2015 IL App (5th) 130239-U

NO. 5-13-0239

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ESTATE OF MARK W. SMEDLEY, Deceased	)	Appeal from the Circuit Court of Christian County.
(Mark W. Smedley, Appellee,	)	
v.	)	No. 05-P-78
Harold Smedley, an Interested Person, Appellant).	)	Honorable Bradley T. Paisley, Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Stewart and Moore* concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred in construing certain provisions of decedent's will, thereby necessitating reversal in part.

¶ 2 This appeal is brought from a final judgment of the circuit court of Christian County construing the last will and testament of Mark W. Smedley, decedent. At issue is

*Justice Spomer was originally assigned to participate in this case. Justice Moore was substituted on the panel subsequent to Justice Spomer's retirement and has read the briefs and listened to the tape of oral argument.

the construction of certain provisions of decedent's will and the disposition of property held at the time of his death.

¶ 3 Decedent, Mark W. Smedley, executed his last will and testament on December 18, 1995. He died May 18, 2005, and his will was admitted to probate on July 15, 2005. Decedent never married and had no children. His heirs were his brothers, Harold L. Smedley and Charles A. Smedley, and his sister, Mary K. Cottrell. Decedent also had six nieces and nephews and three grand nieces and nephews. Harold and Mary's children (decedent's nieces and nephews) were named as legatees to specific bequests. Mary was appointed as executrix for the estate. Mary was also the residual beneficiary under Article V of the will.

¶ 4 At the time of his death, decedent owned a fee simple interest in a residence and outbuildings situated on approximately 3.49 acres in Rosamond Township. This residence was contiguous with approximately 25 acres (also listed as 24 acres) of farm property in Rosamond Township. Decedent also owned a one-third interest in a corporation known as Munz, Inc. (Munz). The remaining two owners of Munz were decedent's sister, Mary, and brother, Harold. Each sibling owned one-third of the shares of stock in Munz. Brother Charles had no interest in Munz. The 25 acres contiguous to decedent's residence were titled in the name of Munz. Decedent also owned an undivided one-third interest in approximately 168 acres in Pana Township, known as the Dunkle Farm, and an undivided one-third interest in property in Shelby County known as the Findlay Farm. Decedent's one-third interest in the Findlay Farm was titled under the Munz company name. In addition, decedent owned an undivided one-fourth interest in

240 acres located in Rosamond and Rountree townships, which he inherited from his aunt, Edith Smedley, who died on April 10, 2005. Decedent's one-fourth ownership interest in the 240 acres came about as a result of a family settlement agreement entered into in January 1995 after decedent's father died. Under that agreement, Harold, Charles, Mary and decedent would each inherit a one-fourth interest in the 240 acres once Edith Smedley passed.

¶ 5 Following decedent's death, Munz, Inc. was liquidated and dissolved in a separate partition action. As referenced previously, Munz was the title holder of the Findlay Farm in Shelby County, and the 25 acres of farm ground adjacent to decedent's residence in Rosamond Township. In the partition action, Mary and Harold entered into an agreed judgment whereby Harold exchanged his one-third interest in the corporation plus cash to take ownership of the Findlay Farm and the Dunkle Farm. Decedent's one-third interest in Munz was exchanged for an undivided one-half interest in the 25 acres adjoining decedent's residence at Rosamond. Mary received the other one-half interest in the 25 acres. The trial court conveyed decedent's one-half interest in this property, now owned by decedent's estate, to Mary pursuant to the residuary clause.

¶ 6 After the settlement of Aunt Edith's estate in which decedent received the one-fourth interest in the 240 acres located in Rosamond, Harold filed an acceptance pursuant to Article III of decedent's will. Article III of decedent's will provided:

> "I give all my right, title and interest in my residential and farm property at Rosamond, IL, to such one of my heirs as is willing to commit to and reside in, maintain, repair, and improve said property, ordinary wear and tear not excepted,

for an indeterminate period. The Executor hereof shall select said heir in the event of conflict among those of my heirs seeking to reside therein. If the selected party later chooses to terminate said residency, he or she shall find and designate one or more of my heirs as are then willing to reside in the premises subject to the conditions aforesaid, that if and in the event an heir is not willing to occupy and maintain the premises as aforesaid, then and in such event the property shall pass to and I do hereby devise same to my sister, Mary K. Cottrell, or, if deceased, to her descendants in being, per stirpes."

¶ 7 Upon filing said acceptance, Harold requested that Mary, as executrix, be ordered to deliver to him all of the residential and farm property in Rosamond, Illinois, together with decedent's garden tools, lawn mower and cider press. The executrix refused. (It should be noted that Harold filed his first acceptance on August 10, 2010. Mary initially rejected Harold's acceptance, but then filed her own acceptance on May 10, 2013.)

¶ 8 Ultimately, a motion for clarification of decedent's will was filed. At issue was the meaning in Article III of what constituted the "residential and farm property at Rosamond, Illinois ***." The trial court entered an order construing the will, disposing of all the claims of the parties, thereby giving direction to the executrix on how to distribute the assets of the estate. The court determined that the 3.49-acre tract with the homestead passed under Article III of the will. The 25 acres received after dissolution of Munz and the one-fourth interest in the 240-acre tract inherited from Aunt Edith's estate were passed to Mary under Article V–the residuary clause. The court further declared that any heir intending to accept the property passing under Article III was to declare, in

writing, their willingness to do so to the executrix within 60 days of the court's order becoming final and nonappealable. As Harold had already declared his intention by the time the court issued its order, the court did not require that he do so again. Harold now appeals the court's order contending that the court erred in its interpretation of the will. Harold further claims the court erred when it allowed the remaining heirs the opportunity to file an acceptance under Article III of the will because Harold had already filed his acceptance on August 10, 2010, and no one else had filed an acceptance until Mary did so in 2013, approximately two years later after the dissolution of Munz in 2011 and the resolution of Aunt Edith's estate in 2011.

¶ 9 We initially note that the cardinal rule in the construction of wills is to ascertain the intention of the testator from the will itself and to effectuate that intention unless it is contrary to some established rule of law or public policy. *Merchants National Bank of Aurora v. Old Second National Bank of Aurora*, 164 Ill. App. 3d 11, 15, 517 N.E.2d 652, 655 (1987). Moreover, the testator's intention is to be gathered from a consideration of the language of the entire will rather than any particular clause, phrase, or sentence in the will. *In re Estate of Capasso*, 55 Ill. App. 2d 330, 335, 204 N.E.2d 788, 791 (1965). Interpretation of a will is a question of law that an appellate court reviews *de novo*. *In re Estate of Williams*, 366 Ill. App. 3d 746, 748, 853 N.E.2d 79, 82 (2006).

¶ 10 The first question we must address is what land did decedent intend to convey under Article III of his will. Again, Article III states that decedent is giving "all my right, title and interest in my residential and farm property at Rosamond, Illinois ***." The trial court concluded that only decedent's homestead on 3.49 acres, along with its

associated outbuildings, was meant to be conveyed pursuant to Article III. Harold asserts that the court's interpretation frustrates the expressed intent of decedent as the 3.49-acre homestead tract is the residence. By eliminating decedent's undivided interest in the 240 acres of farm property and the 25 acres of farm property from the bequest, Harold contends the court has taken all meaning out of the term "farm property." The language used in a will is to be given its common and ordinary meaning. *Hoge v. Hoge*, 17 Ill. 2d 209, 212, 161 N.E.2d 117, 119 (1959). Webster's New World Dictionary (Second Edition) defines a *farm* as "a piece of land (with house, barns, etc.) on which crops or animals are raised." Using the ordinary meaning of the word *farm*, we agree with Harold that 3½ acres would generally not be considered as "farm property," particularly in a farming community. If decedent had intended to bequeath only his residence and the small amount of acreage with the outbuildings, it is more likely he would have restricted his bequest to a description of the residence, as opposed to joining the terms "residential and farm property." Moreover, the residential and farm property described in Article III was located, specifically, in Rosamond, Illinois. Therefore, we must next consider whether the testator owned farm property in Rosamond, Illinois, at the time of his death, which could have come within the intendments of Article III.

¶ 11 The 240 acres of farm property which was owned by Aunt Edith had a common address of Rosamond, Illinois. Decedent inherited a one-fourth interest in these 240 acres before his death but after the execution of his will. The question as to when and how title to real estate was acquired is not material. Even property acquired after execution of a will may pass as directed by a testator in the will despite the fact that the

property may not have been owned by the testator at the time of the execution of the will. The issue is whether the language of the will shows that the testator intended to dispose of all his property, and the fact that he described certain property will not prevent the passage of all property owned by him at the time of his death. See *Halderman v. Halderman*, 342 Ill. 550, 557, 174 N.E. 890, 893 (1931). Where the language of the will is broad enough to encompass the property so devised, it will pass under the will, even though it may have been acquired after the execution of the will. See *Eckardt v. Osborne*, 338 Ill. 611, 619, 170 N.E. 774, 777 (1930) ("our entire remaining estates" was broad enough to allow for transfer of after-acquired real estate through inheritance or joint tenancy ownership). In this instance, decedent was the beneficiary of an agreement whereby he received an interest in the 240 acres prior to his death, but after the execution of his will. Decedent was present during the negotiation of the family settlement agreement entered into during the administration of his father's estate. He knew, from that agreement, that he was going to receive a one-fourth interest in the 240 acres of the Rosamond farm property. This interest was certainly of sufficient size to have been considered a farm, and was located in Rosamond, Illinois. And there is certainly nothing in the will that manifests the intent of decedent to exclude the after-acquired farm property from being disposed of through Article III. No greater degree of particularity is required in an expression of an intention to pass after-acquired property. See *In re Estate of Capasso*, 55 Ill. App. 2d at 336, 204 N.E.2d at 791. Accordingly, we conclude that the language of Article III is broad enough to include decedent's share of this acreage, and that it should have been included within the ordinary meaning of the term "farm

property." Therefore, the trial court erred in restricting the language of Article III to the 3.49-acre homestead tract. Decedent's interest in the 240-acre farm should have passed under Article III of the will.

¶ 12 We must also determine whether the 25 acres of farm ground adjacent to the 3.49-acre homestead property was properly distributed. At the time of decedent's death, this parcel was owned by Munz, Inc., a corporation in which decedent owned a one-third interest, along with Harold and Mary. In Article IV of his will, decedent specifically devised his share of the corporation to Mary, which would initially lead us to the conclusion that decedent intended Mary to have decedent's share of the 25 acres. However, decedent did not anticipate a partition lawsuit, and could not have known that Mary, individually, and as executrix of decedent's estate, would dissolve the corporation by agreement with Harold. Under the dissolution settlement, decedent's estate and Mary each received an undivided one-half interest in the 25 acres, instead of the devised one-third interest that Mary would have received under the will. The settlement agreement further provided that Harold give up his ownership interest in Munz, Inc. along with his one-third interest in the 25 acres and pay cash in order to receive 100% ownership of the Dunkle Farm and the Findlay Farm. The trial court determined that decedent's shares in the corporation, which had been converted to an undivided one-half interest in the 25 acres of farm property surrounding the homestead, should pass through the residuary clause to Mary in order to carry out decedent's intent to leave Mary his share of the corporation. We agree. Once the corporation was dissolved, the corporation no longer had any right, title, or interest in the 25 acres, and as such, could not transfer the acreage

to Mary under Article IV of decedent's will. Any interest decedent may have had in Munz, Inc. was dissolved, and, as a result of the dissolution, decedent's estate received an undivided one-half interest in the 25 acres located in Rosamond. This undivided one-half interest was a part of decedent's estate only because of a court-negotiated agreement, bargained for after decedent's death. Nevertheless, because we are to construe the will to give effect to the testator's intentions, it is clear from Article IV that decedent wanted Mary to inherit his interest in the 25 acres. Although there was no longer a corporation with the ability to transfer shares, the one-half interest in the 25 acres derived as a result of the partition settlement was now owned by decedent's estate. In order to fulfill the intent of the testator that Mary receive this property, the one-half interest in the 25 acres passed through Article V–the residuary clause, to Mary.

¶ 13 Having disposed of the property, we are left with the acceptance portion of Article III, the provision that looks to the heir willing to reside in, maintain, repair, and improve the property described by Article III. Harold was the first heir to file for acceptance. But Mary argues that Harold was not eligible to file an acceptance under the will, and claims that Harold was disinherited. Article VI of decedent's will states: "I have made no provisions for my brothers, Harold L. Smedley and Charles A. Smedley, and the descendants of Charles A. Smedley, for reasons not necessary to recite here." In order for someone to be disinherited, specific and clear language must be provided for in the will, which clearly manifests the testator's intention to disinherit that individual. Looking at the will as a whole, Article VI does not preclude Harold from accepting the bequest contained within Article III. Article VI only states that decedent made no specific

provisions for decedent's brothers. The fact that the will did not make specific provisions for Harold is entirely different from saying that Harold is disinherited, and shall receive nothing from the estate. See *Bond v. Moore*, 236 Ill. 576, 589-90, 86 N.E. 386, 391 (1908). Additionally, the presumption exists that an heir is not disinherited unless the testator devises the property to someone else. The word *heir*, in its primary meaning, designates the person appointed by law to succeed to the estate in case of intestacy (see *In re Estate of Schlenker*, 209 Ill. 2d 456, 462, 808 N.E.2d 995, 999 (2004) (heir refers to anyone who would take from a person's estate under the statute of descent and distribution if that person died without leaving a will)). Here, if decedent's brothers were truly disinherited from taking under Article III of the will, only Mary would have been left as the remaining heir to inherit. A decedent's brothers and sisters are the heirs-at-law on the death of a testator if that testator dies without children and without a spouse. See *Dillman v. Dillman*, 409 Ill. 494, 100 N.E.2d 567 (1951). If it was decedent's intention to give his residential and farm property to Mary from the beginning, he simply would have provided for that distribution in his will. It is clear, however, that decedent wanted one of his heirs to "commit to, reside in and maintain" his residence, and that if no one wanted to commit to, reside in and maintain the residence, then Mary would inherit the residential and farm property. Harold filed an acceptance under the provisions of the will, and there is no intention evident from the will that decedent intended to disinherit Harold.

¶ 14 We have already determined that the property included within Article III is the 3.49 acres, which contains the residence, and decedent's one-fourth interest in the 240-

acre farm. The Illinois Probate Act sets forth the requirements for an acceptance to include the taking of possession, the acceptance of delivery or the receipt of benefits of the property or interest. See 755 ILCS 5/2-7(e) (West 2010). The Act does not identify any time frame in which an acceptance must be filed. Harold filed an acceptance under the will in August of 2010. Admittedly, his acceptance was filed many years after decedent's death. It was reasonable, however, for Harold to wait until Aunt Edith's estate was probated to determine whether decedent's interest in the 240 acres of farm property might be included under the intendments of Article III. Mary, as executrix, denied Harold's acceptance. Instead, almost three years later, Mary filed her own acceptance under Article III. While we are troubled by her long delay in filing her acceptance, Article III does not set forth any time constraints or guidelines for the filing of an acceptance. As the trial court noted, just as Harold had done, it was not unreasonable for Mary to wait to see what property was to be included under Article III before filing an acceptance. The matter had been pending for several years while other litigation concerning the dissolution of Munz and the probate of Aunt Edith's estate slowly came to their own resolutions, all of which further served to delay the administration of decedent's estate. Until the heirs knew what property was part of decedent's estate, it would be impossible for them to know what they were committing to maintain and improve. We therefore conclude that it was reasonable for the trial court, in the discretion afforded courts in the administration of estates, to allow the heirs to essentially start over and file new written declarations or acceptances within 60 days of the termination of any appeals. The trial court excused Harold from having to file a new declaration, as he had already

done so years ago. Mary, however, was not included in the judge's order acknowledging the filing of a prior declaration, but she was not foreclosed from filing anew. Once the 60-day period is concluded, if more than one heir files an acceptance (declaration), then the language of Article III empowers Mary, as executrix, to decide which heir is entitled to occupy the residence and maintain, repair, and improve the property, as required by Article III.

¶ 15 Affirmed in part; reversed and remanded in part.