

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 09-57

SUSANNE L. ANDERSON
MARK SUMMARIA

APPELLANTS

V.

DIANNE M. HOLADA
ESTATE OF ERWIN R. KLEMA,
DECEASED

APPELLEES

Opinion Delivered MAY 12, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. PR 2005-37]

HONORABLE MICHAEL MAGGIO,
JUDGE

REVERSED AND REMANDED

WAYMOND M. BROWN, Judge

Erwin R. Klema passed away on December 15, 2004, survived by his sister, Dianne Holada (appellee), and his niece and nephew, Susanne Anderson and Mark Summaria (appellants). A provision in Klema’s will directed the executor to give his “personal and household effects” to Holada. The circuit court interpreted this phrase to include all of Klema’s personal property. Anderson and Summaria argue that the probate court’s interpretation was incorrect. We previously ordered rebriefing due to a deficiency in Anderson and Summaria’s brief.¹ We now consider the merits and hold that the phrase “personal and household effects” does not include all of Klema’s personal property. Thus, we reverse and remand.

¹ See *Anderson v. Holada*, 2010 Ark. App. 143.

Klema died with a will and living trust. At the time the documents were executed, Klema had two sisters, Holada and Florence Summaria (now deceased, survived by Anderson and Summaria). At issue are two provisions in the will. Article three states, “I give all of my personal and household effects, automobiles and collections to my sisters who survive me in equal shares.” Because Holada is the only surviving sister, she is to receive all property distributed under this article.

Article four distributes the residue of the estate to the trust. The sisters were also to divide this property under the trust, but the share of a predeceased sister was to go to that sister’s children. In other words, under the terms of the trust, Anderson and Summaria are to receive half of the trust assets, while Holada is to receive the other half.

In July 2006, Holada asked the court for a construction of the will, and the circuit court construed Article three to mean that *all* of Klema’s personal property was to pass to the sisters who were then living at the time of his death. Anderson and Summaria asked the court to reconsider the order, but that motion was denied.

Anderson and Summaria now argue that the circuit court interpreted the phrase “household and personal effects, automobiles and collections” too broadly. They contend that such a phrase does not include assets such as certificates of deposit, bank accounts, life insurance proceeds, and individual retirement accounts. Holada argues that there is no set definition of “personal effects” under Arkansas law, but she contends that the phrase can be interpreted to include all personal property.

We review probate matters de novo.² But we do not reverse findings of fact unless they are clearly erroneous.³ A finding is clearly erroneous when, although there is evidence to support it, we are left on the entire evidence with the firm conviction that a mistake has been committed.⁴ When interpreting wills, the intent of the testator governs.⁵ The testator's intent to be gathered from the four corners of the document itself, but a court may consider extrinsic evidence on the issue of a testator's intent if the terms of the will are ambiguous.⁶

The term "personal effects" has no settled meaning.⁷ When used without qualifying words, the phrase includes "such tangible property as is worn or carried about the person, or tangible property having some intimate relation to the person."⁸ But the words may have a

² *Seymour v. Biehslich*, 371 Ark. 359, 266 S.W.3d 722 (2007).

³ *McAdams v. McAdams*, 353 Ark. 494, 109 S.W.3d 649 (2003).

⁴ *Morton v. Patterson*, 75 Ark. App. 62, 54 S.W.3d 137 (2001).

⁵ *Carpenter v. Miller*, 71 Ark. App. 5, 26 S.W.3d 135 (2000).

⁶ *Id.*

⁷ See A.E. Korpela, Annotation, *What Passes Under Terms "Personal Belongings," "Belongings," "Personal Effects," or "Effects" in Will*, 30 A.L.R.3d 797 (1970).

⁸ *Id.*; see also *Black's Law Dictionary* 592 (9th ed. 2009) (defining "effects" as "[m]oveable property; goods" and further defining "personal effects" as "[i]tems of a personal character; esp., personal property owned by a decedent at the time of death."); *Webster's Third New Int'l Dictionary* 724 (1976) (eighth entry for ¹effect same as *Black's*); *Oxford English Dictionary Online*, personal effects (last accessed Apr. 12, 2010) ("personal possessions or luggage as distinguished from merchandise, etc.").

broader meaning if the context so requires.⁹ In *Brandon v. Yeakle*,¹⁰ our supreme court held that “the remainder of my personal effects of whatever nature not enumerated herein” did not include the testator’s interest in an insurance business. And in *Hutcheson v. Pace*,¹¹ it concluded that the phrase “household furniture, household equipment and personal effects of every nature” did not include bank accounts.

Courts in other jurisdictions have limited the definition of personal effects to exclude items such as money, deposit accounts, and securities. A Kansas court did not include a certificate of deposit in the phrase “[a]ll my personal effects including but not limited to [a number of items].”¹² In Massachusetts, the phrase “any of my personal effects and household furnishings and effects” does not include bank deposits or bank shares.¹³ A Pennsylvania court held that a similar phrase excluded cash and stock.¹⁴ In Missouri, “[b]alance of household goods, furniture, personal effects and automobile” did not include bonds, stocks, savings and loan accounts, cash, coins, or currency.¹⁵ And Minnesota and Virginia courts have held that

⁹ Korpela, *supra*.

¹⁰ 66 Ark. 377, 50 S.W. 1004 (1899).

¹¹ 252 Ark. 928, 481 S.W.2d 710 (1972).

¹² See *In re Reitz’s Estate*, 213 Kan. 534, 516 P.2d 909 (1973).

¹³ See *Gaston v. Gaston*, 320 Mass. 627, 70 N.E.2d 527 (1947).

¹⁴ *In re Beisgen’s Estate*, 387 Pa. 425, 128 A.2d 52 (1956).

¹⁵ *In re Estate of Stengel*, 557 S.W.2d 255 (Mo. Ct. App. 1977).

“personal effects” did not include money or securities owned by the testator.¹⁶

The cases relied upon by Holada are distinguishable from the above cases. First, she cites *Turner v. Fletcher’s Estate*,¹⁷ but the distribution there included “all furnishings, fixtures, appliances, silverware, utensils, jewelry, sporting goods, personal effects, and *every other kind of personal property of any kind or nature that may be contained in my said home at the time of my death.*”¹⁸ She also cites *McCollum v. Price*,¹⁹ where the language “all of my household and all other personal possessions, of whatsoever kind and wherever located” was interpreted to cover bank deposits. But both of these cases contained language that was, in the words of the supreme court, “unusually sweeping and comprehensive.”²⁰ The phrase “personal and household effects” is much more limiting than the phrases in *Turner* and *McCollum*.

The phrase “my personal and household effects, automobiles and collections” does not include property such as bank deposits, certificates of deposit, securities, and life insurance proceeds. The circuit court erred by ruling that the phrase included *all* of Klema’s personal property. Accordingly, we reverse the circuit court’s order and remand this case for further proceedings.

¹⁶ See *In re May’s Estate*, 135 Minn. 299, 160 N.W. 790 (1917); *Bennett v. Bradley*, 149 Va. 746, 141 S.E. 756 (1928).

¹⁷ 252 Ark. 917, 483 S.W.2d 176 (1972).

¹⁸ *Id.* at 918–19, 483 S.W.2d at 177–78 (emphasis added).

¹⁹ 213 Ark. 609, 211 S.W.2d 895 (1948).

²⁰ *Turner*, 252 Ark. at 920, 483 S.W.2d at 178.

Cite as 2010 Ark. App. 426

Reversed and remanded.

GLADWIN and HENRY, JJ., agree.