STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of HELEN KAHLE SOUTHWORTH.

DAVID S. HICKMAN, Personal Representative of the Estate of HELEN KAHLE SOUTHWORTH, Deceased,

Appellee,

and

CHARLES A. RUSSELL,

Petitioner-Appellee,

V

ADRIAN COLLEGE,

Respondent-Appellant.

UNPUBLISHED
July 5, 2011

No. 297460
Lenawee Probate Court
LC No. 09-046567-DE

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent, Adrian College, appeals as of right from the order granting summary disposition in favor of petitioner, Charles A. Russell. We affirm.

When he was a child, petitioner's family lived and worked on the farm operated by the Kahle family. Consequently, petitioner knew the decedent, Helen Kahle Southworth, his entire life. Although the Kahle farm briefly changed management, the decedent returned to the farm with her husband, Fred Southworth, sometime after the couple married. Petitioner and his wife were friends with the Southworths. For many years, petitioner worked across the street from the farm and assisted Fred with various projects. When the Southworth couple spent winters in Florida, petitioner received a key to the property and checked on the property while they were out of state. The decedent sent petitioner and his wife Christmas gifts and mailed fruit when the Southworth couple was residing in Florida. Additionally, petitioner was the contact person listed on the decedent's home security system. After Fred died, petitioner continued his friendship with the decedent. He visited her one to two Saturdays per month, and the decedent called him

when she needed something. Petitioner fixed problems for the decedent and maintained equipment for her, including the lawnmowers.

According to petitioner's deposition testimony, the decedent fell on February 26, 2009, and was found in her kitchen on March 1, 2009. After her death, the funeral director discovered a deed in the decedent's safe with other documents, including a will. Petitioner testified that he had no knowledge of the deed quitclaiming the residence and 160 acres; the decedent never mentioned the conveyance to him.

Evidence of the decedent's testamentary intent was admitted through the affidavit of then attorney now circuit court judge Margaret Noe. In February 2005, the decedent consulted Noe for estate planning advice. The decedent advised that she had a will drafted, but wanted to make one change regarding the disposition of her property. Specifically, the decedent wanted petitioner Russell to receive her home and the accompanying 160 acres, but retain a life estate for herself. Therefore, Noe prepared a quitclaim deed as requested by the decedent. On February 15, 2005, Noe witnessed the signing of the deed by the decedent, who took the original deed with her when she left the office.

Respondent, as the primary beneficiary in the will, successfully sought the appointment of David Hickman as the personal representative. On July 29, 2009, the personal representative filed a document indicating that the *inventory* of the estate was worth $1,017,938. This inventory did not include the home and acreage in dispute. Petitioner filed a motion for summary disposition, alleging that the decedent's intent was the paramount issue, and the undisputed evidence revealed her intent to pass the home and acreage to petitioner. In opposition to the motion, respondent asserted that the undelivered deed did not constitute an effective transfer of property, and the undelivered deed could not be transformed into a will. The probate court granted petitioner's motion for summary disposition, holding that petitioner presented clear and convincing evidence that the decedent intended the undelivered deed to be an addition to or alteration of her will in accordance with MCL 700.2503. Respondent appeals as of right from that ruling.

The primary duty of the court when resolving a disputed testamentary disposition is to effectuate, as near as possible, the intention of the testator, as limited by applicable law. *In re Estate of Butterfield*, 405 Mich 702, 711; 275 NW2d 262 (1979); *In re Bem Estate*, 247 Mich App 427, 434; 637 NW2d 506 (2001). When the probate court restricts its analysis to the language of the will alone, we review the issue de novo as a question of law. *Bem Estate*, 247 Mich App at 433. However, a latent ambiguity may be proven by facts extrinsic to the testamentary instrument. *In re McPeak Estate*, 210 Mich App 410, 412; 534 NW2d 140 (1995). Intent need not be proven by direct evidence, but may be circumstantial and inferred from the totality of the circumstances. See *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 12; 596 NW2d 620 (1999). When the probate court engages in factfinding, we apply a clear error standard of review and accord the probate court due deference. *Bem Estate*, 247 Mich App at 433. Application of the law to the facts presents a question of law subject to review de novo. *Miller-Davis Co v Ahrens Constr, Inc*, 285 Mich App 289, 299; 777 NW2d 437 (2009).

This appeal also presents an issue of statutory construction. An issue of statutory construction is reviewed de novo. *Mich Ed Ass'n v Secretary of State*, 488 Mich 18, 26; 793 NW2d 568 (2010). The rules of statutory construction are well established:

> Assuming that the Legislature has acted within its constitutional authority, the purpose of statutory construction is to discern and give effect to the intent of the Legislature. Accordingly, a Court must interpret the language of a statute in a manner that is consistent with the legislative intent. In determining the legislative intent, the actual language of the statute must first be examined. As far as possible, effect should be given to every phrase, clause, and word in the statute. When considering the correct interpretation, a statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. [*Id*. at 26-27 (footnotes and quotations omitted).]

MCL 700.2503 governs writings intended as wills and provides:

> Although a document or writing added upon a document was not executed in compliance with [MCL 700.2502], the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute any of the following:
>
> (a) The decedent's will.
>
> (b) A partial or complete revocation of the decedent's will.
>
> (c) An addition to or an alteration of the decedent's will.
>
> (d) A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the decedent's will.

In the present case, petitioner testified that he was unaware of the decedent's intent to convey her residence and accompanying acreage to him. However, he testified that he had a longstanding relationship with the decedent's family, that he looked after the property when the decedent and her husband were away, and that he continued to look after the decedent after her husband died. The evidence of the decedent's intent was presented in the Noe affidavit, which provides, in relevant part:

> 3. That on February 15, 2005, I met with [the decedent] to discuss her estate plan proposals.
>
> 4. That after an in-office consultation [the decedent] indicated that she already had a Will drafted, but wanted to make one change to ensure [petitioner] received her home and 160 acres, thus she requested I draft a Deed for her home and 160 acres in favor of [petitioner], reserving a life estate for herself.
>
> 5. That [the decedent] expressed an intent to pass her home and 160 acres to [petitioner], subject to her retaining the property during her lifetime.

6. That I drafted the Deed requested by [the decedent].

7. That on February 15, 2005, I witnessed [the decedent] sign said Deed.

8. That [the decedent] took the original Deed with her upon leaving my office.

In addition to the Noe affidavit, there was circumstantial evidence of the decedent's intent to convey the property at issue to petitioner. Although the decedent did not record the deed prepared by Noe, she also did not alter her will, but placed the will and the deed in the safe in her home. The deed was executed on February 15, 2005. On February 24, 2005, respondent's representative mailed a letter to the decedent indicating that he learned of the decedent's intent to consider the college in her estate plan. The representative offered to meet with the decedent and answer any questions regarding estate planning and the college. Despite this offer of assistance, decedent did not alter her will or the deed, but kept both documents together in the safe. There is no record evidence that she contacted the college in response to the mailing. Thus, the only evidence of decedent's intent regarding her residence and acreage was presented in the Noe affidavit and the accompanying deed.

Applying the undisputed factual evidence regarding decedent's intent to the plain language of MCL 700.2503, the probate court did not err in concluding that clear and convincing evidence of decedent's intent[1] to pass her home and acres to petitioner was presented. MCL 700.2503 provides that a document that does not comply with the execution standard for becoming a valid will, MCL 700.2502, is nonetheless treated as compliant when there is clear and convincing evidence that the document was intended to be an addition or alteration to the decedent's will, MCL 700.2503(c). In the present case, Noe was advised by the decedent that she had a will, but wished to make one change to the disposition of her property. Specifically, she wanted to convey the residence and acreage to petitioner. In accordance with that wish, a quitclaim deed was prepared conveying the subject property to petitioner, and the deed at issue was stored with the decedent's will. Despite offers to aid in estate planning by respondent's representation after the execution of the deed,[2] the decedent did not alter her will or destroy the

[1] We note that summary disposition is generally inappropriate when motive and intent are at issue or where the credibility of a witness is crucial. *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005). However, respondent does not challenge the credibility of the Noe affidavit. Moreover, when statutory language is unambiguous and no reasonable person could differ with respect to application of the plain language to undisputed material facts, the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10). *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1990).

[2] Respondent contends that the deed had to be delivered to be valid, does not reflect testamentary disposition, and the failure to deliver may reflect that the decedent was persuaded by respondent's letter regarding estate planning. The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, was intended to modernize probate practice by "simplifying and clarifying the law concerning decedents affairs and by creating a more efficient probate system." *In re Estate of Leete*, ___ Mich App ___; ___ NW2d ___ (2010). The EPIC applies to a governing instrument executed by a decedent dying after April 1, 2000, that does not impair an

deed. Accordingly, the probate court did not err in granting petitioner's motion for summary disposition.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause

accrued right, and a governing instrument is defined to include both a will and a deed. *Id*. The plain language of MCL 700.2503 refers to documents and does not address the validity or content of the document. Rather, the key issue involves the intent of the decedent. Accordingly, respondent's argument is without merit.