

STATE OF MICHIGAN
COURT OF APPEALS

CONSTANCE H. RAVITZ,

Petitioner-Appellant,

v

COMERICA BANK, Successor Trustee of the
EDWARD RAVITZ TRUST, as amended, and
Personal Representative of the ESTATE OF
EDWARD RAVITZ,

Respondents-Appellees.

UNPUBLISHED

November 16, 2004

No. 246994

Oakland Probate Court

LC No. 98-268919-IE

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

PER CURIAM.

Petitioner appeals as of right from the trial court order granting summary disposition under MCR 2.116(C)(10) to appellee Comerica Bank as Successor Trustee of the Edward Ravitz Trust, as amended,¹ on petitioner's claim that her late husband's assignments during his lifetime of certain properties to the trust were legally invalid, thus making the properties part of decedent's estate and entitling petitioner to exercise the right of statutory election with respect to them pursuant to MCL 700.2202. Petitioner raises a number of separate arguments. All have a common theme: that decedent described his interests in the assignments as "partnership" interests when in fact the interests were not partnership interests, and the assignments were, in petitioner's view, legally ineffective. We affirm.

Petitioner first argues that the trial court erred in ruling that it did not matter whether petitioner's interests were partnerships or not because it was clear that he intended to transfer the interests, whatever they were, to the trust. Petitioner asserts that the probate court improperly resolved a genuine issue of material fact, without permitting petitioner to have discovery. We disagree.

¹ Comerica Bank is also a separate party in its distinct capacity as personal representative of the Edward Ravitz estate, and has filed an appearance in this case in that capacity. The Attorney General has also filed an appearance pursuant to his duty under MCL 14.251 to protect the interests of charitable trusts.

This Court reviews a trial court order granting summary disposition de novo to determine whether the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In conducting such a review under MCR 2.116(C)(10), this Court considers all the evidence submitted by the parties in the light most favorable to the party opposing the motion to determine whether there was a genuine issue as to any material fact. However, this Court will consider only substantively admissible evidence actually proffered, not the mere possibility that there might be evidence at trial to support a claim or the promise that there will be. *Id.* at 120-121.

The trial court correctly determined that decedent's plainly stated intent was to transfer his interests in the properties to the trust. We interpret contractual language so as to give it its plain, ordinary meaning, avoiding technical and strained constructions. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). Our primary goal in interpreting a contract is to honor the intent of the parties. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 473; 663 NW2d 447 (2003).

Decedent stated his intent to convey to the trust his interests in the properties that he described as "partnership" properties. He listed the properties on attachments to the assignment documents, so there can be no doubt as to his intent. Because the meaning of the assignments is clear on its face, parol evidence is not admissible to vary their terms. *Klapp, supra*, 468 Mich at 469-470. Therefore, there would be no point in the discovery petitioner requests because there is no genuine issue of material fact on this issue. Petitioner cannot avoid summary disposition simply by raising the hypothetical possibility that she may be able to come up with some evidence that would create an issue as to intent. *Id.* at 120-121.

Petitioner next argues that the trial court improperly effected a reformation of the assignments by interpreting decedent's attempted transfer of "partnership interests" to include any business interests, regardless of whether the holdings were partnership properties. There is no merit to this claim. The integrity of the underlying partnership agreements is not at issue in this case, which involves only decedent's unambiguous transfer of his interests. To the extent that petitioner is challenging the agreement between decedent and the trust, we note that the assignor in the controverted transactions was decedent, and the assignee was decedent's revocable living trust, of which he was trustee. Thus although assignor and assignee may have been legally distinct, they were, in fact, one and the same. Decedent's knowledge, and therefore his capacity for making a mistake, were therefore precisely the same, whether he was decedent as an individual or decedent as trustee of the trust.

Petitioner also argues that a voluntary, gratuitous real property deed cannot be reformed after the grantor's death except under special circumstances not applicable here, citing three cases in support of this proposition.² Petitioner's argument assuming it to be correct, has no relevance to these facts. The disputed documents were not real property deeds, but assignments.

² *Miller v Beardslee*, 175 Mich 414; 141 NW 566 (1913); *Shears v Westover*, 110 Mich 505; 68 NW 266 (1896); *Cummings v Freer*, 26 Mich 128 (1872).

We decline to assume that principles governing the reformation of real property deeds apply to reformation of other documents, such as the assignments here.

Petitioner next argues that the equities of the case favor allowing her to exercise her statutory right to election. In support of this argument, she asserts that if she is not permitted to exercise statutory election, the share of decedent's estate she receives will be less than it would have been had she obtained a divorce from him during his lifetime. This being the case, she argues, in order to avoid providing a strong financial incentive for divorce, this Court needs to be generous in its interpretation of statutory election. She also argues that the fact that Michigan has a statute permitting spousal election demonstrates the existence of a strong public policy favoring the right to exercise such election. For all of these reasons, she asserts, the equities in the case favor finding that the assignments were invalid so that she can exercise the right to election.

There are several difficulties with these arguments. First, although it is true that Michigan has a statute permitting statutory election, MCL 700.2202, this statute permits election only where authorized by the statute. We are unwilling to require, on policy grounds, that the statute be applied contrary to its own terms. It is this Court's role to interpret the Legislature's statutory intent, not to write our own policy preferences into a statute. *In re Worker's Compensation Lien*, 231 Mich App 556, 563; 591 NW2d 221 (1998). For the same reason, petitioner's expressed concern that the institution of marriage will be undermined if she does not prevail is also best left to the Legislature.

Finally, petitioner argues that the interests that decedent transferred to the trust were not actually partnerships, and that accordingly, the assignments were legally invalid. As noted previously, the trial court properly found, on the basis of petitioner's clearly expressed intent, that the assignments validly conveyed the interests in the listed properties to the trust, whether the interests were partnerships or not. The trial court correctly found that the question of the correct legal description was unnecessary to the resolution of petitioner's claim. We, therefore, need not address this issue either.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Michael J. Talbot