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STATE OF MICHIGAN

COURT OF APPEALS

In re BARBARA A. YOUNG LIVING TRUST.

ROBIN WIOSKOWSKI, REBECCA YOUNG, and MICHAEL P. YOUNG,

Petitioners-Appellees,

v

CYNTHIA ANN ROBACK,

Respondent-Appellant.

UNPUBLISHED
April 21, 2022

No. 355309
Macomb Probate Court
LC No. 2014-212578-TV

Before: BORRELLO, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right the probate court's order removing her as successor trustee of the Barbara A. Young Living Trust (the Trust), naming petitioner Robin Wioskowski as the new successor trustee, and ordering that $58,333 plus statutory interest be distributed from the Trust assets to each of the three petitioners.[1] For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

As respondent concedes on appeal, the most pertinent facts necessary for resolution of this appeal are not in dispute. Respondent is Barbara Young's daughter. Barbara[2] passed away in 2012. Clemens Young was Barbara's husband and respondent's father. Clemens predeceased

[1] This order also contains additional rulings by the probate court that are not relevant to the issue on appeal.

[2] Because some of the family members involved in this litigation share the same last name, we will refer to individuals by first name as necessary.

Barbara, having passed away in 2008. Only Barbara's trust is at issue in this litigation.[3] Pursuant to a 2007 amendment to the Trust, respondent had been named a trustee of the Trust upon Barbara's death. At this juncture, respondent is the only one of those trustees named in the amendment that is still living.[4] Petitioners are three of Barbara's grandchildren.

Barbara's will included a pour-over provision providing that all of her property would be transferred to the Trust at her death. This pour-over provision stated in pertinent part as follows: "All of my property of whatever nature and kind, wherever situated, shall be distributed to my revocable living trust." The dispute currently before this Court revolves around two particular sections of the Trust. The first provision is contained in Article 7, Section 3, and involves $50,000 distributions to each of Barbara's grandchildren; this provision states in relevant part as follows:

> **Section 3. Specific Distributions of Trust Property**
>
> Upon my death, my Trustee shall make, free of the trust, specific distributions of trust property, if any, listed on the following page(s) of this Article.
>
> If the property which is the subject of a specific distribution is received by my Trustee from my probate estate or in any other manner at any time after my death, then my Trustee shall distribute the property free of the trust as a specific distribution hereunder at that time. If the property is not part of my trust property at my death or does not subsequently become trust property, then the specific distribution shall be considered to be null and void, without any legal or binding effect.
>
> Notwithstanding anything in my trust to the contrary, all expenses, claims, and taxes shall be apportioned to the recipients of any specific distributions under this Section. Property passing under this Section shall pass subject to all liens, mortgages, and all other encumbrances on the property.
>
> **Specific Distributions of Trust Property**
>
> Upon the death of the survivor of me and my husband, CLEMENS H. YOUNG, my Trustee shall make a cash distribution of $50,000.00 to a trust for each of my Grandchildren who survive me (hereinafter referred to as my "GRANDCHILDREN"). The trust for each of my GRANDCHILDREN shall be held and administered by my Trustee pursuant to the terms set forth below.[5]

[3] Accordingly, our use of the term "the Trust" in this opinion only refers to Barbara's trust.

[4] The other named trustees were Clemens and respondent's husband. Their roles as trustees are not at issue in this appeal.

[5] The Trust includes terms applicable to the trusts to be created for the grandchildren, but those terms are not relevant to the issue before this Court on appeal.

The second provision at issue appears in Article 12 of the Trust document. This provision provides in relevant part that upon Barbara's death, "All trust property not previously distributed under the terms of my trust shall be divided" among her children.[6]

In 2019, petitioners filed a petition seeking to compel distribution of their shares under the trust and to remove respondent as trustee. Following an evidentiary hearing, the probate court found, as relevant to the issue on appeal, that the Trust provided for specific bequests of $50,000 to be paid to each grandchild before any residual bequests were distributed. The probate court additionally found that although there was no evidence that Barbara's estate had any cash assets at the time of her death, Barbara did own real property assets that could have been liquidated in order to divide the estate as directed by the Trust. The probate court thus rejected respondent's argument that the bequests to the grandchildren had lapsed pursuant to the doctrine of ademption, explaining as follows:

> So, it's my opinion that ademption doesn't apply because cash isn't like an object like mother's wedding ring. So, if that wedding ring is gone before mom dies because she sold it, she gave it to somebody else, it's not there anymore, that's ademption.
>
> But, even if you look at MCL 700.2606, you can see that the statute favors non-ademption because even then, you may get the value of that ring, even though the ring is gone. So, cash, the specific devise in this case was cash. It had to be paid first. That means the Estate has to be liquidated. So, even though she didn't have cash in the bank, or cash in stocks any more, she had property that could be converted to cash to pay the specific devises. The specific devise didn't say something like the grandchildren get fifty percent of the cash each that is in my safe deposit box. And then, you go to safe deposit box and there's no money. It's not the same. She didn't say the grandchildren each get $50,000.00 of cash from my Morgan Stanley accounts, and the Morgan Stanley accounts are now gone. That's not the case here. The case is they had $50,000.00 cash specific bequests and there were assets that could be converted to cash that weren't subject to specific bequests. They were the residual beneficiaries were going to receive whatever was left.

As previously stated, the probate court ordered distribution of $58,333 plus interest to each petitioner, which represented each grandchild's share plus the division of the share that would have gone to one of the grandchildren who predeceased Barbara.

II. ANALYSIS

On appeal, respondent states in her brief that she "appeals the court's legal conclusion that the doctrine of ademption does not apply to specific gifts of cash." Respondent maintains that the bequests of cash to petitioners failed under the doctrine of ademption because there was no cash

[6] The terms of this property division were amended in 2004 to provide that "1/5 of the balance" would be distributed to each of the children, but this modification to the manner of dividing the residue of the trust property is not relevant to resolving the issue presented on appeal.

in the trust at the time of Barbara's death and the "thing" bequested therefore was not in existence. Accordingly, respondent argues that the "singular issue on appeal . . . is whether the doctrine of ademption applies to a specific bequest of cash when the trust grantor subsequently spent all of the cash during her lifetime[.]"

"In resolving a dispute concerning the meaning of a trust, a court's sole objective is to ascertain and give effect to the intent of the settlor." *In re Kostin*, 278 Mich App 47, 53; 748 NW2d 583 (2008). "The settlor's intent is determined from the trust document itself, unless there is ambiguity." *In re Estate of Herbert Trust*, 303 Mich App 456, 458; 844 NW2d 163 (2013) (quotation marks and citation omitted). "[T]his Court reviews de novo the language used in wills and trusts as a question of law." *In re Estate of Reisman*, 266 Mich App 522, 526; 702 NW2d 658 (2005).

Under the doctrine of ademption, a "testamentary gift of testator's specific real or personal property is adeemed, or fails completely, when the thing given does not exist as part of his estate at the time of his death." *In re Thornton*, 192 Mich App 709, 712; 481 NW2d 828 (1992) (quotation marks and citation omitted). More specifically described as "ademption by extinction," this doctrine has been further explained as follows:

> If property which is specifically devised or bequeathed remains in existence, and belongs to testator at his death, slight and immaterial changes in its form do not operate as an ademption; but . . . [t]he real question is, whether the specific property is in existence at the death of the testator, and whether testator then owns the interest which may pass under his will. If the property which is described in the will is not in existence, or does not belong to testator, at his death, the legacy fails. [*Hankey v French*, 281 Mich 454, 462-463; 275 NW 206 (1937) (quotation marks and citations omitted).]

As the above statements imply, the "peril of ademption" becomes an issue in the case of "specific" bequests, which may in turn be distinguished from "general" and "demonstrative" bequests. *In re Mandelle's Estate*, 252 Mich 375, 378; 233 NW 230 (1930). Our Supreme Court has explained the nature of these three types of bequests:

> [T]he nature of a legacy as specific, general, or demonstrative is to be determined in accordance with the intention of the testator, which is to be gathered not merely from the language of those clauses establishing the particular gift in question alone, but from the will as a whole, and the circumstances surrounding the testator at the time of its execution.
>
> . . . A general legacy is one which is payable out of the general assets of the testator. A legacy is specific when it is the testator's intention that the legatee shall have the very thing bequeathed and not a corresponding amount in value. A demonstrative legacy partakes of the nature of both a general and a specific legacy. It is a gift of money payable out of a particular fund in such a way as to evince the testator's intent not to relieve his general estate from payment of the legacy in case the particular fund fails. The distinction between demonstrative legacies and specific legacies is that in the former the primary intention is that the legacy be paid

> in any event, even though the designated source fails, while in the latter the main intention is that the legacy be paid by the delivery of the identical thing, and that thing only, and in the event that at the time of the testator's death such thing is no longer in existence, the legacy will not be paid out of his general assets. In determining whether a legacy is specific or demonstrative, the intention of the testator is of primary importance, and in ascertaining his intent the court may consider not only the particular bequest in question, but the language of the entire will, together with the circumstances surrounding the testator at the time it was executed, including his relation to the legatees.
>
> * * *
>
> A specific legacy is a gift of a specific thing, or of some particular portion of the testator's estate, which is so described by the testator's will as to distinguish it from other articles of the same general nature. A specific legacy differs from a general legacy in that it is not intended by testator to be paid out of his estate generally, but is to be paid solely by delivering to the beneficiary the specific thing given by will, as distinguished from a designated value, quantity, and the like. [*Morrow v Detroit Trust Co*, 330 Mich 635, 644-645; 48 NW2d 136 (1951) (quotation marks and citations omitted)

Consistent with the above Michigan authority, "[a]demption does not apply to general bequests but occurs when a specific devise made in a will is no longer in the estate at the time of the testator's death by some act of the testator indicating an intention to revoke." 80 Am Jur 2d, Wills, § 1444, p 622 (citations omitted). The doctrine of ademption "describes the extinction of a specific bequest or devise because of the disappearance of or disposition of the subject matter, including both bequests of personalty and devises of realty, from the testator's estate in his or her lifetime, absent a contrary intention expressed in the will," and it "occurs only when the subject matter of a legacy is so altered or extinguished that the legacy is completely voided." *Id*. (citations omitted).

Here, considering the trust language as a whole, the directive for the trustee to "make a cash distribution of $50,000.00 to a trust for each of my Grandchildren" constituted a bequest of a certain *value* and not a bequest of any specifically identifiable property that could be "distinguish[ed] . . . from other articles of the same general nature," i.e., cash; accordingly, the $50,000 cash bequest was in the nature of a general devise and not a specific devise. *Morrow*, 330 Mich at 644-645. This bequest was therefore to be distributed out of the general assets of the estate even if those assets did not include cash at the time of Barbara's death, and a lack of cash in the estate at that time did not operate as an ademption of the bequest. *Id*.; *Hankey*, 281 Mich at 462-463; *In re Thornton*, 192 Mich App at 712.

Thus, the probate court did not err to the extent that it determined ademption does not apply in this instance because the bequest was not analogous to devising a specific item of unique personal property such as a wedding ring. To the extent the probate court also seemingly ruled that the bequest of cash to the grandchildren was a "specific" devise, we conclude for the reasons

stated above that this ruling was erroneous for purposes of applying the doctrine of ademption.[7] Nonetheless, the probate court reached the correct result and we may affirm a lower court's ruling in such a case even if our reasoning differs.[8] See *Outdoor Sys, Inc v City of Clawson*, 262 Mich App 716, 720 n 4; 686 NW2d 815 (2004).

Affirmed. Appellees having prevailed in full may tax costs. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ Jane E. Markey
/s/ Deborah A. Servitto

[7] It also appears that the probate court's ruling in this regard was primarily intended to distinguish the bequests to the grandchildren from the residuary bequests to the children.

[8] Respondent's brief argument that the probate court erred by removing her as trustee is also dependent on her claim that the bequests to petitioners were adeemed. Based on our conclusion that the probate court did not err in concluding that there was no ademption of these bequests, we also conclude that respondent has not shown that the probate court abused its discretion by removing her as trustee. See *In re Monier Khalil Living Trust*, 328 Mich App 151, 160; 936 NW2d 694 (2019) (stating that a probate court's decision whether to remove a trustee is reviewed for an abuse of discretion).