

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Quintina Flores, Deceased
O.C. No. 67 DE of 2017
Control No. 191887

OPINION

This case involves a petition to sell real estate occupied by a child of Quintina Flores (“Decedent”). The Decedent’s will authorizes her personal representative, Olga Colon-Lajara (“Petitioner”), to provide any of the Decedent’s children shelter in the property located at 414 E. Somerset Street, Philadelphia, Pennsylvania 19134 (the “Somerset Property”), so long as the child has no other place to live. The Court is asked to determine whether the Decedent’s son, Miguel Roque (“Respondent”), in fact has another place to live aside from the Somerset Property. For the reasons below, the Court finds the Respondent does have somewhere else to live. Thus, the Court ejects the Respondent from the Somerset Property, and the Petitioner is free to sell it.

Background

The Decedent died testate on January 1, 2006, and her will reads:

I QUINTINA FLORES AKA (TINA) SOLO OWNER OF THE PROPERTY OF 414 E.SOMERSET STREET. WILL LIKE TO INFORM THAT WHEN I NO LONGER LIVE IN THIS WORLD(DIED). MY SMALLEST DAUGHTER OLGA COLON-LAJARA. BE THE PRINCIPAL OWNER, WITH THE CONDITION IF SHE SEE ONE OF MY OTHER CHILDREN WITH NO PLACE TO LIVE THAT SHE GIVE THEM SHELTER IN THE PROPERTY WITH NO OTHER COMPANING ONLY THEMSELVES . MY WHICHES IS THAT THE PROPERTY NEVER BE SOLD BUT IF FOR ANY REASON THE PROPERTY NEED BE SOLD ALL MY CHILDREN HAVE TO SIGN IN ORDER TO BE SOLD THIS ARE THE NAME OF MY CHILD. RAFAEL ROQUE CARMEN ROQUE AIDA ROQUE MIQUEL ROQUE MARIANA COLON, MARIA COLON, OLGA COLON(LAJARA).
OWNER . QUINTINA FLORES (TINA)

Ex. P-1 (spelling, spacing, punctuation, and grammar in original). The will was admitted to probate on January 13, 2017, and letters of administration c.t.a. were issued to the Petitioner.

On November 8, 2017, the Petitioner filed a petition for ejectment. The Petitioner requested the Court eject the Respondent, his wife, and all other occupants from the Somerset Property. The Petitioner averred the Respondent had no right to possess the Somerset Property because, according to the Decedent's will, he only live at the Somerset Property alone.

On December 4, 2017, the Court granted the petition for ejectment and ordering all occupants to vacate the Somerset Property.

On December 8, 2017, the Respondent filed a motion for reconsideration with an answer with new matter attached thereto. The Respondent's answer denied the Petitioner's claims, arguing he was allowed to occupy the Somerset Property since he had no other place to live.

On December 13, 2017, the Court granted the Respondent's motion for reconsideration, staying the December 4 decree, and ordering the Petitioner to file a reply to the Respondent's answer with new matter. The Petitioner filed her reply on December 26, 2017.

On January 23, 2018, the Court issued a decree vacating the Court's earlier December 13 decree as to the Respondent; otherwise, the decree remained in full effect against all other occupants of the Somerset Property.

On April 15, 2019, the Petitioner filed a petition to sell real estate and averred, among other things, the Respondent did not live at the Somerset Property. The Petitioner requested the Court appoint a master to oversee the sale of the Somerset Property.

On May 22, 2019, the Court issued a rule directing the Respondent to show cause why the Somerset Property should not be sold. Several continuances later, the hearing was held on January 29, 2020.

At the hearing, the Petitioner and Rogelio Guerra, a private investigator, testified on the Petitioner's behalf, and the Respondent and his wife, Luz Flores Roque, testified on the Respondent's behalf. The Court also admitted into evidence several exhibits including the Decedent's will, Mr. Guerra's report, photographs, and utility bills.

On direct examination, the Petitioner testified the Respondent lives at 440 E. Clearfield Street with his wife, Mrs. Roque. N.T. 01/29/2020, at 20. The Petitioner stated she passes 440 E. Clearfield Street (the "Clearfield Property") on her way to and from work and has seen the Respondent entering and leaving the Clearfield Property. *Id.*; *see also id.* at 21 (stating the Respondent is "always" at the Clearfield Property); *id.* at 22 (stating the Respondent's burgundy Nissan is parked in front of the Clearfield Property whenever she passes by on her way to and from work). In order to prove the Respondent does not live at the Somerset Property and has somewhere else to live, the Petitioner hired a private investigator. *Id.* at 22, 24. The Petitioner was not cross-examined.

The Petitioner then called Mr. Guerra, the private investigator employed by the Petitioner. On direct examination, Mr. Guerra testified the Petitioner hired him to determine who lived at the Somerset Property and at the Clearfield Property. *Id.* at 29. Mr. Guerra stated that on one occasion the Respondent left the Clearfield Property at approximately 5:45a.m. *Id.*; *see also* Ex. P-2, at unnumbered 8 (stating the Respondent left the Clearfield Property at 5:51a.m.). While Mr. Guerra noted a burgundy Nissan parked at the Clearfield Property, he only ever observed the Respondent get into a Toyota Corolla which was also parked at the Clearfield Property. N.T. 01/29/2020, at 30-31; *see also* Ex. P-2, at unnumbered 8. Mr. Guerra was cross-examined briefly, then the Petitioner rested.

The Respondent testified next, stating he lives at the Somerset Property. N.T. 01/29/2020, at 39; *see also* Ex. D-1 (the Respondent's driver's license listing the Somerset Property as his address); Ex. D-2, at 1 (the Respondent's PECO bill listing the Somerset Property as his address); Ex. D-3, at 1 (the Respondent's PGW bill listing the Somerset Property as his address). The Respondent denied living at the Clearfield Property, but admitted his wife, three sons, and three grandchildren live there. N.T. 01/29/2020, at 39. Even if he wanted, the Respondent said he could not live with his family at the Clearfield Property as there is no space for him. *Id.*

On cross-examination, the Respondent stated he visits his wife sometimes, but not every day, and admitted he leaves his car in front of the Clearfield Property in order to deter vandalism. *Id.* at 44. The Respondent then stated he occasionally stays with his wife on weekends and that she cooks dinner for him every night. *Id.* at 46, 47.

Mrs. Roque testified last. On direct examination, Mrs. Roque said the Respondent does not live with her. *Id.* at 49, 50. While the Respondent sometimes visits and stays the night, Mrs. Roque stated the Respondent does not live with her at the Clearfield Property. *Id.* at 50. On cross-examination, Mrs. Roque testified to the following: she cooks Respondent dinner every night; the Respondent spends two or three nights a week at the Clearfield Property; and she does the Respondent's laundry once or twice a month. *Id.* at 51. After a short redirect, the Respondent rested.

Discussion

This Court has jurisdiction over the administration of decedents' estates. 20 Pa. C.S. § 711(1). Moreover, in a non-jury proceeding such as this, "the factfinder is free to believe all, part, or none of the evidence." *L. B. Foster Co. v. Charles Caracciolo Steel & Metal Yard*, 777

A.2d 1090, 1093 (Pa. Super. Ct. 2001). “Credibility determinations and consideration of conflicts in the evidence are within the purview of the trial court.” *John B. Conomos, Inc. v. Sun Co., Inc.*, 831 A.2d 696, 703 (Pa. Super. Ct. 2003).

Where, as here, the powers afforded a personal representative pursuant to a will are at issue, the testator’s intent controls the interpretation of the will. *In re Estate of Calder*, 21 A.2d 907, 910 (Pa. 1941); *see also In re Estate of Hirsh*, 5 A.2d 160, 163 (Pa. 1939) (“The ‘polestar’ long fixed for the guidance of courts in interpreting deeds of trust, as in interpreting wills, is the intention of the maker.”). A testator’s intent must be ascertained from the plain meaning of the words within the four corners of the will. *In re Estate of Zerbey*, 459 A.2d 1237, 1241 (Pa. Super. Ct. 1983). Individual clauses are not to be read in isolation but placed in their larger context. *Id.* Of course, where the will is ambiguous or contradictory, a court may determine the testator’s intent by looking to the distribution scheme as well as the facts and circumstances surrounding the will’s execution. *In re Estate of Jessup*, 276 A.2d 499, 502 (Pa. 1970).

Here, the will is unambiguous as it relates to the Decedent’s children occupying the Property. The will states the Petitioner must allow her siblings to live in the Property if they have “NO PLACE TO LIVE.” The Court detects neither latent nor patent ambiguities in this language. Based on the testimony and exhibits produced at the hearing, the Court finds the Respondent has another place to live—the Clearfield Property. The Respondent parks his cars in the vicinity of the Clearfield Property at all hours of the day and night. The Respondent has been seen leaving the Clearfield Property early in the morning on his way to work which corroborates Mrs. Roque’s testimony that the Respondent spends the night two or three times a week in addition to eating dinner there every night. Thus, the Respondent has another place to live, and Petitioner, pursuant to the terms of the will, need not let the Respondent live at the Property.

As for selling the Somerset Property, a decedent's personal representative is empowered to take possession of, preserve, and administer all of the decedent's assets, including real property. See 20 Pa. C.S. § 301(b) ("Legal title to all real estate of a decedent shall pass at his death to his heirs or devisees, *subject, however, to all the powers granted to the personal representative by this title and lawfully by the will and to all orders of the court.*" (emphasis added)); *id.* § 3311(a) ("The court may direct the personal representative to take possession of, administer and maintain real estate so occupied by an heir or a devisee if this is necessary to protect the rights of claimants or other parties. *Nothing in this section shall affect the personal representative's power to sell real estate occupied by an heir or devisee.*" (emphasis added)). Heirs and beneficiaries do not enjoy the same powers as a personal representative over a decedent's assets. As the Supreme Court of Pennsylvania observed:

[I]t would constitute an unwise precedent to permit an individual to retain possession of an asset of an estate when the personal representative is charged with the responsibility of possession and administering such asset, merely because that individual is, or may be, entitled to subsequently share in the distribution of the estate. Inherent dangers are self-evident.

In re Estate of Brose, 223 A.2d 661, 663 (Pa. 1966).

Devisees, however, occupy a slightly different space as the law requires joinder of the specific devisee when a personal representative seeks to sell specifically devised real property. 20 Pa. C.S. § 3351 ("Except as otherwise provided by the will, if any, the personal representative may sell, at public or private sale, . . . any real property not specifically devised, and with the joinder of the specific devisee real property specifically devised."). In the absence of joinder of the specific devisee, the Orphans' Court has to approve the sale of the specifically devised real property. *Maier v. Henning*, 578 A.2d 1279, 1282 n.4 (Pa. 1990).

Here, the plain language of the will states the Petitioner is to be the “PRINCIPAL OWNER” of the Somerset Property. At the same time, the will requires all of the Decedent’s seven children “TO SIGN IN ORDER [for the Somerset Property] TO BE SOLD” and lists their names. The ambiguity here is whether the Decedent specifically devised the Somerset Property only to the Petitioner, all seven of her children, or did not specifically devise the Somerset Property at all. The distinction is a meaningful one in light of Section 3351 requiring joinder of the specific devisee.

If the Petitioner is the sole devisee of the Somerset Property then she could sell the Somerset Property without court approval as her joinder in the sale would be implied. And if the Decedent did not specifically devise the Somerset Property to anyone, then no joinder of any kind is required and the Petitioner is free to sell the Somerset Property without court approval. If, on the other hand, the Decedent specifically devised the Somerset Property to all seven children, each child would have to join in the sale or the sale would require court approval.

Here, the Court finds the Decedent specifically devised the Somerset Property solely to the Petitioner. The Decedent named the Petitioner the “PRINCIPAL OWNER” of the Somerset Property. The Petitioner is the only child identified by the Decedent in connection with ownership of the Somerset Property. Thus, the Court interprets this language to mean the Petitioner is the sole specific devisee of the Somerset Property.

The latter part of the will bolsters the Court’s interpretation. Specifically, the requirement all seven children must agree to the sale of the Somerset Property is prefaced by an important caveat. The clause, in its entirety, reads: “MY WHICHES [sic] IS THAT THE PROPERTY NEVER BE SOLD BUT IF ANY REASON THE PROPERTY NEED TO BE SOLD ALL MY CHILDREN HAVE TO SIGN.” The Court understands the word “whiches” to

mean “wishes,” and a testator’s “wish” or “hope” or “desire” is generally considered precatory, not mandatory. *In re Estate of Lindsay*, 166 A. 848, 848–49 (Pa. 1933) (holding testator’s “wish” that trustee not sell certain stocks was precatory and not binding on the trustee); *In re Estate of Mumma*, 125 A.3d 1205, 1213 (Pa. Super. Ct. 2015) (holding testator’s “desire” that businesses remain in the family was “mere precatory (nonbinding) language—a wish instead of a mandate”); *In re Estate of Warner*, 570 A.2d 544, 548 (Pa. Super. Ct. 1990) (holding testator’s “belief” that real estate “should be retained as an investment” was precatory and did not mandate the retention of the real estate). *But see In re Estate of Pearson*, 275 A.2d 336, 339 (Pa. 1971) (holding testator’s “hope and prayer” that his estate be held in trust was not precatory language as it was followed by “an elaborate, albeit confusing, scheme of distribution imposing very definite duties on the trustee”). Thus, the Court interprets the Decedent’s wish her seven children all agree to the sale of the Somerset Property as precatory language. If anything, the Decedent meant to foster harmony among the Decedent’s children by asking them to work together. This polite hope falls short of a command and is unenforceable. And, given the rancor and dysfunction on display in this litigation, the unity the Decedent desired is light-years away from materializing.

Thus, the will specifically devises the Somerset Property to the Petitioner, and the Petitioner is free to sell the Somerset Property without the joinder of her siblings.¹

According to the Petitioner’s counsel, the Somerset Property must be sold to satisfy debts of the Estate, including inheritance taxes. N.T. 01/29/2020, at 14. The Somerset Property cannot be sold, however, so long as the Respondent either occupies the Somerset Property or prevents its sale in any way. Since the Respondent has another place to live, and in order to


¹ Although the Court finds the Decedent specifically devised the Somerset Property to the Petitioner, nothing can stop the Petitioner from distributing the proceeds of the sale of the Somerset Property among her siblings.

allow the proper administration of the Somerset Property, the Court ejects the Respondent from the Somerset Property.

Conclusion

Therefore, the Court finds the Respondent has another place to live, and the Petitioner is the specific devisee of the Somerset Property. The Respondent is hereby ejected from the Somerset Property, and the Petitioner is free to sell the Somerset Property pursuant to her powers as the Decedent's personal representative.

BY THE COURT:



JOHN W. HERRON, J.

Dated this 18th day of February 2020

Jon Taylor, Esquire
Lee Herman, Esquire