

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Richland County Court of Common Pleas

The Honorable DeAndrea Gist Benjamin, Circuit Judge
The Honorable Amy W. McCulloch, Probate Judge

Appellate Case No. 2022-1010

Michelle Corley..... Appellant,

v.

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,

..... Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Probate Court erred in finding that Judy Martin's share of the Meetze Trusts vested at the death of each of her parents and was not subject to divestment.
- II. The Probate Court erred in finding that the Meetzes' failure to include language directly prohibiting a beneficiary's spouse from receiving benefits overrides their stated intent that the Trusts benefit their lineal descendants and that, therefore, Judy's shares of the Trusts would be subjected to expenses of administering her Estate and distributed to her intestate heirs.
- III. The Probate Court erred in failing to find that justice and equity require Appellant's attorney's fees and costs to be borne by the Estate of Julia Ann Martin, regardless of the final outcome of this case.

STATEMENT OF THE CASE

Appellant Michelle Corley (“Appellant”) commenced this action by the filing of a Summons and Petition for Declaratory Judgment and Other Relief in the Richland County Probate Court on October 19, 2020. [Summons, Petition] All Respondents were served; appeared; and filed Answers. [Answers of Respondent Barrs, Respondent Martin, Respondent Lee and Respondents Meetze and Little, as Trustees]

A hearing was held before the Honorable Amy W. McCulloch on April 20, 2021, and all parties were given notice thereof. [Notice of Hearing]

Thereafter, on April 30, 2021, the Court declared that it would rule in favor of Appellant and Respondent Barrs and directed their counsel to submit a proposed Order. [Email from Kemmerlin, dtd. 4/30/21] A proposed Order was submitted by Appellant’s counsel. [Email from Silvernail, dtd. 5/4/21, Proposed Order]

Prior to signing the proposed Order, and without further input or argument from counsel, the Court announced that it would reverse its announced decision. [Email from Kemmerlin, dtd. 5/24/21]

The Court entered its Order on June 14, 2021, holding that Julia Ann Martin’s share of the Polly Ann Blackmon Meetze Trust and the Elzie Thomas Meetze Trust would pass to her Estate, to be distributed in accordance with the laws of intestacy. [Order dtd. 6/14/21] Appellant filed a timely motion to alter or amend the Order on June 23, 2021. [Mot. Alter, dtd. 6/23/21] By Order of August 30, 2021, the lower Court denied the motion. Petitioner timely filed her Notice of Appeal of both the June 14, 2021 Order and the August 30, 2021 Order on September 8, 2021. Appellant appealed the Probate Court’s decision to the

Richland County Circuit Court, which affirmed the Probate Court by Order dated June 22, 2022. [Order dtd. 6/22/22] This appeal follows.

STATEMENT OF FACTS

This matter arises out of a dispute over the construction of two trusts, the Polly Ann Blackmon Meetze Trust and the Elzie Thomas Meetze Trust. At its heart, this case presents the question of whether Mr. and Mrs. Meetze intended for their Trusts to benefit only their lineal descendants or whether other beneficiaries of the Estate(s) of any child or children who died before distribution of the Trusts' assets should receive a portion thereof.

Petitioner sought construction of the following term of the Elzie Thomas Meetze, Sr. Trust and the Polly Ann Blackmon Meetze Trust (the "Trusts") to resolve a dispute among the beneficiaries of Judy's Estate regarding their meaning:

... upon the death of the survivor of [Elzie Thomas Meetze, Sr. and Polly Ann Blackmon Meetze], the entire remaining principal of [the Trusts] ... shall be divided into separate shares so as to provide for 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. [Petition, Ex. A., Article IX(D)]

The Trusts also contain the following statement of the Settlers' intent:

b. that, after the [second Settlor dies], the Settlor's children and a child's issue, if a child is deceased, be adequately provided for; [Petition, Ex. A., Article VIII(C)(1)(b)]

E.T. died on May 16, 2007, and Polly died on January 25, 2013, resulting in each Trust owning ½ of a parcel of real estate at 7608 Broad River Road in Richland County. [Petition, ¶¶11-12] All six (6) of E.T. and Polly's children survived both of them, including Julia Ann Martin. [Agreement dtd. 1/8/15, p. 1] After Polly's death, certain litigation and disputes among the children arose as to matters related to her Estate and Trust. [Agreement dtd.

1/8/15, pp. 1-2] Those were resolved by a Private Agreement which was filed in the Probate Court on February 19, 2015. Although that Agreement resolved multiple issues and included terms irrelevant to the current dispute, it stated in pertinent part:

8. Sale of Real Property. The Trustees of The Elzie Thomas Meetze, Sr. Trust and The Polly Ann Blackmon Meetze Trust shall use their best efforts to market the real property held by the trusts, with all parties understanding and agreeing that such efforts will necessarily involve balancing the interests of obtaining a favorable price with other considerations such as the benefits of a prompt sale. . . . The Trustees shall keep the individual beneficiaries reasonably informed as to the progress of the sales efforts and shall promptly notify the individual beneficiaries of the material terms of any purchase offers received. [Agreement dtd. 1/8/15, p. 5, ¶8]

The Agreement contemplates the *Trustees* holding, marketing and selling the property; no deed was ever issued conveying to Judy any direct interest in the property; and it does not appear that Judy ever sought distribution of her share of the Trusts in any form or fashion. [Order dtd. 6/14/21, ¶7] To date, the Trust property has not been sold and is still in possession of the Trustees. [*Id.*]

Julia Ann Martin (“Judy”), one of the six children of the Settlers of the Trusts, died intestate on May 10, 2019, survived by her husband, Respondent Phil Martin, and her two children, Appellant Michelle Corley and Respondent Chip Barrs. [Petition, ¶¶3, 8, 9] Judy’s Estate is being administered in Lexington County as Case No. 2019-ES-32-1038. [*Id.* at ¶3]

This action arose after Jordan Corley, as Personal Representative of the Judy’s Estate, included Julia’s interest in both Trusts on the Inventory and Appraisement for Julia’s Estate. [Petition, ¶17] Appellant and Respondent Barrs believe that, because Judy died before *distribution* of the Trusts’ assets, the documents mandate that Judy’s share should be distributed to Appellant and Respondent Barrs as Judy’s issue, rather than to Judy’s Estate.

STANDARD OF REVIEW

"When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999). "In such cases, the appellate court owes no particular deference to the trial court's legal conclusions." *Id.* In this case, there is no dispute over the facts, but simply a dispute over construction of two Trusts in light of the undisputed facts. This Court may therefore freely review whether the Probate Court and Circuit Court properly applied the law.

ARGUMENT

I. The Probate Court Erred in Finding, and the Circuit Court erred in affirming, that Judy Martin's share of the Meetze Trusts vested in *fee simple absolute* at the death of each of her parents and was not Subject to Divestment.

All parties appear to agree that Judy's 1/6TH share in each Trust vested at the death of its Settlor. [Petition, Answers of all Respondents] Respondents Jordan and Phil appear to take the position that Judy's interest in the Trust vested in *fee simple absolute* and is thus subject to passing as an asset of Judy's Estate. Appellant submits that such an interpretation would give no meaning to the final clause of the Trusts 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." [Petition, Ex. A., Article IX(D)]

Although Appellant can find no South Carolina authority directly addressing the question presented herein, existing caselaw on the vesting of Trust interests is supports Appellant's position that Judy's interest vested but was subject to divestment in favor of her issue if she was not alive at the time of *distribution*. See *Scott v. Brunson*, 351 S.C. 313, 569

S.E.2d 385 (Ct.App. 2002) (“When a fee simple subject to an executory interest is cut short, the fee simple automatically passes to a third party . . .”). Here, Judy was entitled to all benefits of her Trust share during her lifetime, but the Trust terms dictate its disposition if she dies before distribution. Judy’s share, when distributed, will pass to her issue.

The shares of the six children in the Trusts vested upon the death of each parent – the class of children was established, and each share was created. The Trust is, however, explicit and clear that distributions are to be made to a deceased child’s issue and, further, that the Settlers intend the Trusts to benefit each other, their children and/or their children’s issue.

It is the cardinal rule of will construction that the testator's intent should be ascertained and followed unless it violates some well-established rule of law. *See People's Nat'l Bank of Greenville v. Harrison*, 198 S.C. 457, 461, 18 S.E.2d 1, 3 (1941); *Wates v. Fairfield Forest Prods. Co.*, 210 S.C. 319, 322, 42 S.E.2d 529, 530 (1947). In ascertaining the testator's intent, effect must be given to every part of the will. If possible by any reasonable interpretation, "all clauses must be harmonized with each other and with the will as a whole." *Shevlin v. Colony Lutheran Church*, 227 S.C. 598, 603, 88 S.E.2d 674, 677 (1955).

McGirt v. Nelson, 360 S.C. 307, 599 S.E.2d 620 (S.C. App. 2004).

Persuasive authority from other states gives further support to Appellant’s position that Judy’s share of the Trusts is, pursuant to the Trusts, now vested in her issue and not in her Estate or heirs-at-law. In *Corefirst Bank & Trust v. Herrman*, 283 P.3d 840 (Kan.App. 2012), the Kansas Court of Appeals addressed a situation where there was a gap in time between the division of a Trust into shares and the distribution of those shares, during which a beneficiary whose share was vested died. That Court’s analysis would apply here, as well:

“[t]he first sentence instructs the trustee to *divide* the Trust into equal shares, so as to provide one share to each of the three children . . . The second sentence directs the trustee to *distribute* one share to each of the children who have survived. . .” *Id.*

The *Corefirst* Court goes on to find that the share of one such child who died between the two dates should be distributed to that child's heirs-at-law.¹

The Meetze Trusts are somewhat unusual in that they do not specify a delay between division and distribution or, in fact, include any specific direction that the Trust shares be distributed at any particular time. Respondents Jordan and Phil appear to take the position that the date of Polly's death (now more than eight (8) years ago) should be considered the distribution date, despite the intervening Agreement that indicates the Trustees would hold and maintain the Trust's assets pending a sale which has undisputedly not yet occurred.

Estate of Rozell v. Betty Rozell Revocable Trust, 299 P.3d 500 (Okla. Civ. App. 2013), also contains some instructive analysis. In that case, the Trust contained language similar to the Meetze Trusts, which provided that a deceased beneficiary's share shall be distributed to that beneficiary's children. One beneficiary died after the Settlor's death but before distribution, and he had no children. The deceased beneficiary's surviving spouse sought to have his share of the trust paid into his estate, and the other beneficiaries argued that his share should be paid over to them in light of his having died before distribution and without children.

The Oklahoma Court found that:

[The trust] provides for a beneficiary's share to be divested upon the conditions subsequent that the beneficiary is deceased and has living children. With respect to Donald's share, both conditions were not met. Donald was deceased but he had no children. Therefore, his interest, which vested upon Betty's death, was never divested. It passed to his estate upon his death.

¹ Importantly, the Trust at issue in that case was completely silent as to the disposition of a deceased child's share; E.T. and Polly's Trusts are clear: that share should be distributed to the *issue* of a deceased child.

While the *Rozell* Court ultimately found that the deceased child's share of the trust was vested and must become an asset of his estate, the above-quoted language makes clear that this result was only because the trust's contingent disposition of his share could not be carried out. The Meetze Trusts anticipate and provide for distribution of a deceased child's share to that child's issue, and Judy undisputedly was survived by her two children.

Appellant submits that the Meetze Trusts unambiguously provide that Judy's share was vested to Judy in fee simple, subject to an executory interest. At Judy's death, which occurred before distribution, her share of the trust was divested from Judy and vested in her issue. Because the Probate Court erred in finding Judy's interest in the Trust to have vested in *fee simple absolute* at the death of her parents, Appellant respectfully submits that this Court should reverse the Probate Court's Order and hold that Judy's share of each Trust is now distributable to her *issue* as set out in the Trusts.

II. The Probate Court erred in finding, and the Circuit Court erred in affirming, that the Meetze's failure to include language directly prohibiting a beneficiary's spouse from receiving benefits overrides their stated intent that the Trusts benefit their lineal descendants and that, therefore, Judy's shares of the Trusts would be subjected to expenses of administering her Estate and distributed to her intestate heirs.

The lower courts found that, despite clear statements in the Trust documents that Mr. and Mrs. Meetze intended to benefit their children or the issue of a deceased child, "they could have crafted their estate planning documents differently, for example, in such a way so that the surviving child's share remained in trust for life." [Order dtd. 6/14/21, p. 5] The Court goes on to find that, by finding that Judy's share of the Trusts is payable to her Estate (and thus payable ½ to Respondent Martin), "the Court is still effectuating the intent of the

settlor, as Judy's children will still be provided for even with Judy's interest passing through her estate because they are to receive their intestate share of her estate." [*Id.*]

Appellant submits that the logic evinced by the Probate Court is at odds with the rules governing construction of trusts in South Carolina. "The Court must give the words contained in the document their ordinary and plain meaning unless it is clear the testator intended a different sense of such meaning which would lead to an inconsistency with the testator's declared intent. *In Re Estate of Prioleau*, 361 S.C. 627, 632, 606 S.E.2d 769, 772 (2004) (quoting *Bob Jones Univ. v. Strandell*, 344 S.C. 224, 230, 543 S.E.2d 251, 254 (Ct.App. 2001)). The Probate Court's Order finds properly that the decedents' stated intent was to benefit their children or their children's issue, but errs in holding that such intent was served where Judy never *received* the benefit of her shares of the Trusts.

The Probate Court's statement that "Judy's children will still be provided for . . . because they are to receive their intestate share of her estate" appears to acknowledge the Meetzes' stated intent to provide for their children or the issue of any deceased child, but finds that intent to be served by the Court's belief that Judy's children will receive ½ of Judy's shares in the Trusts, net of expenses and claims against her Estate. The Probate Court's finding is both speculative and out of line with the stated intent of the Settlers.

For that reason, Appellant submits that this Court should reverse the Orders of the Probate Court and find that the Meetze Trusts require that Judy's shares of each Trust be distributed to her issue as a result of Judy's death prior to the *distribution* of the Trusts.

III. The lower courts erred in failing to find that justice and equity require Petitioner's attorney's fees and costs to be borne by the Estate of Julia Ann Martin, regardless of the final outcome of this case.

Appellant brings this action to resolve an existing and important question regarding the ownership of the share of the Meetze Trusts formerly belonging to Judy. The Personal Representative of Judy's Estate has included Judy's interest in each Trust as an asset of her Estate; if the shares are Estate assets, they dwarf the value of any other Estate asset.

The inclusion of the Trust shares in Judy's Estate has two major effects on all beneficiaries. First, the substantial value placed on those shares could result in a substantial Personal Representative's commission being paid – at great expense to all beneficiaries if it were later determined that the Trust shares were never assets of the Estate. Second, the beneficiaries of Judy's Estate cannot competently agree to how its assets should be distributed unless and until it is finally determined whether the Trust shares are subject to division as part of her Estate. It is thus necessary to resolve this question prior to the distribution and closure of Judy's Estate.

S.C. Code Ann. §62-7-1004 provides:

In a judicial proceeding involving the administration of a trust, 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.

This action involves the administration of the Meetze Trusts, as the determination of how Judy's share passes will resolve the ultimate distribution of the Trusts, as well as confirm who the current beneficiaries of the Trusts are. Appellant submits, however, that the Probate Court erred in failing to tax Appellant's reasonable attorneys' fees and costs to Judy's Estate, as the Court's decision on this matter are of particular benefit to the Estate's beneficiaries as set out above.

The Personal Representative of Judy's Estate unilaterally elected to include the Trust shares (making up more than 80% of the total value of the Estate) on the Inventory, and no party other than Petitioner took initiative to seek a Court determination of whether those shares were actually Estate assets. Petitioner submits that justice and equity require that she be reimbursed from Judy's Estate² for her reasonable attorney's fees and costs herein.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that this Court should reverse the Orders on appeal; hold that Judy's shares of the Meetze Trusts are now distributable to her issue, rather than her Estate; and tax Appellant's reasonable attorneys' fees and costs to Judy's Estate.

Respectfully submitted.



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January 17, 2023

² Although, as set out above, this case involves the administration of trusts, Petitioner notes that this Court is also empowered to award her fees under S.C. Code Ann. §62-1-111, because this case involves the administration of an Estate as well.

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The Honorable Amy W. McCulloch, Probate Judge

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Michelle Corley..... Appellant,

v.

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, Respondents.

PROOF OF SERVICE

The undersigned counsel for Appellant hereby certifies that he has served the Notice of Appeal, with attached Order, on all counsel of record on the date shown below by mailing a copy of the same to them, addressed as follows:

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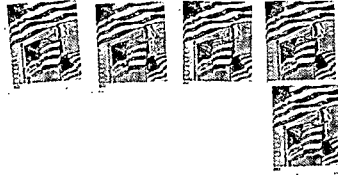
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Respectfully submitted,



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