

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

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Donald B. Hocker, Circuit Court Judge SC Court of Appeals

Case No. 2015-CP-24-1174

Appellate Case No. 2017-001294

Jerald Lamar Harbin, Special Fiduciary of the Franklin N. Harbin and Edna F. Harbin
Living Trust, Appellant,

v.

Susan H. Williams, George T. Williams, Citifinancial Inc. and CFNA Receivables (SC)
Inc., Respondents.

Of whom Susan H. Williams is the Respondent.

FINAL BRIEF OF RESPONDENT

ATTORNEY FOR RESPONDENT

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3. The trial judge did not err in refusing to grant Appellant’s Motion for judgement notwithstanding the verdict on the grounds that the deed in question, executed by the survivor of the co-settlors was invalid; because, the governing Trust Declaration did not provide in any part that the authority to withdraw property from the Trust expired on the death of the other co-settlor.
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STATEMENT OF ISSUES ON APPEAL

1. The trial judge did not err, at the close of evidence in refusing to grant the Appellant's motion for directed verdict on the grounds that the deed in question, executed by the survivor of the two co-settlors, after the death of the other co-settlor, was invalid, because the governing Trust Declaration provided that the survivor of the two would serve as Trustee alone and did not limit the actions the surviving Trustee could take in regard to the Trust or the trust property.

2. The trial judge did not err in submitting to the jury the issue of whether or not the governing Trust Declaration authorized the survivor of the two co-settlors to withdraw the property in question from the Trust, after the earlier death of the other co-settlor.

3. The trial judge did not err in refusing to grant Appellant's Motion for judgement notwithstanding the verdict on the grounds that the deed in question, executed by the survivor of the co-settlors was invalid; because, the governing Trust Declaration did not provide in any part that the authority to withdraw property from the Trust expired on the death of the other co-settlor.

STATEMENT OF THE CASE

1. On January 16, 2000, Franklin N. Harbin and Edna F. Harbin, executed the Declaration of Trust (hereafter Trust), which created the “Franklin N. Harbin and Edna F. Harbin Living Trust,” which was filed in the Office of the Clerk of Court for Greenwood County on January 18, 2000, in Book 606, at page 15 (R. pp. 65-67).
2. On January 16, 2000, Franklin N. Harbin executed a deed, titled *General Warranty Deed*, which granted title to a property on Lake Greenwood, designated as Lot “C” and Lot “A”, the family home at 313 Lakeshore Drive (hereafter “the home”), and a tract of land, containing 128 acres, more or less, and identified as Tract B of the F.E. Harbin lands to the Trust (R. pp. 69-71).
3. On March 31, 2000, Franklin N. Harbin and Edna F. Harbin as Settlers and Trustees of the Trust, executed a deed, titled *General Warranty Deed*, which granted title of the tract of land, containing 128 acres, more or less, and identified as Tract B of the F.E. Harbin lands to Steven Cary Harbin (R. pp. 73-75), one of their five children, leaving the home as the only trust property (R. p. 60, line 8 - p. 61, line 10).
4. Franklin N. Harbin died unexpectedly on June 23, 2000, leaving Edna F. Harbin as the sole surviving Settlor and Trustee of the Trust.
5. On November 30, 2005, Edna F. Harbin, as Settlor and Trustee of the Trust, executed a deed transferring the home to herself for life and a remainder interest to Susan Williams (R. pp. 77-78), her daughter who was living with Ms.

Harbin in the home (R. p. 61, line 16 - p. 62, line 9).

6. On March 21, 2011, Edna F. Harbin died.

7. To this Statement of the Case, Respondent adds and incorporates herein by reference the Appellant's Statement of the Case, paragraphs 1 through 16.

- 1. THE TRIAL JUDGE DID NOT ERR, AT THE CLOSE OF EVIDENCE IN REFUSING TO GRANT THE APPELLANT'S MOTION FOR DIRECTED VERDICT ON THE GROUNDS THAT THE DEED IN QUESTION, EXECUTED BY THE SURVIVOR OF THE TWO CO-SETTLORS, AFTER THE DEATH OF THE OTHER CO-SETTLOR, WAS INVALID, BECAUSE THE GOVERNING TRUST DECLARATION PROVIDED THAT THE SURVIVOR OF THE TWO WOULD SERVE AS TRUSTEE ALONE AND DID NOT LIMIT THE ACTIONS THE SURVIVING TRUSTEE COULD TAKE IN REGARD TO THE TRUST OR THE TRUST PROPERTY.**

Article 2 of the Trust states, in relevant part: "The Settlers shall act as Trustees during their lives. Upon the death or incapacity of either Settlor, the other Settlor shall act as Trustee alone." (R. p. 65) The Harbins created a revokable *inter vivos* trust and at no point in the Trust was there any language that in its plain and simple meaning dictated that the trust became irrevocable on the death of the first of the settlers to die, or, language that limited the acts which the Settlor and Trustee might exercise over the Trust property. Appellant misinterprets Article 3 of the Trust (R. p. 65) as a limitation on the powers of the surviving Settlor and Trustee, when Article 3 is a simple statement and illustration of the independent powers each co-settlor and co-trustee might exercise while both are living.

What happens when a co-settlor dies depends on what is written in the trust document. Section 62-7-602(a) of the South Carolina Code of Laws, as amended, states in part: "Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust." Even though the subject trust predates the effective date of this statute, the statute is a codification of a well established tenet of trust construction.

2. **THE TRIAL JUDGE DID NOT ERR IN SUBMITTING TO THE JURY THE ISSUE OF WHETHER OR NOT THE GOVERNING TRUST DECLARATION AUTHORIZED THE SURVIVOR OF THE TWO CO-SETTLORS TO WITHDRAW THE PROPERTY IN QUESTION FROM THE TRUST, AFTER THE EARLIER DEATH OF THE OTHER CO-SETTLOR.**

Given that the trial judge was present and heard the evidence, it was within his sound discretion to find that, “the Trust document itself does create an issue of fact,” and, therefore, submit the question of fact to the jury. Transcript page 115, lines 7-10 (R. p. 15, lines 7-10).

“In ascertaining a settlor’s intent, if the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument.” *Chiles v. Chiles*, 270 S.C. 379, 384, 242 S.E. 2d 426, 429 (1978). “[C]onstruction 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 after the event.” *Chiles v. Chiles*, 270 S.C. 379, 384, 242 S.E. 2d 426, 429 (1978) quoting *Brock v. Hall*, 33Cal.2d 885, 206 P.2d 360 (1949). Extrinsic evidence is not admissible to alter the plain language of a trust instrument. *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E. 2d 811, 813 (1995).

3. **THE TRIAL JUDGE DID NOT ERR IN REFUSING TO GRANT APPELLANT'S MOTION FOR JUDGEMENT NOTWITHSTANDING THE VERDICT ON THE GROUNDS THAT THE DEED IN QUESTION, EXECUTED BY THE SURVIVOR OF THE CO-SETTLORS WAS INVALID; BECAUSE, THE GOVERNING TRUST DECLARATION DID NOT PROVIDE IN ANY PART THAT THE AUTHORITY TO WITHDRAW PROPERTY FROM THE TRUST EXPIRED ON THE DEATH OF THE OTHER CO-SETTLOR AND THE DEED IN QUESTION WAS VALID.**

Article 2 of the Trust states, in relevant part: "The Settlers shall act as Trustees during their lives. Upon the death or incapacity of either Settlor, the other Settlor shall act as Trustee alone." (R. p. 65) Appellant may not look only to Article 3 (R. p. 65) and draw any conclusion regarding the intent of the settlers in regard to this Trust. The full and true meaning of the Trust is found in looking at the document as a whole. In fact, the law relating to discerning the drafter's intent is identical for wills and trusts. *All Saints Parish, Waccamaw v. Protestant Episcopal Church*, 358 S.C. 209, 224 n.10, 595 S.E. 2d 253, 262 n.10 (Ct. App. 2004). The cardinal rule of will construction is to determine and give effect to the testator's intent from a reading the will as a whole. *Matter of Clark*, 308 S.C. 328, 330, 417 S.E. 2d 856, 857 (1992); *May v. Riley*, 279 S.C. 248, 250, 305 S.E. 2d 77, 78 (1983); *Albergotti v. Summers*, 205 S.C. 179, 182, 31 S.E. 2d 129, 130 (1944). A court may not consider the will piecemeal, but must give due weight to all its language and provisions, giving effect to every part when, under a reasonable interpretation, all the provisions may be harmonized with each other and with the will as whole. *King v. S.C. Tax Commn.*, 253 S.C. 646, 649, 173 S.E. 2d 92, 93 (1970); *Wise v. Poston*, 281 S.C. 574, 578, 316 S.E. 2d 412, 414 (Ct. App. 1984).

CONCLUSION

Edna Harbin, the surviving settlor had the right to withdraw property from the trust estate. Article 2 of the Declaration Of Trust states, in relevant part: "The Settlers shall act as Trustees during their lives. Upon the death or incapacity of either Settlor, the other Settlor shall act as Trustee alone." (R. p. 65) Article 3 (R. p. 65) , when read with the rest of the document, is a simple and plain statement of how the co-settlors might conduct themselves in regard to the Trust and the trust property while both settlors are still living. It is only one part of the whole and must not be severed and made more important than the other parts.

The jury looked at the whole Declaration Of Trust and heard the factual evidence and determined that it was not the intent of the settlors to limit the ability of the surviving co-settlor to withdraw property from the Trust (R. p. 2). Further, the judge who was present for the trial and heard the evidence exercised his sound discretion in submitting the case to the jury (R. p. 15, lines 7-10) and then in denying Appellant's request for a judgement notwithstanding the verdict (R. p. 31, line 22 - p. 32, line 4).

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CERTIFICATE OF COUNSEL
Final Brief of Respondent

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b),
SCACR.

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