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IN THE COURT OF APPEALS OF INDIANA

Kenneth J. Schaefer,
Appellant-Defendant,

v.

Estate of Cletus P. Schaefer, Deceased
Appellee-Plaintiff

April 7, 2021

Court of Appeals Case No. 20A-ES-1007

Appeal from the Spencer Circuit Court

The Honorable Jon A. Dartt, Judge

Trial Court Cause No. 74C01-1606-ES-000025

May, Judge.

[1] Kenneth J. Schaefer appeals the trial court's declaratory judgment in favor of the Estate of Cletus P. Schaefer, Deceased ("the Estate"). He makes multiple arguments, one of which we hold dispositive: whether the language in the Will of Cletus P. Schaefer ("the Will") created a testamentary option to purchase or

a testamentary gift subject to condition precedent. We reverse in part, affirm in part, and remand.

Facts and Procedural History

[2] Cletus P. Schaefer ("Cletus") had four children: Joy Brock ("Joy"), Jill Mehling ("Jill"), Donald Schaefer ("Donald"), and Kenneth Schaefer ("Kenneth"). During his lifetime, Cletus executed a Last Will and Testament and three codicils thereto. The matter before us concerns language in the third codicil ("Third Codicil"), executed on November 4, 2015. During Cletus' lifetime, he and Kenneth jointly owned Schaefer & Schaefer, LLC. Cletus and Kenneth owned the "farm real estate . . . as joint tenants with rights of survivorship[.]" (App. Vol. II at 76.)

[3] The language of the Third Codicil states, in relevant part:

> I hereby give, will, devise and bequeath the following items as a specific bequest, and hereby direct, instruct, and authorize my hereinafter named Co-Executrixes to fulfill and execute the following specific bequests:
>
> > A. Unto my daughter, Joy Brock, I bequeath the sum of Seventy Five Thousand Dollars ($75,000) in cash, and the sum of Three Hundred Dollars ($300.00) per load of any and all future oil that is generated from the acreage described in Deeds bearing instrument numbers 2009R-03979 and 2009R-03980.
> >
> > B. Unto my daughter, Jill Mehling, I bequeath the sum of Seventy Five Thousand Dollars ($75,000) in cash, and the

sum of Three Hundred Dollars ($300.00) per load of any and all future oil that is generated from the acreage described in Deeds bearing instrument numbers 2009R-03979 and 2009R-03980.

C. Unto my son, Donald Schaefer, I bequeath the sum of Seventy Five Thousand Dollars ($75,000) in cash, and the sum of Three Hundred Dollars ($300.00) per load of any and all future oil that is generated from the acreage described in Deeds bearing instrument numbers 2009R-03979 and 2009R-03980.

D. Unto my son, Kenneth J. Schaefer, I bequeath the following:

> (1) all mineral and oil income excluding collectively the Nine Hundred Dollars ($900.00) per month heretofore bequeathed in items A, B, and C above, and all my interest in any farm machinery and tools, and farm vehicles.
>
> (2) All of my interest and ownership in Schaefer and Schafer, LLC, any and all farm machinery, tools and farm vehicles, all conditioned upon said Kenneth paying unto my estate the sum of one thousand Dollars ($1,000.00) per acre for the approximate [sic] 240 acres more specifically described in Deeds bearing instrument numbers 2009R-03979 and 2009R-03980 which said sum shall be paid within five (5) calendar months from the date of my estate being opened for administration, and I hereby direct my Co-Executrixes to distribute said sum unto my daughters, Joy Brock and Jill Mehling, and my son, Donald Schaefer, share and share alike equally as

> joint tenants with rights of survivorship and not as tenants in common. Should my son, Kenneth, not fully perform this condition precedent, then, and upon that event, farm machinery, tools, farm vehicles, and my interest in Schaefer and Schaefer, LLC shall be sold and the proceeds shall be divided equally, share and share alike among my four (4) children as joint tenants with rights of survivorship and not as tenants in common; and
>
> (3) A first right of refusal to purchase any and all remaining real estate I own or have any interest in and all improvements situated thereon at the sum of One Thousand ($1,000.00) Dollars per acre, which amount I direct my named Co-Executrixes to pay unto Joy Brock, Jill Mehling and Donald Schaefer, equally, share and share alike, as joint tenants with full rights of survivorship and not as tenants in common.

(*Id*. at 48-9.) Cletus died testate on June 1, 2016. When Cletus died, the title to the real estate referenced in Section D(2) "vested in Kenny automatically at Cletus's death." (*Id*. at 76.) On June 14, 2016, the Will and codicils were admitted to probate, with Joy and Jill as Personal Representatives ("Personal Representatives"). Sometime within five months of Cletus' death, Kenneth paid $277,500.00 as directed under Section D(2).[1] The Estate "accepted the payment" of this amount. (*Id*. at 52.)

[1] This amount was for the personal property and business interest listed in Section D(2). Kenneth already owned all relevant real estate subject to his joint tenancy with right of survivorship with Cletus.

[4] On October 16, 2017, Personal Representatives submitted an amended inventory of the Estate ("2017 Amended Inventory") to the trial court. The 2017 Amended Inventory included items not relevant to our review totaling $113,925.76, specifically, $4,650.00 in furniture and household goods and $109,275.76 in "Bank Accounts, Money, Insurance Payable to Estate[.]" (*Id.* at 36) (formatting omitted). The 2017 Amended Inventory also included the items referenced in Section D(2), specifically, "Schaefer & Schaefer, LLC Farm Equipment (Estimated 1/2 Values) (Decedent's 1/2 interest)[,]" the money market checking account for Schaefer & Schaefer, LLC, farm animals owned by Schaefer & Schaefer, LLC, and vehicles, farm equipment and machinery, other farm animals, "Miscellaneous Non-Farm Property[,]" and "Oil Business Property[.]" (*Id.* at 36-7.) Those items equaled $1,043,802.35 for an Estate total of $1,157,728.31.[2]

[5] On July 8, 2019, Personal Representatives filed a "Petition for Beneficiary Kenneth Schaefer to Disclose Assets, Respond to Discovery Request, and Permit Appraisal[.]" (*Id.* at 15.) The petition included the list of property inventoried and appraised as part of the 2017 Amended Inventory, and alleged

> 4. That the petitioners believe the [sic] Kenneth Schaefer has knowledge of and/or is in possession of certain oil production equipment (that is in addition to that property listed in paragraph

[2] All amounts, except presumably the bank account balances, in the inventory were estimates. It does not appear from the record that a formal appraisal of anything in the Estate was completed.

2[3] above) that was owned by the decedent and which may not be fully known or identified to them, and which should be included in the estate's assets.

5. That issues exist as to the ownership of certain assets as of the date of Cletus Schaefer's death.

6. That a formal appraisal of the estate property is necessary.

7. That the petitioners have requested that the assets of the decedent in possession of Kenneth Schaefer be made available for appraisal but that Kenneth Schaefer has not yet made the property available for appraisal.

8. That as the qualified personal representatives of the decedent's estate the petitioners are entitled to possession of the estate's property.

9. That as the qualified personal representative's [sic] of the decedent's estate the petitioners are entitled to have the estate's property appraised.

10. That, as personal representatives, the petitioners need to proceed with the collection and investment of the decedent's assets for the benefit of estate beneficiaries.

11. That Kenneth Schaefer should be required to respond to the interrogatories and requests for production of documents attached hereto as Exhibit "A" in order to aid the personal

[3] This list is identical to that which was inventoried, appraised, and submitted to the trial court in 2017.

> representatives in identifying the estate property so that all estate property may be appraised.

(*Id*. at 17-18.)

[6] On July 12, 2019, Kenneth filed his objection to the Personal Representatives' Petition, arguing that the Personal Representatives of the Estate were "not entitled to proceed with the collection and investment of the various farm equipment" identified in their Petition because Kenneth purchased the equipment in question under the terms of the Third Codicil three years prior. (*Id*. at 40.) On July 15, 2019, Personal Representatives filed their response to Kenneth's objection, contending Kenneth's payment pursuant to Section D(2) of the Third Codicil was a "a condition precedent to the vesting of a specific bequest of the stated assets (farm machinery, tools and farm vehicles)" and not an "'option to purchase' the assets identified, and that paying the required [$1,000.00] per acre (which he is acknowledged to have done) he 'purchased' his bequest 'free and clear of any claim by the beneficiaries.'" (*Id*. at 44.)

[7] On October 3, 2019, the trial court held a meeting in chambers with counsel and instructed counsel to submit their briefs regarding the issues by November 8, 2019. The trial court held a hearing on the matter on December 5, 2019, and took the matter under advisement. On April 2, 2020, the trial court issued its order, which stated in relevant part:

> 1. The Court grants Personal Representative's [sic] Motion for Declaratory Judgement and declares that the testator's intent from the language in paragraph D(2) of Cletus Schaefer's Third

> Codicil to the Last Will and Testament of Cletus P. Schaefer was to provide a legacy to Heir, Kenneth Schaefer, that was contingent upon the satisfaction by him of the condition precedent that he pay into the estate One Thousand Dollars ($1,000.00) per acre for the approximately 240 acres described in the deeds.
>
> 2. The Court does not find from the clear language of the Third Codicil to the Last Will and Testament that the language in paragraph D(2) was an option to purchase.
>
> 3. Accordingly, the property covered by paragraph D(2) of the Third Codicil to the Last Will and Testament is "potentially" subject to Abatement and the Personal Representatives are authorized to conduct discovery regarding said property.

(*Id*. at 82-3.) On April 16, 2020, Kenneth filed a motion for entry of final judgment pursuant to Indiana Trial Rule 54(B) and to stay further proceedings pending appeal. The trial court granted Kenneth's motion the same day and issued an order finding "there is no just reason for delay and expressly directs the entry of final judgment on the Personal Representatives' Motion for Declaratory Judgment" and stayed any further proceedings. (*Id*. at 11.)

Discussion and Decision

[8] The interpretation, legal effect, or construction of a will is a question we determine as a matter of law. *In re Estate of Meyer*, 668 N.E.2d 263, 265 (Ind. Ct. App. 1996), *reh'g denied*, *trans. denied*. Consequently, we give no deference to the trial court's decision and review the question de novo. *Bader v. Johnson*,

732 N.E.2d 1212, 1216 (Ind. 2000) ("where the issue presented on appeal is a pure question of law, we review the matter de novo").

[9] We may not construe a will unless an ambiguity exists in the will. *In re Estate of Grimm*, 705 N.E.2d 483, 498 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied*. In the absence of an ambiguity, we must enforce "the express language of the will." *Id*. Before construing ambiguous language in a will, "we must first determine whether the testator's intent is clearly articulated in other provisions of the will." *Id*. To determine his intent, we look at the language used within the four corners of the instrument. *Keck v. Walker*, 922 N.E.2d 94, 100 (Ind. Ct. App. 2010). We presume the testator used words in their "common and ordinary sense and meaning." *Meyer*, 668 N.E.2d at 265. In addition, while previous decisions may help guide our interpretation of language, the meaning of language in any will is determined by the facts particular to that will. *Grimm*, 705 N.E.2d at 498.

[10] The portion of the Third Codicil that is relevant to our review states:

> D. Unto my son, Kenneth J. Schaefer, I bequeath the following:
>
> * * * * *
>
> (2) All of my interest and ownership in Schaefer and Schafer, LLC, any and all farm machinery, tools and farm vehicles, all conditioned upon said Kenneth paying unto my estate the sum of one thousand Dollars ($1,000.00) per acre for the approximate [sic] 240 acres more specifically described in Deeds bearing instrument numbers 2009R-

> 03979 and 2009R-03980 which said sum shall be paid within five (5) calendar months from the date of my estate being opened for administration, and I hereby direct my Co-Executrixes to distribute said sum unto my daughters, Joy Brock and Jill Mehling, and my son, Donald Schaefer, share and share alike equally as joint tenants with rights of survivorship and not as tenants in common. Should my son, Kenneth, not fully perform this condition precedent, then, and upon that event, farm machinery, tools, farm vehicles, and my interest in Schaefer and Schaefer, LLC shall be sold and the proceeds shall be divided equally, share and share alike among my four (4) children as joint tenants with rights of survivorship and not as tenants in common; and
>
> (3) A first right of refusal to purchase any and all remaining real estate I own or have any interest in and all improvements situated thereon at the sum of One Thousand ($1,000.00) Dollars per acre, which amount I direct my named Co-Executrixes to pay unto Joy Brock, Jill Mehling and Donald Schaefer, equally, share and share alike, as joint tenants with full rights of survivorship and not as tenants in common.

(App. Vol. II at 48-9.) Kenneth asserts the trial court erred when it determined the language in Section D(2) created a gift; instead he contends the language created an option to purchase those items. The trial court was asked, and we are to review, this issue because if the language is determined to signify a gift, then Kenneth's property is still part of the estate, and thus is subject to abatement. However, if we determine the language is an option to purchase, Kenneth owns the property free and clear and it is not subject to abatement for debts of the estate. While Personal Representatives focus heavily on whether

Kenneth's payment was a condition precedent to be satisfied before receiving the gift, the actual issue herein is the interpretation the language to evince Cletus' intent to bequeath a gift or an option to purchase the property described.

[11] An option to purchase is a "contract by which the owner of property agrees with another person that the latter shall have a right to buy the property at a fixed price within a certain time." Ballentine's Law Dictionary (3rd ed. 2010). The language in a will may create an option to purchase. *Drake v. Old Nat'l Trust Co.*, 871 N.E.2d 352, 355 (Ind. Ct. App. 2007), *reh'g denied*, *trans. denied*. We examined an option to purchase as part of a will in *Logan v. Lyke*, 855 N.E.2d 603 (Ind. Ct. App. 2006). In *Logan*, relevant to the issue before us, Pattie Owens' will stated:

> If at any time that that [sic] 80 acres or any part thereof shall be placed for sale, then my friends Rodney and Carol Logan shall be permitted first opportunity to purchase the real estate or they shall be given the opportunity to match any offer made for the purchase of the real estate.

Id. at 612 (citation to the record omitted). We held this language created an option to purchase the land and did not violate the law against perpetuities. *Id*. at 613. Similarly, we concluded in *Drake* that similar language in Frances G. Birdsong's will allowed Ralph Drake an option to purchase the real estate owned by Birdsong at the time of her death once that real estate was offered for sale. *Drake*, 871 N.E.2d at 353. Drake was thus given the option to purchase Birdsong's real property for the appraised value of $608,500 before the property was put up for auction. *Id*. at 353-4.

[12] The same situation exists here – though with a slight nuance. The language giving Kenneth the option to pay "one thousand Dollars ($1,000.00) per acre for the approximate [sic] 240 acres more specifically described in Deeds bearing instrument numbers 2009R-03979 and 2009R-03980 which said sum shall be paid within five (5) calendar months from the date of my estate being opened for administration[,]" (App. Vol. II at 57-8), was an option to purchase. However, the amount Kenneth paid pursuant to that language, $277,500, was not the market value of the personal property[4] at the time he purchased it. According to the Amended Inventory, the personal property was possibly worth more than that amount. (*Id*. at 39.) As noted in *Drake*, an option to purchase exists when the party may purchase something at its appraised value, 871 N.E.2d at 353, not at a greatly reduced amount.

[13] "A gift is a thing transferred; a voluntary transfer of property by one person to another without consideration." *Norman v. Norman*, 131 Ind. App. 67, 78, 169 N.E.2d 414, 419 (1960). *See also* Ballentine's Law Dictionary (3rd ed. 2010) (defining "gift" as a "voluntary transfer of property by one to another without any consideration or compensation therefor"). Here, while Kenneth gave consideration for a portion of the items he purchased under Cletus' will, he possibly received a portion of it without providing compensation therefor. An

[4] As noted in the facts, Cletus and Kenneth owned the "farm real estate . . . as joint tenants with rights of survivorship[.]" (App. Vol. II at 76.) Therefore, upon Cletus' death, Kenneth owned all real property relevant to this matter.

appraisal would quantify the property Kenneth received that was a gift – that is, anything valued in excess of $277,500.

[14] As noted in the parties' briefs, gifts are subject to abatement. Abatement, in terms of estate law, is

> the reduction of a legacy because of the insufficiency of the estate of the testator to pay all of his debts, charges, and legacies in full. If an estate proves insufficient for all purposes, the law makes provision for abatement, and it is only out of the balance remaining after payment of all debts of the testator and obligations of his estate that a testamentary gift may be made, and the testator is deemed to have executed his will subject to such limitation.

American Fletcher Nat'l Bank & Trust Co. v. American Fletcher Nat'l Bank & Trust Co., 161 Ind. App. 166, 181, 314 N.E.2d 810, 819 n.2 (Ind. Ct. App. 1974) (quoting 96 C.J.S. Wills § 1153, p. 955) (emphasis omitted). A legacy is "[a] gift by will, esp. of personal property and often of money." Black's Law Dictionary (11th ed. 2019). Additionally, a legacy "[i]n loose usage, [is] inclusive of testamentary gifts of real estate as well as of personal property." Ballentine's Law Dictionary (3rd ed. 2010). Based thereon, we hold that the value of any personal property owned by Kenneth by virtue of the exercise of his option to purchase pursuant to Section D(2) that exceeds the $277,500 he paid was a gift or a legacy and is subject to abatement for the payment of the Estate's debts, charges, and legacies.

Conclusion

[15] We hold the trial court erred in finding Cletus' bequest to Kenneth as part of Section D(2) was entirely a gift. Instead, we conclude the portion Kenneth paid for, $277,500, was a testamentary option to purchase and the remaining value of the property was a testamentary gift. Therefore, we affirm the trial court's order in part, reverse it in part, and remand to the trial court for further proceedings consistent with our opinion.

[16] Affirmed, reversed, remanded.

Riley, J., and Altice, J., concur.