STATE OF MICHIGAN

COURT OF APPEALS

In re KRUPKA FAMILY TRUST.

ADELE OUREDNIK, Individually and as Trustee of the KRUPKA FAMILY TRUST, MARY OUREDNIK ROCCO, and EMIL OUREDNIK III,

Plaintiffs-Appellants,

v

EDWIN KIZIOR and RUTH BAUER, Co-Trustees of the ADELINE M. KRUPKA GRANTOR TRUST,

Defendants-Appellees.

UNPUBLISHED
November 1, 2007

No. 274418
Allegan Probate Court
LC No. 06-054411-CZ

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a probate court order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This appeal involves a dispute over the meaning of a trust instrument executed by Edwin Krupka and Adeline Krupka as grantors in 1988, known as the Krupka Family Trust. Under the Family Trust, the grantors were named as co-trustees, but the trust instrument also provided that "if either of the Trustees shall die, become incapacitated, or refuse to act as Trustee hereafter, the other Trustee shall become the sole Trustee." The trust property consisted of real property "along with all furniture, household goods, furnishings, equipment, tools, garden tools, and aluminum boats . . . ." Upon the death of both grantors, Edwin and Adeline, the trust property was to be distributed to the individual plaintiffs, Adele Ourednik, Mary Ourednik Rocco, and Emil Ourednik III. Adele was to serve as the successor trustee after the death of both grantors. After Edwin died, Adeline executed a new trust instrument, dated January 25, 2002, known as the Adeline M. Krupka Grantor Trust ("Krupka Grantor Trust"). The Krupka Grantor Trust specified that it was amending the Family Trust in its entirety. In conjunction with the execution of the trust instrument, Adeline, as trustee of the Family Trust, quitclaimed real property from the Family Trust to herself, as trustee of the Krupka Grantor Trust.

After Adeline died, Adele, individually and as successor trustee of the Family Trust, and the other two individual plaintiffs, Mary Ourednik Rocco and Emil Ourednik III, filed the instant action against Adeline's siblings, Edwin Kizior and Ruth Bauer, the successor co-trustees of the Krupka Grantor Trust, seeking a determination that the Family Trust was the proper owner of the real property and proceeds from the sale of other real property that Adeline made while trustee of the Krupka Grantor Trust. Both parties filed motions for summary disposition under MCR 2.116(C)(10) with regard to the issue whether Adeline had the authority to transfer real property to the Krupka Grantor Trust, as a surviving trustee, or could amend or terminate the Family Trust, as a surviving grantor. The probate court granted summary disposition in favor of defendants on both issue, finding no ambiguity regarding the grantors' intent from the four corners of the Family Trust instrument.

We review de novo the probate court's summary disposition ruling to determine whether either movant was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Because the parties' dispute involves a written instrument, summary disposition is appropriate only if the Family Trust is unambiguous. See *SSC Assoc Ltd Partnership v Gen Retirement Sys*, 192 Mich App 360, 363; 480 NW2d 275 (1991).

In construing a trust instrument, we apply the general rules applicable to the construction of a will. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985) (Cavanagh, J.); *In re Reisman Estate*, 266 Mich App 522, 527; 702 NW2d 658 (2005). As set forth in *In re Reisman*, *id.* at 527:

> "A fundamental precept which governs the judicial review of wills is that the intent of the testator is to be carried out as nearly as possible." *In re Allen Estate*, 150 Mich App 413, 416; 388 NW2d 705 (1986), citing *In re Kremlick Estate*, 417 Mich 237, 240; 331 NW2d 228 (1983). Where there is no "patent or latent ambiguity in the provisions of a will, the intention to be ascribed to the testator is that intention demonstrated in the will's plain language." *In re Dodge Trust*, 121 Mich App 527, 542; 330 NW2d 72 (1982), quoting *In re Willey Estate*, 9 Mich App 245, 249; 156 NW2d 631 (1967). Furthermore, "[a] court may not construe a clear and unambiguous will in such a way as to rewrite it," *In re Allen Estate*, *supra* at 417, and, where possible, each word should be given meaning, *Detroit Bank and Trust Co v Grout*, 95 Mich App 253, 268-269; 289 NW2d 898 (1980).

Because neither party offered extrinsic evidence of a latent ambiguity, the material questions are whether a patent ambiguity was established relative to Adeline's authority to transfer real property or to amend and revoke the Family Trust and, if not, how to construe the Family Trust. "A patent ambiguity exists if an uncertainty concerning the meaning appears on the face of the instrument and arises from the use of defective, obscure, or insensible language." *In re Woodworth Trust*, 196 Mich App 326, 327-328; 492 NW2d 818 (1992).

Addressing first the parties' dispute concerning Adeline's authority as a surviving grantor to amend or revoke the Family Trust, Article VII provides:

> During *our* lifetime, by an instrument in writing delivered to Trustee(s), *we* may at any time remove any Trustee and appoint another in Trustee's place,

> modify, alter or amend this Agreement, or revoke this Agreement and terminate this trust in whole or in part, and immediately upon such revocation and termination, Trustee(s) shall redeliver to *me* the entire trust estate or the portion thereof to which such revocation relates. [Emphasis added.]

On its face, Article VII appears inherently inconsistent because it uses both plural ("our" and "we") and singular ("me") pronouns. In other words, it indicates that it could apply to both grantors ("we" and "our") or one grantor ("me"). But Article VI contains a rule of construction that "[t]he singular shall include the plural and all pronouns used herein shall include any other appropriate pronoun whenever the acts and context so require."

Applying the rule that the "singular shall include the plural" to Article VII, we conclude that the probate court correctly construed the Family Trust as unambiguously providing for both grantors to act together to abolish the Family Trust. Although the grantors did not provide for the converse situation, i.e., for the plural to include the singular, they clearly required that "all pronouns used herein shall include any other appropriate pronoun whenever the acts and context so require." So construed, and looking to the four corners of the Family Trust instrument, we reject plaintiffs' argument that the use of the word "me" is a mere scrivener's error or typo. The Family Trust's articles are replete with instances in which a consideration of the context of plural or singular words is required to determine their meaning. Even the dispositive provision in Article II on which plaintiffs rely requires such construction, inasmuch as it provides for the conveyance of trust property to the individual plaintiffs, upon the "death of both Grantors," and then uses the phrase "predecease me" when addressing the contingency that the individual plaintiffs must survive both of them.

Every word in a trust instrument should be given meaning, where possible. *In re Reisman, supra* at 527. Therefore, giving effect to the rule of construction in Article VI, we must construe the language in Article VII in light of the act and context in question. The acts to which "me" applies in Article VII are revocation, amendment, or even the removal and replacement of a trustee. We note that Article VII recognizes the possibility of there being only one trustee when a prescribed act occurs because it uses the term "trustee(s)." Although both grantors were appointed trustees, one of the events that could cause either grantor to become a sole trustee under Article IV is the death of the other grantor. Logically, in this context, Article VII can be applied and the pronoun "me" will have meaning if the surviving grantor is permitted to amend and revoke the Family Trust, or to replace himself or herself as the trustee. A contrary interpretation would leave the surviving grantor with no means to replace himself or herself as trustee, inasmuch as the only event provided for in Article IV for the successor trustee is the "death of both of the Trustees."

We conclude that the Family Trust is not patently ambiguous. Giving effect to the rule of construction in Article VI, no uncertainty concerning the meaning of Article VII appears on the face of the Family Trust. Although inartfully drafted, using the pronouns "my" and "I" in place of "our" and "we," the only reasonable construction is that a surviving grantor has the right to amend or revoke to the Family Trust, and to appoint another trustee in his or her place. Cf. *Roberts v Sarros*, 920 So 2d 193, 194 (Fla App, 2006) (rule of construction in trust agreement regarding the singular and plural forms of words applied in determining that a surviving grantor could amend a trust). Therefore, we affirm the probate court's grant of summary disposition in favor of defendants on this basis.

Although our conclusion that Adeline had the authority to amend or revoke the Family Trust is dispositive of the parties' dispute, we also agree with the probate court that Adeline had the power, as a surviving trustee, to dispose of the real property by transferring it to the Krupka Grantor Trust. Plaintiffs' reliance on the distribution provision in Article II is misplaced because that provision only establishes the events for distributing income and principal to the beneficiaries of the trust property. The prefatory statement in Article II clearly subjects the trustees' duties to "hold, manage, invest and reinvest the trust property" to "the provisions of this trust." Under Article III, the "trustees" had the powers conferred upon them by law, as well as other specified powers that included, but were not limited to, selling property "for any price and on any terms Trustee deems suitable, including sale to Grantor's estate or to other accounts for which Trustee serves as agent or fiduciary," to "dispose of the trust property," and to "do any acts which an owner of property could do individually."

The phrase "dispose of" is ordinarily understood to mean "a. to deal with conclusively; settle. b. to get rid of; discord or destroy. c. to give away or sell." *Random House Webster's College Dictionary* (1997), p 378. Therefore, it is clear from the face of the Family Trust that the trustees were empowered to give away real property, and not merely sell it. Examined in context, the language is not obscure or otherwise patently ambiguous. Further, it is consistent with Michigan law, which generally recognizes that a settlor may name himself or herself as a trustee and reserve the right to use or dispose of trust property, *Sabin-Scheiber v Sabin*, 128 Mich App 427, 431; 340 NW2d 114 (1983), although the particular means that Edwin and Adeline chose to establish this right was through their broad powers as trustees.

We further hold that plaintiffs have not establish anything about Adeline's fiduciary duties, as a trustee, that would render the 2002 conveyance of the real property void or voidable. At the time of the conveyance, Adeline was the sole trustee and sole present beneficiary of the Family Trust. The remainder interests of the individual plaintiffs upon which the instant action is predicated were vested, but subject to defeasance in the event that they died before the grantors or the trust property was depleted. See *In re Childress Trust*, 194 Mich App 319, 323-324; 486 NW2d 141 (1992). Although this does not mean that Adeline owed no fiduciary duty to the individual plaintiffs as remainder beneficiaries, trust beneficiaries need not be treated impartially if such an intent is clearly expressed in a trust instrument. See *In re Butterfield Estate*, 418 Mich 241, 257; 341 NW2d 453 (1983) (trustee's investment policies). The Family Trust at issue here, through the establishment of broad trustee powers, clearly evidences an intent for Edwin and Adeline to largely do as they saw fit with regard to the trust property during their lifetimes. They did not agree to preserve the trust property for the benefit of the three individual plaintiffs.

Moreover, plaintiffs have not established any provision of the Estate and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, that prohibits Adeline's 2002 conveyance. Although the EPIC was effective before the conveyance was made and sets forth powers and duties of a trustee, the trustee may act in a manner authorized by the trust instrument. See MCL 700.7401(2), MCL 700.7402(1)(a), and MCL 700.8101. Further, the instant action does not involve a claim for breach of fiduciary duty, but rather is an action against co-trustees of the Krupka Grantor Trust to void the conveyance made by Adeline in 2002. Because plaintiffs have not shown any authority for voiding the conveyance under Michigan law where, as in this case, the Family Trust in unambiguous terms authorized the act, we find no basis for disturbing the

probate court's decision. Cf. *In re Estate of West*, 948 P2d 351 (Utah, 1997) (surviving trustee's conveyance of trust property to himself, at a time when he was the sole present beneficiary, involved no breach of fiduciary duty to other beneficiaries whose rights were vested, but subject to divestiture before his death).

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood