

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0710

**SUCCESSION OF
LEON LAWRENCE VULLO**

Judgment Rendered: December 23, 2014

**Appealed from the
21st Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Case No. 2011-0030327**

The Honorable Elizabeth P. Wolfe, Judge Presiding

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Estate of Leon Lawrence Vullo**

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

THERIOT, J.

In this succession proceeding, a residual legatee of the will of Leon Lawrence Vullo appeals the judgment of the Twenty-First Judicial District Court, which interprets certain dispositive paragraphs of the will in favor of the executor who probated the will. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Mr. Vullo died on November 5, 2006. At the time of his death, he was married to his only wife, Santa Tantillo Vullo. No children were born of the marriage, and Mr. Vullo was predeceased by his father and mother. While Mrs. Vullo was alive, Mr. Vullo's will was not probated. Mrs. Vullo continued to reside in and make undisturbed use of the marital property until her death on April 12, 2011. Mr. Vullo's will was then probated on November 28, 2011.

At issue in this appeal are the third and fourth paragraphs of the dispositive provisions of Mr. Vullo's will. The third paragraph reads as follows:

I give and bequeath to my wife, Santa Tantillo Vullo, all of my interest in my home... and my interest in any vehicle owned at the time of my death. Should my wife predecease me or if we die in a common accident, I direct that my Executor liquidate this property and divide the assets on an equal basis to my residual legatees, Angelo T. Giardino, Jr., Kenneth Giardino, Gerald Giardino, Joseph Anthony Piediscalzo, Carol P. Pivach, Joyce P. Boyd, Peggy F. Brown, Gayle F. Gendron, Terri D. Chaucer and Victor Anthony Mele, with the remaining one-eleventh (1/11th) interest to be divided equally between Diane T. Hoose, Victor Tantillo, Becky Tantillo and Sheila Matera....

The fourth paragraph reads as follows:

Any residual household furnishings, movables and other assets or other furniture and non attached fixtures shall be offered for purchase at their fair market value to my residual legatees with the sale proceeds to be placed in my residual estate. The process for the sale of this property shall be determined by my Executor in a fair and equitable fashion.

Terri D. Chaucer, one of the named legatees, was appointed as independent executrix of the will. On November 18, 2011, she petitioned the court for an order of distribution of certain assets of the estate. Specifically, she requested from the court an interpretation of the third and fourth paragraphs of the will so she could properly distribute the cash assets of Mr. Vullo's estate, which also comprised the community property of Mrs. Vullo's estate.

On December 8, 2011, Victor Tantillo, a residual legatee, filed a motion to intervene in the petition for an order of distribution of certain assets of the estate. Mr. Tantillo argued that, by operation of law, the property of Mr. Vullo devolved to his wife, who was deceased at the time he filed this motion to intervene. The cash assets at issue, Mr. Tantillo claimed, were now part of Mrs. Vullo's estate and must be distributed according to the provisions of her will.¹ Ms. Chaucer, however, argued that the cash assets were "movables and other assets" as described by the fourth paragraph of Mr. Vullo's will and should be distributed according to the third paragraph of his will.

After a hearing on January 17, 2012, the court rendered a judgment in open court on January 19, 2012, and signed a judgment on February 13, 2012. In that judgment, the court found Mr. Vullo's will to be "unambiguous as to the dispositions contained therein and that no parol evidence is necessary or required to ascertain the intentions of [Mr. Vullo]."

¹ The pertinent paragraph of Mrs. Vullo's will reads as follows:

I give and bequeath all of my interest in my home... and all of the remaining assets of which I die possessed to the following: Joseph Anthony Piediscalzo, Frances P. Pivach (also known as Carol P. Pivach), Joyce P. Boyd, Peggy F. Brown, Gayle F. Gendron, Terri D. Chaucer, Victor Anthony Mele, Diane T. Hoose, Victor Tantillo, Becky Tantillo and Shiela Matera....

According to this paragraph, Mr. Tantillo and other legatees were entitled to a larger share of the residual legacy than they would receive under Mr. Vullo's will.

The court ordered that the cash assets be distributed according to the provisions of the third paragraph of Mr. Vullo's will.

Mr. Tantillo filed a motion for devolutive appeal on March 7, 2012. (Prior appeal R. 28). That matter was heard before this Court as *In re Succession of Vullo*, 2012-0822 (La. App. 1 Cir. 12/21/12) (unpublished opinion). In the opinion, this Court reversed the decision of the district court and remanded for further proceedings, finding:

Because the dispositive provision regarding Mr. Vullo's residual estate is subject to more than one equally reasonable interpretation, we hold that the district court erred in ruling that this provision of the testament was unambiguous. Evidence is required to determine Mr. Vullo's intent regarding the disposition of the residual estate, particularly the cash assets at issue in this appeal.

Succession of Vullo, 2012-0822 at p. 10.

On remand, the district court held a hearing on November 18, 2013, where the testimony of Ms. Chaucer and Victor Tantillo was heard, as well as the deposition testimony of several witnesses was submitted.² The wills of Mr. and Mrs. Vullo were also submitted as evidence. After hearing all testimony and reviewing all the evidence, the district court found that Ms. Chaucer's interpretation of the will was correct, in that the cash assets were to be distributed as set out in the third paragraph of Mr. Vullo's will. The district court signed a judgment to this effect on March 5, 2014, and Mr. Tantillo filed a motion for devolutive appeal on March 11, 2014.

ASSIGNMENTS OF ERROR

Mr. Tantillo cites four assignments of error:

1. The district court was manifestly erroneous in determining Mr. Vullo's intention with respect to the disposition of the cash assets, given the testament's lack of a dispositive provision dealing with these assets.

² Other witnesses deposed were Sandra Paradelas, Andre Coudrain, and Melissa Brogan. The deposition of Ms. Chaucer was also submitted.

2. The district court erred as a matter of law in distributing the assets without a lawful dispositive provision in the testament at issue.
3. The district court was manifestly erroneous and erred as a matter of law in interpreting the fourth paragraph of the testament's dispositive provisions as (1) applying to a situation where Mrs. Vullo does not predecease Mr. Vullo, and/or (2) interpreting the same provision as applying by its terms to the cash assets.
4. The district court erred as a matter of law in finding that the cash assets are distributed to a class of residual legatees without a specific dispositive provision directing these assets to them, and without defining said class to exist in the case Mrs. Vullo does not predecease Mr. Vullo.

STANDARD OF REVIEW

In cases where the district court is presented evidence on the testator's intent, the appellate court is constrained to review those findings under the manifest error or clearly wrong standard. *See Pittman v. Magic City Memorial Co., Inc.*, 2007-1567 (La. App. 1 Cir. 3/26/08), 985 So.2d 156, 158. We must therefore determine if the district court's finding following the November 18, 2013 hearing, which is consistent with its previous ruling, is clearly wrong based on the evidence that was presented.

DISCUSSION

Based upon our previous review of this case, we find there are two reasonable interpretations of the paragraphs at issue in Mr. Vullo's will.

The first interpretation is that Mr. Vullo intended to bequeath his residual property to his surviving spouse, in the event Mrs. Vullo did not predecease him. Without an applicable testamentary disposition of the residual estate, the residual estate passes intestate to the testator's surviving spouse, as it relates to community property. La. C.C. arts. 880 and 889. Although Mr. Vullo died in 2006, his succession was not opened until after Mrs. Vullo's death in 2011. Since Mrs. Vullo did not predecease Mr. Vullo, that condition in the third paragraph was not met, thereby rendering the

fourth paragraph to be without effect. The cash assets would then pass intestate to the estate of Mrs. Vullo and be distributed according to the provisions of her will. See *Succession of Vullo, 2012-0822 at p.9.*

The second reasonable interpretation is that in applying the fourth paragraph, there is a disposition of Mr. Vullo's residual estate to the residual legatees named in the third paragraph. It is logical to conclude that Mr. Vullo intended that in the event his wife predeceased him, his interest in the house and vehicles be sold and that sum be divided in accordance with the third paragraph, with the household items to be offered to the residual legatees for purchase at fair market value. The result of this interpretation in the case where Mrs. Vullo survived her husband, which she did, is that Mr. Vullo intended to bequeath his interest in the home and vehicles to his wife, but required his interest in the household furnishings, movables, and other assets or other furniture and non-attached fixtures be sold, and his interest in the cash assets be placed into the residual estate to be distributed to the residual legatees listed in the third paragraph, to the exclusion of his surviving spouse. See *Id* at pp. 9-10. In actuality, the household furnishings and movables were not sold while Mrs. Vullo was alive and living in the residence. No items were liquidated until after her death.

At the November 18, 2013 hearing, the district court took note of Ms. Chaucer's testimony as the executrix of Mr. Vullo's will, with respect to his intent with distributing his residual legacy. When asked if she knew of any reason as to why Mr. Vullo would have wanted to limit the shares of Mr. Tantillo and several other legatees, Ms. Chaucer explained:

Well, [Mr. Vullo's] words were that [Diane Hoosay, Victor Tantillo, Becky Tantillo, and Sheila Mattera] had not been involved in his life, had not done anything for [Mr. and Mrs. Vullo] for the care, well-being as far as health-wise or visiting. The girls at one time they visited now and then, but as [the

Vullos] both got older and sicker they did not come around as much and that was his reason for it. He said he wanted to leave his money to those who were actively involved in his life.

Based on Ms. Chaucer's testimony, the district court was reasonable and well within its discretion to conclude that Mr. Vullo did not intend to leave a share of his cash assets to Mr. Tantillo and the other so-related heirs that was larger than that was stated in the third paragraph of his will. Mr. Tantillo did not or could not present evidence to refute Ms. Chaucer on this point. Based upon the standard of review and the fact that we previously ruled that such a conclusion is reasonable, we will not reverse the district court's ruling to distribute the cash assets pursuant to the third paragraph of Mr. Vullo's will as it is written.

CONCLUSION

Since this Court has previously found two reasonable interpretations of Mr. Vullo's will and the district court has reached one of those interpretations through extrinsic evidence presented at a hearing, the district court has reached a ruling that is not manifestly erroneous. Such a ruling will not be overturned by this Court.

DECREE

The judgment dated March 5, 2014 is affirmed. All costs of this appeal are assessed to the appellant, Victor Tantillo.

AFFIRMED.