



**COUNSEL FOR APPELLEE, IRON COUNTY SENIOR CITIZEN'S ASSOCIATION**

**AFFIRMED**

Marianna Da Rin Sorodin, appellant/plaintiff seeks to reverse the trial court's ruling in favor of Iron County Senior Citizens Association also known as the Senior Citizens of Iron County, declaring them the beneficiary of the residual estate of Victor Bottacin.

On appeal, Ms. Da Rin Sorodin makes the following contentions;

(1) The trial court erred in declaring as a matter of law and fact that the organization known as the Iron County Community Senior Citizens Association to be the beneficiary of the residual estate of Victor Bottacin.

(2) The trial court erred as a matter of law that it had the authority and jurisdiction to change a suspensive appeal to a devolutive appeal six months after the order for suspensive appeal had been signed.

**DISCUSSION**

When interpreting testaments, this Court must attempt to ascertain and

carry out the intention of the testator. LSA-C.C. Art. 1712. Rules of interpretation are only means to achieve the end of determining the testator's intent. If the language of the will is unambiguous on its face, such language will be considered the intention of the testator. *Succession of Meeks*, 609 So.2d 1035 (La.App.2ndCir.1992); *Succession of Hagelberger*, 96-2049 (La. App. 4 Cir. 8/27/97) 700 So.2d 226.

Further, the Louisiana Civil Code offers the following guidance for the interpretation of legacies:

**Art. 1712. Intention of testator**

In the interpretation of acts of last will, the intention of the testator must principally be endeavored to be ascertained, without departing, however, from the proper signification of the terms of the testament.

**Art. 1713. Sense, which gives effect**

A disposition must be understood in the sense in which it can have effect, rather than that in which it can have none.

**Art. 1715. Interpretation to ascertain intent**

When, from the terms made use of by the testator, his intention cannot be ascertained, recourse must be had to all circumstances, which may aid in the discovery of his intention.

Therefore, the intent of the testator is the paramount consideration in determining the provisions of a will, and, when a will is free from ambiguity, the will must be carried out according to its written terms,

without reference to information outside the will. *Succession of Williams*, 608 So.2d 973 (La.1992); *Carter v. Succession of Carter*, 332 So.2d 439 (La.1976). If, however, a provision in a will is subject to more than one equally reasonable interpretation, then the court may consider all circumstances existing at the time of the execution of the will, and not just the language of the will, which may aid in determining the intent of the testator. *Id.*

On, Mr. Bottacin's intent, the trial court in its reason's for judgment:

**The testimony of witnesses and dispositions establish Victor Bottacin's connection with Hurley, Wisconsin, his fonderness (sic) for the community and desire to help its citizens. It is the opinion of this court that the Decedent used a generic rather than a legal name for the Senior Citizens of Iron County because of his familiarity with its programs and services.**

**This court finds that it was the intention of the testator to leave the residuary of his estate to the Senior Citizens of iron County.**

In the absence of manifest error, an appellate court should not disturb the factual finding of the trial court where there is evidence before the trier of fact La. App. 4 Cir. 8 which upon its reasonable evaluation of credibility, furnishes a reasonable factual basis for its finding. *Succession of Mitcham*,

513 So.2d 345 (La. App. 4th Cir.), *writ denied*, 514 So.2d 1177 (La.1987).

In the instant case, after considering testimony and the evidence that was presented to the trial judge, we cannot find that he was clearly wrong in his conclusion regarding the bequest to the Senior Citizens of Iron County.

This contention is without merit

Marianna Da Rin Sorodin in her second assignment of error contends that the trial court erred as a matter of law that it had the authority and jurisdiction to change a suspensive appeal to a devolutive appeal six months after the order for suspensive appeal had been signed. Da Rin Sorodin argues that the trial court divested itself of jurisdiction over the case when it signed the initial order granting the suspensive appeal and that the court had no authority to recall its order granting him a suspensive appeal because none of the grounds set forth La.C.C.P.art. 2088 were met. The trial court erred in granting a suspensive appeal on a non-money judgment but later converted it to a devolutive appeal. We find no error in the trial court 's ruling of converting from a suspensive appeal to devolutive appeal. This contention lacks merit.

In answering the appeal, Iron County Senior Citizens Association also

known as the Senior Citizens of Iron County, the appellee, seek sanctions against Da Rin Sorodin for filing an alleged frivolous appeal and misrepresentation of facts in their brief.

Under section 2164 of the Louisiana Code of Civil Procedure, an appellate court may award damages for frivolous appeal. An appeal is frivolous if it does not present a substantial legal question, if the sole purpose of the appeal is delay, or if the appealing counsel does not seriously believe the view of the law that he advocates. *Francis v. O'Neal*, 26,193, 26,194 (La. App. 2 Cir. 10/26/94), 645 So.2d 236, 237. Appeals are always favored and, unless the appeal is unquestionably frivolous, damages will not be granted. *George v. M & G Testing and Serv., Inc.*, 95-31 (La. App. 3 Cir. 7/19/95), 663 So.2d 79, 86.

This Court is reluctant to grant frivolous appeal damages because of the chilling effect it may have on the appellate process, and we decline to do so in this case. Based on the record, the parties' briefs and oral arguments, the appeal is not unquestionably frivolous and damages are not warranted.

**CONCLUSION**

Accordingly, for the reasons assigned herein, the judgment of the trial court is affirmed.

**AFFIRMED**