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OPINION OF THE CONNECTICUT PROBATE COURT

IN RE: THE ESTATE OF MARILYN LINDER

PROBATE COURT, TRUMBULL DISTRICT

AUGUST 4, 2017

EDITOR'S SUMMARY & HEADNOTES

Petitioner submitted Decedent's handwritten Will, dated March 15, 1999, which the Court found to be lawfully executed. The Will gave a specific devise and a specific bequest to Petitioner as Guardian of Decedent's dog and cat, and the Will contained no residuary clause. The heirs at law asked the Court to interpret the specific devise and specific bequest as an attempt by Decedent to create a pet trust, which the heirs at law argued would fail because pet trusts were not enforceable at the time the Will was executed. While the Court found a clear intent for Decedent's assets to be used for the pets' benefit, there was no clear indication of Decedent's intent to create a trust. The Court found that the Will lacked unambiguous trust language, contextual clues indicating an intention to create a trust, and the manifestation of a clear intention to create a trust. The Court held that the bequests transmit absolute gifts, free from definitive conditional or trust language.

1. **Wills: Execution**

   Pursuant to Conn. Gen. Stat. § 45a-251, a duly executed will must be in writing, subscribed by the testator, and attested by two witnesses, each of them subscribing in the testator's presence.

2. **Trusts: Elements**

   The elements of a valid and enforceable trust are: (1) a trustee, who holds the trust property and is subject to duties to deal with it for the

benefit of one or more others; (2) one or more beneficiaries, to whom and for whose benefit the trustee owes the duties with respect to the trust property; and (3) trust property, which is held by the trustee for the beneficiaries.

3. Ambiguity: Testamentary Instrument

The creation of a trust must use unambiguous language to convey duties onto a trustee.

4. **Ambiguity: Generally**

An absolute gift will be found by default unless the decedent's language was incapable of any but one meaning.

Opinion

Procedural Background

Margaret Woods ("Petitioner") submitted the Last Will and Testament of Marilyn Linder ("Decedent"), dated March 19, 1999, and a Petition for this Court to probate the Will on March 15, 2016. Under the Petition, Petitioner would be the Executrix of the submitted Will. On January 3, 2017, Decedent's heirs at law ("Respondents") objected to portions of the Will, specifically Paragraphs F, G, and H of Article Third, and asked the Court to find that the property described in Paragraphs F and G should pass by intestacy.

On April 24, 2017, by agreement of all parties, the Court admitted portions of the Will, while reserving judgment on the objections to Paragraphs F, G, and H of Article Third, to permit briefing and argument from Counsel. As part of the Agreement, the Court appointed Petitioner as fiduciary of the estate, with all monies to be held in a restricted account, except for $25,000, which was the agreed upon amount to be used by the Executrix for any necessary upkeep of the Estate. Respondents filed a Memorandum of Law in opposition to admission of certain portions of Decedent's Will on May 23, 2017. Petitioner filed a Brief, dated May 24, 2017, advocating for the Court's acceptance of the Will in full.

Facts

[1] A valid will written in Connecticut must be in writing, signed by the testator, and signed by two witnesses in the testator's presence. Conn. Gen. Stat. § 45a-251 (2016). The Court found that Decedent validly executed her Will because all of these elements were present. No party disputed the Will's validity as a whole. The contested provisions, as written by Decedent in her handwritten will, are as follows:

Paragraph F:

My house and all real property shall go to Margaret Woods, as the guardian of and with whom my beloved dog, Lolli, and my

> beloved cat, Purrah, actually live and are pampered as indoor members of the family.
>
> **Paragraph G:**
>
> After distribution as directed above, 100% (one hundred per cent) of all my money, bonds, certificates of deposit, treasury direct account, savings account, checking account(s), money market accounts, zero municipal investment trusts, etc. shall go to Margaret Woods, as the guardian of and with whom my beloved dog, Lolli, and my beloved cat, Purrah, actually reside and are pampered as indoor [emphasis in original] members of the family to cover the costs of veterinary bills, food, toys, and all manner of luxurious comforts to which they are accustomed. Specifics related to their care and the location of all my wealth can be found in my safe deposit box at People's Bank, Rte 111. Monroe, CT.
>
> **Paragraph H:**
>
> Under no [emphasis in original] circumstances shall Emelia (Millie) Conkling or any member of her family become a successor guardian for my dog, Lolli, or my cat, Purrah.

The Respondents' Argument

Although Respondents filed a Memorandum ostensibly to oppose the admission of Paragraphs F, G, and H, they argued, both in the Memorandum and at the Hearing on July 7, 2017, that the Court should reinterpret these sections rather than dismiss them outright. Respondents ask the Court to view Paragraphs F, G, and H as an attempt to create a pet trust.

Respondents note that the Restatement (Third) of Trusts requires only that a testamentary trust identify a trustee, a beneficiary, and a trust property. Restatement (Third) of Trusts § 2 cmt. f (Am. Law Inst. 2003). Further, according to Respondents, the language creating a trust need not use the term "trustee," but could also use terms that indicate a fiduciary relationship, such as "guardian" or "agent." *See generally id.* at § 2 cmt. b (stating that "[f]iduciary relationships include not only the relation of trustee and beneficiary but also, among others, guardian-ward, agent-principal, attorney-client, and partnership relationships"). In the case at hand, Decedent named Petitioner as a potential trustee by naming her a "guardian" in Paragraphs F and G. Decedent's stipulation in Paragraph H that neither Emelia Conkling nor her family members could become "guardians" of Decedent's pets reinforces her intention to create a trust with potential successor trustees. Decedent also named her pets, Lolli and Purrah, as beneficiaries, and identified the trust property in Paragraphs F and G. With all of the Restatement elements seemingly satisfied, Respondents argue that Decedent

essentially attempted to create a trust for her pets.

Pursuant to Connecticut General Statutes, a testator is allowed to create a testamentary or inter vivos trust on behalf of animals during the testator's lifetime. Conn. Gen. Stat. § 45a-489a(a) (2016). However, this statute was not passed until 2009, which was ten years after Decedent wrote her Will, and does not, according to the Respondents, apply retroactively. Respondents argue that Decedent failed to create a trust only because pet trusts were not enforceable at the time she wrote her Will. Respondents argue that under Restatement (Third) of Trusts § 28 cmt. a (Am. Law Inst. 2003), the property in a failed trust should pass to the residuary beneficiaries of a decedent's will or a decedent's heirs at law, absent a residuary clause. Decedent's Will contained no such residuary clause. Thus, Respondents contend that the property mentioned in Paragraphs F and G should pass to them.

The Petitioner's Argument

Petitioner argued, both in the Brief and at the Hearing on July 7, 2017, that the Court should view Paragraphs F and G as absolute gifts. Petitioner relies, *inter alia,* on *Peyton v. Wehrhane,* 125 Conn. 420, 425 (1939), which notes that testators have the right to bequeath a complete interest to another party, while also expressing a desire for the party to use the bequest in a particular way. *Peyton* establishes that an absolute gift should be found by default unless "the lesser estate is expressed in positive terms, and in language which is unambiguous and incapable of any but the one meaning." *Id.* at 426 (citation omitted).

Petitioner notes that Decedent did not specify in Paragraphs F and G that she would lose her inheritance if she did not care for Decedent's pets. Petitioner further argues that Decedent had the opportunity to attach a condition to her gift or to create a trust for her pets, which Decedent did not take advantage of. Decedent's bequest included the word "shall," followed by an explicating dependent clause, but included no limiting language, such as "if and only if" or "on the condition that." Similarly, Petitioner also argues that the word "guardian," used in Paragraphs F, G, and H, does not imply that Decedent attempted to create a pet trust because the term "guardian" carries ambiguity and lacks technical meaning. Following the test set out in *Peyton*, Petitioner asks the Court to view the bequests in Paragraphs F and G as absolute gifts.

Decision

Respondents ask this Court to find that Decedent created a trust in Paragraphs F and G, but that the trust is unenforceable because pet trusts did not exist at the time Decedent created the Will. The property mentioned in Paragraphs F and G would pass to Respondents, were the Court to find this a failed trust. Petitioner asks this Court to find the bequests in Paragraphs F

and G to be absolute gifts because the language in those Paragraphs does not clearly establish a trust or attach any other condition. Hence, the decision turns on whether Paragraphs F and G were intended to create a trust.

[2] [3] An enforceable trust requires three elements: (1) a trustee who holds property for one or more other parties; (2) one or more beneficiaries for whom the trustee holds the property; and (3) trust property held by the trustee for the beneficiaries. *Palozie v. Palozie*, 283 Conn. 538, 545 (2007) (citing Restatement (Third) of Trusts: General Principles § 2 cmt. f (Am. Law Inst. 2003)). The creation of a trust must also use unambiguous language to convey these duties. *Id.* at 546; *See also Hansen v. Norton*, 172 Conn. 292, 296 (1977); *Hebrew University Ass'n. v. Nye*, 148 Conn. 223, 229 (1961).

Decedent's Will lacks evidence of a trust creation. The Will lacks unambiguous trust language, lacks outside context that might identify a trust, and does not otherwise manifest a clear intention to create a trust. The Will's lack of clear trust language is most notable. Paragraphs F and G refer to Petitioner as a "guardian" of Decedent's pets and Paragraph H sets out conditions for a "successor guardian," but presents no other language that could indicate a trust. The term "guardian" could indicate a fiduciary relationship if it were accompanied with other explicit language, such as, "my house and real property shall be placed in a trust of which Margaret Woods should serve as the guardian." Absent similar language, Decedent seems to use the term "guardian" colloquially to indicate her desire for Petitioner to take personal responsibility for the pets.

The Will also lacks contextual clues that might indicate that Decedent intended Paragraphs F and G to set up a trust. Respondents note that only Paragraphs F and G contain the expository dependent clauses beginning "as guardian of and with whom . . . ." Respondents argue that viewing these clauses in contrast to the other Will Paragraphs demonstrates an intention to attach a condition to those bequests, namely that they be held in trust. Yet, Paragraphs F and G lack clear conditional language, such as, "my property shall go to Margaret Woods *to be used exclusively* for my pets." Merely attaching the dependent clause without conditional language appears more like a testamentary exposition about how Decedent wished Petitioner to use the bequest. Paragraphs F and G were also the only paragraphs containing assets pertinent to the pets' well-being, so including an exposition only in these two Paragraphs might be expected, and does not necessarily imply an intention to attach a condition.

Finally, the Will does not show a clear intention to create a trust. The heirs at law argue that Decedent's extensive expositions in Paragraphs F and G show her intention to create a trust. Decedent describes the pets in Paragraphs F and G as "indoor members of the family," and requests that Petitioner use the

assets to "pamper" them. Further, Respondents contend that Decedent could not express her intentions more clearly because she lacked legal training and potentially had an unbalanced state of mind while she was writing the Will.[1] The language shows that she intended the money to be used to care for her pets, but it does not express clear intent to create a legal entity or implement binding conditions upon Petitioner. Decedent may possibly have intended to create a pet trust. However, this Court cannot find an enforceable trust without clearly communicated language and actions showing its existence.

[4] *Peyton* requires that an absolute gift be found by default unless the decedent's language was "incapable of any but the one meaning." *Peyton*, 125 Conn. at 426 (citation omitted). Paragraphs F and G bequeath the property to Petitioner, not to any pet, using the term "shall." Moreover, those Paragraphs do not contain definitive conditional or trust language.

Accordingly, this Court finds that the bequests transmit absolute gifts.

And it is ORDERED AND DECREED that:

The objection of Respondents to Paragraphs F, G, and H of Article Third of Decedent's Last Will is denied.

Dated at Trumbull, Connecticut, this 4th day of August 2017.

/s/

T.R. Rowe, Judge

[1] During the Hearing on July 7, 2017, Respondents referenced as evidence of Decedent's reduced capacity an admitted paragraph of the Will that left two cents to an individual as "an accurate reflection of her value" to Decedent in the months prior to the Will's creation. The Court gives little weight to this argument for several reasons. First, both parties had already agreed to admit this portion of the Will. Second, the bequest reflects a sound testamentary wish of Decedent, though perhaps unorthodox. Third, and perhaps most importantly, there was no substantive evidence offered by the parties to challenge Decedent's testamentary capacity.