

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

**Probate Division
Stanley Mosk Dept. - 67,**

19STPB01623

In re: In re the Peter S. Bing GC-5 Trust

**July 16, 2019
1:30 PM**

Honorable Daniel Juarez, Judge

Corrina Ornelas, Judicial Assistant

NATURE OF PROCEEDINGS: Petition - Trust/Pursuant Prob Code Sec 17200 (Initial) filed on February 20, 2019 by William Stinehart, Jr.

The following parties are present for the aforementioned proceeding:

No appearances.

Out of the presence of the court reporter, the Court makes the following findings and orders:

The court heard this matter on June 26, 2019. The parties filed moving and opposing papers on the issue of whether this court should consider extrinsic evidence to interpret the Peter S. Bing GC Trusts, created for the benefit of the Settlor's future (at the time of its execution in 1980) grandchildren. The question is whether an ambiguity exists in the Trusts as to the designation of "grandchild." The court considered all moving and opposing papers and attachments thereto, and arguments at hearing.

The Trusts share essentially the same language, except that each is numbered one through six, one for each of Settlor's first six grandchildren. Section I of Trust GC-1, entitled "Trust Beneficiary," states in pertinent part, "The trust estate shall be held principally for the benefit of the first born grandchild of Peter S. Bing." Each Trust thereafter designates the second through sixth-born grandchild as the beneficiary of each trust respectively from Trusts GC-2 to GC-6.

Section V, Subsection A of each Trust, entitled "Other Provisions," states in pertinent part, "The words 'child,' 'children,' and 'issue' whenever used herein shall include legally adopted persons, whether adopted by Grantor or by Grantor's natural or adopted children."

Section III, entitled, "Powers of the Trustee" states in pertinent part: "The Trustee shall have the power to construe this Declaration of Trust, and any reasonable construction adopted after obtaining the advice of responsible legal counsel shall be binding on all persons claiming an interest in the trust estate as beneficiaries or otherwise."

The law that guides the interpretation of trusts such as these is plain and directive. The Legislature mandates that "[a]ll parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of an instrument is ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the instrument." (Prob. Code, § 21121.)

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Case law further guides this court with long-held principles of testamentary interpretation expressed by the reviewing courts of this state. "Although wills are to be construed in accordance with the testator's intent, it is the intent expressed by the words of the will itself which must be given effect rather than some undisclosed purpose or intent that may have existed in the mind of the testator." (In re Hill's Estate (1963) 214 Cal.App.2d 812, 816.) "In other words, a court must give effect to the language of the will and no intention should be attributed to a testator which cannot reasonably be drawn from the language of the document itself. (Id., Citations omitted.) It is to be presumed that a testator did not intend that which he might have said but did not say in the will. If the words of the will are clear and unambiguous, the testator's intention is to be derived solely therefrom." (Id., Citations omitted.)

"[I]f the court can ascertain the testator's intent from the words actually used in the instrument, the inquiry ends." (Trolan v. Trolan (2019) 31 Cal.App.5th 939, 949 [citing Estate of Newmark (1977) 67 Cal.App.3d 350, 355-356].) Where the terms of [the instrument] are free from ambiguity, the language used must be interpreted according to its ordinary meaning and legal import and the intention of the testator ascertained thereby. (Trolan v. Trolan, supra, 31 Cal.App.5th at 949 [citing Estate of Avila (1948) 85 Cal.App.2d 38, 39-40 (Brackets in original.)])

Trustee argued that because the term "grandchild" is not further defined, that term is ambiguous and susceptible to multiple meanings. In his attempt to construe the term "grandchild," Trustee consulted with and obtained the advice of legal counsel, as directed by the Trusts. Upon such advice and having construed the Trusts himself, Trustee believes "grandchild" means grandchild, but to the exclusion of non-marital grandchildren and adult adoptees. Pursuant to the Trusts' terms, Trustee argued further that this interpretation is final, conclusive, and binding on all Trust beneficiaries, and asks this court to approve his construction. Of relevance here are Settlor's biological grandchildren, beneficiaries Hurley and Kerkorian.

Another contingent beneficiary (Ellis) argues that where an ambiguity exists, as he and Trustee assert, that extrinsic evidence is allowable to help interpret the Trusts. Ellis claims that the Court should accept Trustee's construction, and that the court can confirm such construction by looking at extrinsic evidence, that includes, among other things, Settlor's current-day declarations explaining what he intended when he effectuated the Trusts in 1980 and Probate Code section 21115, subdivision (b), discussed further below.

There is no ambiguity in the Trusts' use of the term, "grandchild." For a latent ambiguity to exist, there would have to be "two or more persons or things exactly measuring up to the description and conditions" of the instrument "or where no person or thing exactly answers the declarations and descriptions of the instrument." (Estate of Donnellan (1912) 164 Cal. 14, 20). Even beyond the guidance provided by the early yet accurate Donnellan definition of latent ambiguity, the Trusts' use of the word "grandchild" offers no ambiguity otherwise unless one accepts Trustee's foisted definition that restricts, among others, grandchildren born out of wedlock to one of Settlor's children unless they lived with one of Settlor's children while a minor or as a regular member of the household. These restrictive, limiting, further definitions unreasonably distort the term's clear and plain use in the Trusts. The Trusts contain no conditions, limitations, qualifications, or restrictions on the term "grandchild." The term, as used in the Trusts, is not reasonably susceptible to any alternate meaning.

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The Trusts define "children" and "issue." The absence of a definition of "grandchild," where it is clear Settlor knew to define terms he wished to, leaves it clear to this court that "grandchild" is to carry its everyday meaning. Furthermore, the court takes note that Settlor took effort to define "child" and "issue" to include adopted individuals.

Trustee and Ellis point to Probate Code section 21115, subdivision (b), arguing that its relation definition parallels Trustee's proffered interpretation. That argument is inapposite. First and foremost, the lack of an ambiguity obviates the need to resort to this statutory provision. Second, if read, Probate Code section 21115, that must be read in whole (subdivisions (a) and (b) together), applies to ambiguities in the identification of beneficiaries of a "class gift or relationship in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession." (Prob. Code, § 21115, subd. (a).) That is not applicable here, particularly when there is no ambiguity or reasonable susceptibility to other definitions.

Trustee and Ellis argue that there is an appellate case on point that is controlling here: Estate of DeLoreto (2004) 118 Cal.App.4th 1048. DeLoreto, however, is distinguishable from the instant matter. In DeLoreto, the court applied Probate Code section 21115, subdivision (b), to define grandchildren. Such a definition was required to adjudicate the claims of two adult alleged adoptees of one of the settlor's sons. The Second Appellate District used Probate Code section 21115, subdivision (b), and found the adoptees were excluded from the class of the testator's grandchildren, as they were not regular members of the alleged adoptive parent's (or other testator's families') households. But, in the instant case, there are no adoptees at issue. This matter deals with biological grandchildren. As biological grandchildren, the relation is clear, unambiguous, and not reasonably susceptible to a different meaning. A "grandchild," as used in the Trusts at issue, is a child born of Settlor's child. In discussing ambiguity, the DeLoreto Court wrote, "They [the alleged adoptees] believe that extrinsic evidence as to the testator's intent should not be admitted in the absence of an ambiguity. But instead of speaking in terms of ambiguities, the proper analysis requires that we ask whether the language of the will is 'reasonably susceptible' of the interpretation suggested by a rule of construction or extrinsic evidence." (Id., at 1053, citation omitted.) The DeLoreto Court went on to explain that because the will in that case did not "expressly include adult adoptees within the class of grandchildren . . . the absence of such express language . . . makes the will reasonably susceptible to the interpretation suggested by section 21115, subdivision (b) and the extrinsic evidence of the testator's intent." Here, there is no such susceptibility. Because DeLoreto dealt with adoptees, whether "grandchild" meant an adopted grandchild was a reasonable question that was not answered by the mere term or presumably elsewhere in the instrument. Here, the court considers the term as it relates to biologically-born grandchildren. In this context, and when considering the instrument as a whole, the term is simply not reasonably susceptible to Trustee's proffered interpretation.

Trustee and Ellis point further to Settlor's current-day declarations attempting to explain his intention from 1980, almost 40 years ago. The court cannot consider such erstwhile information that attempts to define a term that, on its own, expresses no doubt as to its meaning. (Estate of Russell (1968) 69 Cal.2d 200, 210; Estate of Dye (2001) 92 Cal.App.4th 966, 977; In re Hill's Estate, supra, 214 Cal.App.2nd at 816.)

The Trustee's interpretation of the Trusts is unreasonable because no ambiguity exists and the Trustee's construction of "grandchild" is simply unfounded. The Trustee has a duty to administer the Trusts according to

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the trust instruments (Prob. Code, § 16000), and in this case, Trustee has not. Thus, Trustee's construction is not entitled to deference. Upon a reading of the Trusts, the Trusts' use of the term "grandchild" reasonably and properly includes biologically-born children of Settlor's children. That would include Beneficiaries Hurley and Kerkorian. There is nothing in the Trusts directing Trustee to exclude non-marital grandchildren. There is nothing in the Trusts that would reasonably lead Trustee to define "grandchild" as Trustee concludes.

In conclusion and as stated above, the term "grandchild" in the Trusts is clear, unambiguous and not reasonably susceptible to another meaning when each of the Trusts is read as a whole. Thus, no extrinsic evidence is required to interpret the Trusts' use of the term "grandchild." Trustee's interpretation is unreasonable and not entitled to deference. Upon this ruling as to extrinsic evidence, the court further finds that Beneficiaries Hurley and Kerkorian are beneficiaries of the Trusts if they are biologically born children of Settlor's child. If that is the case, guardian ad litem for Hurley and Kerkorian are entitled to Trust-related information and Beneficiary Hurley is entitled to Trust-related information upon reaching the age of majority. Guardian ad litem for Hurley is denied attorney fees and costs, pursuant to Probate Code section 1003, as no evidence of fees and costs was presented at hearing. The next court date remains as ordered at hearing.

The Court orders the Clerk to give notice.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, SHERRI R. CARTER, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of July 16, 2019 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: July 17, 2019

By: /s/ Corrina Ornelas

Corrina Ornelas, Deputy Clerk

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