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IN THE
COURT OF APPEALS OF INDIANA

In Re: The Supervised Estate
Kevin J. Wilson,
Appellant-Plaintiff,
v.

Terrel B. Wilson, Jr.,
Appellee-Defendant.

December 15, 2021
Court of Appeals Case No.
21A-ES-1406
Appeal from the Hendricks
Superior Court
The Honorable Robert W. Freese,
Judge
Trial Court Cause No.
32D01-2105-ES-128

Pyle, Judge.

Statement of the Case

[1] Kevin Wilson (“Wilson”), as the personal representative of the estate of his deceased brother, Terrel Wilson, Sr., (“Terrel, Sr.”), (“the Estate”), appeals the trial court’s denial of his motion to correct error. Wilson filed the motion to correct error after the trial court concluded that the trust (“the Trust”) in Terrel,

Sr.’s, will (“the Will”) was invalid because it failed to identify the beneficiaries with reasonable certainty as required by INDIANA CODE § 30-4-2-1. On appeal, Wilson contends that the language in the Will created a valid trust. Concluding that the Trust in the Will is invalid because it failed to identify the beneficiaries with reasonable certainty, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether the trial court erred in denying Wilson’s motion to correct error.

Facts

[3] In October 2018, Terrel, Sr., executed the Will, which includes five Articles. In Article 1, Terrel, Sr., directed that expenses related to his last illness, funeral and burial, the costs of administration, and all taxes due by reason of his death be paid from the principal of his residuary estate. In Article 2, Terrel, Sr., identified four children, including Terrel, Jr., (“Terrel, Jr.”). Article 3 concerned the distribution of Terrel, Sr.’s, tangible personal property. In Article 4, which is the subject of this appeal, Terrel, Sr., “gave all of the residue of [his] estate to [his] brother, [Wilson], as Trustee, IN TRUST, to be distributed to [Terrel, Sr.’s] family and others as per [his] instructions to [Wilson].” (App. Vol. 2 at 16). In Article 5, Terrel, Sr., appointed Wilson as the personal representative of the Estate and authorized the unsupervised administration of the Estate.

- [4] Terrel, Sr., died in February 2021. Three weeks later, in March 2021, Wilson filed a petition to probate the Will without court supervision. The trial court granted Wilson's petition.
- [5] In April 2021, Terrel, Jr., filed a petition asking the trial court to require Wilson to produce the Trust referred to in Article 4 of the Will. One week later, Wilson filed a response to Terrel, Jr.'s petition. In his response, Wilson explained that “[t]o the best of [his] knowledge and after diligent search, the Last Will and Testament of [Terrel, Sr.] . . . [was] the only document showing the intent of the testator as to the distribution of his estate.” (App. Vol. 2 at 24).
- [6] Shortly thereafter, Terrel, Jr., filed a petition to revoke the unsupervised administration of his father's estate. In this petition, Terrel, Jr., argued that the Trust in the Will was invalid because it failed to identify the beneficiaries with reasonable certainty as required by INDIANA CODE § 30-4-2-1. Terrel, Jr., asked the trial court to: (1) issue an order requiring supervision of the Estate; (2) require Wilson to post a bond; (3) order an accounting of Wilson's actions; and (4) order the residuary of the Estate to be distributed, pursuant to INDIANA CODE § 29-1-2-4, under the law of intestate succession.
- [7] In May 2021, the trial court granted Terrel, Jr.'s, petition without a hearing. In its order, the trial court concluded that the Trust had failed to identify the trust beneficiaries with reasonable certainty as required by INDIANA CODE § 30-4-2-1. In addition, the trial court ordered the supervised administration of the Estate and required Wilson to post a bond and file an accounting of his actions.

Lastly, the trial court concluded that “[b]ecause no trust can exist, the disposition of the residuary of the Estate through Article 4 is ineffective. As such, [pursuant to INDIANA CODE § 29-1-2-4,] the residuary assets of the Estate must be distributed according to the laws of intestate succession.” (App. Vol. 2 at 38).

- [8] Two weeks later, Wilson filed a motion to correct error, wherein he argued that “[t]he beneficiaries [had been] sufficiently identified from the language ‘*to my family and others as per my instructions to him.*’” (App. Vol. 2 at 43) (emphasis in the original). The trial court denied Wilson’s motion.
- [9] Wilson now appeals.

Decision

- [10] Wilson appeals the denial of his motion to correct error. We generally review the trial court’s ruling on a motion to correct error for an abuse of discretion. *Poiry v. City of New Haven*, 113 N.E.3d 1236, 1239 (Ind. Ct. App. 2018). However, where the issue raised in the motion to correct is a question of law, the standard of review is de novo. *Id.* Here, Wilson’s motion to correct error raised issues regarding trusts and the Indiana Trust Code. Because the interpretation of trusts and statutes presents questions of law, our standard of review is de novo. *See Fulp v. Gilliland*, 998 N.E.2d 204, 207 (Ind. 2013).

- [11] Wilson argues that the trial court erred when it denied his motion to correct error because “[t]he language in the Will create[d] a valid trust under Indiana law.” (Wilson’s Br. 10). According to Wilson, “[t]he beneficiaries [had been]

sufficiently identified from the language ‘*to my family and others as per my instructions to him.*’” (Wilson’s Br. 10) (emphasis in the original). We disagree.

[12] INDIANA CODE § 30-4-2-1 provides, in relevant part, as follows:

(c) Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but *the terms of the trust must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee’s interest, the identity of the beneficiary, the nature of the beneficiary’s interest and the purpose of the trust may be ascertained with reasonable certainty.*

* * * *

(f) A trust has a beneficiary if the beneficiary can be presently ascertained or ascertained in the future, subject to any applicable rule against perpetuities.

(g) A power of a trustee to select a beneficiary from an indefinite class is valid[.]

IND. CODE § 30-4-2-1. (Emphasis added).

[13] The burden of proof rests on the party seeking to impose the trust. *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099, 1108 (Ind. 2012). Thus, here, the burden was on Wilson as the named trustee seeking to impose the Trust.

[14] A trustee is the legal title holder of trust property. *Doll v. Post*, 132 N.E.3d 34, 39 (Ind. Ct. App. 2019) (citing I.C. § 30-4-2-6), *trans. denied*. The beneficiaries are the equitable title holders. *Doll*, 132 N.E.3d at 39 (citing I.C. § 30-4-2-7). Although the trust’s settlor need not identify a beneficiary with exact precision, the settlor must give the trustee the ability to determine an intended beneficiary.

Doll, 132 N.E.3d at 39. Specifically, INDIANA CODE § 30-4-2-1(c) directs the settlor to identify a beneficiary with “reasonable certainty.” *Id.* In addition, INDIANA CODE § 30-4-2-1(f) states that a beneficiary must be capable of being “ascertained,” *Id.* INDIANA CODE § 30-4-2-1(g) further provides that a trustee can select a beneficiary “from an indefinite class,” which itself requires that the settlor first limit the trustee’s discretion by identifying an indefinite class.

- [15] Nothing close to such an identification exists here, where the designated beneficiaries are “my family and others[.]” (App. Vol. 2 at 16). The parties agree that the Probate Code includes a definition for “family.” *See* INDIANA CODE § 29-1-6-1(c). However, neither the Trust Code nor the Probate Code defines “others.” We, therefore, look to the dictionary definition. *See, e.g., Rainbow Realty Group, Inc. v. Carter*, 131 N.E.3d 168, 174 (Ind. 2019) (explaining that when the legislature does not define a term, we turn to the general-language dictionary). Merriam-Webster defines “other” as “a different or additional one.” (Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/others>, (last visited November 19, 2021)). Thus, the generalization “my family and others” clearly does not satisfy the statutory requirement that trust beneficiaries be identified with reasonable certainty. Indeed, as Terrel, Jr., aptly notes, “[t]he plain meaning of ‘my family and others’ literally includes everyone on Earth.” (Terrel, Jr.’s Br. 8-9).
- [16] Because the generalization “my family and others” does not satisfy the statutory requirement that beneficiaries be identified with reasonable certainty,

the Trust in the Will is invalid. Accordingly, the trial court did not err in denying Wilson's motion to correct error.¹

[17] Affirmed.²

Bailey, J., and Crone, J., concur.

¹ We further note that INDIANA CODE § 29-1-2-4 provides that “[i]f part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates.” Thus, after invalidating the Trust, the trial court properly ordered the distribution of the residuary assets of the Estate according to the laws of intestate succession.

² Wilson also argues that the “language in [Terrel, Sr.’s] Will as to [the [T]rust] i[s] ambiguous and therefore the Trial Court should have considered extrinsic evidence, specifically testimony from [Wilson], for the purpose of explaining or determining [Terrel, Sr.’s] intentions.” (Wilson’s Br. 15). Terrel, Jr., responds that there are “no ambiguous terms contained in the [W]ill that would require the Court to consider extrinsic evidence to determine [their] meaning.” (Terrel, Jr.’s Br. 6). We agree with Terrel, Jr. The term “others” is not ambiguous. Rather, it simply fails to identify the Trust’s beneficiaries with reasonable certainty.

Lastly, Wilson argues that the trial court’s order denying Wilson’s motion to correct error “result[ed] in an impermissible attack on the validity of the Will.” (Wilson’s Br. 14). However, our review of the trial court’s order reveals that the trial court invalidated only the Trust. The trial court neither attacked the validity of the Will nor invalidated it.