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COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Re: *IMO Amelia Noel Living Trust and Estate of Amelia Noel*,
C.A. No. 2020-1107-SEM

Dear Counsel:

Pending before me is a dispute regarding the estate of Amelia Noel. The issue is singular: did Ms. Noel intend to, and effectively, disinherit her daughter from receiving any distribution from her estate? What would normally be a simple question is complicated because the daughter is disinherited in Ms. Noel's pour-over will but not the receiving trust. In this post-trial report, I find that Ms. Noel amended her trust when she amended her will, such that her daughter was effectively disinherited. As such, I recommend declaratory judgment to that effect be issued.

I. BACKGROUND[1]

Amelia Noel (the "Decedent") passed on January 23, 2020.[2] She was survived by four children: Ivette Noel (the "Respondent"), Ferdinand Noel, Ramon Noel (the "Petitioner"), and Wilbert Noel.[3] Rather than leave her estate to intestate succession, the Decedent engaged in estate planning to make her intentions known. First, she executed a will and trust on April 30, 2018 (the "2018 Will" and the "2018 Trust"). Through the 2018 Will, the Decedent appointed the Petitioner as her personal representative and directed him to distribute her entire estate to the trustee of the 2018 Trust.[4] The 2018 Trust then provided that, upon the Decedent's death, the Petitioner would succeed her as trustee and the "residuary trust estate [would] be

[1] Unless otherwise noted, the facts recited herein are taken from the stipulated record. *See* Docket Item ("D.I.") 41. Trial exhibits are cited as JX#. I have not considered JX10. *See* D.I. 47. Further, the pretrial order provided that the parties included all deposition transcripts on their exhibit list, but the deposition of the Respondent was not so included. D.I. 41. After trial, the Respondent submitted a copy of the transcript to which the Petitioner objected arguing I should disregard it because the record closed at trial. *See* D.I. 49. I have reviewed the Respondent's deposition transcript, which I will refer to as JX12. But I note the Respondent testified at length about her relationship with the Petitioner and her concerns about the Decedent's health, neither of which are relevant to the question before me. *See generally* JX12.

[2] D.I. 41 § 2, ¶ 3.

[3] *Id.*, ¶ 4. The non-party children have not been directly involved in this action, although the Petitioner filed a consent on behalf of Wilbert Noel and the Respondent testified that Ferdinand Noel is on the Respondent's side. D.I. 33. JX12, 40:4-5.

[4] JX1.

distributed outright, free of trust to [her] descendants, per stirpes[,]" with her "descendants" defined as all four (4) of her children.[5] By its terms, the 2018 Trust could be amended "[b]y a signed writing[.]"[6]

In the fall of 2019, the Decedent resolved to change her testamentary plan. She retained The Castro Firm, Inc., to assist her in doing so, and met with the firm's principal, Tabatha L. Castro, on or about November 6, 2019.[7] Notes from that meeting reflect Ms. Castro's impressions that the Decedent wanted "to disinherit" the Respondent.[8] Counsel then affixed a sticky note to her handwritten notes providing: "Please draft new will disinheriting [the Respondent] only all other stay same. Disinherit from will, trusts, etc. anything she may be entitled to."[9] Further, after their initial meeting, The Castro Firm, Inc., confirmed their representation of

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[5] JX2.

[6] *Id*.

[7] D.I. 41 § 2, ¶ 10. This was a change from the counsel who drafted the 2018 Will and 2018 Trust, the Levinson Firm, LLC. D.I. 41 § 2, ¶ 6. JX11 7:21-8:3. During the initial meeting, Ms. Castro did inquire why the Decedent was not returning to the Levinson Firm, LLC and she understood the Decedent felt more comfortable with her because she spoke Spanish, the Decedent's native tongue. JX11, 35:15-22. The Petitioner was also present during part of the Decedent's meeting with Ms. Castro. *See* JX11, 13:2-8.

[8] JX3. *See also* JX 11, 8:4-21 (confirming the notes were taken by Ms. Castro during the November 2019 meeting).

[9] JX3.

the Decedent explaining "you have retained our office to draft/edit your Last Will and Testament on your behalf."[10]

To assist in these efforts, Ms. Castro was provided with the 2018 Will.[11] Ms. Castro was not provided with any other documents, including the 2018 Trust.[12] Per Ms. Castro, she was generally aware of the 2018 Trust but not retained to review, revise, or amend it because the Decedent "wanted everything to stay the same in [the 2018 Trust]. She just wanted to update the [2018 Will] to disinherit [the Respondent]."[13] Ms. Castro explained the effect of the will disinheritance to the Decedent as follows: "Do you understand that this means that in the event of your death that [the Respondent] gets zero, she gets absolutely nothing?"[14] She then asked: "Are you sure you want to do this?"[15] The answer was unequivocal: Yes.[16]

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[10] JX4. The written fee agreement confirmed this scope of representation, checking off solely the box for "Last Will & Testament" and leaving unchecked boxes for other items including "Living Revocable Trust". JX5.

[11] JX11, 14:4-7.

[12] *Id.*, 14:4-12.

[13] *Id.*, 16:15-18. Ms. Castro confirmed that she spent "about an hour" with the Decedent and "spoke to her in her native language of Spanish" to ensure Ms. Castro knew what the Decedent wanted. *See id.*, 13:2-8, 19:20-23.

[14] *Id.*, 20:11-12.

[15] *Id.*, 20:14-15.

[16] *Id.*, 20:17-23.

Following her client's directions, Ms. Castro drafted a new will for the Decedent, which the Decedent executed on December 5, 2019 (the "2019 Will").[17] The 2019 Will continued to appoint the Petitioner as the Decedent's representative (this time calling him the executor) and directed the Decedent's real estate and residuary to her 2018 Trust.[18] But, unlike the 2018 Will, the 2019 Will explicitly excluded the Respondent as an heir and beneficiary, providing:

> I hereby knowingly and willfully have chosen to exclude my daughter [the Respondent], from receiving any benefit, distribution, property or inheritance pursuant to the provisions of this Will, due to personal differences between us. I further direct that [the Respondent], shall not be construed as an "omitted heir", by virtue of any statute or rules of Court, as I have intentionally omitted and disinherited her from receiving any benefit under this Will.[19]

Although unambiguous, the 2019 Will's disinheritance was not confirmed or mirrored in an amendment to the 2018 Trust. The 2018 Trust was never expressly amended or restated before the Decedent's death. Per Ms. Castro, she and the Decedent "never talked specifically about a trust" amendment because the Decedent's "limited purpose coming to [Ms. Castro] was to omit an heir in the will

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[17] JX6.

[18] *Id.*

[19] *Id.*

portion," so that is what Ms. Castro helped the Decedent do.[20] As written, the 2018 Trust was to be distributed to all four (4) of the Decedent's children.[21]

On March 6, 2020, less than two (2) months after the Decedent's death, the Petitioner filed a petition to act as executor of the Decedent's estate.[22] The 2019 Will was admitted to probate and letters testamentary were granted to the Petitioner on March 11, 2020.[23] In this capacity, the Petitioner has worked to probate the Decedent's estate.[24]

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[20] JX11, 23:2-3, 21:19-21.

[21] JX2. The Respondent testified at her deposition that the 2018 Trust reflected the Decedent's final wishes. Per the Respondent, the Decedent wanted her assets split evenly among her four children. JX12 17:5-13. But the Respondent contends the Petitioner was pressuring the Decedent to disinherit everyone but him. JX12 30:5-17. Per the Respondent, the Petitioner did not want his siblings to receive anything from the Decedent's estate. JX12 30:5-17. Thus, the Respondent believes the disinheritance in the 2019 Will was the Petitioner's doing and it was not the Decedent's intent to fully disinherit the Respondent. *See* JX12 51:21-53:21. The Respondent emphasized in her testimony that the Decedent would not disinherit her because the Decedent loved and cared for the Respondent. *See, e.g,,* JX12 54:7-16. This Court cannot speak to the Decedent's love other than to note that testators disinherit their heirs for many reasons and the holding expressed herein is by no means a finding that the Decedent did not love or care for the Respondent.

[22] *See In the Matter of Amelia Noel*, ROW 174480 ("ROW") D.I. 1-6. "Because the Register of Wills is a Clerk of the Court of Chancery, filings with the Register of Wills are subject to judicial notice." *Arot v. Lardani*, 2018 WL 5430297, at *1 n.6 (Del. Ch. Oct. 29, 2018) (citing 12 *Del. C.* § 2501; Del. R. Evid. 202(d)(1)(C)).

[23] ROW D.I. 7.

[24] *See generally* ROW.

Recognizing the seeming conflict between the 2019 Will and the 2018 Trust, the Petitioner brought this action seeking declaratory relief and reformation.[25] Filed on December 30, 2020, this action seeks a declaration that the 2019 Will amended the 2018 Trust or, alternatively, the failure to amend the 2018 Trust was a scrivener's error, supporting reformation of the 2018 Trust to match the disinheritance in the 2019 Will.[26] The Respondent answered and later amended her answer on February 23, 2021 to add counterclaims seeking to invalidate the 2019 Will and have the Petitioner removed as executor of the Decedent's estate.[27] During a hearing on June 8, 2021, I issued a final report recommending that the Respondent's counterclaims be dismissed.[28] No exceptions were filed to my final report and it became an order of this Court effective June 22, 2021.[29]

The Petitioner's claims were teed up for trial on February 2, 2022.[30] The parties stipulated to a trial on the paper record, submitting exhibits and deposition

[25] D.I. 1.

[26] *Id.*

[27] D.I. 3 (original answer), 4 (amended answer and counterclaims).

[28] D.I. 16.

[29] *See id.*; Ct. Ch. R. 144.

[30] *See* D.I. 25, 32.

testimony to the Court for review, aided by counsel's trial presentations.[31] Post-trial submissions were filed by February 9, 2022, at which time I took this matter under advisement.[32] This is my final report.

II. ANALYSIS

The Petitioner makes two alternative arguments: either the 2019 Will amended the 2018 Trust or the failure to amend the 2018 Trust was a scrivener's error that should be reformed to reflect the Decedent's intent. Because I find the Petitioner succeeds on his first argument, I do not reach the second.

The Petitioner bears the burden of proving his claim for declaratory relief by a preponderance of the evidence.[33] "Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not."[34] Applying this standard, I find judgment should be entered in the Petitioner's favor.

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[31] *See* D.I. 41 § VII.

[32] D.I. 47-49.

[33] *See Llamas v. Titus*, 2019 WL 2505374, at *2, *2 n.3 (Del. Ch. Jun. 18, 2019) (addressing burden of proof for claims for declaratory judgment).

[34] *Del. Exp. Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002) (citations and quotation marks omitted).

"The settlor of an inter vivos trust has power to revoke or modify the trust to the extent the terms of the trust . . . so provide."[35] Because this power depends on the terms of the trust, "the settlor must follow any procedure required in the trust and express an intent to revoke, 'though that expression need not be in formal terms.'"[36] As explained in then-Master Zurn's report in *In re Kalil*, the "[i]ntent to revoke or amend can be expressed implicitly, such as by referring to the property that is the subject to the power to revoke or amend, or where the instrument at issue would be meaningless unless it exercised the power to revoke or amend."[37]

In applying this standard, I must ensure the protection of, and deference to, the settlor's expressed intent. "The ability to discharge one's property by will is a

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[35] *In re Kalil*, 2018 WL 793718, at *6 (Del. Ch. Feb. 7, 2018) (citations and quotation marks omitted).

[36] *In re Esther W. Price Tr.*, 2020 WL 10965358, at *5 (Del. Ch. Dec. 9, 2020) (quoting *Kalil*, 2018 WL 793718, at *6).

[37] *In re Kalil*, 2018 WL 793718, at *6 (citations marks omitted). The Petitioner also points me to persuasive authority from New York and Texas, which further supports my holding. *See In re Sahakian's Estate*, 255 N.Y.S.2d 520, 521 (Sur. Ct. 1965) (finding that an inter vivos trust was effectively revoked by a later will, which directed the distribution of property in a manner different than, and in conflict with, the trust); *Sanderson v. Aubrey*, 472 S.W.2d 286, 287 (Tex. Civ. App. 1971) (finding that a later will revoked an earlier trust). At my request, the Petitioner also searched for analogous corporate authority and located authority emphasizing the need to interpret interrelated documents consistently. *See* D.I. 49 (citing *In re Nat'l Collegiate Student Loan Trs. Litig.*, 251 A.3d 116, 144 (Del. Ch. 2020), *Comerica Bank v. Global Payments Direct Inc.*, 2014 WL 3567610, at *7 (Del. Ch. July 21, 2014)). I follow this authority herein.

cherished right."[38] And, further, "[a] duly executed will is entitled to the presumption that it reflects the testamentary intent of the testator."[39] How this policy works hand in hand with principles like those articulated in *Kalil* was displayed decades ago in *Wilmington Trust Co. v. Grier*.[40]

In *Wilmington Trust*, Chancellor Wolcott addressed a comparable fact pattern. A settlor conveyed real property to a trust, authorizing the named trustee to sell the property, and directing that if the property was sold after the settlor's death "two-thirds of [the] net proceeds [of the sale] shall be paid pursuant to the last will and testament" of the settlor or by intestate succession if the power was not executed.[41] After the settlor died, the trustee sold the property but sought instructions on whether the settlor's will effectively executed the power to direct disposition of the remaining two-thirds. In pertinent part, the settlor's will bequeathed the residue of his estate to his grandson, in trust, and only one dollar to each of his children. But in doing so, the will did not expressly reference the two-thirds or that the power was being executed.

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[38] *In re Hammond*, 2012 WL 3877799, at *5 (Del. Ch. Aug. 30, 2012).

[39] *Id.*

[40] *Wilmington Tr. Co. v. Grier*, 161 A. 921 (Del. Ch. 1932).

[41] *Id.* at 921.

Construing the testator's will as a whole, Chancellor Wolcott found that the settlor/testator's clear intent was to execute the power in his trust to direct the remaining two-thirds proceeds to his grandson, cutting off his children.[42] In doing so, he noted the testator expressly referenced the trust in other parts of the will and displayed a clear intent on who should and should not inherit from his estate. To the latter, Chancellor Wolcott explained:

> By items three and four [the testator] cut off his son and daughter from a participation in his estate by bequests of one dollar each and expressly stated his reasons for not giving them more. Now if he did not execute the power, two-thirds of the proceed of the real estate would go to them under the provisions of the trust deed as his distributes under the intestate laws. Thus, a construction which would result in a denial of an execution of the power would confer on his son and daughter much more than his clearly disclosed intent showed it was his wish they should receive. . . . [The testator's] plainly expressed intent to cut off his children from participation in his estate, manifested elsewhere in his will, furnishes confirmation at least of the thought that the power was exercised so as similarly to cut them off from participation in its subject matter.[43]

In so holding, Chancellor Wolcott balanced the trust directives on how to execute the power with this State's respect for settlor's and testator's intent to reach a common-sense conclusion on estate distribution.[44] I endeavor to do the same here.

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[42] *Id.* at 924.

[43] *Id.* at 924.

[44] *See also Security Tr. Co. v. Spruance*, 174 A. 285, 288 (Del. Ch. 1934) (explaining "[i]f it is asked-did the trustor intent to exercise his power?-and it appears that his act dealt with

I begin with the indisputable facts. Through the 2018 Trust, the Decedent directed that the Respondent receive one-fourth of the 2018 Trust's residuary upon the Decedent's death. At the time it was executed, the 2018 Trust matched the wishes expressed in the 2018 Will. But the Decedent changed her mind as reflected in the 2019 Will. Therein, the Decedent expressly and unequivocally disinherited the Respondent "from receiving any benefit under" the 2019 Will. Yet the 2019 Will continued to pour over into the 2018 Trust.

Taking the Decedent's testamentary documents together, to give effect to her testamentary intent reflected therein, I find the 2019 Will amended the 2018 Trust.[45] Like the power retained by the settlor in *Wilmington Trust*, the Decedent retained the ability to amend the 2018 Trust, limited only in that any amendment must be in writing. Also like the settlor in *Wilmington Trust*, the Decedent did not expressly state that she was exercising her retained right when she executed the 2019 Will.

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the entire subject matter of the power and that unless his act was an exercise of the power it was a pure nullity, the answer must be . . . that the power was exercised").

[45] I give no weight to the Respondent's belief or understanding of the Decedent's testamentary intent because my inquiry starts and ends with the 2019 Will. "The paramount rule of testamentary construction is that the intention of a testator as expressed in [her] will governs the distribution of [her] estate and that intention, once it has been ascertained, will be given effect unless to do so would violate some settled rule of law or would be contrary to public policy." *Myers v. Bank of Delaware*, 149 A.2d 745, 747 (Del. 1959). The 2019 Will reflects a clear intent to disinherit the Respondent; what the Decedent may have told the Respondent or the Respondent's subjective belief about her mother's wishes cannot overcome that.

The 2019 Will did, however, expressly refer to the property that would pour over into the 2018 Trust and the disinheritance in the 2019 Will would be meaningless unless it exercised the power to amend the 2018 Trust.[46] Further, the 2019 Will was in writing, meeting the express requirements under the 2018 Trust.

I find the Decedent's intent was clear and the 2019 Will effectively amended the 2018 Trust such that the Respondent is no longer a beneficiary of the 2018 Trust and is entitled to no distribution therefrom. The Petitioner is, therefore, entitled to a declaration to that extent.

III. CONCLUSION

For the foregoing reasons, I find judgment should be entered in the Petitioner's favor. A declaratory judgment should issue confirming that the 2019 Will effectively amended the 2018 Trust, such that the Respondent is not entitled to any distribution from the Decedent's estate or the 2018 Trust.

[46] The Respondent argues that the Decedent intentionally amended only the 2018 Will and wished to keep the equal distribution in the 2018 Trust. D.I. 43. This argument strains reason, particularly considering the explicit language in the 2019 Will and the testimony of Ms. Castro where she confirmed that the Decedent wished to completely disinherit the Respondent. JX11, 20:14-23.

This is a final report and exceptions may be filed under Court of Chancery Rule 144.

Respectfully submitted,

/s/ *Selena E. Molina*

Master in Chancery