STATE OF MICHIGAN

COURT OF APPEALS

In re IRREVOCABLE TRUST OF CHARLES STEWART MOTT.

CHARLES B. WEBB, Trustee,

Petitioner-Appellee,

v

STEWART R. MOTT,

Respondent-Appellant,

and

AMSOUTH BANK, Trustee of the Susan Mott Webb Marital Trust and the Susan Mott Webb Charitable Trust, STEWART M. DANSBY, SUZANNE E. DANSBY-PHELPS, and ELIZABETH R. WEBB,

Respondents-Appellees.

UNPUBLISHED
June 26, 2001

No. 222333
Genesee Probate Court
LC No. 99-158942-TT

Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Appellant, Stewart R. Mott, appeals as of right from an order directing that a one-third share of the corpus of a trust created by his father, Charles Stewart Mott, dated May 28, 1935, be distributed to the personal representative of the estate of his deceased sibling, Charles Mott's deceased daughter, Susan Mott Webb. Susan Mott Webb survived her father, the grantor of the trust, but predeceased her mother, Ruth Mott, a life beneficiary under the trust. The trial court ruled that Susan Mott Webb's interest in the trust corpus vested before her death, even if the grantor intended a class gift, and that Susan Mott Webb was not divested of her share as a result of having predeceased the life beneficiary. We affirm.

Appellant argues that the trial court improperly interpreted the language of the trust agreement to conclude that Susan Mott Webb's interest in the trust vested, either at the time of her birth or at least by the time Charles Stewart Mott died, and that her survival of the life beneficiary (her mother) was not required in order for her estate to be entitled to her one-third share of the corpus. We find no error.

"In resolving a dispute concerning the meaning of a will or trust, the court's sole objective is to ascertain and give effect to the intent of the testator or settlor." *In re Nowels Estate*, 128 Mich App 174, 177; 339 NW2d 861 (1983). The trust instrument itself must be looked at to determine the settlor's intent. *In re Butterfield Estate*, 418 Mich 241, 259; 341 NW2d 453 (1983). Each word in the trust document should be given meaning, if possible. *The Detroit Bank & Trust Co v Grout*, 95 Mich App 253, 268-269; 289 NW2d 898 (1980). The general rules for construing wills are applied to the interpretation of trust agreements. *In re Maloney Trust*, 423 Mich 632, 639, 645; 377 NW2d 791 (1985).

> A fundamental precept which governs the judicial review of wills is that the intent of the testator is to be carried out as nearly as possible. As with other legal documents, the "intent" is to be gleaned from the will itself unless an ambiguity is present. The law is loath to supplement the language of such documents with extrinsic information. This is especially so in the case of testamentary documents because the maker is not available to provide additional facts or insight.
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> However, presence of an ambiguity requires a court to look outside the four corners of a will in order to carry out the testator's intent. Accordingly, if a will evinces a patent or latent ambiguity, a court may establish intent by considering two outside sources: (1) surrounding circumstances, and (2) rules of construction. [*Id*. at 639, quoting *In re Kremlick Estate*, 417 Mich 237, 240; 331 NW2d 228 (1983) (citations omitted).]

If an ambiguity is not found within the four corners of the instrument itself, the court is required to interpret and enforce the language of the document as written. *In re Butterfield Estate*, 405 Mich 702, 711; 275 NW2d 262 (1979).

The trust at issue in this case provides, in part:

> NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, the said Charles Stewart Mott, for and in consideration of the promises as well as for and in consideration of the love and affection which I bear to my wife, Ruth Rawlings Mott, my children and descendants, and for the purpose of providing an income for my wife, Ruth Rawlings Mott, I have, as above recited, given, granted and delivered unto Charles Stewart Mott, as Trustee, the sum of $396,877.50 with which has been purchased the securities above enumerated and as set forth on attached Schedule A, which are to be held by me as Trustee, and in no other capacity, for the following uses and trust purposes, that is to say:

> 1. In trust, to collect and receive the dividends and income therefrom and pay the net income from the securities now or hereafter held subject to this trust, unto RUTH RAWLINGS MOTT, for and during the term of her natural life-time, within thirty days after their receipt by me as Trustee; upon the death of her, the said Ruth Rawlings Mott, to assign, transfer and deliver the corpus of this trust estate, including any additional securities added to this trust, unto the children of Charles Stewart Mott and Ruth Rawlings Mott, his wife, the issue of their said marriage, absolutely.
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> 2. In the event there are no children of Charles Stewart Mott and Ruth Rawlings Mott, the issue of their said marriage, living at the time of the death of Ruth Rawlings Mott, then the entire corpus of this trust, including any securities hereafter added thereto, shall belong to and be the property of my son, Charles Stewart Harding Mott and my daughters, Aimee Mott Butler and Elsa Mott Mitchell, share and share alike, absolutely. If any of my children, that is to say, Charles Stewart Harding Mott, Aimee Mott Butler and Else Mott Mitchell, shall be deceased at the time this provision becomes effective, (if it does become effective) then the children of such deceased son and/or daughters shall take the share of their deceased parent. In the event any of my children last above mentioned shall be deceased at the time this provision of the trust becomes effective, (if it becomes effective) leaving no children surviving, then the share of such deceased child shall become the property of my surviving children, share and share alike, absolutely, or their children per stirpes in the event of the death of said child of mine.

Appellant maintains that the grantor actually intended for the trust corpus to be distributed only to the children who survived the life beneficiary. We conclude that the plain language of the trust does not support that interpretation. Paragraph one does not state that the grantor's children must survive the life beneficiary to be entitled to a share of the corpus. Had the grantor intended to include a condition of survivorship of the life beneficiary, he could have included such language in paragraph one. The absence of such language is an indication that the grantor did not intend to impose that condition. Nor does a reading of paragraphs one and two together compel us to imply such a survivorship requirement into the trust agreement. The plain language of paragraph two only requires that at least one of the children of Charles and Ruth Mott be living at the time of Ruth Mott's death. Thus, the trial court did not err in ruling that the trust should not be construed as requiring that all of the children must survive Ruth Mott in order to share in the corpus.

Appellant also maintains that the trial court erred in concluding that Susan Mott Webb's share vested before the life beneficiary died. The trust does not state when Charles and Ruth Mott's children's interests in the corpus was to vest. The trial court properly noted that Michigan follows the rule that favors the early vesting of estates. As our Supreme Court stated in *In re Jamieson Estate*, 374 Mich 231, 237-238; 132 NW2d 1 (1965):

> [I]t has long been the law in Michigan that vested estates are to be favored, and that conditions of survivorship will not lightly be implied. *Toms v Williams*,

> 41 Mich 552, 565. Indeed, we have characterized as a rule of property not to be disturbed the rule that when ambiguity exists whether a testator intended to condition a remainderman's taking of an estate merely upon survival of the testator or upon survival of the holder of a precedent estate, the latter condition should not be implied.

See, e.g., *In re Shumway's Estate*, 194 Mich 245, 254; 160 NW 595 (1916); *In re Childress Trust*, 194 Mich App 319, 322-323; 486 NW2d 141 (1992); *In re Dodge Trust*, 121 Mich App 527, 543-546; 330 NW2d 72 (1982). Even where the testator directs that the remainder should go to a relative "upon the death" of the life beneficiary, such language is insufficient to delay vesting. See *In re Shumway's Estate*, *supra* at 253-254. As a general rule, vesting should occur as early as possible, even if the enjoyment of the property at issue is deferred. *In re Hurd's Estate*, 303 Mich 504, 509-512; 6 NW2d 758 (1942).

Because the trust in this case lacks any language reflecting an intent to delay vesting until the life beneficiary's death, the trial court properly held that Susan Mott Webb had a vested remainder interest in the corpus that was subject to defeasance only if the entire corpus was depleted to support the life beneficiary or if none of the children survived the life beneficiary. Given that neither of these conditions occurred, Susan Mott Webb's share of the corpus was not divested. See *Conover v Hewitt*, 125 Mich 34; 83 NW 1009 (1900).

Appellant urges this Court to review other trust agreements created by Charles Stewart Mott for the purpose of discerning his intent with respect to the instant trust agreement. We decline this invitation. There is nothing in the record to suggest that the trial court looked beyond the instant trust and considered any other trusts, and they were never made part of the record. Accordingly, we will not consider them on appeal. *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 18; 527 NW2d 13 (1994).

Appellant next maintains that the trial court failed to distinguish between class and individual gifts when determining when Susan Mott Webb's interest vested. Appellant claims that, as a matter of law, a class gift may only vest upon the death of the life beneficiary, because only at that time does membership in the class close.

Assuming that the grantor intended a class gift to his and Ruth Mott's children, the grantor's intent still controls with regard to vesting or closing of the class. *Rozell v Rozell*, 217 Mich 324, 328-330; 186 NW 489 (1922). Unless the grantor indicates when the membership of the class should be ascertained or closed, in a will, the membership will be fixed as of the date of the testator's death. *In re Fitzpatrick Estate*, 159 Mich App 120, 128; 406 NW2d 483 (1987). In *In re Fitzpatrick Estate*, the panel followed the rule set forth in 96 CJS, Wills § 695(1)(a), p 35, whereby the decision regarding membership of a class may be decided in reference to the date of the will and that membership should be ascertained at the earliest possible point, consistent with a fair reading of the will. Where class gifts are involved, the interests of remaindermen may vest upon ascertainment of the members of the class. *Rendle v Wiemeyer*, 374 Mich 30, 41-42; 131 NW2d 45 (1964). See also Michigan Law & Practice, Wills, § 194, pp 500-501. Our Supreme Court has applied the rule relating to the early vesting of estates to interests that could be considered class gifts. *Sturgis v Sturgis*, 242 Mich 52, 53-55; 217 NW 771 (1928), overruled in part on other grounds by *Johnson v Atchinson*, 362 Mich 296, 301; 106 NW2d 748 (1961);

Holmes v Holmes, 215 Mich 112, 116-117; 183 NW 784 (1921). See also *Boulden v Dean*, 167 Md 101; 173 A 26, 28 (1934) (holding that the rule favoring early vesting of estates applies whether an individual or a class gift is involved).

In this case, appellant has not shown that the vesting of Susan Mott Webb's interest was delayed until the death of the life beneficiary simply because the grantor may have intended a class gift. Any class closed, at the latest, when Charles Stewart Mott died, or approximately nine months thereafter. At that point, no other members could enter the class and the interests of all members of the class at that time became vested, subject only to defeasance due to depletion of the corpus or the failure of any of the children to survive the life beneficiary. The trial court's interpretation of the trust language is consistent with the rules on vesting of class gifts. Accordingly, we conclude that the trial court properly interpreted the trust language to determine and carry out the grantor's intent as expressed in the trust agreement. *In re Kremlick Estate*, *supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Brian K. Zahra