

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of CHARLES W. WILHOITE, Deceased.

DEBRA L. BAILEY, Personal Representative of
the Estate of CHARLES W. WILHOITE,
Deceased,

UNPUBLISHED
April 16, 2002

Petitioner-Appellee,

v

No. 228472
Washtenaw County
Probate Court
LC No. 00-000092-IE

COREY J. WILHOITE and STACIE D.
WILHOITE,

Respondents-Appellants.

Before: K.F. Kelly, P.J. and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Respondents appeal as of right the order admitting decedent's will into probate. We affirm in part and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Charles W. Wilhoite executed a will on January 7, 2000, providing for an equal distribution of his estate among his three children, Debra Bailey, Corey Wilhoite, and Stacie Wilhoite. On January 9, 2000, the three children signed a document agreeing to a dispersion of property. Charles Wilhoite died on January 14, 2000. The probate court declined to enforce the January 9th agreement, and admitted the will to probate.

Appellants assert that the agreement is enforceable under MCL 700.3914, which provides in part:

(1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written agreement executed by all who are affected by its provisions.

While a testator is still alive, he may alter the provisions of his will at any time. There are no successors until after a testator had died. The probate court properly found that the statute does not apply to an agreement reached prior to death of the testator.

The parties did not enter into a binding contract that is enforceable by a court. A settlement agreement is a contract that is subject to legal principles applied to contracts generally. *Reed v Citizens Ins Co*, 198 Mich App 443, 447; 499 NW2d 22 (1993). The enforceability of a contract depends upon consideration. *Hisaw v Hayes*, 133 Mich App 639, 643; 350 NW2d 302 (1984). No consideration was identified in this case.

Appellee concedes that appellants properly filed objections to the admission of the will that were not addressed by the probate court. On remand the probate court is to allow appellants to present evidence that the will is invalid.

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh