STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Michelle Corley,	)	
	)	Case No.
Appellant,	)	2021-CP-40-4558
	)	
vs.	)	
	)	**ORDER AFFIRMING**
Phil Martin, Chip Barrs, Jordan Corley Lee, as Personal Representative of the Estate of Julia Ann Martin, and John Meetze and Kenneth Little, as co-Trustees of the Elzie Thomas Meetze Trust and the Polly Ann Blackmon Meetze Trust,	)	**PROBATE COURT ORDERS**
Respondents.	)	

This matter came before the Court on May 20, 2022, for a hearing on an appeal from the Richland County Probate Court, Case No. 2020-GC-40-116. Having reviewed the Record on Appeal, the briefs filed by Appellant Michelle Corley, Respondent Phil Martin, and Respondent Chip Barrs, and having heard the arguments of counsel, I find and conclude that the Order of the Richland County Probate Court entered on June 14, 2021 and the Order Denying Motion to Alter, Amend and/or Vacate Order filed August 30, 2021, should be AFFIRMED. The basis for this conclusion is set forth below.

FACTS AND PROCEDURAL HISTORY

This appeal involves the division and distribution of assets of a trust. Elzie Thomas ("E.T.") Meetze, Sr. and Polly ("Polly") Ann Blackmon Meetze were married and had six children. E.T. and Polly each had similar testamentary trusts (the "Trust") that provided for the surviving spouse during his or her lifetime. E.T. died on May 16, 2007, making Polly the

surviving Settlor. Polly thereafter died on January 25, 2013. Article IX of her Trust provided that, "upon the death of the survivor of the Settlor's husband and the Settlor, the entire remaining principal of the Polly Ann Blackmon Meetze Trust, or the part of such trust not effectively appointed, shall be divided into equal separate shares so as to provide One (1) share for each then living child of the Settlor and One (1) share for each deceased child of the Settlor who shall leave issue then living. The share for a living child of the Settlor shall be distributed to such child. The share for a deceased child of the Settlor who shall leave issue then living shall be distributed per stirpes to such issue." In Article XIII of the Trust, a list of the Settlor's intentions included, among other things, "that, after the Settlor's husband's death, the Settlor's children and a child's issue, if a child is deceased, be adequately provided for." E.T. and Polly's six children, including Julia Ann Martin (a.k.a. "Judy"), whose interest is the subject of this appeal, are identified by name in Article XIX (A) of the Trust.

After Polly's death, a dispute arose among the beneficiaries of the Trust that was resolved by a Private Agreement dated January 8, 2015. The Private Agreement authorized the Trustees of the Trust to continue paying property taxes on and to market for sale real property located at 7608 Broad River Road in Richland County, South Carolina, which constitutes the bulk of the Trust assets. The Private Agreement did not purport to alter the division or distribution of the Trust assets.

Judy died intestate more than four years later on May 10, 2019. Judy was the mother of both Appellant Michelle Corley and Respondent Chip Barrs ("Barrs"). Respondent Phil Martin was married to Judy and is her surviving spouse. As part of the administration of Judy's Estate, her Personal Representative, Jordan Corley Lee, listed Judy's share of the Trust assets as an

Estate asset, such that it would be distributed one-half to Martin, and one-quarter each to Appellant and Barrs.

Appellant filed a Petition for Declaratory Judgment and Other Relief in the Probate Court in Richland County, South Carolina, challenging the listing of Judy's share of the Trust as part of her Estate. Appellant sought a determination that she and Barrs, her brother, were entitled to share equally all of their deceased mother Judy's entire share of the Trust and, correspondingly, that Judy's share of the Trust was not an asset of Judy's Estate. Appellant also sought an award of attorney's fees and costs to be paid out of Judy's Estate or, alternatively, out of Judy's share of the Trust, asserting that resolution of the dispute would "benefit the Estate and all beneficiaries by lending certainty to the final administration of Judy's Estate."

In his Answer, Respondent Martin denied that there had been any dispute regarding distribution of Judy's share of the Estate prior to Appellant "creating this 'dispute.'" Martin asserted that the Trust contemplated distribution to the children of a deceased child only if the child predeceased E.T. and/or Polly. Because she died after Polly, Judy's share of the Trust was fixed at Polly's death, even though it had not yet been distributed due, in part, to the dispute that arose among the beneficiaries of the Trust. By way of counterclaims, Respondent Martin also sought a declaratory judgment that, pursuant to the Trust, "the division into shares for living and deceased children occurs upon the death of the survivor of the Settlors," such that Judy's share should be distributed as an asset of her Estate. Martin also sought an award of attorney's fees for having to defend the action.

The declaratory judgment action was heard by the Honorable Amy W. McCulloch, Richland County Probate Judge, on April 20, 2021. On June 14, 2021, Judge McCulloch filed an Order finding, among other things, that both E.T. and Polly died testate and that all of their six

children survived them. Judge McCulloch concluded that Judy's one-sixth share of the Estate vested at the death of the last surviving Settlor, such that Judy's share "will pass through her estate pursuant to the laws of intestacy." Thereafter, Appellant moved to alter or amend the Order, which the Probate Court denied on August 30, 2021. This appeal was filed on September 8, 2021.

STANDARD OF REVIEW

"An appellate court's determination of the standard of review for matters originating in the probate court is controlled by whether the cause of action is at law or in equity." *In re Estate of Rider v. Estate of Rider*, 407 S.C. 386, 391, 756 S.E.2d 136, 139 (2014). "An action to construe a will is an action at law." *Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005) (applying the same standard of review to the construction of a trust). "When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." *In re Estate of Rider*, 407 S.C. at 392, 756 S.E.2d at 140. Where, however, as is the case here, the appellant "has admitted that no facts are in dispute in this case, this court can review conclusions of law based on those facts." *Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 654, 640 S.E.2d 480, 483 (Ct. App. 2006).

LEGAL ANALYSIS

I. The Probate Court correctly concluded that Judy's one-sixth share of the Trust vested at the death of the last surviving Settlor and, therefore, passes through Judy's Estate pursuant to the laws of intestacy.

"The primary consideration in construing a trust is to discern the settlor's intent." *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995). Pursuant to S.C. Code Ann. Section 62-7-112, "[t]he rules of construction that apply in this State to the interpretation of and

disposition of property by will also apply as appropriate to the terms of a trust and the disposition of the trust property." As is the case in interpreting wills, "[t]he primary consideration in construing a trust is to discern the settlor's intent." *Bowles*, 319 S.C. at 380, 461 S.E.2d at 813.

Here, the Probate Court correctly concluded that the language in Article IX (D) of the Trust "is clear and unambiguous, such that the children living at the death of the surviving spouse receive a share. All six children were living at Polly Ann Blackmon Meetze's death on January 25, 2013, and their shares vested at the death of Polly Ann Blackmon Meetze. Therefore, the language providing for a deceased child's issue does not come into play." The Probate Court also correctly held that "the settlor's intent specifically to provide for then living children was effectuated in that Judy, as a then living child, had the opportunity to receive her interest for over eight (8) years, but it was her choice to sign the Private Agreement, effectively allowing the Co-Trustees to continue to hold the property in Trust and not receiving a distribution from the Trusts."

The Probate Court also reasoned that, had the Settlors been concerned about a spouse of a child receiving part of that child's share, they could have so specified. In addition, the Court held that its resolution of the dispute still fulfilled the Settlors' intent as expressed in Article VII (C)(1)(b), in that Judy's children will still be provided for, even with her share passing through her Estate.

With regard to the Private Agreement, the Probate Court pointed out that, while the Private Agreement did not "give any direction as to how the Real Property should be handled in the event of the death of any party and does not contain any language regarding when the Trust shall be distributed," it does reflect that the six children of E.T. and Polly "believed they were the current beneficiaries of the Trusts, as evidenced by the specific language in the Recitals section

which states, '[t]he six (6) children of Elzie Thomas Meetze, Sr. and Polly Ann Blackmon Meetze, who are the individual parties to this Private Agreement are the current and equal beneficiaries under the terms of The Polly Ann Blackmon Meetze Trust.'" The Probate Court noted that, "had this Private Agreement never come into existence, Judy, along with all other children would have likely received their distribution, presumably by way of Deed, and then Judy's portion would be subject to her estate plan, or lack of one in this case." As a result, the Probate Court properly held that Judy's one-sixth share of the Trust "vested at the death of the Settlors," such that Judy's share "will pass through her estate pursuant to the laws of intestacy." The Probate Court's determination of this dispute both fulfills the intent of the Settlors and comports with South Carolina precedent.

Appellant incorrectly argues that the Probate Court's interpretation of Article IX (D) would give no meaning to the final clause of that Article dictating that "[t]he share for a deceased child of the Settlor who shall leave issue then living shall be distributed per stirpes to such issue." This argument lacks merit for two reasons. First, the qualifier, "then living," appears three times in Article IX (D): at the death of the last surviving Settlor, the Trust "shall be divided into equal separate shares so as to provide One (1) share for each *then living* child of the Settlor and One (1) share for each deceased child of the Settlor who shall leave issue *then living*. The share for a living child of the Settlor shall be distributed to such child. The share for a deceased child of the Settlor who shall leave issue *then living* shall be distributed per stirpes to such issue." (emphasis added). The plain and unambiguous language of Article IX (D) provides that the Trust is divided among "then living" children or, if a child is deceased at the time of the division, to that child's issue, "then living." This interpretation is consistent with and supported by *In re Estate of Prioleau v. Prioleau*, 361 S.C. 629, 606 S.E.2d 769 (2004), which held that the

phrase "then-living grandchildren" unambiguously meant those children living at the time of the testator's death. Second, the final sentence of Article IX (D) simply directs *how* the distribution among then living children of a deceased child is to be made, *i.e.*, per stirpes, as opposed to any other method of division, but does not alter or place any condition on the right of a then living child of the Settlors to receive their full one-sixth share. The Probate Court's interpretation thus gives proper meaning to all of the provisions of Article IX (D) of the Trust.

In addition, South Carolina law "favors the vesting of estates at the earliest time possible and wherever there is doubt as to whether a remainder is vested or contingent, the court will construe it as vested rather than contingent, [citations omitted] and the general rule that an estate or interest, otherwise vested, is not rendered contingent because the amount of property the beneficiary will receive remains uncertain until a future time." *Albergotti v. Summers*, 205 S.C. 179, 187, 31 S.E.2d 129, 132 (1944); *see also Allison v. Wilson*, 306 S.C. 274, 278, 411 S.E.2d 433, 435 (1991) (noting the "rules and presumptions which favor vesting of estates at the earliest possible time").

In *First Nat'l Bank v. Bennett*, 206 S.C. 402, 34 S.E.2d 678 (1945), the testator provided that the residue of his estate be held in trust "for the benefit of my children," and, once those assets were properly sold, "to then divide the proceeds among my children, share and share alike, the child or children of any deceased child to take the parent's share." 206 S.C. at 403, 34 S.E.2d at 678. One of the testator's sons died after the testator but before the final distribution of the trust assets. The lower court held that his legacy lapsed at his death because, although he was married, he had no children. In overruling the lower court and finding that the deceased son's share would pass to his widow pursuant to the terms of the son's will, the Supreme Court explained that there was no language creating a contingency but, "[o]n the contrary, the will is

barren of evidence of an intention to suspend the gifts contained in the residuary clause upon the contingency of survival of the donees to the date of completion of the distribution." 206 S.C. at 406, 34 S.E.2d at 679. The Court concluded that "[t]his case might well be rested upon the hornbook rule that a will speaks (takes effect) as of the death of the maker, which is its effective date. And a donee thereunder takes immediately in the absence of qualifying language in the will, and there is none here except the trust for liquidation and distribution of the residue. The gift was 'to my children,' of which [the deceased child] was one when the will became effective; and the added clause, 'the child or children of any deceased child to take the parent's share,' may properly be disregarded for the simple but cogent reason that there was no 'deceased child' when the will spoke." 206 S.C. at 408, 34 S.E.2d at 680.

The same is true in this case. The bequests in the Trust became effective at Polly's death, as there was no contingency, executory interest, or condition attached to Judy's share. All that was necessary was that she be living at the time of Polly's death. As the Probate Court properly found, because all six of the Settlors' children were living at the time the Trust instrument "spoke" or took effect, *i.e.*, the date of Polly's death, "the language providing for a deceased child's issue does not come into play."

In an attempt to change the focus from determining the effect of the terms of the Trust to an argument she believes she can win, Appellant strives to read into the Trust a provision that a beneficiary's portion of the Trust assets does not vest permanently until *distribution* of the assets. However, Appellant cannot point to any language in the Trust that demonstrates unequivocally that the Settlors intended for Judy's share to be subject to an executory interest or a condition subsequent that exposed it to divestment upon her death prior to distribution. "An estate devised in fee cannot by subsequent language be stripped of its legal incidents, and where it appears that

the controlling intention is to give an absolute estate, subsequent language inconsistent therewith must be held ineffective. [citation omitted] In some circumstances, an absolute grant may be cut down by subsequent language in a will. However, this subsequent language must be 'at least as clear in expressing that intention as the words in which the interest is given.' [citation omitted] Words of doubtful import following a gift made in clear and unequivocal terms cannot cut down or qualify that gift." *McGirt v. Nelson*, 360 S.C. 307, 312, 599 S.E.2d 620, 623 (Ct. App. 2004). Here, there is no language in the Trust limiting or cutting down the absolute grant of a one-sixth share to Judy, and certainly none creating an executory interest or a condition subsequent that had to be fulfilled prior to distribution of Trust assets.

Despite Appellant's assertion that Judy was entitled to benefit from her share of the Trust during her lifetime but that "the Trust terms dictate its disposition if she dies before distribution," her position finds no support in the Trust itself. There is no language suggesting, let alone stating, the outcome urged by Appellant—that should a beneficiary pass away before final distribution of the Trust assets, that share passes to any issue then living. As explained above, the language in Article IX (D) regarding distribution describes the method by which each share is to be distributed, *i.e.*, one full share to each then living child and, alternately, per stirpes to the children of any deceased child, but not when the shares vest. "It is well established in South Carolina that whenever a devise 'takes effect in possession immediately on testator's death, words of survivor-ship [sic] refer to the date of testator's death and are intended to provide for the contingency of the death of the objects of his bounty in his lifetime." *McGirt*, 360 S.C. at 313, 599 S.E.2d at 623.[1]

[1] Foreign case law relied on by Appellant does not support, let alone dictate a different result.

The Probate Court did not err in rejecting Appellant's argument that Article XIII(C)(1)(b), by listing as one of the Settlor's intentions "that, after the Settlor's husband's death, the Settlor's children and a child's issue, if a child is deceased, be adequately provided for," overrides the clear language that specifies that, at the death of the last surviving Settlor, the Trust "shall be divided into equal separate shares so as to provide One (1) share for each *then living* child of the Settlor and One (1) share for each deceased child of the Settlor who shall leave issue *then living*." (Trust, Art. IX (D)) (emphasis added). The Probate Court correctly rejected Appellant's argument that the general intent expressed in Article XIII (C)(1)(b) overrides the conflicting specific language in Article IX(D). *See, e.g.*, *Epworth Children's Home*, 365 S.C. at 167, 616 S.E.2d at 715-716 (lower court erred "by isolating [a] single phrase and interpreting it in a manner which conflicts with the remainder of the will").

Indeed, had the Settlors wished to create an executory interest or a condition subsequent, as the Probate Court noted, they could have done so. However, no such language exists in the Trust, which "must be 'at least as clear in expressing that intention as the words in which the interest is given.' [citation omitted] Words of doubtful import following a gift made in clear and unequivocal terms cannot cut down or qualify that gift." *McGirt*, 360 S.C. at 312, 599 S.E.2d at 62.

Appellant incorrectly asserts that the Private Agreement somehow changed the Settlor's intent regarding time that Judy's share vested permanently. However, construction of a trust or will "depends upon the trustor's intent at the time of execution as shown by the face of the document and not on any secret wishes, desires or thoughts," or private agreements amongst the beneficiaries, "after the event." *Holcombe-Burdette.*, 371 S.C. at 658, 640 S.E.2d at 485. In addition, as the Probate Court properly found, as a factual matter, "[t]he Private Agreement also

did not give any direction as to how the Real Property should be handled in the event of the death of any party and does not contain any language regarding when the Trust shall be distributed." Furthermore, the Private Agreement provides, in pertinent part, that "the parties hereto, their respective heirs, beneficiaries, successors-in-interest, transferees and assigns" are bound by its terms and provisions. Logically, there would be no need to bind their heirs, beneficiaries, etc., if the ultimate distribution of the Trust assets already was restricted to the parties and their issue.

Based on the foregoing, the Probate Court correctly ruled that Judy's share of the Trust vested at the time of Polly's death and is properly included in Judy's Estate.

II. The Probate Court correctly denied Appellant's request for attorney's fees and costs.

In addition to finding that Judy's share vested upon at the death of the Settlors such that it will pass through her estate pursuant to the laws of intestacy, the Probate Court also correctly held that "All parties will be responsible for their own attorney's fees." Any award of attorney's fees and costs is permissible, but not automatic, under Section 62-7-1004, which provides, in pertinent part, that "the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees to any party, to be paid by another party or from the trust that is the subject of the controversy." S.C. Code Ann. § 62-7-1004; *see also Eaddy v. Jackson Beauty Supply Co.*, 244 S.C. 256, 258, 136 S.E.2d 297, 298 (1964) ("use of the term "may" is permissive).

Respondent Martin requested that Appellant be held responsible for payment of his attorneys' fees and costs in having to respond to the action she brought in Probate Court. The Personal Representative of Judy's Estate both denied "there are any valid uncertainties or problems with Judy's Estate," and also sought payment of her attorney's fees. Thus, even though

both Respondent and the Personal Representative of Judy's Estate both sought attorney's fees and costs, and even though the Probate Court ruled in favor of the positions advanced by those two parties, the Probate Court ruled that all parties were responsible for their own attorney's fees. Clearly, justice did not require that the Probate Court award costs to Appellant in pursuing her own self-interested position, she was not benefitting either the Trust or Judy's Estate.

CONCLUSION

Based on the foregoing, the Order of the Richland County Probate Court entered on June 14, 2021 and the Order Denying Motion to Alter, Amend and/or Vacate Order filed August 30, 2021, are AFFIRMED.

AND IT IS SO ORDERED.

DeAndrea Gist Benjamin
Presiding Judge
Richland County Court of Common Pleas

Richland Common Pleas

Case Caption: Michelle Corley VS Phil Martin , defendant, et al

Case Number: 2021CP4004558

Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161