STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of the Estate of RICHARD T. SAHLIN, Deceased.

ERIC SAHLIN, BRUCE SAHLIN, GLENN SAHLIN, and BRIDGET VAN ARNEM,

Appellants,

v

STEPHEN GREENHALGH and NBD BANK as Co-Personal Representatives of the Estate of Richard T. Sahlin, CHRISTINE EASTERBROOK SAHLIN, and AMY E. PETERMAN, Guardian Ad Litem for RYAN SAHLIN, a minor,

Appellees.

UNPUBLISHED
December 19, 2000

No. 214326
Oakland Probate Court
LC No. 96-252701-SE

Before: Smolenski, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Appellants appeal as of right from the probate court's opinion and order ruling that the deceased's specific devise to his grandson was not subject to apportionment of federal and state estate taxes. We affirm.

The deceased, Richard Sahlin (Sahlin), created both a will and a trust with specific devises. The first paragraph of Sahlin's will directed that all his debts, including estate taxes, be paid before any property or cash was devised to his heirs, and contained a direct prohibition against apportioning these debts and taxes among his takers:

> I direct that all my legal debts (except mortgage debts and other similar long-term indebtedness, the payment of which shall be discretionary unless otherwise required by law), the expenses of my last illness, funeral and burial expenses, and the expenses of administering my estate, together with all estate,

> inheritance, legacy, succession or similar duties or taxes which shall become payable in respect of any property, or interest therein, which I may own at the time of my death, and which is properly included in my gross estate for any such taxation purposes, shall be charged to and paid from my residuary estate, unless there shall be direction to pay such taxes or expenses from the Richard T. Sahlin agreement of Trust referred to in Article III hereof, in which case my Personal Representative shall pay only such taxes or expenses as remain unpaid after payment from such trust, and my Personal Representative *shall not seek recovery or reimbursement from, or apportionment between or among the recipients of any such property or interest.* [Emphasis added.]

The second paragraph in the will directed that certain personal property be divided between Sahlin's children, and the third paragraph directed that the remainder of his assets be deemed his residuary estate.

Sahlin also created a trust, naming himself as the first trustee and National Bank of Detroit (NBD) and attorney Stephen Greenhalgh as co-successor trustees. The trust provided that after Sahlin's death, the successor trustees were to create a special trust for the sole benefit of Sahlin's eldest grandson, Ryan Sahlin (Ryan), in an amount equal to the generation-skipping tax exemption. The trust further provided that the residue of the estate was to be divided equally between Sahlin's five children. After Sahlin's death, the successor trustees sought instructions from the probate court regarding, among other things, the apportionment of taxes. The probate court found that Sahlin's will contained a prohibition on apportionment of taxes against bequests and ruled that the language in the will overrode the statutory presumption in favor of apportionment. See MCL 720.12; MSA 27.3178(167.102). Thus, the probate court ordered that the state and federal estate taxes not be apportioned against the sum bequeathed to Ryan.

Appellants, four of the five surviving children of the deceased,[1] argue that the probate court erred in ruling that the decedent's will contained a specific anti-apportionment clause, providing that the federal and state estate taxes not be apportioned against the residue of his estate. We disagree.

"All appeals from the probate court shall be on a written transcript of the record made in the probate court or on a record settled and agreed to by the parties and approved by the court." Appeals of probate matters are not tried de novo. MCL 600.866(1); MSA 27A.866(1). Rather, we review the probate court's findings of fact for clear error. *In re Webb H Coe Marital & Residuary Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999). Factual findings are clearly erroneous when this Court is left with a definite and firm conviction that a mistake has been made. *In re Harold S Ansell Family Trust*, 224 Mich App 745, 749; 569 NW2d 914 (1997).

Michigan has adopted the Uniform Estate Tax Apportionment Act (UETAA), MCL 720.11 *et seq.*; MSA 27.3178(167.101) *et seq.* Section 2 of the UETAA provides:

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[1] Appellee Christine Easterbrook Sahlin, the deceased's fifth child, is the mother of Ryan Sahlin.

> *Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate.* The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. *In the event the decedent's will directs a method of apportionment of tax different from the method described in this act, the method described in the will shall control*. [MCL 720.12; MSA 27.3178 (167.102); emphasis added.]

The plain and unambiguous statutory language directs that the statutory presumption of apportionment of taxes may only be overridden by an express direction against apportionment in a will. *In re Coe Trusts, supra* at 534. The burden of proof rests with the party opposing apportionment. *Id.*

The principal purpose of the tax apportionment statute is to avoid placing the total burden of estate taxes on the residuary estate, which is usually directed to the natural objects of the testator's bounty. *In re Roe Estate*, 169 Mich App 733, 737-738; 426 NW2d 797 (1988). Any directive against apportionment should be expressed in clear and unambiguous language. *Id.* at 739. In construing a will to determine whether the testator expressly manifested an intention that taxes be paid out of the estate and not apportioned pursuant to the UETAA, this Court's primary goal is to effectuate the testator's intent consistent with the law. *In re Coe Trusts, supra* at 533-534; *In re Roe Estate, supra* at 738. "The right to alter or omit apportionment may be exercised by will only." *In re Roe Estate, supra* at 739.

Here, Sahlin's will expressly states that all taxes shall be paid from the residuary estate and the personal representative "shall not seek recovery or reimbursement from, or apportionment between or among the recipients of any such property or interest." We find no reason to ignore Sahlin's expressed intent to avoid apportionment that is contained in the plain wording of his will. The plain and unambiguous language in the will was a compelling, manifest expression of Sahlin's intent to override the apportionment directives in § 2 of the UETAA. *In re Coe Trusts, supra* at 535. Accordingly, we conclude that the probate court did not err in ruling that apportionment was barred in this matter.

Affirmed

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter