

DA 19-0072

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 229

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IN THE MATTER OF THE  
HAROLD ANKRUM TRUST ADMINISTRATION

and

IN THE MATTER OF THE  
ESTATE OF DELLA L. ANKRUM

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APPEAL FROM: District Court of the Thirteenth Judicial District,  
In and For the County of Yellowstone, Cause No. DV 17-1868  
Honorable Michael G. Moses, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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For Appellee:

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Submitted on Briefs: August 14, 2019

Decided: September 24, 2019

Filed:

  
Clerk

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Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Stewart Ankrum appeals the order of the Thirteenth Judicial District Court, Yellowstone County, distributing assets from the Estate of Della L. Ankrum (the “Estate”) and the Harold Ankrum Trust (the “Trust”) to Della and Harold’s three children.

¶2 Stewart raises the following issue on appeal:

*Whether the District Court correctly interpreted Della Ankrum’s handwritten codicil as a wish and not a specific devise of her stock in Ankrum Trucking to Stewart.*

¶3 As we affirm on this issue, ¶3 we do not need to address Linda Hertoghe and Daniel Ankrum’s cross-appeal as to whether the District Court erred in ruling the trustee of the Harold Ankrum Trust had no discretion to make disproportionate distributions of the trust assets so long as the beneficiaries received an equally valued share of the trust.

#### **PROCEDURAL AND FACTUAL BACKGROUND**

¶4 Harold and Della were married and had three children together: Stewart Ankrum, Linda Hertoghe, and Daniel Ankrum. Harold passed away November 21, 1993. Della passed away September 19, 2016. Before Harold’s death, Harold and Della executed identical wills, providing that the assets of the first spouse to die would go into a trust for the benefit of the surviving spouse during his or her lifetime with the assets distributed equally between their three children upon the death of the surviving spouse. Because Della survived Harold, his assets were distributed into the Trust upon his death. The net income of the Trust was payable to Della during her lifetime and upon her death “[a]ll remaining trust property shall be distributed in separate, equal share to [his] children.” Harold’s Will

appoints Linda's husband, Calvin Hertoghe, as trustee. Under the terms of Della's Will because she survived Harold, Della "devise[d] the remainder of [her] estate in separate, equal shares to [her] children." Della's Will appoints Calvin as the personal representative of the Estate.

¶5 Harold started Ankrum Trucking in 1967 and both Harold and Della worked to create, grow, and sustain the company during their lifetimes. Ankrum Trucking was incorporated in 1977 and is a closely held company. Della was proud of her life's work creating the company and wished for the company to continue operating into the future. While alive, Harold and Della gifted equal number of shares of the company to their three children. At the time of Della's death, the Trust owned 3,726 shares, Della owned 2,838 shares, and their three children owned 1,032 shares each.

¶6 Since 1992, Harold and Della's three children have served as directors for the company. Linda is the President of the company. Stewart is the Vice President and manages the day-to-day operations. Daniel is the Secretary and Treasurer. Both Daniel and Stewart have also worked for Ankrum Trucking as employees, but Daniel stopped working for the company in 2010. Stewart, his wife, and his two sons continue to work for the company. Testimony at trial established Stewart is the only one of Della and Harold's children willing to continue the business.

¶7 Stewart testified he offered to buy Della's shares of Ankrum Trucking in 2013, but she declined at that time. In 2015, Della asked Stewart if he was still interested in her

shares and he told her he was. Della and Stewart did not further discuss transferring Della's shares to Stewart.

¶8 After Della's death, Calvin found a handwritten codicil to Della's Will in a cupboard in her home. The codicil was dated March 9, 2016. Titled "addition to my will," it devised \$4,000 to each of her five great-grandchildren. In a separate paragraph, below her signature she further hand wrote

Also Stewart Ankrum—son  
If at all possible should  
get control of Ankrum Trucking.  
Have full ownership.

The parties do not dispute the validity of the codicil and the devise of money to each great-grandchild. If Stewart received all of the shares of Ankrum Trucking from the Estate, he would own about forty percent of the company. With one-third of the shares from the Trust, he would own over fifty percent of the company.

¶9 Calvin initiated informal probate of the Will and handwritten codicil in October 2016. After disagreement arose between the siblings about the distribution of the assets from the Trust and the Estate, Calvin filed a petition seeking declaratory judgment regarding the interpretation of the codicil and whether the codicil was a specific devise of the Ankrum Trucking shares in the Estate to Stewart. He further filed a verified petition to approve the distribution of the Trust and moved to consolidate those proceedings with the Estate proceedings. In the petition for approval of distribution of the Trust, Calvin sought approval to distribute more Ankrum Trucking shares from the Trust to Stewart and more cash and other assets to Linda and Daniel if the codicil was a specific devise of the shares

in the Estate to Stewart. If the codicil was not a specific devise to Stewart, he proposed distributing the Trust assets in kind, in equal shares. He reasoned that if there was a majority shareholder, the shares of the company would be less valuable to minority shareholders. The District Court consolidated the proceedings. It held a hearing on November 8, 2018, on the petitions for declaratory judgment regarding the codicil and distribution of the Trust.

¶10 The District Court issued its Findings of Fact, Conclusions of Law and Order on December 19, 2018. The District Court first concluded the Trust is a separate instrument from Della's Will and creates a separate devise of property. The court ordered the trustee to divide and distribute the Trust assets in kind to the beneficiaries, in equal shares. Turning to the Estate, the District Court determined the language in the codicil was insufficient to indicate that Della's intent was to make a specific devise of Ankrum Trucking shares to Stewart. It concluded the language was a wish on the part of Della and not a testamentary transfer and ordered the personal representative to distribute the residuary of the Estate in kind to each of the children, in equal shares.

#### **STANDARD OF REVIEW**

¶11 The judicial interpretation and construction of a will is a question of law. *Snyder v. Snyder (Estate of Snyder)*, 2000 MT 113, ¶ 8, 299 Mont. 421, 2 P.3d 238. We review a district court's conclusions of law to determine whether its conclusion is correct. *Estate of Snyder*, ¶ 8.

## DISCUSSION

¶12 *Whether the District Court correctly interpreted Della Ankrum's handwritten codicil as a wish and not a specific devise of her stock in Ankrum Trucking to Stewart.*

¶13 Stewart maintains the codicil is a specific devise of all shares of Ankrum Trucking in the Estate to him, and he and his siblings would each get equal shares of the remaining Estate assets under the residuary provisions of the Will. Linda and Dan maintain the codicil expressed a desire or wish and does not alter Della's clear intent to provide "separate, equal shares" of the Estate to her three children.

¶14 When interpreting a will, a court determines the intention of the testator, according to the meaning of the words used, "deduced from a consideration of the whole instrument and a comparison of its various parts in the light of the situation and circumstances which surrounded the testator when the instrument was framed." *Estate of Snyder*, ¶ 10 (quoting *In re Estate of Bolinger*, 284 Mont. 114, 121, 943 P.2d 981, 985 (1997)). "The testator's intent is gleaned not from a single word or phrase but from a sympathetic reading of the will in its entirety." *Estate of Snyder*, ¶ 10 (citing *Will of Ackert*, 398 N.Y.S.2d 97, 98 (N.Y. Surr. Ct. 1977)). "The primary inquiry when construing an expression is whether the testator intended only 'to advise or influence' the devisee's discretion, or to 'control or direct the disposition intended.'" *In re Charles M. Bair Family Tr.*, 2008 MT 144, ¶ 35, 343 Mont. 138, 183 P.3d 61 (quoting *Estate of Bolinger*, 284 Mont. at 123, 943 P.2d at 986). "Precatory language expresses merely a wish or a recommendation and generally creates, at most, an ethical obligation, rather than a legal obligation." *In re Charles M. Bair Family Tr.*, ¶ 35.

¶15 Unlike the Will itself, the contested language of the codicil lacks direct terms of bequest. Della’s Will states: “If my husband fails to survive me, I devise the remainder of my estate in separate, equal shares to my children.” In contrast, the codicil contains qualifying language: “If at all possible” Stewart “should get control of Ankrum Trucking.” This qualifying language is precatory, expressing a desire rather than a command. The codicil language does not “provide[] a clear directive.” *In re Charles M. Bair Family Tr.*, ¶ 36. Further, Della’s codicil concludes that Stewart should “[h]ave full ownership.” But given the division of the company stock between the Estate, the Trust, and the three children, it is impossible for Stewart to get full ownership of Ankrum Trucking with a bequest of the stock in Della’s estate alone. For Stewart to have “full ownership” would require transfers from Linda and Daniel. The District Court correctly interpreted the language of the codicil as precatory, expressing a desire or a wish, rather than a specific devise of the Ankrum Trucking shares to Stewart.

¶16 Evidence Della wished Ankrum Trucking to continue operating, and Stewart was the only child willing to do so, did not overcome the intent expressed in the words of her Will that Della intended to treat her children equally and evidence she had carefully treated each child equally during her life. Based on the words Della used and in consideration of the document as a whole and the surrounding circumstances, the District Court correctly interpreted Della’s codicil as lacking in testamentary intent to specifically devise her shares of Ankrum Trucking to Stewart.

## CONCLUSION

¶17 The District Court's Findings of Fact, Conclusions of Law, and Order is affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR

/S/ BETH BAKER

/S/ JIM RICE