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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ESTATE OF LILLIAN N. MISTRATA,)	Appeal from the Circuit Court
Deceased (Carol Mahfouz, Petitioner-)	of Du Page County.
Appellant v. Diane Dolin, Respondent-)	
Appellee).)	No. 08—P—873
)	
)	Honorable
)	Thomas C. Dudgeon,
)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in holding as a matter of law that a quitclaim deed failed to convey property out of trust estate where the deed was signed in individual name rather than in trustee capacity.

Petitioner, Carol Mahfouz, appeals the trial court order denying her petition to quiet title of property in Bloomingdale and finding that the subject property was controlled by and subject to distribution per the terms of the Lillian N. Mistrata Revocable Declaration of Trust dated September 12, 1995. Carol argues that the trial court erred in denying her petition to quiet title by: (1) finding the quitclaim deed was ineffective in conveying title out of trust to Carol; and (2) disregarding the intent of the decedent. We affirm.

I. BACKGROUND

Lillian died on March 31, 2008, at the age of 88, leaving behind a home in Bloomingdale and two surviving daughters: Carol Mahfouz and Diane Dolin. The home in Bloomingdale was purchased by Lillian and her husband, Joseph Mistrata, on November 9, 1970, in joint tenancy. In 1995, Lillian established her 1995 Revocable Trust, dated September 12, 1995, which took title to the couple's home, stocks, and bank accounts. On September 12, 1995, Joseph executed an assignment to all his interests in furniture, furnishings, and personal effects to “Lillian N. Mistrata, as trustee under the Lillian N. Mistrata 1995 Revocable Declaration of Trust dated September 12, 1995.” Also on that date, Joseph and Lillian conveyed title of the Bloomingdale property to “Lillian N. Mistrata, as trustee under the Lillian N. Mistrata 1995 Revocable Declaration of Trust dated September 12, 1995.”

The trust contained the following relevant provisions. The trust was to hold the property described in Schedule A, which included the home, stocks, and bank accounts. The first provision stated:

“As long as I am acting as trustee, I will have the power to withdraw any part or all of the net income and principal of the trust. Any net income not withdrawn shall be added to principal from time to time.”

Upon Lillian's resignation, death, or incapacitation, Diane and Lillian's sister, Loretta Bellavia, were named successor trustees. Per section 4A of the trust, upon the last to die of Joseph and Lillian, the trustee was to divide and distribute the trust *res* as followed:

“50% to my daughter, DIANE DOLIN, if she survives me, otherwise per stirpes to her descendants then living.

50% to a separate trust for the benefit of my daughter, CAROL MISTRATA a/k/a Carol Mahfouz, if she survives me, otherwise to my daughter, DIANE DOLIN, if she survives me, otherwise per stirpes to DIANE DOLIN's descendants then living. The trustee shall pay CAROL MISTRATA a/k/a Carol Mahfouz, all the net income of the trust in convenient installments at least as often as quarter-annually. The trustees may in their discretion pay to CAROL MISTRATA a/k/a Carol Mahfouz, or use for her benefit, so much or all of the principal of her trust as the trustees from time to time determine to be required or desirable for her support, comfort, companionship, enjoyment, and medical care, taking into consideration other resources known to the trustees.”

Section 4B of the trust provided:

“If any beneficiary under this trust, or any trust created hereunder, in any manner, directly or indirectly, contests or attacks this trust or any of its provisions, any share or interest in the trust to be distributed upon my death to the contesting beneficiary under this trust is revoked and shall be disposed of in the same manner as if that contesting beneficiary had failed to survive me and left no surviving children.”

Section 6 of the trust outlined the powers of the trustee, providing that:

“the trustee shall have the following powers with respect to each trust, exercisable in the trustee's discretion:

* * *

B. To sell at public or private sale, contract to sell, grant options to buy, convey, transfer, exchange, partition, dedicate, lease, or grant easements for a term within or

extending beyond the term of the trust, repair, improve, remodel, demolish, or abandon any real or personal property;

* * *

G. To cause any security or other property to be held in the name of the trustee personally or in the name of a nominee;

* * *

Q. To do all other acts to accomplish the proper management, investment, and distribution of the trust.”

Section 9 of the trust stated, “I reserve the right from time to time during my life, by written instrument delivered to the trustee, to amend or revoke this agreement.” The agreement was signed by Lillian N. Mistrata, dated September 12, 1995, and witnessed by two persons. Joseph died sometime in 1999.

On September 19, 2001, Lillian executed a quitclaim deed, which provided “The Grantor, Lillian N. Mistrata” conveyed title of the Bloomingdale property to Carol. Lillian signed her name as “Lillian Mistrata.” On March 19, 2002, Carol executed a quitclaim deed conveying title back to Lillian so that a correction could be made to the legal description of the property. On July 19, 2003, Lillian executed another quitclaim deed conveying title from “grantor, Lillian Mistrata” to “Carol E. Mahfouz and Lillian Mistrata.”

On March 22, 2002, Lillian executed her “Last Will and Testament.” Article I of the will provided that Lillian was a widow with the following surviving relatives: daughters Carol and Diane; grandchildren Richard W. Mahfouz, Lisa Dolin, Tammy Foster, and Donald Dolin; and great-grandchild Jessica Foster. Article III provided that any interest Lillian had in her homestead shall

be distributed to Carol. Article IV provided that all personal property shall be distributed to Carol.

Article V stated:

“Specific Distributions And Exclusion from Beneficiary Status

I give to my daughter, DIANE, ONE DOLLAR (\$1.00); to my granddaughter, LISA, ONE DOLLAR (\$1.00); to my granddaughter, TAMMY, ONE DOLLAR (\$1.00); and to my grandson, DONALD, ONE DOLLAR (\$1.00).

My daughter, DIANE, my granddaughters, LISA and TAMMY, and my grandson, DONALD are otherwise excluded from beneficiary status. I may exclude any persons for any reason whatsoever, whether or not such excluded person or other persons believe the exclusion is justified. My present belief is that I am excluding said persons whom I have financially benefited [*sic*] at an earlier time or in some other manner, and I am excluding said persons whose lifestyle does not meet my standard of appropriate behavior. I have not lightly excluded any person who falls within the category of beneficiaries but have done so thoughtfully and deliberately.”

Carol was named executor of Lillian's estate with grandson, Richard Mahfouz as successor executor. The will was signed by Lillian Mistrata, witnessed, and dated March 22, 2002.

On September 12, 2008, Diane filed a petition contesting the validity of Lillian's will. Count I alleged that Carol exerted undue influence over Lillian by isolating Lillian from Diane and other relatives from 2001 until her death. Because of Lillian's advancing age, deteriorating eyesight, and physical weakness, she relied upon Carol for her personal needs. Diane attempted to call and visit Lillian over the course of years but Carol disconnected the phone and refused entry. Count II alleged presumption of undue influence by the fact that Carol had complete control over Lillian's affairs and

was named sole beneficiary of documents executed during the time of her control. Count III alleged that Lillian's trust was never revoked, and therefore the will was invalid.

On February 17, 2009, Carol filed a petition to quiet title, attached to which was a chain of title by Attorneys' Title Guaranty Fund, Inc. The chain of title provided the following history of title of the Bloomingdale home. A warranty deed dated November 9, 1970, and recorded November 25, 1970, was executed by Frank and Eleanor Steinke and given to Joseph and Lillian N. Mistrata. A deed dated September 12, 1995, and recorded on October 13, 1995, was executed by Joseph and Lillian N. Mistrata and given to Lillian N. Mistrata as Trustee of the Lillian N. Mistrata 1995 Revocable Declaration of Trust dated September 12, 1995. A quitclaim deed dated September 19, 2001, and recorded September 25, 2001, was executed by Lillian N. Mistrata and given to Carol E. Mahfouz. A second quitclaim deed dated March 19, 2002, and recorded on March 19, 2002, was executed by Carol E. Mahfouz and given to Lillian N. Mistrata. A third quitclaim deed dated July 9, 2003, and recorded July 9, 2003, was executed by Lillian Mistrata and given to Carol E. Mahfouz and Lillian Mistrata. That July 9, 2003, quitclaim deed was re-recorded on April 29, 2008.

According to Carol, the chain of title conclusively establishes that she was the titleholder to the Bloomingdale property. Diane responded to Carol's petition by arguing that the quitclaim deeds did not convey title to the property because Lillian did not convey the property as trustee. Carol replied, arguing that in a conventional living trust, the trustee holds legal title and the beneficial owner holds the equitable title. Because Lillian was both the trustee and the beneficial owner, she was allowed to convey title by quitclaim deed, citing section 10 of the Conveyances Act (765 ILCS 5/10 (West 2008)). According to Carol, based on the facts and documents, Lillian intended to convey the property to her.

The matters proceeded to trial on September 28, 2009. At the start of trial, the parties stipulated that there were no disputed issues of fact regarding the quitclaim deeds and that the only question before the court was the legal effect of the deeds. The series of deeds were read into evidence and submitted by exhibit as stipulated facts. In other words, the court was to determine whether that property was ever effectively deeded out of the trust. Carol argued that Lillian could convey her equitable rights via quitclaim deed as no case law or statute barred such a conveyance. According to Carol, legal and equitable title merged at that point. Further, execution of the will established that Lillian intended for Carol to have the property. After the parties made their arguments pertaining to Carol's petition to quiet title and the effect of the quitclaim deeds, the trial court denied Carol's petition. The court determined that when Lillian created the trust, she divested herself of legal title to the property and thus had no title to convey through the quitclaim deed. The court rejected Carol's argument that the documents established that it was Lillian's intent for her to have the property. The court held that if it was Lillian's intent to convey the property out of the trust, she would have signed as trustee or otherwise conveyed the property in a manner that complied with the trust. Because Lillian did not act in the capacity of trustee, the court determined that the property was not conveyed out of the trust. Accordingly, the trust still held the property, and its distribution was subject to the terms of the trust.

Before proceeding to the issues regarding the will, the court clarified that it ruled, as a matter of law, that the quitclaim deeds failed to transfer the property out of trust and that the sole issue remaining before the court was the will contest. Its ruling on the will contest would not affect its ruling on the quitclaim deeds. The court went on to listen to the testimony of several witnesses. On October 1, 2009, the court ruled that Diane did not prove by clear and convincing evidence that Carol

exerted undue influence such that Lillian's will was invalid. Therefore, the court denied counts I and II of Diane's petition to contest the will and found count III moot based on the court's decision finding the quitclaim deed to be ineffective in transferring the property out of the trust.

On October 26, 2009, Carol moved for reconsideration, arguing that the court erred in not taking into account the evidence adduced in the will contest trial. After a series of continuances, on March 4, 2010, the trial court denied Carol's motion for reconsideration of the court's decision on the petition to quiet title. Carol timely appealed.

II. ANALYSIS

A. Effectiveness of Quitclaim Deeds

Carol first argues that the trial court erred in finding that the quitclaim deed did not effectively convey the property out of the trust. She argues that the trial court failed to recognize the distinction between an Illinois land trust and a revocable common law trust and failed to recognize that because Lillian was both the grantor and trustee of the trust, she could convey the trust property to Carol through a quitclaim deed. She also argues that the trial court ignored that such a transaction was authorized by the Conveyances Act (765 ILCS 5/10 (West 2008)). Construction of a deed normally involves a question of law (*Diaz v. Home Fed. Sav. and Loans Ass'n of Elgin*, 337 Ill. App. 3d 722, 725 (2002)), which we review *de novo* (*Vancura v. Katris*, 238 Ill. 2d 352, 374 (2010)).

At the outset, the parties dispute whether Lillian's trust was a land trust or a common law trust. We find that the trust in this case was not a land trust. In a typical land trust, the trustee holds title to the property and the beneficiary is given full management powers. *In re Kress Road Partnership*, 134 Bankr. N.D.Ill. 292, 297 (1991). The trustee deals with the property only upon the written direction of the beneficiaries; the beneficiaries exercise all rights of ownership other than

holding or dealing with the legal title. *Id.* The Illinois land trust differs from common law land trust in that a common law land trust creates a split between the legal title in the trustee and the equitable title in the beneficiary whereas the Illinois land trust places both the legal and equitable title in the trustee. *IMM Acceptance Corp. v. First National Bank & Trust Co. of Evanston*, 148 Ill. App. 3d 949, 954 (1986). “By placing with the trustee the full, complete, and exclusive title to the real estate, both legal and equitable, the beneficiary's interest in the [land] trust is said to be personal property and not a direct interest in the real estate *res* of the trust.” *Id.*

At common law, an express trust requires: “(1) the intent of the parties to create a trust either by a declaration of a trust by the settlor or by circumstances which show that the settlor intended to create a trust; (2) a definite subject matter or trust property; (3) ascertainable beneficiaries; (4) a trustee; (5) specifications of a trust purpose and how the trust is to be performed; and (6) delivery of the trust property to the trustee.” *Kurtz v. Solomon*, 275 Ill App. 3d 643, 649 (1995). Although the trust settlor may declare a trust over personal property and make herself the trustee and act as such for the beneficiaries, there must be a complete separation and transfer of the legal interests from the beneficial interests. *In re Estate of Gabbett*, 352 Ill. App. 3d 900, 904-05 (2004).

The terms of Lillian's trust do not correspond with the characteristics of an Illinois land trust. The terms of Lillian's trust provide that the trustee retained the power to buy, sell, and otherwise manage the trust *res*, and not the beneficiaries, which included herself and Joseph. Contemporaneously with the execution of the trust, Lillian and Joseph transferred legal title to the property from their joint name to the name of the trust. Thus, the trust held legal title to the property,

and Lillian and Joseph held equitable title as the beneficiaries. With these terms, Lillian's trust constituted an express, revocable living trust.

The question then is whether Lillian, as settlor, trustee, and beneficiary of her revocable, living trust could convey property out of the trust by signing a quitclaim deed in individual name rather than in trustee capacity. As Carol argues in her brief, section 10 of the Conveyances Act provides that quitclaim deeds are a valid tool to convey property:

“Every deed in substance in the form described in this Section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quit claim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor, in the premises therein described, but shall not extend to after acquired title unless words are added expressing such intention.” 765 ILCS 5/10 (West 2008).

To determine what rights were conveyed through the quitclaim deed, we must consider what legal and equitable rights the grantor possessed at the time of the conveyance. As stated, common law trusts create a split between the legal title in the trustee and the equitable title in the beneficiary. *IMM Acceptance*, 148 Ill. App. 3d at 955. Lillian as trustee possessed legal title to the property, and Lillian in her individual capacity owned equitable title as the beneficiary of the trust. Thus, Lillian could only convey equitable title to the property at the time she executed the quitclaim deed; legal title remained in the trust because per the trust terms, only the trustee had the power to sell or convey trust property. Equitable title is defined as “a title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title.” *Black's Law Dictionary* 1493 (7th Ed.1999). A beneficial interest is defined as a “right or expectancy in something (such as a trust or

an estate), as opposed to the legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property.” *Black's Law Dictionary* 149 (7th Ed. 1999).

The interest Carol received in the trust property was the same as Lillian, as beneficiary, owned—the right to receive income and benefits from the trust property. Lillian's beneficial interests in the property ended upon her death. Upon the last to die of Lillian and Joseph, the trust property was to be distributed according to the trust terms. While Lillian was alive, she, as the trustee, had the power to sell, convey, acquire, and otherwise manage trust properties for the benefit of herself and Joseph during his lifetime. Carol could have acquired legal title in the same manner that Lillian could have reacquired legal title, which was through the trustee. The trustee, in this case Lillian, never conveyed legal title of the property back to herself or to anyone else. Thus, the trust property was still to be handled according to the terms of the trust, and Carol's beneficial interest ended when Lillian's beneficial interest ended: upon Lillian's death. The trust would then be distributed according to the trust terms. Carol seems to argue that legal and equitable title are one in the same because Lillian was both trustee and beneficiary of the trust at the time the quitclaim deed was executed. We disagree based on the foregoing analysis that in a common law trust, legal title is held by the trustee and equitable title is held by the beneficiary. While in this case, Lillian was also the trustee and *could* have conveyed legal title to the property, the deed does not indicate that she did convey title from the trust.

As an aside, Diane argues that Carol was not entitled to any interest in the home because she revoked her interest as a trust beneficiary when she attacked the trust. Diane points to section 4B of the trust, which stated:

“If any beneficiary under this trust, or any trust created hereunder, in any manner, directly or indirectly, contests or attacks this trust or any of its provisions, any share or interest in the trust to be distributed upon my death to the contesting beneficiary under this trust is revoked and shall be disposed of in the same manner as if that contesting beneficiary had failed to survive me and left no surviving children.”

Carol, however, did not attack the trust, but rather filed a petition to quiet title based upon her belief that Lillian had successfully transferred the home out of trust and into Carol's name. Therefore, we reject Diane's argument on this point.

B. Grantor's Intent

Carol's second argument focuses on Lillian's intent to convey the property out of trust, demonstrated by Lillian's execution of the quitclaim deed and execution of her will. While the construction of a deed is typically a legal issue, reviewed *de novo*, if an ambiguity exists, requiring admission of extrinsic evidence to ascertain the intent of the parties, a question of fact is presented. *Diaz*, 337 Ill. App. 3d at 725. Factual questions are reviewed using the manifest weight of the evidence standard. *Id.* We note that the parties stipulated that the only issue for the trial court to decide was the legal issue of whether the deed, on its face, effectively transferred the property out of the trust. The parties stipulated that there were no factual issues in dispute. The issue of whether Lillian intended to terminate her trust or otherwise convey the property out of trust was presented

to the trial court by argument, through the mentioning of Lillian's subsequent execution of her will, which left her “homestead” to Carol. However, arguments are not evidence and the will itself was not submitted into evidence. The trial court considered only the deeds, the chain of title, and the trust to determine the legal issue that the parties stipulated was the only issue before the court. While the trial court mentioned that it rejected Carol's argument that Lillian intended to convey the property out of the trust, the trial court did not make any specific factual findings. Rather, it considered only the documents (deeds, chain of title, and trust) in evidence and the stipulated facts read into evidence, which merely restated the information contained in the deeds. Thus, the parties forfeited the factual issue of intent by stipulating that the legal issue was the only issue before the trial court and failing to present any evidence regarding intent during the petition to quiet title. To the extent the parties attempt to raise on appeal the factual issue regarding the effect the will had on Lillian's intent as quitclaim grantor, we deem the issue forfeited. *In re Estate of Savio*, 388 Ill. App. 3d 242, 250 (2009) (issues not presented in the trial court are forfeited).

Accordingly, we agree with the trial court that the property was never effectively conveyed out of the trust and now must be distributed per the terms of the trust.

III. CONCLUSION

For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

Affirmed.