

STATE OF MICHIGAN
COURT OF APPEALS

In re MILDRED WENDT REVOCABLE TRUST.

RICHARD WENDT, as the Successor Trustee of
the MILDRED WENDT REVOCABLE TRUST,

UNPUBLISHED
July 21, 2011

Appellee,

v

MICHAEL BISSETT, as the Personal
Representative of the Estate of JEAN WENDT,

No. 298391
St. Clair Probate Court
LC No. 2009-000300-TV

Appellant.

Before: M. J. KELLY, P.J., and O'CONNELL and SERVITTO, JJ.

PER CURIAM.

Michael Bisset, as personal representative of the Estate of Jean Wendt (petitioner), appeals as of right the probate court's denying petitioner a portion of the proceeds from the sale of a parcel of real property known as the Kellys Farm. Because we conclude that there were no errors warranting relief, we affirm.

Patricia Mildred Wendt executed a revocable trust agreement in October 1995. She amended the trust several times before her death in February 2008. In the final version of the trust, Patricia Wendt gave Richard Wendt two farms, but provided that, should he sell the farms, he must pay Jean Wendt a portion of the proceeds: "[The Duck and Kellys Farm] to my grandson **Richard Wendt**, provided, however, that in the event Richard Wendt shall sell the farms he shall pay over and deliver one half of the net proceeds thereof to **Jean Wendt**."

Patricia Wendt died in February 2008, and Jean Wendt died in December of that same year. In March 2009, Richard sold the Kellys Farm on land contract for \$217,500.

In June 2009, petitioner filed a petition for supervision of the trust agreement. Petitioner alleged that it was entitled to one-half of the proceeds Richard Wendt received from the sale of the Kellys Farm. Richard Wendt, as successor trustee of the Mildred Wendt trust (respondent), responded that petitioner's interest was extinguished at Jean Wendt's death, which was before the sale took place and her heirs were otherwise not entitled to a share of the proceeds.

Petitioner moved for summary disposition under MCR 2.116(C)(10). The trial court determined that the trust agreement contained a “patent ambiguity” regarding “whether Jean’s interest is personal to her (i.e., it would terminate on her death) or whether it was intended to pass to her descendants.” For that reason, it denied the motion. Thereafter, it held an evidentiary hearing in order to hear evidence concerning whether Patricia Wendt intended Jean Wendt’s interest to be personal. After receiving testimony, the trial court found that it was Patricia Wendt’s intent that the interest be personal to Jean Wendt. For that reason, it concluded that petitioner was not entitled to any proceeds from the sale of the Kellys Farm.

On appeal petitioner sole argument concerns whether the trial court erred when it determined that the language of the trust was ambiguous. Petitioner argues that the language in the trust is plain and unambiguous on its face, and that the unambiguous language clearly provides that Jean Wendt’s interest would pass to her heirs upon her death.¹

This Court reviews de novo, as a question of law, the proper interpretation of a trust. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005).

An ambiguity can be either patent or latent. *In re Woodworth Trust*, 196 Mich App 326, 327-328; 492 NW2d 818 (1992). “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.” *Id.* “A latent ambiguity exists where the language and its meaning [are] clear, but some extrinsic fact creates the possibility of more than one meaning.” *Id.* at 328.

The probate court correctly determined that the trust provision at issue here was ambiguous.² As the trial court noted, what is unclear from the language is whether Patricia Wendt intended Jean Wendt’s right to the proceeds to be personal to Jean—that is, to terminate after Jean’s death—or whether she intended Jean’s right to pass to her heirs. If Patricia Wendt provided in the trust that the proceeds were to go to Jean Wendt *and her heirs*, it would be clear that Patricia intended the interest to pass to Jean’s heirs. Likewise, had Patricia Wendt provided that the proceeds should go to Jean Wendt *so long as she is living*, it would be clear that Patricia

¹ Petitioner does not argue that the trial court clearly erred when it found that Patricia Wendt intended the bequest to be personal to Jean Wendt.

² While the trust language mirrors somewhat a grant of a future interest in the farm to Jean Wendt, which would require us to ascertain what type of interest she received and whether it was devisable, this is not actually the case. Jean Wendt’s interest in one-half of the proceeds from a potential, future sale of the farm does not constitute a future interest in real property, because there is no circumstance where Jean could ever come into possession of the property. The trust provides that the property must be sold in order for Jean to take anything. Accordingly, the question here does not involve a right in real property, but instead the determination of whether the settlor intended for Jean Wendt’s heirs to receive money from any future sale of the property in the event Jean died before the sale.

intended the interest to be personal to Jean. Because the trust is silent as to whether the bequest is personal, it is susceptible to either construction and, therefore, is patently ambiguous. See *In re Woodworth Trust*, 196 Mich App at 327-328.

We also do not agree that *In re Jamieson's Estate*, 374 Mich 231; 132 NW2d 1 (1965), is applicable here. Unlike the trust language in *Jamieson*, the bequest at issue in this case contains no express language to indicate that Jean Wendt's share was to go to her heirs if Jean died. In other words, there are no specifically delineated secondary remaindermen. Given that petitioner does not claim error with the trial court's factual determination regarding Patricia Wendt's intent, and the evidence presented supports the probate court's finding, we affirm its determination concerning the proceeds from the sale of Kellys Farm.

Affirmed. As the prevailing party, respondent may tax its costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto