STATE OF MINNESOTA

IN SUPREME COURT

A21-0319

Court of Appeals | Hudson, J.

In re the Estate of: Hazel E. Bach, Deceased.

Filed: September 7, 2022
Office of Appellate Courts

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S Y L L A B U S

When a devise of land is made conditioned upon the payment of money to a third party, that instruction creates an equitable lien upon the land and makes the recipient of the land personally liable to the third party for the payment, if the recipient accepts the devise. Such an instruction does not create a condition that may cause the devise to fail.

Reversed.

O P I N I O N

HUDSON, Justice.

This appeal asks us to resolve a family dispute among four siblings—Sylvia Perron, Lee Johnson, Neal Johnson, and Thomas Johnson—over the ownership of 200 acres of farmland.[1] This dispute stems from the last will and testament of their aunt, Hazel E. Bach, which devised the farmland to Neal and Thomas, "conditioned upon" payment of $200,000 to Sylvia within 120 days of Bach's death. On advice of the estate's attorney, Neal, Thomas, and Sylvia came to an agreement that the $200,000 would be paid over 5 years, secured by a promissory note and a mortgage. Sylvia, acting as co-personal representative of the estate, sought to transfer title to the farmland to Neal and Thomas based on this agreement. Lee, acting as the other co-personal representative, refused to transfer title. Lee argued that the farmland should be distributed under the residuary clause of the will.

After a trial, the district court ordered that the farmland be distributed to Neal and Thomas. The district court relied upon both the plain language of the will and a common-law rule that when real estate is devised with instructions to pay a third party, the devisee takes the land subject to a lien and assumes personal liability for the payment. The court of appeals reversed and remanded with instructions that the district court order the distribution of the farmland under the residuary clause. The court of appeals reasoned that the plain language of the will created a condition precedent that was not satisfied, and

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[1] Because Neal, Thomas, and Lee share the last name Johnson, this opinion refers to the four siblings by their first names.

therefore the devise to Neal and Thomas failed. Because the court of appeals failed to apply well-settled common law, we reverse.

FACTS

Bach died on September 28, 2018.[2] Bach's will named Sylvia and Lee as co-personal representatives of Bach's estate. Both Sylvia and Lee accepted the appointment as co-personal representatives.

At the time of her death, Bach owned a 208-acre farm in Nicollet County. Neal and Thomas had been farming this land before Bach's death. Article III of Bach's will provides for the distribution of the farm. The first clause devises 8 acres with a building site to Lee. The second clause contains a devise of the remaining 200 acres of farmland to Neal and Thomas:

> B. The remaining approximate two hundred (200) acres of land I do hereby grant to my nephews, NEAL C. JOHNSON and THOMAS D. JOHNSON, in equal shares as tenants in common. Provided, nevertheless, if either NEAL C. JOHNSON or THOMAS D. JOHNSON should predecease me, the deceased's share I do grant to the survivor. *This bequest is conditioned upon NEAL C. JOHNSON and THOMAS D. JOHNSON, or the survivor of the two, making the following payments within one hundred twenty (120) days of my death*:
>
> 1. The sum of $200,000.00 to my niece, SYLVIA E. PERRON, . . . but only if she survives me.
>
> 2. The sum of $1,000.00 to my husband's niece, LEANN HERBST BUENDORF, but only if she survives me.
>
> 3. The sum of $1,000.00 to my husband's nephew, JOHN HERBST, but only if he survives me.

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[2] On appeal there is no dispute that Bach died on September 28, 2018. At times, however, the record states that Bach died on September 29, 2018. Bach's obituary also states that she died on September 29, 2018.

> If neither NEAL C. JOHNSON nor THOMAS D. JOHNSON survive me, then such real estate will become a part of the residue of my estate distributed under Article IV below, and the residue of my estate is to be used to first pay the cash amounts shown above to SYLVIA E. PERRON, LEANN HERBST BUENDORF and JOHN HERBST, if living.

(Emphasis added.) Article IV devises "the rest, residue and remainder of" Bach's estate, "in equal shares," to 11 "blood related nieces and nephews" (including Sylvia, Lee, Neal, and Thomas).

Upon learning of the devise, Neal and Thomas stated that they would accept the 200 acres from the estate. On January 18, 2019, Neal made a $1,000 payment to Buendorf and a $1,000 payment to Herbst as required by the will. There is no dispute that these two payments were timely made within the 120-day period.

The dispute here concerns the payment to Sylvia. Sylvia did not want her brothers to have to borrow money from a bank, and she did not need the entire $200,000 at once. The estate's attorney suggested that Sylvia, Neal, and Thomas come to an arrangement to make payments in installments. On January 18, 2019, the estate's attorney sent Sylvia a $50,000 check signed by Neal along with a cover letter. The cover letter states that the $50,000 "represents the agreed upon down payment on the $200,000.00 bequest" and that there was an agreement in principle that Neal and Thomas would pay the remaining $150,000 over 5 years, at a fixed 4 percent interest rate and secured by a mortgage on the farmland. Lee was not informed of this arrangement.

January 26, 2019, marked 120 days from Bach's death. In early March 2019, Neal and Thomas signed a promissory note, agreeing to pay Sylvia $150,000 in five annual

payments at a 4 percent interest rate. The promissory note was secured by a mortgage signed the same day.

Upon learning that Neal and Thomas had not paid Sylvia the entire $200,000 within 120 days of Bach's death, Lee refused to sign the deed transferring the 200 acres. Instead, Lee requested that the land be distributed according to the residuary clause in Bach's will.

Sylvia asked the district court to resolve the dispute over the farmland. After a trial, the district court ordered that the 200 acres be distributed to Neal and Thomas. In reaching that result, the district court relied on our longstanding precedent on conditional devises—specifically, our holding from over 100 years ago that "[t]he law is well settled that where real estate is devised to a person with direction that he pay . . . a third party the devisee takes the land charged with the payment of the legacy, and also that by accepting the devise he assumes a personal liability to pay the same." *In re Miller's Est.*, 160 N.W. 1025, 1026 (Minn. 1917). The district court also determined that "the 120-day requirement" in Bach's will "was likely to ensure that the Will's arrangements were complete within a reasonable time"—not that the devise should "fail in the event that all steps necessary to paying [Sylvia] were not complete as of 120 days after her death." The district court noted that the will did not specifically provide for the farmland to "become[] part of the residue of the estate in the event that Tom and Neal . . . did not make the payments . . . within the 120 days"; rather, the will contemplated that the farmland would become part of the residue of the estate only if neither Neal nor Thomas survived Bach. The district court therefore ordered the 200 acres be distributed to Neal and Thomas and did not treat the obligation to make the payments as a condition that could cause the devise to fail if not fulfilled.

The court of appeals reversed and remanded. *In re Est. of Bach*, No. A21-0319, 2021 WL 5049466, at *1, *6 (Minn. App. Nov. 1, 2021). The court of appeals concluded that the plain language of the will requiring Neal and Thomas to make the payments within 120 days of Bach's death functioned as a condition that they needed to fulfill to receive the 200 acres. *Id.* at *2–3. The court of appeals held that the condition was not met and so the land should be distributed under the residuary clause. *Id.* at *5–6. The court of appeals remanded to the district court for distribution of the 200 acres under the residuary clause of the will. *Id.* at *6.

We granted Neal and Thomas's petition for further review on whether the rule articulated in *In re Miller's Estate* controls and, if it does not, they made "payment" of $200,000 to Sylvia within 120 days of Bach's death.

ANALYSIS

This appeal requires us to determine whether a devise of land in a will that is "conditioned upon" payment of money to a third party vests upon communication of acceptance by the devisee or upon payment to the third party.[3] The resolution of this legal question determines whether Neal and Thomas receive the 200 acres of farmland—because they accepted the farmland—or whether the farmland must be split among 11 of Bach's nieces and nephews under the residuary clause of the will if we conclude that payment was not made to Sylvia within 120 days of Bach's death.

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[3] "Devise" means "a testamentary disposition of real or personal property" when used as a noun. Minn. Stat. § 524.1-201(12) (2020). Here, the devise is the 200 acres of farmland. A "devisee" is "any person designated in a will to receive a devise." *Id.* § 524.1-201 (13). Here, the devisees are Neal and Thomas.

The interpretation of Bach's will presents legal questions that we review de novo. *See In re Pamela Andreas Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012). The parties' dispute focuses on the common-law rules that govern the interpretation of a will. When interpreting a will, our "cardinal rule of construction . . . is that the intention of the testator, as expressed in the language used in the will, shall prevail, if it is not inconsistent with the rules of law."[4] *In re Tr. Created by Will of Tuthill*, 76 N.W.2d 499, 502 (Minn. 1956) (citation omitted) (internal quotation mark omitted). We gather intent "from everything contained within the four corners of the will, read in the light of the surrounding circumstances," and do not focus on isolated words. *Id.*; *see also In re Trs. Created by Will of Hartman*, 347 N.W.2d 480, 483 (Minn. 1984) (explaining that "the court is to put itself in the position of the testator at the time the will was executed"). Although each will is unique, we interpret the provisions of a will in accordance with our precedent, "unless it is established by a preponderance of evidence that a testator intended some other meaning." *In re Tr. Created by Will of Patrick*, 106 N.W.2d 888, 890 (Minn. 1960).

Bach's will devises the 200 acres of farmland to Neal and Thomas, "conditioned upon" them paying $200,000 to Sylvia within 120 days of Bach's death. Our precedent is clear about how we interpret this language. Over 100 years ago, we announced that "[t]he law is well settled that where real estate is devised to a person with direction that he pay . . . a third party the devisee takes the land charged with the payment . . . and also that by accepting the devise he assumes a personal liability to pay the same." *In re Miller's*

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[4] A "testator" is "[s]omeone who has made a will." *Testator*, *Black's Law Dictionary* (11th ed. 2019). Here, the testator is Bach.

Est., 160 N.W. at 1025. We have clarified that this rule applies when a devise is made "subject" to such a payment, *Lundquist v. First Evangelical Lutheran Church*, 259 N.W. 9, 10 (Minn. 1935), and also when a devise is "*conditioned upon* the payment of money to a third person," *Quarnstrom v. Murphy*, 281 N.W.2d 847, 848 (Minn. 1979) (emphasis added).[5]

The rule articulated in *In re Miller's Estate*, and reaffirmed in *Lundquist* and *Quarnstrom*, remains good law: when a devise of land is made conditioned upon the payment of money to a third party, that instruction creates an equitable lien upon the land and makes the recipient of the land personally liable to the third party for the payment (if the recipient accepts the devise); it does not create a condition that may cause the devise to fail. This rule is also consistent with the "prevailing rule" in other jurisdictions "that a will

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5 The distinction drawn by the court of appeals and argued for by Lee between "independent conditions" (allegedly at issue in *In re Miller's Estate*, *Lundquist*, and *Quarnstrom*) and "dependent conditions" (allegedly at issue here) is not compelling. The court of appeals cited no case law supporting this distinction and instead relied on what it described as the "markedly different" language in Bach's will compared to these earlier cases. *See In re Est. of Bach*, 2021 WL 5049466, at *4. Bach's will stated that the devise of the farmland to Neal and Thomas was "*conditioned upon* . . . making . . . payments." (Emphasis added.) The devise in *Lundquist* was made "*subject* . . . *to* the payment" by the devisees of $2,000 to a third party. 259 N.W. at 10 (emphasis added). And the will in *Quarnstrom* stated that the devise was made "*under the conditions* that he care for" the testator's widow out of the estate. 281 N.W.2d at 848 (emphasis added). All three operative phrases are considered "conditional" language. *See* Donald Paul Duffala, Annotation, *Testamentary Direction to Devisee to Pay Stated Sum of Money to Third Party as Creating Charge or Condition or as Imposing Personal Liability on Devisee for Nonpayment*, 54 A.L.R.4th 1098, 1104, § 2 (2020). Admittedly, the language used in *In re Miller's Estate* was not conditional ("Said sums of money have to be paid by [another devisee]."), but we concluded that "[i]t matters little whether the devise and bequest . . . be considered conditional or not." 160 N.W. at 1025–26. Because there is no meaningful distinction between the language in Bach's will and the language employed in *In re Miller's Estate* and its progeny, we decline to adopt the reasoning of the court of appeals.

provision which directs a devisee to pay a sum of money will be construed, if possible, as merely a charge upon the devised estate securing the payment and not as a condition the breach of which would cause a forfeiture of the estate." *Hitz v. Est. of Hitz*, 319 N.W.2d 137, 140 (N.D. 1982) (citing cases); *see also* Donald Paul Duffala, Annotation, *Testamentary Direction to Devisee to Pay Stated Sum of Money to Third Party as Creating Charge or Condition or as Imposing Personal Liability on Devisee for Nonpayment*, 54 A.L.R.4th 1098 (2020) (compiling and describing an extensive list of cases). And this rule gives effect to Minnesota's policy of favoring the vesting of estates, *In re Tr. Created by Will of Kischel*, 299 N.W.2d 920, 922–23 (Minn. 1980), and "avoid[ing] forfeitures when reasonably possible to do so," *Capistrant v. Lifetouch Nat'l Sch. Studios, Inc.*, 916 N.W.2d 23, 28 (Minn. 2018).

Bach could of course have written around the nonforfeiture rule. After all, our primary goal in interpreting a will is to discern the testator's intent. *See In re Tr. Created by Will of Tuthill*, 76 N.W.2d at 502. But to do so Bach would have needed to provide an "express provision for forfeiture" upon failure of the payment condition. William J. Bowe & Douglas H. Parker, 5 *Page on the Law of Wills* § 44.2, at 492 (2022) (citing cases); *see, e.g.*, *Overturff v. Miller*, 71 N.W.2d 913, 919–20 (Iowa 1955) (holding that the absence of an express forfeiture provision "is convincing indication that the" testator intended for the payments to be "charges or liens upon the land, and not conditions precedent to the vesting of the estate").

Here there is no provision expressly providing for forfeiture of the 200 acres of farmland if Neal and Thomas failed to pay Sylvia the full $200,000 within 120 days of

Bach's death. Instead, the will specifies that the 200 acres will be distributed to certain nieces and nephews under the residuary clause only if neither Neal nor Thomas survived her. We therefore conclude that Bach did not intend for the 200 acres to be distributed under the residuary clause if Neal and Thomas did not pay Sylvia within 120 days. Accordingly, Neal and Thomas are entitled to the 200 acres under Bach's will.

Lee's arguments to the contrary are unavailing. Lee claims that the plain language of the will creates a condition precedent. We have recognized that a devise may contain conditions precedent that must be fulfilled before a devise vests. *See, e.g.*, *In re Trusteeship under Will of Schmidt*, 97 N.W.2d 441, 451 (Minn. 1959) ("A beneficiary must comply with the conditions precedent prescribed by the trust instrument to acquire any rights under it." (quoting 19 Dunnell Minn. Digest, *Conditions Precedent* § 9888b (3d ed. 1956))). But none of the decisions cited by Lee involve a devise of land conditioned upon payment of money to a third party. Instead, these cases generally address whether a potential devisee must survive until some point in time before their interest in a testamentary trust vests. *See In re Trusteeship under Will of Schmidt*, 97 N.W.2d at 445; *First & Am. Nat'l Bank of Duluth v. Higgins*, 293 N.W. 585, 589 (Minn. 1940). *But see Lake Co. v. Molan*, 131 N.W.2d 734, 735 (Minn. 1964) (addressing a contract provision governing a real estate commission); *Hobart v. Kehoe*, 126 N.W. 66, 66–67 (Minn. 1910) (addressing a contract provision governing the sale of land); *In re Rong's Est.*, 123 N.W. 471, 472 (Minn. 1909) (addressing whether a will was "void because it attempted to create a trust which [was] invalid, and also attempted illegally to suspend the power of alienation"). And the general rule that we reaffirm here—that a devise of land conditioned upon payment of money to a

third party creates an equitable lien on the land and makes the devisee personally liable for payment—does not preclude the creation of a condition precedent tied to the payment of a third party. Rather, to create a condition precedent in this context, the language of the will must explicitly provide for forfeiture of the devise in the event of nonpayment.[6]

CONCLUSION

For the foregoing reasons, we reverse the court of appeals.

Reversed.

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[6] We do not need to consider the second question on appeal—whether Neal and Thomas made "payment" of $200,000 to Sylvia within 120 days of Bach's death—because we conclude that Article III of Bach's will did not create a condition precedent that could cause the devise of farmland to Neal and Thomas to fail if payment was not timely made.