

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of EDRIK C. MAYFIELD, Deceased.

CHARLES KIRKLAND,

Petitioner-Appellant,

v

CEDRICK C. MAYFIELD, Personal
Representative of the Estate of EDRIK C.
MAYFIELD, Deceased,

Respondent-Appellee.

UNPUBLISHED

October 1, 2002

No. 228624

Washtenaw Probate Court

LC No. 99-001111-IE

Before: Holbrook, Jr., P.J., Zahra and Owens, JJ.

PER CURIAM.

Petitioner appeals as of right from a probate court order denying his request that decedent's estate discharge two mortgages on real property devised to petitioner. We affirm.

Petitioner was decedent's caregiver for several years before his death. In his will, decedent devised his residence, its furnishings and fifteen percent of the residual estate to petitioner. The will also provided the general directive that the personal representative pay out of the estate "all my just debts [.]". At the time of decedent's death, there were two mortgage loans on the subject property, with principal balances totaling approximately \$178,500. Petitioner sought to have the mortgages discharged by the estate under the will's general directive to pay debts. At an evidentiary hearing, petitioner testified that he had conversations with decedent about the residential property. Petitioner claimed that decedent wanted him to stay in the home after decedent's death, and that decedent made assurances to him that the home would be "paid for" and "taken care of" because decedent knew petitioner would be unable to afford the mortgage payments without decedent's assistance.

The general principles for interpreting wills are set forth in *In re Woodworth Trust*, 196 Mich App 326, 327-328; 492 NW2d 818 (1992), as follows:

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 will. Where there is no ambiguity, that intention is to be gleaned from the four corners of the instrument.

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. A latent ambiguity exists where the language and its meaning is clear, but some extrinsic fact creates the possibility of more than one meaning. [Citations omitted.]

We review de novo both the language used in the will and issues involving the interpretation of a statute, and apply the clearly erroneous standard of review where an issue requires fact-finding. *In re Bem Estate*, 247 Mich App 427, 433; 637 NW2d 506 (2001).

Here, petitioner claims that decedent intended for the will's instruction to pay all "just debts" to include the loans secured by the mortgages. Thus, petitioner seeks to establish a latent ambiguity.

The nonexoneration provision of the Estates and Protected Individuals Code (EPIC), MCL 700.2607, states:

A specific devise . . . passes subject to any mortgage or other security interest existing on the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

The EPIC took effect on April 1, 2000, approximately six months after decedent's death. However, the EPIC's applicability to this action is governed by § 8101, which provides, in pertinent part:

(2) Except as provided elsewhere in this act, on this act's effective date, all of the following apply:

(a) The act applies to a governing instrument executed by a decedent dying after that date.

(b) The act applies to a proceeding in court pending on that date or commenced after that date regardless of the time of the decedent's death except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of the infeasibility of applying this act's procedure.

* * *

(e) A rule of construction or presumption provided in this act applies to a governing instrument executed before that date unless there is a clear indication of a contrary intent. [MCL 700.8101.]

Petitioner argues that the nonexoneration provision is inapplicable because it is a "rule of construction or presumption" under § 8101(2)(e) and his uncontradicted testimony regarding decedent's intent to give him the property unencumbered by the mortgages constitutes a "clear indication of a contrary intent."

We conclude that petitioner's claim is barred by the nonexoneration provision of the EPIC. The provision of the will directing payment of all "just debts" does not expressly refer to payment of the mortgages and such intent cannot be implied from the remaining unambiguous language of the will. The EPIC's nonexoneration provision states that such general directives do not exonerate mortgage debt. MCL 700.2607.¹ Petitioner's self-serving testimony on the issue does not establish a clear indication of a contrary intent under MCL 700.8101(2)(e) so as to make the EPIC inapplicable. Because the will is unambiguous, we will not look beyond its four corners to establish decedent's intent. *In re Woodsworth Trust, supra*. Petitioner's claim that the estate must pay the mortgage debt is contrary to the plain language of the nonexoneration statute, and the trial court properly denied petitioner relief.

Given that conclusion, we need not consider petitioner's additional argument concerning the trial court's reference to the amount owing on the loans. The statement in the trial court's order regarding the amounts of the mortgages is of no consequence given that petitioner has failed to establish any ambiguity in the will or demonstrate that the nonexoneration provision does not bar relief in this case.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens

¹ The statute in effect at the time the will was executed, MCL 700.137, was consistent with MCL 700.2607.