the conclusion of the 21-year period. The court also found O.T.'s trust failed upon Robert's death without issue. Thus, the court determined that "the intent of the testators is irrelevant, and the property shall be distributed according to the rules of intestacy in effect at the time that the trusts were created." The court relied on *Johnston v. Cosby*, 374 Ill. 407, 411, 29 N.E.2d 608, 610 (1940) and *Glaser v. Chicago Title and Trust Co.*, 393 Ill. 447, 459-60, 66 N.E.2d 410, 416 (1946), to find "the heirs-at-law who shall receive the distributions of the undisposed assets remaining in each trust to be those heirs of each testator that were alive at the time of death of each testator respectively, as opposed to the heirs who were alive at the time each of the trusts failed."

¶ 28 The trial court initially stated Adele may have an interest in these legal proceedings as a potential heir through Beulah, O.T.'s sole heir at the time of his death. However, the court found Beulah's settlement and release of all claims against O.T.'s estate prevented Adele from asserting any valid claim to inherit from O.T. or being an heir at law of O.T. or Edith. Specifically, the court found "[Adele] is excluded by waiver from receiving any corpus of either trust because she is prohibited, or her mother was prohibited, from asserting a claim against the estate of O.T. Metz." The court found both releases by Beulah and CIIS "to be effectual." CIIS is not a party to this appeal.

¶ 29 Ultimately, the court determined, "When this intestate property flows, it flows to Catherine and O.T. from Edith's trust or Edith's estate, ultimately all ending in Catherine Ann Mazet's estate because Beulah's waiver against claiming anything from O.T. is valid. Everything shifts to Catherine at that point. Then Bruce's [estate's] waiver and release is valid. Thus, all of this undisposed property in the eyes of this Court flows through to the estate of Robert Mazet."

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 On appeal, Adele argues (1) she had standing to challenge Beulah's settlement and release with O.T.'s estate as Beulah's sole heir, (2) Beulah's settlement and release with the executors of O.T.'s estate did not preclude her from receiving part of Edith's estate or O.T.'s estate as the sole heir of Beulah through intestate succession, and (3) Edith's trust agreement showed her intent to distribute the corpus of the trust to the heirs of her children, O.T. and Catherine, in the event a failure of issue occurred whereby she no longer had any living descendants. We address these issues below.

¶ 33 A. Standard of Review

¶ 34 In cases involving cross-motions for summary judgment and cross-motions for judgment on the pleadings, as here, the parties agree no factual issues exist and disposition of the case turns only on resolution of purely legal issues. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 432, 930 N.E.2d 999, 1003 (2010) (citing *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 285, 917 N.E.2d 899, 911 (2009)); *Area Erectors, Inc., v. Travelers Property Casualty Co. of America,* 2012 IL App (1st) 111764, ¶ 19, 981 N.E.2d 1120. Standing is also a question of law. *Sierra Club v. Illinois Pollution Control Board*, 2011 IL 110882, ¶ 8, 957 N.E.2d 888. Accordingly, our review is *de novo*. See *Founders Insurance Co.*, 237 Ill. 2d at 432; *Area Erectors, Inc.*, 2012 IL App (1st) 111764, ¶ 19; *Sierra Club*, 2011 IL 110882, ¶ 8. Having established the standard of review, we turn first to the question of standing.

¶ 35 B. Standing

¶ 36 Conservators of Arizona initially contends Adele lacks standing to challenge Beulah's settlement and release with O.T.'s estate where she was not a third party beneficiary. Adele disagrees and argues she has standing as Beulah's daughter and sole heir. We agree with Adele.

¶ 37 "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing a lawsuit." *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1028, 929 N.E.2d 1167, 1187 (2010). Standing requires an actual or threatened injury in fact to a legally cognizable interest. *Id.* Such an injury "must be: (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Id.* " 'The doctrine of standing requires that a party, either in an individual or representative capacity, have a real interest in the action brought

and in its outcome.' " *O'Halloran v. Luce*, 2013 IL App (1st) 113735, ¶ 22, 988 N.E.2d 156 (quoting *In re Estate of Wellman*, 174 Ill. 2d 335, 344, 673 N.E.2d 272, 276 (1996)).

¶ 38 The trial court in its final order stated that "[Adele] was at least entitled to conduct an investigation into the legal proceedings *** based upon the unique status of her relationship *** as a potential heir" of O.T. through her mother Beulah. We agree with the trial court and find under the unique circumstances that Adele, as Beulah's sole heir, had standing to challenge Beulah's settlement and release with O.T.'s estate.

¶ 39 C. Intestate Succession

¶ 40 The trial court, in its final order, concluded that both Edith's trust and O.T.'s trust failed. Therefore, the court determined the property "shall be distributed according to the rules of intestacy in effect at the time the trusts were created." See *Johnston*, 374 Ill. at 411; *Glaser*, 393 Ill. at 459-60. Specifically, the court found "the heirs-at-law who shall receive the distributions of the undisposed assets" through intestate succession were "those heirs of each testator who were alive at the time of death of each testator[.]" We agree with the trial court's findings.

¶ 41 The Illinois rules of descent and distribution under the Probate Act of 1975 (755 ILCS 5/2-1 (West 2014)) are virtually identical to those in effect on O.T.'s death in 1968. The Illinois rules of descent and distribution governed whether Adele could receive part of Edith's estate and O.T.'s estate as the sole heir of Beulah. However, Beulah released all of her rights in and to O.T.'s estate. Therefore, the trial court treated Beulah as having predeceased O.T. Accordingly, the undisposed assets of both Edith's trust and O.T.'s trust passed to Catherine, the sole heir of Edith and O.T.

¶ 42 Catherine died intestate as to the residue of her estate in Arizona. According to Arizona's rules of intestate descent and distribution (A.R.S. § 14-2103), Catherine's intestate estate passed to her descendents by representation, specifically her sons, Bruce and Robert. When Bruce died in 2003, CIIS, the beneficiary under Bruce's will, entered into a settlement releasing its interest in Catherine's estate. The trial court, in its final order, found CIIS's settlement released its interest in and to Catherine's estate. As a result, the undisposed property of Edith's trust and O.T.'s trust passed to Robert and subsequently to his estate.

¶ 43 Adele argues Edith's trust agreement showed her intent to distribute the corpus of her trust to the heirs of her children in the event a failure of issue occurred whereby she no longer had any living descendants and thus she should receive part of Edith's estate and O.T.'s estate as the sole heir of Beulah. We find the trial court properly concluded, "Upon determining that the two trusts in this case failed in their respective schemes to distribute all of the income and assets of their trusts, the intentions of the trust creators became irrelevant throughout the remainder of the analysis regarding descent and distribution." Adele's intent argument became irrelevant once the undisposed property passed by intestate succession.

¶ 44 We must determine whether Beulah's settlement and release of O.T.'s estate excluded Adele by waiver from being an heir at law of O.T. or Edith, thus preventing Adele from receiving the corpus of either Edith's trust or O.T.'s trust.

¶ 45 D. Beulah's Settlement and Release

¶ 46 Adele argues Beulah's settlement agreement and release were not sufficiently clear and unambiguous to include a waiver of her rights to inherit property passed by intestate succession. Conservators of Arizona disagrees and argues that through the settlement agreement and the release Beulah intended to waive her rights to O.T.'s estate. We look to the language in

the documents themselves to determine whether Beulah intended to release and convey to O.T.'s estate all of her interest.

¶ 47 Based on the plain language of the documents, Beulah, rather than renounce O.T.'s will, agreed to settle with O.T.'s executors and estate for $50,000, in addition to keeping the lifetime annuity. Beulah then signed a release that extended to any and all property in O.T.'s estate, whether or not such property would have passed under his will and testamentary trust. "[Beulah] does hereby remise, release, acquit and forever discharge the Executors and the Estate of O.T. Metz, deceased *** from any and every claim ***, legal or equitable, arising out of or connected with the administration of the Estate of [O.T.][.]"

¶ 48 Beulah released "all claims" she had or ought to have had against O.T. or his estate. She released her claims after "full and complete knowledge and opportunity of knowledge concerning all of the facts arising out of any rights or claims that [Beulah] might have after consulting with her attorneys." Furthermore, she released and conveyed to O.T.'s estate "all of her interest" in O.T.'s estate "of whatever name or nature of the same may be and wherever so situated."

¶ 49 Adele argues the settlement and release did not alter Beulah's status as O.T.'s sole heir where no language in the settlement agreement or release barred Beulah from receiving an inheritance by intestate succession. See *Christy v. Marmon*, 163 Ill. 225, 231, 45 N.E. 150, 152 (1896) ("There is no language in the agreement which recites that the provisions therein made are to be in satisfaction of her inheritance as heir."). This case is distinguishable from *Christy*. *Christy* involves the interpretation of only an ante-nuptial agreement, not also a settlement and release. *Id.* at 230. The ante-nuptial agreement reserved certain real property to the deceased husband, giving his widow full use and control of the property during her widowhood and as an

annual dower. *Id.* at 227. The court found the ante-nuptial agreement defined the extent of the widow's dower from what she otherwise would have taken but did not bar her inheritance as an heir of her husband because the agreement failed to have language stating that it was in satisfaction of her inheritance. *Id.* at 231.

¶ 50 Here, while Beulah entered into an ante-nuptial agreement prior to her marriage to O.T., where she forfeited any rights she may have obtained by marriage, she also negotiated and executed a separate release of any expectancy she might have to inherit from O.T. after his death. Through her release, Beulah accepted a lump sum payment of $50,000, along with the lifetime annuity, in exchange for "all of her interest" in O.T.'s estate "of whatever name or nature of the same may be and wherever so situated." Beulah through her release ratified the ante-nuptial agreement she entered into with O.T.

¶ 51 "[A] prospective heir may release his expectancy to his ancestor[,]" resulting in the extinguishment of the heir's right to take any estate by descent. *Williams v. Swango*, 365 Ill. 549, 553, 7 N.E.2d 306, 308 (1937). To do so, an heir can release his inheritance by an instrument that is clear and unambiguous. *Id.* at 555.

¶ 52 No language in Beulah's release limited her relinquishment of her interest in O.T.'s estate to only the property he owned at the time of his death. Beulah released all expectancy interest to O.T.'s estate, after consulting her attorneys, resulting in an extinguishment of her expectancy interest, whereby Beulah is treated as having predeceased O.T. for all purposes of inheritance. Beulah even went a step further by conveying to O.T.'s estate "all of her interest in [O.T.'s estate] of whatever name or nature of the same may be and wherever so situated," except for her lifetime annuity. We find the language in Beulah's settlement agreement and

release clear and unambiguous where she released and conveyed to O.T.'s estate all of her interest in his estate, including her interest as O.T.'s heir at law.

¶ 53 Furthermore, the Sangamon County probate court's order approving Beulah's settlement agreement and ratifying Beulah's release barred Adele, as Beulah's sole heir, from inheriting O.T.'s undisposed property by intestate succession. The court authorized the settlement of Beulah's claims "for the sum of $50,000, [along with the lifetime annuity payment,] as settlement in full of any and all claims which the said [Beulah] may have had, now has, or hereafter may have against the Estate of O.T. Metz, Deceased." Ultimately, the court ordered that Beulah "is forever barred from asserting any claims against the foregoing Estate, its executors, or beneficiaries, arising out of the foregoing Estate or any interest therein."

¶ 54 " 'Illinois public policy generally favors the peaceful and voluntary resolution of disputes.' " *Cameron v. Bogusz*, 305 Ill. App. 3d 267, 272, 711 N.E.2d 1194, 1197 (1999) (quoting *Haisma v. Edgar*, 218 Ill. App. 3d 78, 86, 578 N.E.2d 163, 168 (1991)). "There is a presumption of validity when a settlement is entered into, absent mistake or fraud, and the settlement is conclusive on the parties thereto as to all matters included therein." *Haisma*, 218 Ill. App. 3d at 86. However, "In the event of a mutual mistake of fact as to a material matter affecting the substance of the transaction an agreement may be rescinded." *Cameron*, 305 Ill. App. 3d at 272.

¶ 55 Adele alleges the court-approved settlement should be set aside because it was based on a mutual mistake of fact. We analyze Adele's allegation below.

¶ 56 E. Mutual Mistake of Fact

¶ 57 In order to set aside the court-approved settlement, Adele must prove "by clear and convincing evidence that a mistake has been made by both parties relating to a material

feature of the contract." *Village of Oak Park v. Schwerdtner*, 288 Ill. App. 3d 716, 718, 681 N.E.2d 586, 588 (1997). "The party asserting mutual mistake must show that both parties were mistaken as to a material matter at the time of the execution of the instrument." *Cameron*, 305 Ill. App. 3d at 272. "[T]he mistake must be of fact and not of law, mutual and common to both parties, and in existence at the time of the execution of the instrument, showing that at such time the parties intended to say a certain thing but mistakenly expressed another." *Spies v. De Mayo*, 396 Ill. 255, 272, 72 N.E.2d 316, 324 (1947).

¶ 58 Adele alleges the mutual mistake here is that both parties to the settlement agreement believed O.T.'s estate was worth about $850,000, whereas it is actually worth about $4 million. Adele further alleges the failure of Edith's trust and O.T's trust, which resulted in the undisposed property passing intestate, was not something contemplated by the parties in 1969. In support, Adele cites *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 518, 585 N.E.2d 207, 213 (1992), where the court vacated a marital settlement agreement because the parties failed to anticipate the tax consequences of a lump-sum distribution of the husband's pension. Adele alleges Beulah's settlement must be set aside because the parties failed to anticipate a huge increase in the value of O.T.'s estate. We do not find a mutual mistake of fact occurred at the time the parties executed the settlement agreement and Beulah signed the release.

¶ 59 In 1969, when the parties executed the settlement agreement and Beulah signed the release, both parties agreed the approximate value of O.T.'s estate to be over $800,000. The Inheritance Tax Appraisement shows O.T.'s gross value of "Property transferred by Will or intestate law" as $848,625.89, with a net value of $628,541.89. The tax valuation included the lump-sum payment of $50,000 and the lifetime annuity valued at $61,334.10.

¶ 60 Adele fails to show by clear and convincing evidence that a mutual mistake of fact occurred that resulted in the settlement agreement being invalid. At the time Beulah and O.T.'s executors negotiated the settlement agreement, both parties agreed O.T.'s estate was worth around $800,000, and that is exactly what the parties executed the settlement based on. In 1969, O.T.'s estate was worth around $800,000, not $4 million. Beulah executed her verified release based on O.T.'s estate being worth $800,000, stating, "after full and complete knowledge and opportunity of knowledge concerning all of the facts arising out of any rights or claims that [Beulah] might have after consulting with her attorneys." Therefore, a mutual mistake of fact did not occur where the parties failed to foresee that both Edith's trust and O.T.'s trust would fail, leaving the corpus of the trusts to flow intestate. We find no mutual mistake of fact occurred.

¶ 61 We agree with the trial court's findings and conclude that Beulah's settlement and release of all claims against O.T.'s estate excluded Adele by waiver from receiving the undisposed assets of Edith's estate and O.T.'s estate as the sole heir of Beulah under intestate succession.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, we affirm the trial court's judgment.

¶ 64 Affirmed.