NOTICE

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JAMES DANIEL STOUFFER SR., Trustee of the Charles Keeney Stouffer Trust, v. ESTATE OF CHARLES KEENEY STOUFFER and BARBARA STOUFFER, Executrix
Court of Common Pleas, Franklin County Branch,
Civil Action No. 2000-300

Judgment on the pleadings — Contract to make reciprocal Wills — 20 Pa.C.S. section 2701 — Validity of trust agreement

1. A motion for judgment on the pleadings should be granted where the pleadings and documents attached thereto demonstrate that no genuine issue of fact exists and the moving party is entitled to judgment as a matter of law.

2. Courts must interpret post-martial agreements, including an agreement to make reciprocal Wills, pursuant to principles of contract law; the court cannot mold unambiguous contract language to achieve a particular result as urged by one of the contracting parties.

3. Since Wills are by nature revocable, courts must carefully scrutinize allegations that a person has contractually limited his testamentary freedom.

4. Where parties to a post-marital agreement agree to make reciprocal Wills naming each other as sole beneficiary of their respective estates, courts will not find that each spouse agreed to give up his or her right to later revoke a Will in the absence of clear proof of an express provision in the post-marital agreement to forbear revocation.

5. Where a post-marital agreement provided that ex-wife was to be named as executrix and sole beneficiary of ex-husband's estate, and ex-husband's Will so names her, but the post-marital agreement did not restrict his freedom to make gifts to persons other than ex-wife or bar him from spending down his assets in their entirety before his death, ex-husband's later creation of a trust naming himself as trustee and his transfer of all his assets into the trust, leaving nothing in the estate at his death for ex-wife to inherit, was not a fraudulent transfer; ex-wife's expectation that assets would be left in the estate to pass to her was unreasonable given the absence of a specific provision in the post-marital agreement reserving property to her.

Appearances:
J. McDowell Sharpe, Esq.
Courtney J. Graham, Esq.

OPINION

Herman, J., December 29, 2000

Introduction

Before the court are cross-motions for judgment on the pleadings. Argument was held and counsel submitted briefs. This matter is ready for decision.

Background

Charles Keeney Stouffer ("Charles") was the settlor and trustee of a Revocable Trust created on August 26, 1999. The trust purported to transfer ownership of all Charles's assets into the trust. By the time Charles died a short time later on September 19, 1999, he had not yet formally transferred title of the assets from his own name to the trust. Upon his death, the trust became irrevocable and his son James Stouffer ("James") became successor trustee.

Charles and Barbara G. Stouffer ("Barbara") executed a post-marital agreement on June 4, 1982, upon their divorce which provided in part: "(2) Charles will continue Barbara as primary beneficiary on all existing insurance policies...(3) Charles will have a Will which provides for Barbara as sole beneficiary...and also naming her as Executrix of said Will...(4) Barbara will have a Will which provides for Charles as sole beneficiary...and also naming him as Executor of said Will...." The post-marital agreement did not specifically state that the parties intended to give up the right to revoke their respective Wills if they so chose. Charles did not name Barbara as beneficiary of the trust. After Charles's death, Barbara took out letters testamentary on October 4, 1999, pursuant to her position as executrix of his estate.

James filed a complaint against Charles's estate and Barbara as executrix seeking to have assets being held by the estate returned to him as trustee because those assets belong, not to the estate, but to the trust.[1] Barbara responded to the complaint by alleging that in creating the trust, Charles breached the terms of the 1982 agreement because he transferred all his assets into the trust, leaving nothing in the estate, and this transfer was done for the sole purpose of fraudulently defeating the terms of the agreement requiring him to name her sole beneficiary of his estate under his Will. Barbara asks the court to void the transfer of the assets into the trust and to have those assets returned to the estate.[2] The parties filed cross-motions for judgment on the pleadings. A motion for judgment on the pleadings should be granted where the pleadings and documents attached thereto demonstrate that no genuine issue of fact exists and the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1034; *Vetter v. Fun Footwear Co.*, 668 A.2d 529 (Pa.Super. 1995). The motion is similar to a demurrer. *Shirley by Shirley v. Javan*, 684 A.2d 1088 (Pa.Super. 1996).

[1] The complaint also demands that the estate give a full accounting for the period of the estate's administration and that the estate be surcharged for any losses incurred by the trust during that period.

[2] In her capacity as executrix, Barbara also filed a counterclaim seeking an accounting and the imposition of surcharges for any losses sustained by the trust since Charles's death.

Discussion

The central issue before the court is whether a contract to make reciprocal Wills is equivalent to a contract to make those Wills irrevocable. A corollary issue is whether a post-marital agreement requiring one party to make a Will naming the other party as sole beneficiary without reserving specific assets to that other party is violated when the first party later creates a trust naming himself as trustee and transfers his assets in their entirety into the trust under his control during his lifetime, leaving the estate an empty shell at his death. Counsel framed the dispute in terms of this corollary issue, but our research reveals that the first issue as set out above is the key one.

Since Wills are by nature revocable, courts must carefully scrutinize allegations that a person has contractually limited his testamentary freedom. Little if any credence will be given to allegations that a decedent made an oral contract to make a Will benefiting a particular person or to forbear revocation of a Will where those allegations are based on vague statements, indefinite understandings or mere "hoped-for" benefactions. *Fahringer v. Estate of Strine*, 216 A.2d 82 (Pa. 1966); *Hatbob v. Brown*, 575 A.2d 607 (Pa. 1990). In particular, where spouses agree to make reciprocal or mutual Wills, courts will not find that each spouse specifically agreed to give up his or her respective right to later revoke a Will in the absence of clear proof of an express contract to forbear revocation. *Id.*

Where there is a **written** agreement to make reciprocal or mutual Wills, it cannot be presumed that such an agreement necessarily prohibits either testator from revoking his or her Will. Section 2701(b) of the Decedents, Estates and Fiduciaries Code, 20 Pa.C.S. 101 et seq., provides: "Joint will or mutual wills. — The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills." Although section 2701 was specifically designed "to tighten the methods by which contracts concerning succession may be proved" with an eye toward reducing litigation over **oral** contracts to forbear revocation (Official Comment — 1992), clearly courts must demand similarly high levels of proof when reviewing claims of testamentary limitations in the context of **written** agreements.

The post-marital agreement clearly requires the parties to make reciprocal Wills naming each other as sole beneficiary of their respective estates. However, nowhere in that agreement did the parties state that the execution of reciprocal Wills carried with it an agreement to give up the right to revoke those Wills. In the absence of such a provision, we are constrained to find that the agreement to make reciprocal Wills was not

equivalent to a contract to make those Wills irrevocable. The court lacks authority to mold clear and unambiguous contract language to achieve a particular result as urged by one of its parties. "The courts are not generally available to rewrite documents or make up special provisions for parties who fail to anticipate foreseeable problems." *Banks Engineering Co. Inc. v. Polons*, 697 A.2d 1020, 1023 (Pa.Super. 1997), citing *In re Estate of Hall*, 535 A.2d 47, 56 (Pa. 1987). "The court may not read into the contract something it does not contain and thus make a new contract for the parties." *Banks*, supra at 1023, citing *Snellenburg Clothing Co. v. Levitt*, 127 A.2d 309, 310 (Pa. 1925).

Although we have concluded that the post-marital agreement fails to expressly prohibit Charles from later revoking his Will and that conclusion is dispositive of the matter, we also take this opportunity to examine whether the post-marital agreement, which does not reserve specific assets to Barbara, was violated when Charles created a trust naming himself as trustee and transferred all his assets into the trust, leaving nothing in the estate at his death for Barbara to inherit.

A trust arises where there is a definite subject matter or res, sufficiently declared words or terms, and a statement of the trust's purpose or object. *Di Lucia v. Clemens*, 541 A.2d 765 (Pa.Super. 1988), app. denied. The designation of a beneficiary is also evidence that a trust has been created. *Rebidas v. Murasko*, 677 A.2d 331 (Pa.Super. 1996); *First Federal Savings and Loan Association v. Great Northern Development Corp.*, 422 A.2d 1145 (Pa.Super. 1980). A trust is valid even if the settlor is the trustee and retains exclusive control over the res and the right to revoke the trust. *Dickerson's Appeal*, 8 A. 64 (Pa. 1887). The settlor need not specifically transfer the assets which form the res where the settlor names himself trustee; the settlor-owner's declaration that he holds property in trust for another is sufficient. *Di Lucia*. The formal transfer of title of assets from Charles's name into the trust's name before his death was therefore not required.

Barbara does not dispute that Charles created a trust. What she does argue is that his transfer of all his property into the trust which he controlled during his lifetime denuded the estate, leaving her no assets to inherit as the Will's sole beneficiary in fraudulent violation of paragraph #3 of the post-marital agreement. James maintains that Charles fully complied with the agreement's literal terms by making a Will naming Barbara executrix and sole beneficiary and that the allegations of fraud and bad faith are meritless insofar as the agreement did not entitle her to receive any specific property or indeed any property at all except benefits under insurance policies.

The post-marital agreement did not restrict Charles's ability to make gifts to persons other than Barbara during his lifetime, nor did it bar him from gifting away or spending down his assets in their entirety before his death. Not only did the agreement make no guarantee that Barbara would receive a particular percentage of Charles's property upon his death, it did not guarantee that **anything** would be left in the estate for her to inherit. Nothing prevented Charles from sailing a vessel into the Atlantic and flinging every last dollar bill overboard, or gathering his cash into a pile and striking a match, if he was so moved. To bar him from doing whatever he pleased with his own property during his lifetime where the post-marital agreement does not guarantee that any particular asset would be preserved for Barbara's benefit is untenable. Although Barbara may have had an **expectation** that assets would be available in the estate to pass to her as the Will's sole beneficiary, her expectation was unreasonable given the absence of a specific provision reserving particular property to her. *Vanmeter v. Norris*, 177 A.2d 799 (Pa. 1935).

This court previously interpreted the post-marital agreement in the context of Barbara's petition for special relief pursuant to its paragraph #1:[3]

> Courts must interpret post-nuptial agreements pursuant to the principles of contract law. *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990) (interpreting a pre-nuptial agreement); *Adams v. Adams*, 414 Pa.Super. 634, 637, 607 A.2d 1116, 1118 (1992), alloc. denied...("same principles apply to both antenuptial and postnuptial agreements"). As with a contract, the Agreement must be interpreted on its face and being unambiguous, the Court need not look beyond its four corners. *First Home Savings Bank, FSB v. Nernberg*, 436 Pa. Super. 377, 648 A.2d 9 (1994), alloc. denied...The parties had the ability to negotiate a more complex Agreement...but they failed to do so. Both parties were represented by counsel in the preparation of the Agreement. Neither party should now be in a position to adjust his or her interpretation when the language of the Agreement appears clear on its face.

Stouffer v. Stouffer, F.R. 1982-193, Slip Opinion, March 29, 1999, pp. 3–4. These principles apply with equal force to paragraph #3. If Barbara wanted to guarantee that particular assets would exist in the estate to pass to her as

[3] Paragraph #1 of the agreement provides: "Charles shall weekly pay to Barbara 50% of his take-home pay or net income after taxes, so long as he lives or she lives."

beneficiary, she could have bargained for them as was done with regard to the insurance policies. Of course, as discussed above, the agreement would also have had to include a provision that Charles was giving up his right to revoke his Will naming her as sole beneficiary of his estate. The court cannot remold the clear terms of the agreement simply because Barbara now desires an outcome not provided for therein.

Barbara has presented the court with an impressive array of case authority from other jurisdictions to support her allegations that Charles's transfer of all his assets into the trust was done fraudulently and in bad faith. We remain unpersuaded that these allegations are anything more than a distraction from the real issues: the post-marital agreement to execute reciprocal Wills did not automatically carry with it an agreement to forbear revocation, and also the agreement contains no assurances that any particular asset would pass to Barbara as sole beneficiary under the Will. The plaintiff is entitled to a judgment on the pleadings under these circumstances.

ORDER OF COURT

Now this 29th day of December, 2000, the motion for judgment on the pleadings filed by James Daniel Stouffer, Trustee of the Charles Keeney Stouffer Trust, is granted. The motion for judgment on the pleadings filed by the Estate of Charles Keeney Stouffer and Barbara Stouffer, Executrix, is denied.

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