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Court of Appeals
Division II
State of Washington
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No. 51992-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re Estate of

CAROL L. WOOD,

Deceased.

SUSAN M. GONZALES,
Appellant,

v.

SECURITY STATE BANK, TRUST DEPARTMENT,
Appellee.

BRIEF OF APPELLANT

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1. INTRODUCTION

1.1. Carol L. Wood ("Ms. Wood") executed a Will in May of 2014, and then a Codicil on April 28, 2016. The Will and Codicil made no specific gift of an individual retirement account ("IRA") that Ms. Wood had with the financial institution Edward Jones. The day after the Codicil was executed, April 29, 2018, Ms. Wood entered into a custodial agreement with Edward Jones regarding the distribution of her IRA. That custodial agreement provided in plain terms that the IRA passed to Ms. Wood's heirs at law, a common provision designed to reduce the burden of administration as well as reduce federal income taxes due upon distribution of the asset.

1.2. The personal representative believed that the IRA should be distributed as a probate asset under the residuary provision of Ms. Wood's Will. Edward Jones did not agree, so the personal representative filed a motion to show cause why the IRA should not pass to the residual beneficiary of Ms. Wood's Will. Susan Gonzales ("Ms. Gonzales") is Ms. Wood's biological daughter and an heir at law. She opposed the personal representative's motion.

1.3. The trial court granted the personal representative's motion, reasoning that Ms. Wood's intent as demonstrated in her Will and/or Codicil overcame the contractual provision in the IRA's custodial agreement. Ms. Gonzales moved to reconsider and filed this appeal because the trial court's

ruling was in error. Ms. Wood's Will, and subjective intent, were irrelevant to deciding whether the IRA passed to Ms. Wood's heirs under the plain, unambiguous, language of the custodial agreement with Edward Jones.

2. ASSIGNMENTS OF ERROR

2.1. The trial court erred in ruling that as a matter of law Ms. Wood's IRA, bound by a custodial agreement naming her heirs at law as beneficiaries, passed to beneficiaries of and under the terms of her prior dated Will. (CP at 58-60, 61; RP at 3-4, 9, 19).

2.2. The trial court erred in finding Ms. Wood's Will and/or subjective intent, as gleaned from her Will, relevant and/or dispositive to deciding whether her IRA passed under the account's custodial agreement or under her earlier dated Will that did not mention such account. (CP at 58-60, 61; RP at 3-4, 9, 19).

2.3. Alternatively, the trial court erred in not holding further, or alternative, evidentiary hearings, or requiring further evidence, to decide material issues of law and/or fact regarding whether Ms. Wood's IRA passed as a probate asset under the Will or under the terms of the custodial agreement. (CP at 58-60, 61; RP at 3-4, 9, 19).

3. ISSUES RELATED TO THE ASSIGNMENTS OF ERROR

3.1. Whether Ms. Wood entered into a "super" Will that could control the distribution of Ms. Wood's IRA? (Assignment of Errors 2.1-

2.3).

3.2. Whether Ms. Wood entered into a custodial agreement with Edward Jones concerning her IRA? (Assignment of Errors 2.1-2.3).

3.3. Whether Ms. Wood's Will and/or subjective intent, as gleaned from the Will, was relevant and/or dispositive to deciding whether her IRA passed under the account's custodial agreement? (Assignment of Errors 2.1-2.3).

3.4. Whether the contractual provisions of Ms. Wood's IRA custodial agreement dictate that the account is to be distributed to Ms. Wood's heirs at law? (Assignment of Errors 2.1-2.3).

3.5. Arguendo, whether the trial court should have ordered further, or alternative, proceedings or evidence to be presented? (Assignment of Errors 2.1-2.3).

4. STATEMENT OF THE CASE

4.1. Ms. Wood passed in early December 2017. (CP at 1). Probate began in the middle of December 2017. (CP at 1-25). Security State Bank, Trust Officer ("Personal Representative") petitioned to be and was named personal representative of the Estate. (CP at 1-25).

4.2. Ms. Wood's Will provides that the residue of the Estate passes to Scott Wood ("Mr. Wood"), Ms. Wood's biological son. (CP at 6-16). Ms. Gonzales is Ms. Wood's biological daughter and received personal

tangible property from her mother prior to her mother's passing, which the Will reflects may happen. (CP at 6-16).

4.3. Ms. Wood's Estate includes an IRA, on account with Edward Jones. (CP at 45-52; 120-26). The personal representative requested that the IRA be distributed as a probate asset under the terms of Ms. Wood's Will. (*See* CP at 26-27).

4.4. Edward Jones would not agree to liquidate the IRA because of the terms of the custodial agreement between Edward Jones and the late Ms. Wood. (*See* CP at 26-27). The custodial agreement between Ms. Wood and Edward Jones clearly stated that both parties were bound:

> *This Custodial Agreement* is incorporated into and is part of the Individual Retirement Account Authorization Form (collectively "Agreement") signed by me (collectively "the Depositor," "the Client," "me," and "I") and *constitutes a binding contract between Edward D. Jones & Co. L.P. (collectively "Edward Jones" and Custodian") and Me. I represent that have read and understand the Agreement and agree to be bound by its terms as well as the separate disclosures and notices referenced in and/or provided with this Agreement*.

(CP at 47) (emphasis added).

4.5. An IRA under federal law cannot exist at all without such a custodial agreement. 26 U.S.C. § 408(a) (stating the creation of an IRA requires a "written governing instrument," i.e., a contract, between the individual benefiting from the IRA and the institution creating the IRA).

4.6. The IRA, according to the custodial agreement, was to be distributed to Ms. Wood's "descendants per stirpes" not to the Estate, which is a common IRA contractual provision for tax purposes:[1]

> (b) Beneficiary Not Designated. If I have no designated beneficiaries, or no beneficiaries survive me, then my beneficiaries shall be deemed to be designated in the following order and priority: (1) my surviving spouse; or if none, then (2) my descendants, per stirpes, as defined by the laws of the State of Missouri; or if none, then (3) my estate.

(CP at 49).

4.7. Missouri law, R.S.Mo. § 474.010, provides that if there is no surviving spouse, a decedent's assets pass to surviving children.

4.8. On April 11, 2018, the personal representative moved to "liquidate the IRA of the Carol L. Wood as though it named 'My Estate' as the beneficiary of said account." (CP at 26). Ms. Gonzales opposed such motion. (*e.g.*, CP at 54-56; RP, May 11, 2018).

4.9. Edwards Jones subsequently took the position of being a

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[1] The reason why this is a common contractual provision is tax avoidance and to ease the burden involved in the administration of the asset: An IRA liquated into an estate causes income taxes against the estate to be due at the rate an entity pays income taxes—which is the highest rate possible, about 37%—whereas if the IRA is distributed to a human being, directly, the income tax to be paid by such person(s) is the far lower rate paid by individuals, especially since that/those beneficiary/beneficiaries can elect to take minimum distributions per IRA life expectancy tables (thus reducing his or her taxable income for the year) instead of liquidating the entire IRA. *See e.g.*, IRS Publication 559, *available a*t, https://www.irs.gov/pub/irs-pdf/p559.pdf; IRS Publication 590-B, *available at*, https://www.irs.gov/publications/p590b. By distributing directly to heirs at law instead of the estate, it is a double bonus of lower taxes due after distribution0 and disposing of the need to probate the asset.

"neutral third party" taking "no position" in the matter. (CP at 43-44). "Edward Jones will abide by any order issued by the Court designating the proper beneficiary of the Account." (CP at 43).

4.10. The trial court was presented at hearing with the following issue, in the trial court's own words:

> The argument is that, since there was no beneficiary named, that the account should pass to the estate and then be distributed according to the terms of the will. The other side of that argument is that apparently Edward D. Jones has some default provisions that get attached to these accounts that provide for descent distribution of these assets. So the question is which of those legal theories prevails under the circumstances.
>
> ***
>
> I think it's really clear what Ms. Wood's intent was with regard to what is in her estate. The question is does this account pass by the default provisions of descent and distribution for Edward D. Jones' directions or, since there was no beneficary designated at least intially by Ms. Wood, does this pass according to the terms of the will.

(RP at 3-4). After hearing argument from counsel for the personal representative, the trial court rephrased the issue sussinctly:

> THE COURT: This comes down to the very narrow question what happens when a beneficiary is not named in that account.

(RP at 9).

4.11. Counsel for the personal representative did not object to the admission of the IRA custodial agreement at hearing. (RP at 1-20). He

supplied and filed the custodial agreement, provided by Edward Jones to him, with the trial court. (CP at 45-52). At hearing, counsel for the personal representative stated:

> We have a will that says residuary to Security State Bank in trust for my son and *we have [an] IRA that says if no beneficiary named then to the two children*.

(RP at 7) (emphasis added). Counsel for the personal representative then argued that the

> Supreme purpose in constructing will is to ascertain actual intent; in construing a will the supreme purpose is to ascertain the actual intent; or a court is bound to give the construction to a will – which effectuates the intention of the testator.

(RP at 7). Counsel also argued that:

> there's absolutely no cases at all that say *wills* should be interpreted in accordance with what tax benefits would be.

(CP at 13) (emphasis added).

4.12. The trial court's order states "all parties agreed to hearing this matter in a summary procedure as a matter of law." (CP at 59). As a matter of law, the trial court found and reasoned:

> The Court further finds that the overriding intent of the decedent to leave the residuary of her estate to the Trust created for her son is quite evident from the "four corners" of the will and codicil and that the evidence shown as to whether decedent knew of the custodial agreement terms and her intent in not making a beneficiary are neither clear enough nor sufficient to overcome the clear showing as to her intentions as to the residue of the estate.

(CP at 59).

4.13. On May 21, 2018, the trial court denied Ms. Gonzales' Motion for Reconsideration. (CP at 58-60, 61)

4.14. Ms. Gonzales filed a notice of appeal and this Court subsequently granted Ms. Gonzales an appeal as a matter of right. The trial court's order has been stayed pending appeal. (CP at 125-26).

5. STANDARD OF REVIEW

Contract interpretation is a question of law when the interpretation does not depend on the use of extrinsic evidence. *Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co.*, 176 Wn.2d 502, 517, 296 P.3d 821 (2013); *see also Mut. of Enumclaw v. USF Ins. Co.*, 164 Wn.2d 411, 424 n.9, 191 P.3d 866 (2008) (noting that when a contract presents no ambiguity and no extrinsic evidence is required to make sense of the contract terms, contract interpretation is a question of law); *Keystone Masonry, Inc. v. Garco Constr., Inc.*, 135 Wn. App. 927, 932, 147 P.3d 610 (2006). "Absent disputed facts, the legal effect of a contract is a question of law that we review de novo." *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 711-712, 334 P.3d 116, 119 (2014).

Here, the parties agreed that the matter was to be decided by the trial

court as a matter of law, no party disputed the evidence or facts presented at the show cause hearing, and the trial court relied on all facts and evidence presented in making its decision. (*See e.g.*, CP at 59). Thus, the standard of review is *de novo*.

6. ARGUMENT

6.1. Ms. Wood Did Not Enter into a "Super" Will that Could Control the Distribution of Ms. Wood's IRA.

A Will under Washington State law can dispose of non-probate assets under a "super" Will, so long as the non-probate asset is a specific gift in the Will to a specific beneficiary. *See* RCW 11.11.020. However, a general devise in a Will cannot distribute a non-probate asset. *See* RCW 11.11.020(2); 26 U.S.C. § 408(a); *In re Estate of Burks*, 124 Wn. App. 327, 330, 100 P.3d 328, 330 (2004) (holding "A 'general residuary gift' does not entitle the devisees or legatees to the owner's nonprobate assets."). Non-probate assets are statutorily defined by RCW 11.11.010(7). An IRA is not subject to distribution under RCW 11.11.020, Washington's "super" Will statute, because an IRA is *not* a non-probate asset under Washington law. RCW 11.11.020(3); RCW 11.11.010(7)(a). Regardless, a beneficiary designation entered into after a Will, or Codicil, is executed supersedes a "super" Will. RCW 11.11.020(4).

Here, the trial court ruled that Ms. Wood's subjective intent as

gleaned from the Will was "clear" and "overriding" when compared to the custodial agreement with Edward Jones:

> The Court further finds that the overriding intent of the decedent to leave the residuary of her estate to the Trust created for her son is quite evident from the "four corners" of the will and codicil and that the evidence shown as to whether decedent knew of the custodial agreement terms and her intent in not making a beneficiary are neither clear enough nor sufficient to overcome the clear showing as to her intentions as to the residue of the estate.

(CP at 59). Thus, it appears that the trial court found, or believed, Ms. Wood's Will was a "super" Will under RCW 11.11.020. (*See* CP at 58-60, 61; RP at 3-4, 9, 19). It further appears the trial court found the residue clause of the Will dispositive. (*See* CP at 58-60, 61; RP at 3-4, 9, 19). These were errors.

Ms. Wood's Will is not a "super" Will under RCW 11.11.020 and cannot govern the distribution her IRA. First, the IRA is not specifically bequeathed to a named beneficiary (CP at 6-16); thus, the Will cannot control this asset's distribution. *See* RCW 11.11.020. Second, IRA's are specifically excluded from the category of non-probate assets that a "super" Will can distribute. *See* RCW 11.11.020 (citing RCW 11.11.010(7)(a)). Third, the custodial agreement with Edward Jones was entered into a day after the Will (*Compare* CP at 6-16 *with* CP at 46-52); therefore, such agreement supersedes any Will, "super" or otherwise. RCW 11.11.020(4).

Accordingly, Ms. Wood's Will was not a "super" Will and could not control the distribution of the IRA.

6.2. Ms. Wood Entered into a Custodial Agreement with Edward Jones Controlling the Distribution of Her IRA.

An IRA cannot exist without a contract between financial institution and its client, in this case the late Ms. Wood. 26 U.S.C. § 408(a) (stating the creation of an IRA requires a "written governing instrument," i.e., a contract, between the individual benefiting from the IRA and the institution creating the IRA); *Michel v. Commissioner*, 1989 Tax Ct. Memo LEXIS 670, *10, T.C. Memo 1989-670 (holding "Once the section 408(a) requirements are met, a valid IRA is created. . . ."). A valid written agreement can exist without one party's signature. *Shelcon Constr. Grp., LLC v. Haymond*, 187 Wn. App. 878, 894, 351 P.3d 895, 904 (2015).

Here, the trial court ruled "the evidence shown as to whether decedent knew of the custodial agreement terms and her intent in not making a beneficiary are neither clear enough nor sufficient to overcome the clear showing as to her intentions as to the residue of the estate." (*See* CP at 58-60, 61; RP at 3-4, 9, 19). This was error.

Ms. Wood signed the Edward Jones custodial agreement, required by federal law to have an IRA, after she executed her Will. (CP at 46). Such agreement provided that the parties "read and understood the Agreement"

and were bound by it:

> This Custodial Agreement is incorporated into and is part of the Individual Retirement Account Authorization Form (collectively "Agreement") signed by me (collectively "the Depositor," "the Client," "me," and "I") and constitutes a binding contract between Edward D. Jones & Co. L.P. (collectively "Edward Jones" and Custodian") and Me. I represent that have read and understand the Agreement and agree to be bound by its terms as well as the separate disclosures and notices referenced in and/or provided with this Agreement.

(CP at 47).

Accordingly, the evidence clearly, and objectively,[2] demonstrated that Ms. Wood entered to the custodial agreement with Edward Jones that was required under federal law for the IRA to exist.

6.3. Contractual Provisions of Ms. Wood's IRA Custodial Agreement Dictate that the Account was to be Distributed to Ms. Wood's Heirs at Law.

Washington State follows an objective manifestation theory of contracts. *Everett v. Estate of Sumstad*, 95 Wn.2d 853, 855, 631 P.2d 366, 367 (1981). Under an objective manifestation theory of contracts, the Court objectively looks at whether a contract was created. *Id.* It disregards subjective intentions of the parties. *Id.* (holding "subjective intention of the parties is irrelevant" and "A contract has, strictly speaking, nothing to do

[2] *See* Section 6.3, *infra*, regarding Washington State following an objective manifestation theory of contracts.

with the personal, or individual, intent of the parties"). "Words in a contract are given their ordinary, usual, and popular meaning, absent indication of any contrary intent or use of technical terms." *Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co.*, 176 Wn.2d 502, 509-510, 296 P.3d 821, 825 (2013).

Here, the trial court ruled as a matter of law that "the overriding intent of the decedent to leave the residuary of her estate to the Trust created for her son is quite evident from the 'four corners' of the will and codicil"—therefore—"Ms. Wood's] . . . intent in not making a beneficiary [designation as to the IRA is] neither clear enough nor sufficient to overcome the clear showing as to her intentions as to the residue of the estate." (CP at 58-60, 61; RP at 3-4, 9, 19). It appears that the trial court was gleaning Ms. Wood's subjective intent from the Will when interpreting the custodial agreement, or that the trial court was objectively interpreting the wrong document, i.e., the Will, when deciding whether the custodial agreement governed the distribution of the IRA. (*See* CP at 58-60, 61; RP at 3-4, 9, 19) (stating "This comes down to the very narrow question what happens when a beneficiary is not named in that account."). In either case, the trial court erred.

Anything Ms. Wood's Will stated, and any gleaning of Ms. Wood's subjective intent in any instrument, was irrelevant to interpreting the

custodial agreement because Washington follows an objective manifestation theory of contractual interpretation. The plain words of the contract govern, and the subjective intention of Ms. Wood is disregarded. *See e.g.*, *Estate of Sumstad*, 95 Wn.2d at 855. Stated simply, there is no ambiguity in the custodial agreement's provision governing the distribution of the IRA, when Ms. Wood passed, that would allow the trial court to use parol evidence, i.e., the Will, to aid in interpreting the distribution provision of the custodial agreement. Rather, the distribution provision plainly states that Ms. Wood's children receive the IRA, as it is not debatable that Ms. Wood passed without a surviving spouse:

> (b) Beneficiary Not Designated. If I have no designated beneficiaries, or no beneficiaries survive me, then my beneficiaries shall be deemed to be designated in the following order and priority: (1) my surviving spouse; or if none, then (2) *my descendants*, *per stirpes*, as defined by the laws of the State of Missouri; or if none, then (3) my estate.

(CP at 49) (emphasis added); R.S.Mo. § 474.010. By looking to the Will at all to interpret this unambiguous provision of the custodial agreement, the trial court erred by improperly resorting to parol evidence *to create an ambiguity* when there was none in the provision at issue itself. *See Wash. Fish & Oyster Co. v. G. P. Halferty & Co.*, 44 Wn.2d 646, 658-659, 269 P.2d 806, 813 (1954) (holding "The rule is universal that the written contract itself must be resorted to as the source of authority for receiving

parol evidence. Parol evidence is never admissible to create an ambiguity, but only to explain or remove an ambiguity apparent on the face of the instrument, or to identify a subject-matter otherwise uncertain.”).

Accordingly, the trial court erred in ruling as a matter of law that the custodial agreement’s distribution provision did not control the distribution of Ms. Wood’s IRA. It further erred ruling that IRA should be liquidated and distributed under the residue provision of the Will.

6.4. Arguendo, if the Trial Court Found the Evidence Presented Lacking, and Material Issues of Law or Fact Remained, the Proper Procedure was to Have Additional, or Alternative, Hearings and/or Evidence Presented.

“Statutory provisions strictly limit the superior court's jurisdiction over nonintervention probate proceedings.” *In re Estate of Ardell*, 96 Wn. App. 708, 715, 980 P.2d 771, 776 (1999); *In re Estate of Rathbone*, 190 Wn.2d 332, 341, 412 P.3d 1283, 1287 (2018) (holding “nonintervention statutes grant superior courts limited authority to address the specific issue through the remedy specified in that statute.”). “Once a court declares a nonintervention estate solvent, the court has no role in the administration of the estate except under narrow, statutorily created exceptions that give courts limited authority to intervene.” *Estate of Rathbone*, 190 Wn.2d at 339. “The court can regain this limited authority only if the executor or another person with statutorily conferred authority properly invokes it.” *Id.*

Non-intervention powers are not waived by a personal representative seeking "any order or decree during the course of . . . administration of the estate." RCW 11.68.020.

A creditor or beneficiary may cite a personal representative to come before the Court to determine whether such personal representative discharged his or her duties faithfully according to law. RCW 11.68.070. Alternatively, a petition TEDRA allows "any party" to "have a judicial proceeding for the declaration of rights or legal relations with respect to any matter." *Estate of Rathbone*, 190 Wn.2d at 345. "[M]atter" being defined broadly to include construction of wills. RCW 11.96A.080(1); RCW 11.96A.030(2)(a)-(h); *Estate of Rathbone*, 190 Wn.2d at 345. Mistakes in a Will can be corrected via a TEDRA petition as well. RCW 11.96A.125.

Here, the personal representative's motion for an "order to show cause" contained no explicit basis for authority to invoke the trial court's jurisdiction over the non-intervention estate. (CP at 26-27). It was not a TEDRA petition. That said, the parties agreed to have the trial court decide this matter (CP at 59), and jurisdiction was probably properly invoked by the personal representative requesting the trial court decide the issue. *See In re Estate of Megrath*, 142 Wash. 324, 326, 253 P. 455, 456 (1927) (holding pre-TEDRA that grant of non-intervention powers is "a grant of power to the executor" and "If in his judgment matters arise in the settlement of the

estate requiring judicial determination, he may invoke the jurisdiction of the superior court, either in equity or in probate" but "this must be of his own volition.").

Regardless, the trial court erred in ruling *as a matter of law* that the IRA was to be distributed under the residue of Ms. Wood's Will. *See* Section 6.3 *supra*. If anything, as a matter of law, it is clear that the IRA should be distributed under the terms of the custodial agreement. *See* Section 6.3 *supra*. However, if this Court finds any material issues of law or fact at issue, or any jurisdictional issue, the matter should be remanded for further proceedings and/or further evidence to be presented at hearing.

7. ATTORNEY FEES

Pursuant to RAP 18.1, Ms. Gonzales requests attorney fees on appeal. The Revised Code of Washington Section 11.96A.150 permits any court on an appeal, in its discretion, to order costs, including reasonable attorney fees, to be awarded to any party from any party to the proceedings under Title 11 RCW. RCW 11.96A.150(2) (stating "This section applies to *all proceedings governed by this title*. . . .") (emphasis added). This proceeding was under "Title 11 RCW," probate and trust law.

Here, Ms. Gonzales should prevail in demonstrating that the trial court erred in deciding as a matter of law that the IRA was to be distributed under the residue provision of Ms. Wood's Will. That being the case, and it

being further the case that (a) the IRA is only valued at about $49,000.00 (CP at 122), and (b) the Estate is flush with other liquid assets (CP at 122), Ms. Gonzales should be awarded attorney fees so that her distribution is not substantially reduced by the costs of this appeal.

Respectfully submitted this 10th day of December, 2018,

Drew Mazzeo WSBA No. 46506
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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on December 10, 2018, I caused to be served:

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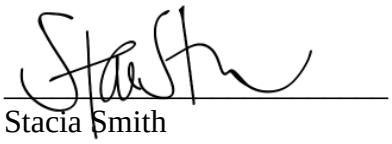
Dated December 10, 2018, at Olympia, Washington.



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