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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the matter of the Estate of:

FRANCES L. STREAKER

Deceased.

SUSAN ROFF-FUQUAY, *Petitioner/Appellant,*

v.

RAYMOND DUNBAR, *Respondent/Appellee,*

ROBERT N. STREAKER III, *Appellee.*

No. 1 CA-CV 17-0188
FILED 12-4-2018

Appeal from the Superior Court in Yuma County
No. S1400PB201600121
The Honorable Roger A. Nelson, Judge

AFFIRMED

COUNSEL

Law Office of Jeremy Claridge, PLC, Yuma
By Jeremy J. Claridge
Counsel for Petitioner/Appellant

Garcia, Aguirre & Villarreal, P.L.C., Yuma
By Arturo I. Villarreal, Jacqueline R. Luger
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Michael J. Brown joined.

M O R S E, Judge:

¶1 Appellant Susan Roff-Fuquay appeals from a superior court's judgment and order appointing Raymond Dunbar as personal representative of Frances Streaker's estate. For the forgoing reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On January 14, 2003, Frances Streaker ("Decedent") executed her Last Will and Testament (the "Will"), disposing of her assets and appointing a personal representative. The Sixth Section ("Section Six") of the Will states:

SIXTH: I appoint, my son, Robert Nelson Streaker, as my Personal Representative and Executor. If he cannot serve, then I appoint Raymond Dunbar as my Personal Representative and Executor. In the Event they decline or are unable to act as personal representative and executor, they have the authority to select an Alternate, and such any Personal Representative and Executor or Alternate, if related to me by blood or marriage, may serve without bond or other security in any jurisdiction.

On June 6, 2015, Decedent died in New York, leaving personal and real property in Arizona. She was survived by her six adult children.

¶3 Pursuant to Section Six, Robert Streaker ("Streaker") became first personal representative and was responsible for administering Decedent's estate. On June 3, 2016, however, Roff-Fuquay filed an Application for Informal Probate of Will and Appointment of Personal Representative ("Application"). On June 30, 2016, Streaker filed his

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Renunciation of Right to Appointment with Nomination and Consent to Appointment without Bond ("First Renunciation"). The First Renunciation included, in pertinent part, the following provisions:

1. I have the highest priority for appointment as personal representative under A.R.S. § 14-3203 because I am named in the will as the Decedent's first choice for Personal Representative and I am a Devisee.
2. I renounce any right to appointment as the Personal Representative.
3. I nominate and consent to my sister, Susan I. Roff-Fuquay, for appointment as Personal Representative, to serve without bond.

¶4 On July 5, 2016, Dunbar filed an objection to Roff-Fuquay's Application and requested formal proceedings on the matter. Roff-Fuquay then filed her Petition for Formal Probate of Will and Appointment as Personal Representative ("Roff-Fuquay's Petition"). On August 15, 2016, Streaker filed a document in which he purported to rescind his First Renunciation and replace it with an amended renunciation ("Second Renunciation"). In the Second Renunciation, Streaker states that he can serve as personal representative, but "decline[s] appointment" and selects Roff-Fuquay "as my Alternate, to act in my stead, as Personal Representative"

¶5 On October 31, 2016, a status conference was held. Dunbar's attorney formally objected on the record to Roff-Fuquay's Petition, arguing that Dunbar should have been appointed as personal representative over Roff-Fuquay. Roff-Fuquay argued that she could serve as the personal representative of Decedent's estate because she was appointed by Streaker, who was the first-named personal representative on the Will. Both parties agreed that an evidentiary hearing was unnecessary because there were no contested facts and their dispute was solely a matter of interpretation of the Will. The court ordered briefing regarding the legal sufficiency of each party's arguments concerning priority of appointment of a Personal Representative under the Will.

¶6 After oral argument, the superior court determined that upon Streaker's First Renunciation, the Will named Dunbar as personal representative. The court reasoned that when Streaker "renounce[ed] his right to serve as personal representative, he cannot serve. . . . He can't turn around and decide later that he wants to be the personal representative."

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The court further concluded that Decedent clearly intended for Streaker to be named as first personal representative, Dunbar to be named second, and that when Streaker renounced his right to serve as personal representative, Streaker "[did] not have any right as the person that was named first in the will to designate anybody else to serve in his stead."

¶7 Roff-Fuquay timely appealed following the Order of Formal Probate and Appointment of Personal Representative naming Dunbar as personal representative of Decedent's estate. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(9).

DISCUSSION¹

¶8 "We review the interpretation of a written instrument de novo." *In re Indenture of Tr. Dated January 13, 1964*, 235 Ariz. 40, 44, ¶ 7 (App. 2014); *see also In re Estate of Friedman*, 217 Ariz. 548, 553, ¶ 13 (App. 2008) ("We review all matters of legal interpretation de novo."). "The interpretation of an instrument is a question of law to be determined by this court independent of the findings of the trial court." *Squaw Peak Cmty. Covenant Church of Phx v. Anozira Dev., Inc.*, 149 Ariz. 409, 412 (App. 1986).

I. Power to Disclaim

¶9 Roff-Fuquay argues that the superior court erred when it found that Streaker renounced his position to serve as personal representative when he filed his First Renunciation. Any person eighteen years of age or older "may renounce the person's right . . . to an appointment by appropriate writing filed with the court." A.R.S. § 14-3203(C). A person may disclaim "any interest in or power over property, including a power of appointment." A.R.S. § 14-10005(A). A "disclaimer" is the "refusal to accept an interest in or power over property," A.R.S. § 14-10002(3), and becomes irrevocable when it is filed with the court, A.R.S. §§ 14-10005(E), -10012(B)(2). "A disclaimer of an interest in property by an appointee of a power of appointment" will take effect at the time the instrument becomes

¹ Roff-Fuquay has, in large part, failed to comply with Arizona Rule of Civil Appellate Procedure ("ARCAP") 13(a)(7) because her opening brief does not present discernable issues, cite relevant authorities, statutes, or parts of the record. In our discretion, however, we address her claims to the extent they are discernable and supported by explanation. However, any arguments that are not supported by adequate explanation, citations to the record, or authority, are waived. *See In re Aubuchon*, 233 Ariz. 62, 64, ¶ 6 (2013).

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irrevocable. A.R.S. §§ 14-10010(A), -10006(A)(1). Furthermore, once an interest in property is disclaimed, including a power of appointment, the disclaimed interest will pass as if the disclaimant died immediately before the time of distribution. A.R.S. § 14-10006(A)(3)(a).

¶10 Here, pursuant to A.R.S. § 14-10005(E), Streaker's First Renunciation became irrevocable the moment he filed it with the court. Once Streaker disclaimed his interest to serve as personal representative, he is treated as if he predeceased the Decedent. Thus, by law, he was "unable" to serve as personal representative under the Will. Moreover, because his First Renunciation was irrevocable when filed, Streaker could not rescind and amend the renunciation to appoint Roff-Fuquay—in his Second Renunciation—to serve in his stead.

¶11 To the extent Roff-Fuquay further argues that Streaker did not disclaim his position to serve because it was conditioned upon Streaker's nominee being appointed, this argument fails. By its terms, the First Renunciation was not conditional. In one paragraph, Streaker explicitly disclaimed "any right to appointment as the Personal Representative," without any reservation. In the next paragraph, Streaker nominated his sister to serve in his stead, without any indication that the preceding paragraph was conditional on her appointment. Moreover, even if there were some interpretive merit to this argument, Roff-Fuquay waives it on appeal because she did not cite to any relevant legal authority, and her assertion is without supporting legal argument other than hypotheticals unsupported by the record. Cf. ARCAP 13(a)(7); see *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, 491 n.2, ¶ 6 (App. 2007).

II. Decedent's Intent

¶12 Roff-Fuquay argues that the superior court erred in determining that the Will did not permit Streaker to unilaterally appoint another to be personal representative. She asserts that the plain language of the Will should be interpreted to mean, Streaker has the authority to select an alternative personal representative to serve in his stead "parallel to his first priority to serve" if he, himself, is willing and able to serve but chooses not to. As such, she asserts that Dunbar is only endowed with the power to serve when Streaker "cannot" serve. She further argues that she had first priority to serve as personal representative because she was "on equal footing" with Streaker when he nominated her.

¶13 "The basic rule for the interpretation of all wills and trusts is to ascertain the intent of the settlor or testator." *In re Gardiner's Estate*,

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5 Ariz. App. 239, 240 (1967). This intent is to be "ascertained from the contents within the four corners of the instrument," which includes the "general plan or scheme thereof." *Id.* "The court will determine from the context of the will what the testator intended and give that intention effect." *Newhall v. McGill*, 69 Ariz. 259, 262 (1949). Hence, we will "consider the text of the will as a whole" when determining the Decedent's intent. *In re Estate of Pouser*, 193 Ariz. 574, 578, ¶ 10 (1999).

¶14 There is no argument as to the contents of the Will, but the parties differ in their interpretation of Decedent's intent as reflected in the provisions of Section Six. First, Streaker cannot serve under the Will as he disclaimed his interest in his First Renunciation. *See supra* ¶ 10. Because Streaker can no longer serve under the Will, we must look "within the four corners" of the Will, and specifically to Section Six, to determine the steps Decedent desired in the event an appointee was unwilling or unable to serve. *In re Gardiner's Estate*, 5 Ariz. App. at 240.

¶15 Here, the terms of Section Six do not support Roff-Fuquay's interpretation. When interpreting Section Six as a whole, it is evident Decedent intended each appointment to follow a prearranged order. The first sentence of Section Six appoints Streaker as personal representative. The following sentence appoints Dunbar as an alternate if Streaker "cannot" serve. The Will only considers an unnamed alternate after both Streaker and Dunbar are specifically named.

¶16 Additionally, Section Six groups both Streaker and Dunbar together collectively as "they" in addressing steps to take should either decline to serve or are unable to act. Although Roff-Fuquay argues that "they" in Section Six is singular and does not refer to Streaker and Dunbar together, this argument fails. Decedent differentiates the word "he," referencing Streaker alone, from the word "they," referring to Streaker and Dunbar together after both have been named. *See supra* ¶ 2. If Decedent had intended Streaker to unilaterally appoint an alternate, Section Six would grant that authority to "he," as it did when referring to Streaker alone. Instead, after both Streaker and Dunbar were named, Section Six provides that "they" may appoint an alternate. The superior court did not err in interpreting Section Six.

III. Standing

¶17 Roff-Fuquay argues that Dunbar, as a non-beneficiary, has no standing to seek appointment to serve as personal representative of Decedent's estate nor object to any of the proceedings unless Streaker

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"cannot" serve. Section 14-3203 governs the priority of appointment of personal representatives and when an objection may be made to an appointment. The person with the highest priority to serve as personal representative is a person with priority "as determined by a probated will including a person nominated by a power conferred in a will." A.R.S. § 14-3203(A)(1). Further, an objection to an appointment can only be made in a formal proceeding and, in cases where an objection is made, the priority of appointment stated in A.R.S. § 14-3203(A) applies. A.R.S. § 14-3203(B).

¶18 Here, Section Six of the Will states that Dunbar has priority to serve as personal representative if Streaker "cannot" serve. *Supra* ¶ 2. When Streaker disclaimed his interest to serve by filing his First Renunciation, he is treated as if he predeceased the Decedent and hence cannot serve under the Will. *Supra* ¶ 10. Dunbar, as the first alternate named second in the Will, was specifically nominated by Decedent. Although Streaker may have held a higher priority position—being named first in the Will—Dunbar has standing to seek appointment as personal representative by virtue of Streaker's disclaimer.

¶19 Furthermore, pursuant to A.R.S. § 14-3203(B), Dunbar had standing to object to the appointment. Here, the objection occurred on the record during a formal proceeding—the Status Conference held on October 31, 2016—and, as Dunbar was nominated in the Will to serve as alternate personal representative and had not consented to any alternate, he had standing to object to Roff-Fuquay's appointment.

IV. Attorneys' Fees

¶20 Appellee requests an award of attorneys' fees on the grounds that Appellant's first opening brief (which we struck) unreasonably delayed the proceedings, triggering fees under A.R.S. § 12-349(A)(3). We decline to award fees on this basis because, although frustrating for Appellee, we do not find the filing of the flawed brief unreasonably delayed or expanded the proceedings. *See Solimeno v. Yonan*, 224 Ariz. 74, 81, ¶ 32 (App. 2010) ("Under § 12-349(A)(3), the relevant question is whether a party's (or attorney's) actions caused unreasonable delay and expansion of the proceedings.").

¶21 However, lawyers must conform "to an acceptable, minimal level of competency and performance," and it is our duty to both the legal community and litigants to ensure lawyers meet these standards. *Evans v. Arthur*, 139 Ariz. 362, 364 (1984). As noted above, the amended opening brief largely fails to comply with ARCAP 13(a)(7), even though this Court

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struck counsel's original opening brief and warned him of its deficiencies. Pursuant to ARCAP 25, we have the power to "impose sanctions on an attorney . . . for a violation of these Rules . . . to discourage similar conduct in the future." We take great caution in imposing ARCAP 25 sanctions, *Ariz. Tax Research Ass'n v. Dep't of Revenue*, 163 Ariz. 255, 258 (1989), but find them appropriate here because counsel demonstrated an intolerable disregard for the rules and orders of this Court. Accordingly, it is ordered that Appellant's counsel will pay \$500.00 to the clerk of this Court within 15 days of the filing of this decision. It is further ordered that counsel shall pay such charges *personally*, and shall neither charge them to his client nor against any funds that may belong to his client.

CONCLUSION

¶22 For the foregoing reasons, we affirm the superior court's order appointing Dunbar as personal representative of Decedent's estate.



AMY M. WOOD • Clerk of the Court
FILED: AA