STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1713

In re: Estate of
Doris L. Prestegaard, Deceased

Filed June 17, 2008
Affirmed; motion to strike granted in part
Klaphake, Judge

Hennepin County District Court
File No. 27-PI-03-000731

Peter Prestegaard, 115 Eagle Ridge Way, Nanuet, NY 10954 (pro se appellant)

Daniel J. Steinhagen, Steinhagen & Crist, P.L.L.P., 5001 Chowen Avenue South, Minneapolis, MN 55410-2150 (for respondents Westphal and Bolstad)

Jennifer L. Athanases, MacMillan, Wallace, Athanases & Patera, P.A., 9220 Bass Lake Road, Suite 355, Minneapolis, MN 5428 (for respondent U.S. Bank, N.A.)

Considered and decided by Minge, Presiding Judge; Klaphake, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Doris L. Prestegaard died on March 1, 2003, survived by her three children, respondents Stefni Westphal and Kristi Bolstad, and appellant Peter Prestegaard, who were her residuary beneficiaries. All three were appointed as personal representatives of the estate, as well as respondent U.S. Bank N.A., as corporate personal representative.

Appellant contests the district court's June 29, 2007 order for complete settlement and distribution decree, arguing that the court misconstrued the provisions of the will.

Because the plain language of the will supports the district court's construction, we affirm.

D E C I S I O N

Construction of the Will

We will not set aside the district court's findings of fact construing a will unless clearly erroneous and will determine whether those findings support the district court's conclusions of law. *In re Estate of LeBrun*, 458 N.W.2d 139, 142 (Minn. App. 1990). The court construes a will to ascertain the intent 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 of the will." *In re Estate of Arend*, 373 N.W.2d 338, 342 (Minn. App. 1985). Generally, extrinsic evidence of the testator's intent is not admissible unless a will is ambiguous, that is, suggesting more than one interpretation. *In re Estate of Zagar*, 491 N.W.2d 915, 916 (Minn. App. 1992). But extrinsic evidence of surrounding circumstances is "always admissible." *Arend*, 373 N.W.2d at 342. We determine whether a will is ambiguous as a question of law. *Zagar*, 491 N.W.2d at 916.

We see no ambiguity in the contested bequest. Decedent exercised a general power of appointment over a marital deduction trust created by her late husband. After making certain charitable bequests and bequests of personal property, she left the residue of her estate, including the marital deduction trust, to her three children in "as many equal

shares as shall be necessary to provide one share for each child of mine who survives me, and one share for each child of mine who does not survive me, but who has descendants who survive me." All three children survived decedent.

The will further provides that

> [e]ach share for a child of mine shall be reduced by the amount of any emergency or exceptional education payments I made to any institution for such child, or the descendants of such child. The amount by which such child's share is reduced shall be redistributed into as many equal shares as shall be necessary to provide one share for each child of mine who survives me and one share for each child of mine who does not survive me, but who has descendents who survive me.

The court adopted the construction advanced by respondent bank, which interprets this language to mean that if decedent advanced money to a beneficiary or a child of a beneficiary for educational expenses, a two-step calculation must be made: (1) after division of the residue into three equal shares, the amount advanced to a beneficiary must be deducted from the beneficiary's share; and (2) the amount advanced must be divided by three, and the quotient amount must be added to each beneficiary's share. The resulting sum represents each beneficiary's share of the residue. Although the residuary amounts so calculated were not equal among the beneficiaries, the overall value represents an equal share of the estate when the previous gifts are included. Additionally, the court divided income earned by the estate during the probate process in proportion to each beneficiary's percentage share of the residuary estate.

The district court's construction of the will is a straightforward interpretation of the clear language of the will. Appellant asserts that the inclusion of the phrase

"exceptional education payments" renders the bequest ambiguous. We do not agree. As part of the circumstances surrounding the drafting of the will, we note that decedent established educational funds for the benefit of her grandchildren; the educational payments deducted from the residuary estate did not include these funds, but other payments advanced by decedent, which could be considered "exceptional." Further, appellant's children received far larger educational advancements than the children of respondents Westphal and Bolstad. Decedent emphasized "equal shares" for each of her children in her will. Adjusting for previous exceptional educational payments, as set forth in the plain language of the will, preserves the equality of these bequests. We therefore affirm the district court's order of final settlement and distribution.

Motion to Strike

Respondent bank moves to strike most of appellant's brief and appendix. Pages 19-33, 64, 71-78, and 82, of appellant's appendix to his brief are not a part of the appellate record. *See* Minn. R. Civ. App. P. 110.01 (describing the record on appeal as all papers, exhibits, and transcripts filed in the district court). We therefore strike those pages of appellant's appendix, but deny the balance of respondent's motion.

Affirmed; motion to strike granted in part.