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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1219**

In re the Estate of: Peter Barna, Deceased

**Filed June 23, 2009  
Affirmed  
Toussaint, Chief Judge**

Ramsey County District Court  
File No. 62-PR-05-819

Thomas P. Malone, Susan E. Tegt, Barna, Guzy & Steffen, Ltd., 400 Northtown  
Financial Plaza, 200 Coon Rapids Boulevard, Coon Rapids, MN 55433-5894 (for  
respondent Estate of Peter Barna)

Richard J. Schieffer, Dove, Fretland & Van Valkenburg, P.L.L.P., 5881 Cedar Lake  
Road, Minneapolis, MN 55416 (for appellant Samantha A. Matson)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Harten,  
Judge.\*

**UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

Appellant Samantha A. Matson challenges the probate court order denying her a  
share of the remainder of her deceased uncle Peter Barna's estate, arguing that the

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

probate court's findings that Barna's will and accompanying codicil were ambiguous and that Barna did not intend her to share in the remainder of his estate were clearly erroneous. Because the district court's findings were not clearly erroneous, we affirm.

## **D E C I S I O N**

Appellant is a quadriplegic and a recipient of publicly funded benefits. In his will, executed in 1999, Barna intentionally omitted appellant as a beneficiary. Barna's codicil, executed in 2004, amends his will by adding a paragraph establishing a supplemental-needs trust for appellant "to provide for [her] reasonable living expenses and other needs when benefits from publicly funded benefits programs are not sufficient to provide adequately for those needs." The codicil directed that \$75,000 would be placed in trust for appellant's benefit and that appellant's brother would serve as trustee and as personal representative of Barna's estate.

During probate of Barna's estate, appellant asserted that she was entitled to receive a share of the residue of Barna's estate because the 1999 will devised the remainder "in equal shares to [Barna's] nieces and nephews named in Article Two herein," and her trust was added to the will as section four of article two. The probate court found the will and codicil ambiguous because "[i]nclusion of [appellant] as a residuary beneficiary would have the effect of replacing, reducing, substituting for, or rendering [appellant] ineligible for publicly funded benefits." The parties presented extrinsic evidence as to Barna's intent at trial. In its order holding that appellant is not entitled to receive a share of the remainder of Barna's estate, the probate court found that Barna was "diligent . . . in setting up a gift for [appellant] that would not interfere with

her receipt of publicly funded benefits” and that “it was [Barna’s] intent that [appellant] not receive a share of the remainder.”

We will not set aside the probate court’s findings of fact construing a will unless clearly erroneous and provided that those findings support the court’s findings of law. *In re Estate of LeBrun*, 458 N.W.2d 139, 142 (Minn. App. 1990). Whether the language of a will is ambiguous is a question of law. *In re Estate of Zagar*, 491 N.W.2d 915, 916 (Minn. App. 1992).

When construing a will, a court must “ascertain the actual intention of the testator as it appears from a full and complete consideration of the entire will when read in light of the surrounding circumstances at the time of the execution.” *Id.* (quotation omitted). Only if there is ambiguity as to the intent of the testator may extrinsic evidence be admitted for clarification. *Id.* But extrinsic evidence of surrounding circumstances is “always admissible.” *In re Estate of Arend*, 373 N.W.2d 338, 342 (Minn. App. 1985). A will is ambiguous if its terms are reasonably susceptible of two or more interpretations. *Id.*

## I.

Appellant challenges the probate court’s finding that, when read together, Barna’s will and codicil present an ambiguity. But, as the probate court found, the documents are susceptible to three different interpretations: (1) Because the codicil devises \$75,000 to the trustee of appellant’s trust, appellant is not “named” in article two and is therefore omitted from a share of the residual estate; (2) Because appellant is referenced as beneficiary of the trust in article two, she is “named” and is entitled to an outright

distribution from the residual estate; and (3) Because the codicil devises \$75,000 to the trustee of appellant's trust, the trustee is entitled to a distribution from the residual estate, to be placed in trust for appellant's benefit. Thus, Barna's testamentary documents are ambiguous because they are reasonably susceptible of two or more possible interpretations. The probate court did not err in finding that the will and codicil are ambiguous as to whether appellant was to share equally in the residuary estate.

## II.

The codicil states that, in establishing a supplemental-needs trust for appellant's benefit, Barna intended "to prohibit disbursements that would have the effect of replacing, reducing or substituting for publicly funded benefits otherwise available to [appellant] or rendering [her] ineligible for publicly funded benefits."

At trial, respondent Estate of Peter Barna presented testimony from both Barna's drafting attorney and personal representative as to their understanding that Barna did not intend, at the time that the documents were drafted, that appellant share in the residue of his estate; rather, Barna intended for her to receive money only through the trust to protect her eligibility for publicly funded benefits. The record indicates that Barna presented his attorney with specific instructions regarding the drafting of his will and codicil. As the attorney testified, Barna would likely have given detailed instructions regarding appellant sharing in the residue if that had been his intention. Barna's housekeeper also testified to Barna's concern about giving money outright to appellant. Moreover, the fact that, shortly before his death, Barna wrote an \$11,000 check payable

to the trustee of appellant's supplemental-needs trust, instead of to appellant directly, evidences his intent to provide for appellant only through the trust.

Appellant presented no evidence rebutting the testimony that Barna did not intend her to share in the residue of his estate. *See Fidelity Bank & Trust Co. v. Fitzimons*, 261 N.W.2d 586, 590 (Minn. 1977) (“Where a plaintiff proves a prima facie case and it is un rebutted by defendant, the plaintiff has met his burden of proof.”). The district court’s factual finding that Barna did not intend appellant to share in the residue of his estate was not clearly erroneous.

**Affirmed.**