IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 13, 2009 Session

IN RE ESTATE OF CHARLYNE HUTTON PICKARD

Appeal from the Circuit Court for Davidson County
No. 80001 David R. Kennedy, Judge

No. M2008-02028-COA-R3-CV - Filed August 26, 2009

In this will construction case, the trial court found the language of the will demonstrated that the testatrix intended her real property to be administered as part of her estate subject to the administrator's control. The will further provided that the shares of any beneficiary who died before receiving his entire share would go to the surviving beneficiaries. Therefore, the petitioning estate was not an heir entitled to take future distributions under the will. The judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Christopher E. Thorsen and Kyle D. Neal, Nashville, Tennessee, for the appellants, Estate of Hutton Buchanan, Sr. and Carolyn Buchanan.

Jean L. Byassee, Nashville, Tennessee, for the appellee, Estate of Charlyne Hutton Pickard.

OPINION

FACTUAL BACKGROUND

This case involves the construction of a will and the application of a statutory provision concerning the vesting of real property upon a testate decedent's death. The underlying facts relating to the issue before us are largely undisputed. Charlyne Hutton Pickard died on January 9, 1987. Ms. Pickard executed a Last Will and Testament ("Will") which was admitted to probate by her sons, Jack Pickard and Hutton Buchanan, as co-executors of her estate. The estate was opened on May

12, 1987, administered according to the Will, and subsequently closed in 2001.[1] Mr. Buchanan died in August 2007.

On March 7, 2008, Mr. Pickard filed a petition to reopen his mother's estate. As grounds, Mr. Pickard stated that he relied on his co-executor, now deceased, to administer the estate and recently discovered that it was not properly closed. The petition claimed that reopening the estate "would allow bills to be paid and one remaining small piece of property to be sold pursuant to Section 2 of the will and the remaining proceeds distributed to the living residuary beneficiaries under section 5, paragraph 2 of the will." The relevant portions of Ms. Pickard's Will read as follows:

> SECOND: I direct that those in charge of my estate sell all my real property, execute and deliver any and all necessary documents and instruments to consummate said sale and the net proceeds therefrom I hereby direct that they go into and become a part of my general estate.
>
> . . . .
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> FIFTH: All the rest, residue and remainder of my estate, I hereby give, will, devise and bequeath thirty-five percent (35%) to my son, Hutton Buchanan, Sr., thirty-five percent (35%) to my son, Jack Pickard, ten-percent (10%) each to Ginger Pickard, Jill Pickard and Jack L. Buchanan.
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> In the event any of my said beneficiaries shall predecease me or die prior to receiving their entire share, then said amount and share shall go to the survivor or survivors named herein to be based upon the percentages as set forth.

Mr. Buchanan's estate ("the Appellant") filed a response objecting to the petition or, alternatively, intervening as an interested party and heir under the Will. The estate was reopened on March 20, 2008, and Mr. Pickard was named sole executor to distribute the remaining assets of the estate according to the terms of the Will.

On May 6, 2008, the Appellant filed a motion to declare the rights of the beneficiaries of the Will, specifically, whether it was entitled to Mr. Buchanan's 35% residuary share of the unsold real property based on Tenn. Code Ann. § 31-2-103. The Appellant claims that the real property vested in the beneficiaries immediately upon Ms. Pickard's death and did not become a part of her general estate, thereby entitling the beneficiaries, including Mr. Buchanan's estate, to their pro rata share of the proceeds from its sale. The trial court found that, "pursuant to the language of the will, it was the intent of the testator to have her real property be administered as part of her estate subject to the

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[1] Ms. Pickard's estate was closed by general order directing that "all cases not presently entered into the [Davidson County Probate Court] computer's database, particularly those which are considered 'archived' by the Clerk's office, should be officially, CLOSED." The probate court acknowledged that an archived estate closed pursuant to the September 24, 2001 order may be reopened for good cause by petitioning the court.

control of the personal representative." Because an heir must be living at the time any distribution is made according to the second paragraph and because Mr. Buchanan died before the final distributions were made, the trial court held that his estate was not an heir entitled to take under the will. The estate of Hutton Buchanan, Sr. appeals.

ANALYSIS

The only issue for our review is whether the trial court erred in its construction of Ms. Pickard's will, and this is a question of law. *In re Estate of Snapp*, 233 S.W.3d 288, 291 (Tenn. Ct. App. 2007). We review questions of law de novo with no presumption of correctness accompanying the trial court's conclusions. *In re Estate of McFarland*, 167 S.W.3d 299, 302 (Tenn. 2005).

The cardinal rule in construing a will is that the court "must attempt to ascertain the intent of the testator and to give effect to that intent unless prohibited by a rule of law or public policy." *Id*. "The testator's intention is to be ascertained from the particular words used in the will itself, from the context in which those words are used, and from the general scope and purposes of the will, read in the light of the surrounding and attending circumstances." *Presley v. Hanks*, 782 S.W.2d 482, 487 (Tenn. Ct. App. 1989). This intent "is to be gathered from the scope and tenor of the whole will. . . ." *In re Estate of Vincent*, 98 S.W.3d 146, 150 (Tenn. 2003) (quoting *Podesta v. Podesta*, 189 S.W.2d 413, 415 (Tenn. Ct. App. 1945)). Every word used in the will is presumed to have some meaning. *Daugherty v. Daugherty*, 784 S.W.2d 650, 653 (Tenn. 1990). In ascertaining the intent from the words used, "the most easy, reasonable and natural reading of the language" should be given effect. 2 Jack W. Robinson, Sr., Jeffrey Mobley & Andra Hedrick, PRITCHARD ON WILLS AND ADMINISTRATION OF ESTATES § 405 (6th ed. 2007).

The Appellant maintains that the real property vested in the decedent's beneficiaries immediately upon her death in 1987, and because Mr. Buchanan was alive when he received his share of the real property, his estate is entitled to his 35% interest. The argument is based on Tenn. Code Ann. § 31-2-103 which provides, in part, that "[t]he real property of a testate decedent vests immediately upon death in the beneficiaries named in the will[.]" However, the statute follows with an exception to the general rule allowing a testator to explicitly provide that the real property vest in his or her estate instead:

> The real property of a testate decedent vests immediately upon death in the beneficiaries named in the will, *unless the will contains a specific provision directing the real property to be administered as part of the estate subject to the control of the personal representative*. . . . After payment of debts and charges against the estate, the personal representative shall distribute . . . the property of a testate decedent to the distributees as prescribed in decedent's will.

Tenn. Code Ann. § 31-2-103 (2007) (emphasis added). In response, Mr. Pickard relies on the language of the second paragraph of the Will. He claims, and the trial court agreed, that the words the decedent used were sufficiently clear and invoked the exception above.

After examining the Will in its entirety, we have determined that the language in the second paragraph indicates that the testatrix did not intend her real property to vest in an individual; rather, the words used demonstrate that the property vested in her estate to be sold. The Will instructs the personal representatives to "sell all my real property . . . and the net proceeds therefrom I hereby direct that they go into and become a part of my general estate." This is a sufficiently specific provision to trigger the exception in Tenn. Code Ann. § 31-2-103. While the language does not state verbatim that the real property is to be "administered" as part of the estate, the Will does specify that the property is to be sold in order to become part of the general estate and is immediately followed by directives on how the estate shall be administered.

The language clearly expresses the testatrix's intent: that *all* her real property be sold, and the proceeds put into her general estate. The Appellant construes this directive as simply granting the co-executors the power to sell her real property, a power that is not automatically given to the personal representatives of a decedent's estate. Nevertheless, the natural and reasonable reading of this provision shows that the testatrix directs those in charge of her estate to the sell the property: she doesn't just grant the power to sell her property, she instructs them to do so before administering her estate. "[W]ords of testamentary direction cannot be disregarded as surplusage, if any reasonable meaning can be drawn from them." *Rinks v. Gordon*, 24 S.W.2d 896, 897 (Tenn. Ct. App. 1930); *See also* Robinson, Mobley & Hedrick, supra, at § 407. A review of the Will's second paragraph in the context of the entire document, particularly the order in which the Will disposes of the testatrix's property and affairs, is further indication that Ms. Pickard intended her real property to vest in her estate upon her death. The proceeds from the sale of the testatrix's real property were intended to fund certain trusts established in the third and fifth paragraphs.[2] Therefore, the real estate vested in the executors, not the beneficiaries, at the time of her death.

Evidence as to the administration of the estate prior to its closing in 2001 shows that the co-executors conveyed property on behalf of and belonging to the estate. Included in the record is a warranty deed on one parcel of the decedent's property which was sold by the "Estate of Charlyne Hutton Pickard" and signed by co-executors Jack P. Pickard and Hutton Buchanan, Sr. Had the property vested in Mr. Pickard and Mr. Buchanan as beneficiaries of the Will upon the death of the testatrix, then the property conveyed on July 25, 1988, would have been conveyed by all beneficiaries as joint tenants. Because the estate administration was incomplete at the time of Mr. Buchanan's death, he did not receive his entire share. Therefore, his shares are to be divided among Ms. Pickard's surviving heirs according to the fifth paragraph of the Will.

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[2] The third paragraph of the Will sets up a trust on behalf of Leah Suddreth to be used exclusively for her education and the testatrix bequeaths her personal property to her sons in the fourth paragraph. The shares of the beneficiaries receiving a 10% interest were set up in trusts and were administered by the co-executors pursuant to the fifth paragraph.

CONCLUSION

The judgment of the trial court is affirmed in all respects. Costs of appeal are assessed against the appellants, Estate of Hutton Buchanan, Sr. and Carolyn Buchanan, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE