

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the JACK E. CRANE TRUST.

JACK D. CRANE,

Appellant,

v

J. RUSSELL LABARGE, JR., Successor Trustee
of the JACK E. CRANE TRUST, LILIA CRANE,
and DONALD STREHL, Successor Personal
Representative of the Estate of DONALD
CRANE,

Appellees.

UNPUBLISHED
December 2, 2010

No. 293006
Macomb Probate Court
LC No. 2008-195427-TV

Before: FORT HOOD, P.J., and JANSEN and WHITBECK, JJ.

PER CURIAM.

Appellant Jack D. Crane appeals as of right the probate court's order that granted a motion for an order construing certain trust terms in the Jack E. Crane Trust and for determination of appellee Lilia Crane's beneficiary. On appeal, Jack D. Crane argues that the probate court erred in finding that 1) the Jack E. Crane Trust was unambiguous and, as a result, extrinsic evidence—the scrivener's testimony—was inadmissible, and that 2) Lilia Crane's son, Vladislav Crane, was a Jack E. Crane Trust beneficiary. We disagree and we therefore affirm.

I. BASIC FACTS

In July 1997, Jack E. Crane executed a trust agreement. At the time he executed the Jack E. Crane Trust, Jack E. Crane had two children: appellant Jack D. Crane and Donald Crane. The Jack E. Crane Trust initially named Jack E. Crane as the settlor and trustee, and Donald Crane as the successor trustee. The Jack E. Crane Trust indicated that upon the settlor's death, “[a]ll of the Trust Estate shall be divided into equal shares, one for each child of the Settlor who shall then be living[.]” The Jack E. Crane Trust further stated that if and when either Jack D. Crane or Donald Crane died, “the Trust designated for such deceased child [Jack D. Crane or Donald Crane], together with all accumulations, shall be held in separate Trusts for such living

issue by right of representation for the benefit of such grandchildren.” The Jack E. Crane Trust gave the following definitions:

The term “child”, “grandchild”, “issue”, “heir”, “descendent”, “beneficiary” or other equivalent term shall be construed to include any adopted person and his or her descendants whether natural or adopted, but shall in no event, and under no circumstances, be construed to include any illegitimate child or children, as that term is defined by the statutes of the State of Michigan currently in force, unless such illegitimate child is specifically named in the Trust Agreement, or any amendments hereto.

In October 2003, Jack E. Crane amended the Jack E. Crane Trust to designate Jack D. Crane as the successor trustee, instead of Donald Crane.

Donald Crane met Lilia Crane, a Republic of Moldova resident, via the Internet in 2004, and they exchanged emails throughout 2004 and 2005. On March 16, 2005, Jack E. Crane died. In December 2005, Lilia Crane informed Donald Crane that she was pregnant with another man’s baby. Donald Crane traveled to Moldova and married Lilia Crane on May 10, 2006. On May 19, 2006, Vladislav Crane was born. Donald Crane put his name on Vladislav Crane’s birth certificate as Vladislav Crane’s father.

On September 15, 2007, Donald Crane died. Jack D. Crane was appointed as the Donald Crane Estate personal representative,¹ and Jack D. Crane informed the state of Michigan that Donald Crane had been divorced and had no surviving spouses. In November 2007, in a separate action from this matter, Lilia Crane petitioned for removal of Jack D. Crane as the Donald Crane Estate personal representative and for determination of heirs.² In December 2007, Jack D. Crane filed objections to the petition and questioned the validity of Donald Crane’s marriage to Lilia Crane.³ In October 2008, after two days of trial, the Macomb Probate Court found that Jack D. Crane lacked legal standing to challenge the validity of Donald and Lila Crane’s marriage under Moldovan law and that Donald Crane’s heirs included Lilia Crane and the child from the marriage, Vladislav Crane. (Jack D. Crane appealed the probate court’s ruling finding that he lacked standing to challenge the marriage between Donald and Lilia Crane, but this Court affirmed that ruling in March 2010.⁴)

In November 2008, Lilia Crane filed a petition on behalf of her son, Vladislav Crane, for accounting, removal of trustee, appointment of successor trustee, and an order compelling trust

¹ *In re Donald Crane*, unpublished opinion per curiam of the Court of Appeals, issued March 16, 2010 (Docket No. 288654).

² *Id.*

³ *Id.*

⁴ *Id.*

assets in the Jack E. Crane Trust. Lilia Crane argued that Vladislav Crane was a beneficiary of Donald Crane's portion of the Jack E. Crane Trust. She further alleged that Jack D. Crane wrongly informed the state of Michigan that, at the time of his death, Donald Crane was divorced and that no spouses survived him. Lilia Crane contended that Jack D. Crane improperly identified himself as Donald Crane's sole heir. In her petition, Lilia Crane asked the probate court to 1) remove Jack D. Crane as the Jack E. Crane Trust trustee; 2) require Jack D. Crane to account for all trust income, assets, and disbursements since March 16, 2005; 3) deliver all trust assets to Caputo Brosnan, P.C., for safekeeping; 4) reform the Jack E. Crane Trust for individuals to act as successor trustees; and 5) to appoint Martin J. Brosnan and Lilia Crane as successor co-trustees.

After the filing of a number of motions, the probate court entered a consent order in March 2009. In the order, the probate court indicated that Jack D. Crane was suspended as the successor trustee of the Jack E. Crane Trust in January 2009, and that J. Russell LaBarge, a public administrator, was appointed as the temporary successor trustee. The probate court ordered LaBarge to disclose all trust assets to Donald Strehl, the personal representative of Donald Crane's estate by April 30, 2009.

Following further motions and proceedings, on June 19, 2009, the probate court issued an opinion and order, finding that the Jack E. Crane Trust was unambiguous and, therefore, extrinsic evidence in the form of the scrivener's testimony was not admissible. In particular, the probate court found that the term "illegitimate child" was not ambiguous within the trust agreement and that it meant any child born out of wedlock. Moreover, the probate court found that, since Vladislav Crane was covered under both "issue" and "grandchild," the trust was not ambiguous regarding whether he was covered.

On June 29, 2009, the probate court issued another opinion and order regarding Lilia Crane's motion for an order construing certain trust terms and determination of trust beneficiary. In the opinion, the probate court found that "issue" in the Jack E. Crane Trust meant "an individual's descendent," including adopted children and excluding illegitimate children. The probate court found that Vladislav Crane was Donald Crane's issue for purposes of the Jack E. Crane Trust because he was not illegitimate and because the probate court had previously issued an order that Vladislav Crane was Donald Crane's child. Jack D. Crane now appeals.

II. AMBIGUITY OF THE TRUST; ADMISSION OF EXTRINSIC EVIDENCE

A. STANDARD OF REVIEW

Jack D. Crane argues that the probate court erred in finding that the Jack E. Crane Trust was unambiguous and that, as a result, extrinsic evidence was inadmissible. We review for clear error a trial court's factual findings, while we review de novo its conclusions of law.⁵

⁵ *In re Kostin Estate*, 278 Mich App 47, 53; 748 NW2d 583 (2008).

B. LEGAL STANDARDS

“In resolving a dispute concerning the meaning of a trust, a court’s sole objective is to ascertain and give effect to the intent of the settlor.”⁶ “The intent of the settlor is to be carried out as nearly as possible.”⁷ The settlor’s intent is determined based on the trust document itself, unless the language of the trust is ambiguous.⁸ “If ambiguity exists, the court must look outside the document in order to carry out the settlor’s intent, and may consider the circumstances surrounding the creation of the document and the general rules of construction.”⁹

“The rules of construction applicable to wills also apply to the interpretation of trust documents.”¹⁰ With regard to wills, a court may not construe a clearly written will in such a way as to rewrite it, and if possible, the court must give each word meaning.¹¹ An ambiguity in a will may be patent or latent; a latent ambiguity may be proven by facts extrinsic to the instrument.¹² “A latent ambiguity exists where the language and its meaning are clear, but some extrinsic fact creates the possibility of more than one meaning.”¹³ “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.”¹⁴

C. APPLYING THE STANDARDS

Here, Jack D. Crane argues that the meaning of “issue” is patently ambiguous in the Jack E. Crane Trust. He contends that because of three mistakes in the Jack E. Crane Trust language, it is not clear what the meaning of “issue” is and whether “issue” includes non-biological children like Vladislav Crane. He urges this Court to conclude that extrinsic evidence is admissible in the form of the scrivener’s testimony to resolve the meaning of “issue.”

1. DEFINITION OF “ISSUE”

Jack D. Crane argues that the trust document’s definitions section mistakenly defined “issue” to include:

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *In re Reisman Estate*, 266 Mich App 522, 527; 702 NW2d 658 (2005).

¹¹ *Id.*

¹² *In re McPeak*, 210 Mich App 410, 412; 534 NW2d 140 (1995).

¹³ *In re Woodworth Trust*, 196 Mich App 326, 328; 492 NW2d 818 (1992).

¹⁴ *Id.* at 327-328.

[A]ny adopted person and his or her descendents whether natural or adopted, but shall in no event, and under no circumstances, be construed to include *any illegitimate child or children, as that term is defined by the statutes of the State of Michigan currently in force*, unless such illegitimate child is specifically named in the Trust Agreement, or any amendments hereto.^[15]

According to Jack D. Crane, the Jack E. Crane Trust was ambiguous as written because no Michigan statutes then in force at the time that the trust document was executed defined “illegitimate child or children.” We disagree.

As the probate court indicated in its opinion and order, at the time of the Jack E. Crane Trust formation, Michigan law equated a child requiring legitimating—that is, an “illegitimate child”—with a child born out of wedlock. Specifically, MCL 710.39(3) read:

If the parental rights of the mother are terminated pursuant to this chapter or other law and if the court awards custody of *a child born out of wedlock* to the putative father, the court shall enter an order granting custody to the putative father and *legitimizing* the child for all purposes.^[16]

The probate court further indicated that Michigan law defined a “child born out of wedlock” as “a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.”¹⁷ We agree with the probate court’s reasoning and conclude that a statutory definition of “illegitimate child” existed under Michigan law at the time the Jack E. Crane Trust was executed. Therefore, the definitions section of the Jack E. Crane Trust was not ambiguous.

2. EQUATING ISSUE OF SETTLOR’S DECEASED CHILD AND SETTLOR’S GRANDCHILD

Jack D. Crane argues that the Jack E. Crane Trust was patently ambiguous because it equated the issues of the settlor’s deceased child with the settlor’s grandchildren, even though the two are not always the same. We disagree.

The portion of the Jack E. Crane Trust that Jack D. Crane questions reads:

If any of said children shall have died or shall die leaving *issue* then living, the Trust designated for such deceased child, together with all accumulations, shall be

¹⁵ Emphasis added.

¹⁶ Emphasis added.

¹⁷ MCL 722.711(a).

held in separate Trust for such living *issue* by right of representation for the benefit of such *grandchildren*.^[18]

The probate court determined that this part of the Jack E. Crane Trust was not ambiguous with regard to Vladislav Crane because he was both the issue of Donald Crane (Jack E. Crane's deceased child) and Jack E. Crane's grandchild. Jack D. Crane is correct that the issue of the settlor's deceased child, as defined under Michigan law, is not necessarily the settlor's grandchild in all circumstances, because an issue may be a descendent and not a child. However, in this case, Vladislav Crane is both the issue of the settlor's deceased child and the settlor's grandchild. Given that this Court should not rewrite the meaning of clear language, we agree with the probate court's reasoning in concluding there was no ambiguity in this section of the Jack E. Crane Trust.

3. IMPOSSIBILITY

Jack D. Crane argues that the Jack E. Crane Trust is patently ambiguous because it created an impossible situation. We disagree.

The Jack E. Crane Trust reads:

If any of Settlor's children shall die leaving no issue then living, the Trust for his or her benefit shall terminate and all of the then remaining principal of such Trust, together with all accumulations, shall be equally divided among and distributed to the Settlor's then living child or children, and the then living issue of any deceased child or children, such issue taking by right of representation.

Jack D. Crane argues that, based on this language, if Donald Crane died with no issue, then his portion would be shared between Jack D. Crane and Donald Crane's issue, which is simply impossible. The probate court, however, found no mistake or ambiguity by considering the possibility that Jack E. Crane could have had more than two children. The probate court reasoned:

If Jack E. Crane hypothetically had another child named John, and Jack D. Crane were to die without issue then living, the separate Trust created for Jack D. Crane's benefit would terminate and be distributed equally between the hypothetical son named John [Settlor's then living child] and Donald Crane's issue [the living issue of any deceased child.]

We find the probate court's reasoning persuasive and conclude there was no ambiguity in this section of the Jack E. Crane Trust.

¹⁸ Emphasis added.

4. SCRIVENER'S TESTIMONY

Jack D. Crane argues that additional facts from the scrivener's testimony demonstrate a latent ambiguity. The scrivener testified that Jack E. Crane, the settlor, intended "issue" in the Jack E. Crane Trust to only apply to biological descendants. Jack D. Crane contends that this demonstrates an ambiguity in the Jack E. Crane Trust regarding whether "issue" is defined under Michigan law or whether "issue" means only biological descendants. However, the Michigan Supreme Court has held that when trust language is clear, the settlor's intent should be gleaned from the will's four corners rather than through extrinsic evidence.¹⁹ Moreover, as noted above, a court may not construe a clearly written will in such a way as to rewrite it.²⁰

We conclude that admitting the scrivener's extrinsic evidence would impermissibly alter the meaning of the Jack E. Crane Trust. The Jack E. Crane Trust's definitions section makes clear that adopted, non-biological children can benefit from the Jack E. Crane Trust. An adoption severs the natural familial relationship and creates a substitute relationship.²¹ In this case, Donald Crane created that substitute relationship by marrying Lilia Crane before Vladislav Crane was born and putting his name on Vladislav Crane's birth certificate as Vladislav Crane's father. We conclude that Jack E. Crane's intent to allow children like Vladislav Crane to benefit from the Jack E. Crane Trust was clear in the trust agreement's four corners.

Jack D. Crane further argues that a court should always admit extrinsic evidence to determine the trust's meaning in accordance with the settlor's intent, even if no patent or latent ambiguity is present. We disagree.

Jack D. Crane argues that we should follow this Court's decision in *In re Nowels Estate*.²² But we find that case inapplicable here. In *In re Nowels Estate*, the settlor's 54-year-old daughter adopted her 42-year-old cousin.²³ Under the terms of the settlor's trust, upon the daughter's death, her share of the trust was to go to a separate trust for "each of her then surviving children." By statute, the term "child" was to be construed to include "any adopted person."²⁴ This Court held that the plain terms of the trust did not contradict the statutory presumption; however, this Court nevertheless concluded that the Legislature did not intend for the statutory presumption "to be automatically enforced in all cases without regard to the

¹⁹ *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985); see also *In re Kostin Estate*, 278 Mich App at 53.

²⁰ *In re Reisman Estate*, 266 Mich App at 527.

²¹ *In re Handorf*, 285 Mich App 384, 388; 776 NW2d 374 (2009).

²² *In re Nowels Estate*, 128 Mich App 174; 339 NW2d 861 (1983).

²³ *Id.* at 176.

²⁴ MCL 700.128, repealed by 1998 PA 8102, effective April 1, 2000.

circumstances surrounding the adoption procedure.”²⁵ According to this Court, the statutory presumption should not be enforced where, through adoption of an adult, “there has been an abuse of the adoption process and where the end result would violate the settlor’s probable intent and normal expectations.”²⁶ Thus, the present case, involving adoption of a child, is factually distinguishable from the holding and reasoning in *In re Nowles Estate*.

Additionally, Jack D. Crane suggests that we overrule the Michigan Supreme Court’s reasoning in *In re Maloney Trust*, which held that when trust language is clear, the settlor’s intent is to be initially gleaned from the will’s four corners rather than through extrinsic evidence.²⁷ In *In re Maloney Trust*, the Supreme Court stated, “‘The law is loath to supplement the language of such documents with extrinsic information. This is especially so in the case of testamentary documents because the maker is not available to provide additional facts or insight.’”²⁸

We see no need to overrule the Supreme Court’s decision in *In re Maloney Trust*. We acknowledge Jack D. Crane’s argument that *In re Maloney Trust* was issued before the passage of the Estates and Protected Individuals Code (EPIC)²⁹ and, since its passage, some panels of this Court have held that, under certain circumstances, admission of extrinsic evidence is allowable to establish a settlor’s contrary intent.³⁰ However, those cases are unpublished and nonbinding,³¹ and distinguishable.³²

According to EPIC, “A rule of construction or presumption provided in this act applies to a governing instrument executed before that date *unless there is a clear indication of a contrary intent*.”³³ Under EPIC, there is a presumption that an adopted child is included in the definitions of both “child” and “issue.”³⁴ Further, the Michigan Revised Probate Code, the law in effect at

²⁵ *In re Nowels Estate*, 128 Mich App at 177.

²⁶ *Id.* at 178.

²⁷ *In re Maloney Trust*, 423 Mich at 639.

²⁸ *Id.*, quoting *In re Kremlick Estate*, 417 Mich 237, 240; 331 NW2d 228 (1983).

²⁹ MCL 700.8101 *et seq.*

³⁰ See *In re Dudley Trust*, unpublished opinion per curiam of the Court of Appeals, issued March 16, 2010 (Docket No. 287918); *In re Estate of Fink*, unpublished opinion per curiam of the Court of Appeals, issued July 24, 2008 (Docket No. 278266).

³¹ MCR 7.215(C)(1); *Dyball v Lennox*, 260 Mich App 698, 705 n 1; 680 NW2d 522 (2003).

³² *In re Dudley Trust* is distinguishable because in that case the respondents averred that there was a latent mathematical error in the distribution percentages. This type of latent ambiguity can clearly only be resolved by resorting to extrinsic evidence.

³³ MCL 700.8101(2)(e) (emphasis added).

³⁴ See MCL 700.1105(d) (“‘Issue’ means an individual’s descendant.”); MCL 700.1103(k) (“‘Descendant’ means, in relation to an individual, all of his or her descendants of all

the time of execution of the trust, created a similar presumption that adopted persons were included within the term “child” and similar terms.³⁵ Here, the trust document does not show an intent contrary to this presumption. And, unlike in *In re Estate of Fink*, passage of EPIC did not create a latent ambiguity by altering the established presumption.

Moreover, it is the Supreme Court’s obligation to overrule or modify its decisions.³⁶ And until that Court takes such action, the Supreme Court’s decision in *In re Maloney Trust* binds this Court and all lower courts.³⁷

III. VLADISLAV CRANE AS A BENEFICIARY OF THE JACK E. CRANE TRUST

A. STANDARD OF REVIEW

Jack D. Crane argues that the trial court erred in finding that Vladislav Crane was a Jack E. Crane Trust beneficiary. As noted above, we review for clear error a trial court’s factual findings, while we review de novo its conclusions of law.³⁸ A finding is clearly erroneous if, after reviewing the entire record, the court is left with the definite and firm conviction that a mistake was made.³⁹

B. THE TRUST’S PROVISIONS

The Jack E. Crane Trust distributes its assets in the following manner: “All of the Trust Estate shall be divided into equal shares, one for each child of the Settlor who shall then be living, and one for the then living issue by right of representation of each who shall have died before that time leaving issue then living.” Issue is defined to “include any adopted person and his or her descendents[.]” but not “any illegitimate child or children[.]” Since the Jack E. Crane Trust states that it “shall be construed in accordance with the laws of the State of Michigan,” we rely on Michigan law to determine the meaning of “issue.”

generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act.”); MCL 700.1103(f) (“‘Child’ includes, but is not limited to, an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved. Child does not include an individual who is only a stepchild, a foster child, or a grandchild or more remote descendant.”); MCL 700.2114(2) (“An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents[.]”).

³⁵ MCL 700.128, repealed by 1998 PA 8102, effective April 1, 2000; *In re Nowels Estate*, 128 Mich App at 177.

³⁶ *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009).

³⁷ *Id.*

³⁸ *In re Kostin Estate*, 278 Mich App at 53.

³⁹ *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008).

C. STATUTORY PROVISIONS

At the time that the Jack E. Crane Trust was executed, and currently, Michigan law defines “issue” as “an individual’s descendent.”⁴⁰ A descendent is “all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act.”⁴¹ Under Michigan law, a child is “an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved.”⁴² The probate court previously found that Vladislav Crane was Donald Crane’s heir and entitled to inherit from Donald Crane by intestate succession. Therefore, we conclude that the probate court correctly ruled that, as Donald Crane’s issue, Vladislav Crane was a Jack E. Crane Trust beneficiary.

We affirm.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ William C. Whitbeck

⁴⁰ MCL 700.1105(d).

⁴¹ MCL 700.1103(k).

⁴² MCL 700.1103(f).