STATE OF MICHIGAN

COURT OF APPEALS

In re CASSELL L. PURSELL TRUST.

CASSELL C. PURSELL, JR., KRISTINE D. SHIRK, CHRISTOPHER PURSELL, KATHRYN ENZWEILER, BEATRICE COOK, VIRGINIA EICHER, and GLENADINE PURSELL,

Petitioners-Appellants,

v

CAROL PURSELL,

Respondent-Appellee,

and

CITY BANK AND TRUST,

Respondent.

UNPUBLISHED
May 2, 1997

No. 195602
Jackson Probate Court
LC No. 95-000002

Before: Griffin, P.J., and Doctoroff and Markman, JJ.

PER CURIAM.

Petitioners appeal as of right the probate court's May 29, 1996, order interpreting the trust agreement of Cassell L. Pursell [hereinafter L. Pursell]. We affirm.

This action was initiated on January 2, 1996, by L. Pursell's daughter, who filed a petition requesting the probate court to interpret the following language in the Cassell L. Pursell Trust:

> (c) Upon the death of the Grantor's wife, GLENADINE M. PURSELL, or upon the death of the Grantor if the said GLENADI[N]E M. PURSELL shall have predeceased him, then this Trust shall immediately terminate and the Trustee shall distribute the remaining corpus and undistributed income of the Trust Estate to the Grantor's children in the following proportions:

(1) To my son, CASSELL C. PURSELL, thirty (30%) per cent thereof;

(2) To my daughter, BEATRICE P. TRAPNELL, thirty (30%) per cent thereof;

(3) To my daughter, VIRGINIA P. EICHER, forty (40%) per cent thereof;

> [P]rovided, however, that if any of my said children shall predecease me leaving issue me surviving the issue shall take, in equal parts per stirpes, the share which such child who predeceased me would have taken if such child had survived me; if there be no such issue then living to my issue living at the death of such child, in equal parts per stirpes, and if there be no such issue of mine then living to the persons who would be entitled to inherit the same in accordance with the laws of the State of Michigan then in force as if I had died immediately after the death of such child, intestate, and a resident of the State of Michigan and owning the said property. [Article II, paragraph C, subparagraph (c), (1), (2) and (3) of the Cassell L. Pursell Trust.][1]

Following a hearing on March 26, 1996, the probate court concluded that the above language in the trust was not ambiguous and clearly stated that the rights of L. Pursell's children "vest if they live long enough to outlive himself, which all of them did" and therefore Cassell Pursell's [hereinafter C. Pursell] interest vested at the time of L. Pursell's death.[2] The probate court held that because there was no ambiguity in the trust, there was nothing for the court to construe and no reason to allow testimony regarding the grantor's testamentary intent.

Petitioners first contend that the probate court erred in ruling that the trust contains no ambiguities requiring interpretation by the court. They argue that consideration of the entire trust document reveals that the grantor intended to assure that the trust corpus and any undistributed income would pass to the grantor's lineal descendants, including C. Pursell's children. Petitioners further argue that because the trust language, as interpreted by the probate court, allows the trust to be inherited by individuals, such as respondent Carol Pursell-- C. Pursell's wife at the time of his death-- who are unrelated to L. Pursell, such language must be the result of a drafting error and is therefore ambiguous.

The role of the probate court is to ascertain and give effect to the intent of the testator as derived from the language of the testamentary instrument. *In re Woodworth Trust*, 196 Mich App 326, 327; 492 NW2d 818 (1992). Where there is no ambiguity, that intention is to be gleaned from the four corners of the instrument. *Id*. A patent ambiguity exists if an uncertainty concerning the meaning appears on the face of the instrument and arises from the use of defective, obscure, or insensible language. *Id*. at 327-328. A latent ambiguity exists where the language and its meaning is clear, but some extrinsic fact creates the possibility of more than one meaning. *Id*. at 328.

The language used in L. Pursell's trust agreement is unambiguous. Petitioners do not argue that there is uncertainty concerning the meaning of the language used or that there is some extrinsic fact

creating the possibility of more than one meaning for the language used. They only argue that evaluating the trust in a fuller context would reveal an ambiguity. Therefore, neither a patent nor a latent ambiguity exists in the language at issue and L. Pursell's intent must be gleaned from the four corners of the trust agreement which he established. *Id.* at 327.

This Court has held that where there is no patent or latent ambiguity, the intention to be ascribed to the grantor is the intention demonstrated in the will's plain language. *In re Willey's Estate*, 9 Mich App 245, 249; 156 NW2d 631 (1967). Where an instrument is unambiguous, the court has merely to interpret and enforce the language employed. *In re Norwood Estate*, 178 Mich App 345, 347; 443 NW2d 798 (1989). The Supreme Court has held that, in the absence of ambiguity or mistake appearing on the face of the document, even the testimony of the scrivener regarding a mistake or an intention of the testator different from that expressed in the will is not admissible and the court may not reform the document. *Burke v Central Trust Co*, 258 Mich 588, 592; 242 NW 760 (1932).

While L. Pursell's trust agreement demands one result if he predeceases his wife and another if she predeceases him, such results seem clearly and unambiguously to be called for by the language of the trust. The former has occurred and we must read the agreement accordingly. There is no indication revealed within the four corners of the trust document that such a result was not intended by L. Pursell nor do we find it to be without conceivable rationality. Therefore, the probate court's ruling that there is no ambiguity or mistake on the face of the document and the court's refusal to further interpret the document was not clearly erroneous.

Petitioners also argue that because the trust document was ambiguous, testimony should be allowed to establish the grantor's true intent. Again, however, the trust agreement created by L. Pursell was unambiguous, requiring no reformation or construction by the probate court. Petitioners seek specifically to admit the testimony of L. Pursell's daughters to establish his testamentary intent. However, this Court has held that, absent ambiguity, the testator's intent is to be gleaned wholly from within the four corners of the testamentary instrument. *In re McPeak Estate*, 210 Mich App 410, 412; 534 NW2d 140 (1995). Additionally, testimony of a mistake in drafting, or of an intention of the testator different from that expressed in the document, is not admissible in the absence of ambiguity or mistake appearing on the face of the document. *Burke, supra* at 592. Therefore, the probate court's ruling that testimony would not be allowed regarding L. Pursell's testamentary intent was not clearly erroneous.

Affirmed.

/s/ Richard Allen Griffin
/s/ Martin M. Doctoroff
/s/ Stephen J. Markman

[1] The December 6, 1975, amendment to the trust changed the proportions in subparagraphs (c) (1), (2), and (3) to one-third (1/3) each. All other language remained the same.

[2] C. Pursell passed away shortly after his father L. Pursell.