

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re LORRAINE C. MARTENS Trust.

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ROBIN ROHN, Trustee for the LORRAINE C.  
MARTENS Trust, and JUDITH NEWSOM,

UNPUBLISHED  
November 29, 2012

Appellees,

v

LINDA CLINE,

No. 308679  
Cheboygan Probate Court  
LC No. 11-013437-TV

Appellant.

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Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

Appellant appeals by right from the February 8, 2012 order of Cheboygan Probate Court Judge Robert J. Butts interpreting the provisions of appellant's mother's trust. For the reasons set forth in this opinion, we affirm the order of Judge Butts.

Prior to her death, the decedent, Lorraine C. Martens, had established a trust. The relevant portions of the trust for purposes of this appeal are Articles 10(A) and 10(B) which contained the following language:

A. Upon the death of the Settlor, the Trustee shall first distribute outright and free of all trusts hereof Twenty-Five Thousand (\$25,000) Dollars to each grandchild of Settlor only if then living, otherwise this distribution shall lapse. At the present time, Settlor's grandchildren are LARRY NEWSOM, JODI NEWSOM, DAVID NEWSOM, MATHEW NEWSOM, CHRISTINE CLINE, CARRIE CLINE and JAMMIE CLINE.

B. Upon the death of the Settlor and after the specific distributions described in Subarticle 10.A, the Trustee shall divide the then trust estate into equal shares, one for each of the Settlor's then surviving daughters and one share for each deceased daughter of the Settlor for her then surviving issue, by right of representation. Provided, however, the Trustee shall allocate to the share for the benefit of the Settlor's daughter, LINDA CLINE or her issue as the case may be,

the cottage on Burt Lake located at 3753 White Goose Road, Cheboygan, Michigan 49721; and the trustee shall allocate to the share for the benefit of Settlor's daughter, JUDITH NEWSOM or her issue as the case may be, the condominium located at 6705 Maple Lakes Drive, West Bloomfield, Michigan 48322. . . .

At the time of decedent's death, the trust had been reduced to \$50,717 in liquid assets, not counting the value of the cottage on Burt Lake or the \$50,000 in proceeds from the sale of the West Bloomfield condominium, which had been sold with the consent of all interested parties. Additionally, decedent's estate had a cash value of approximately \$15,000.

Given the state of the funds in decedent's estate and trust, appellee Judith Newsom filed a petition to have the trust document interpreted by the probate court. A hearing was held and the court concluded that grants to the grandchildren were specific devises, and that the grants to the daughters, including the condominium and cottage, were residual devises. As such, the probate court held that the funds from the condominium sale had to be put toward the payment of the specific devises, and the cottage needed to be sold so that the funds from sale could be put toward the payment of the specific devises. The probate court also found that Article 10(B) required the residual share given to each daughter to be equal, and that therefore appellant and appellee were required to evenly split any leftover proceeds from the sales of the condominium and cottage.

Appellant argues that the probate court erred by finding that the Burt Lake cottage needed to be sold in order to cover the funds owed to the grandchildren under Article 10(A) of decedent's trust. This Court reviews de novo the language used in wills and trusts. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005).

When the assets of a trust or estate are insufficient to satisfy all of the grants of a will or trust, some grants must be abated in favor of others. This abatement process is governed by MCL 700.3902, which sets the order of abatement, from first to abate to last to abate, as follows: (1) "Property not disposed of by the will"; (2) "Residuary devises"; (3) "General devises"; and (4) "Specific devises." MCL 700.3902(1)(a)-(d) (paragraph structure omitted).

On appeal, appellant presents this Court with two arguments. First, appellant argues that the grant of \$25,000 to each of decedent's grandchildren is a general devise. In support of this argument, appellant asserts that the grant is a class gift subject to abatement within the class as a general devise. MCL 700.3902(2). Although Article 10(B) specifically refers to the grants in Article 10(A) as "specific distributions," the devise to the grandchildren is not of an identifiable piece of property or even a fund of some kind. See Black's Law Dictionary (7th ed), p 463 (definition of general devise). Rather, it is a general devise paid out of the estate assets, i.e., a gift of money to the named grandchildren. Haskell, Preface to Wills, Trusts and Administration (2nd ed), ch 6, pp 93-94. As such, the grants in Article 10(A) were incorrectly classified as specific devises by the probate court. *Id.*

Second, appellant argues that the grant of the cottage to appellant and the grant of the condominium to appellee are specific devises. The identification of these two particular pieces

of real property means that this is a specific devise. See Black's Law Dictionary (7th ed), p 463 (definition of specific devise); Haskell, *supra* at ch 6, pp 92-93.

Nonetheless, it is clear that following the order of abatement set forth in MCL 700.3092(1) is at odds with the expressed intent of the settlor. We concur with the finding of the probate court that the devises set forth in Article 10(B) clearly are to be distributed "after the specific distributions described in" Article 10(A). Based on this finding, our conclusion is governed by the express language of MCL 700.3902(3) which states: "If the will expresses a different order of abatement, the will controls. If the testamentary plan or the devise's express or implied purpose would be defeated by the order of abatement stated in subsection (1), the distributees' shares abate as found necessary to give effect to the testator's intention." Accordingly, although the devises were incorrectly characterized by the probate court, the result reached by the probate court was consistent with the intent of the settlor, and therefore consistent with MCL 700.3902(3). See *Gleason v Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003) ("A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason.")

Appellant also argues that Article 10(B) of decedent's trust requires that appellant and appellee take the residual value of the trust in equal shares, but that those equal shares should not contemplate the discrepancy in value between the cottage and the condominium. Again, Article 10(B) reads as follows, in relevant part:

B. Upon the death of the Settlor and after the specific distributions described in Subarticle 10.A, the Trustee *shall divide the then trust estate into equal shares*, one for each of the Settlor's then surviving daughters . . . . *Provided, however, the Trustee shall allocate to the share for the benefit of the Settlor's daughter, LINDA CLINE or her issue as the case may be, the cottage on Burt Lake located at 3753 White Goose Road, Cheboygan, Michigan, 49721; and the trustee shall allocate to the share for the benefit of Settlor's daughter, JUDITH NEWSOM or her issue as the case may be, the condominium located at 6705 Maple Lakes Drive, West Bloomfield, Michigan 48322. . . .* [Emphasis added.]

Under appellant's interpretation, the trustee is required to divide the residual value of the trust, not counting the cottage and condominium, into equal shares, and then allocate the cottage to appellant and the condominium to appellee.

This reading, however, is inconsistent with Article 10(B). That language clearly specifies that the residual value of the estate is to be divided into equal shares, provided that appellant's share includes the cottage and appellee's share includes the condominium. Contrary to appellant's position, the language following "provided, however" is not an exception to the requirement that appellant and appellee receive equal shares, but rather a guide to how decedent's real estate should be divided between those equal shares.

Therefore, because the plain language of the trust requires the shares granted to appellant and appellee to be equal, the probate court correctly determined that appellant must split the residual proceeds from the sale of the cottage equally with appellee.

Affirmed. No costs are awarded to either party. MCR 7.219.

/s/ Stephen L. Borrello  
/s/ E. Thomas Fitzgerald  
/s/ Donald S. Owens