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Every month I summarize the most important probate cases in Michigan. Now I publish my summaries as a service to colleagues and friends. I hope you find these summaries useful and I am always interested in hearing thoughts and opinions on these cases.

PROBATE LAW CASE SUMMARY

BY: Alan A. May

Alan May is a shareholder who is sought after for his experience in guardianships, conservatorships, trusts, wills, forensic probate issues and probate. He has written, published and lectured extensively on these topics.

He was selected for inclusion in the 2007-2013 issues of *Michigan Super Lawyers* magazine featuring the top 5% of attorneys in Michigan and has been called by courts as an expert witness on issues of fees and by both plaintiffs and defendants as an expert witness in the area of probate and trust law. Mr. May maintains an "AV" peer review rating with Martindale-Hubbell Law Directory, the highest peer review rating for attorneys and he is listed in the area of Probate Law among Martindale-Hubbell's Preeminent Lawyers. He has also been selected by his peers for inclusion in *The Best Lawyers in America®* 2014 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2013 by Woodward/White, Inc., of SC). He has been included in the Best Lawyers listing since 2011.

He is a member of the Society of American Baseball Research (SABR).

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DT: February 4, 2014

RE: Richard E. Sperlik Trust
STATE OF MICHIGAN COURT OF APPEALS

REVIEW OF CASE:

Reference Files: Patent Ambiguity
Error by Lower Court not Requiring Reversal

This unpublished case has its uses. When do we allow extrinsic evidence to interpret the terms of a Trust?

Answer: When there is a patent ambiguity on the face of the document *or* when there is a latent ambiguity which can be demonstrated by extrinsic evidence.

But, how open is the second door?

The Sperlik defines the limitations by looking at the quality of the extrinsic evidence.

In this matter, Settlor deeded Parcel 1 to Appellant and Parcel 2 to his Trust. The Trust allocated his “cottage” to Appellant. Neither parcel was an improved parcel. Appellant argued latent ambiguity claiming that the two parcels were used together, that they were close and that common sense dictated that the Decedent would have wanted Appellant to have lakefront access.

The Court of Appeals set a standard:

A. Extrinsic evidence must be persuasive and reliable to show latent ambiguity.

B. When the extrinsic evidence is unpersuasive or unreliable and the claims are speculative, the extrinsic evidence will not demonstrate latent ambiguity.

The Lower Court did admit some extrinsic evidence to prove its point, but the Court of Appeals did not overrule saying that the Lower Court made the right decision for the wrong reason.

In my opinion, the Appellant should read MCL 700.7415 and get back to the Lower Court and seek reformation. The above section allows the showing of intent “even if the terms of the Trust are unambiguous”; for instance if there was a mistake. There is a standard of clear and convincing, however.

AAM:jv:761053
Attachment

STATE OF MICHIGAN

COURT OF APPEALS

In re RICHARD E SPERLIK Trust.

PATRICK SPERLIK, Trustee,

Appellee,

v

DEAN SPERLIK,

Appellant.

UNPUBLISHED
January 2, 2014

No. 311914
Kent County Probate Court
LC No. 12-191968-TV

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Dean Sperlik appeals as of right a probate court order construing the phrase "Barry County cottage" to exclude a vacant lot located in Barry County. We affirm.

In 1995, Richard Sperlik executed a trust. The trust provided that on his death:

> Trustee shall divide all remaining Trust Property into four (4) equal shares for Grantor's children other than **Patrick J. Sperlik**; provided, however, that Grantor's Barry County cottage shall be allocated to **Dean R. Sperlik's** share even if the value exceeds his equal share.

The trust document did not define "Barry County cottage."

When the trust was executed, Richard owned two parcels of land in Barry County. The first, identified as Lot 32, was a landlocked parcel abutting a road which ran through the surrounding area. At the time the trust was created, and to this day, Dean resided in a habitable trailer on Lot 32. The second parcel, identified as Lot 26, was a vacant lot directly across the road from Lot 32. Lot 26 was a lakefront parcel with direct access to Gun Lake. In 2003, Richard executed a quitclaim deed conveying Lot 32 to himself and Dean as joint tenants with rights of survivorship. A second quitclaim deed conveyed Lot 26 to the trust.

After Richard died, Patrick Sperlik—acting as successor trustee—petitioned the probate court to determine whether "Barry County cottage" should be construed to include Lot 26. At the probate hearing, Dean argued that "Barry County cottage" should be construed to include Lot

26, even though Lot 26 was undeveloped and did not contain a cottage. Dean argued that the two parcels had always been used as a single parcel, thus making the vacant lot a part of the cottage property. Dean also argued that Richard intended for Dean to receive Lot 26.

At the close of the hearing, the probate court found the trust language to be clear and refused to consider extrinsic evidence. The court determined that "Barry County cottage" did not include lot 26 and that title should be distributed among the four children, as per the trust document.

On appeal, Dean argues that the trial court erred by refusing to consider extrinsic evidence demonstrating latent ambiguity in the phrase "Barry County cottage." This issue was raised in and decided by the trial court, and is therefore properly preserved for review. *Fast Air Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Interpretation of a trust document is a question of law we review de novo. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005). We further note that the general rules of will interpretation also apply to the interpretation of trust documents. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). "When it is unnecessary to consider extrinsic evidence to interpret a will, as is almost always the case, a probate court's findings are not factual in nature. Rather, as when interpreting a contract, the probate court, in restricting its analysis to the language of the will, engages in an inquiry to determine the legal effect of the words used." *In re Bem Estate*, 247 Mich App 427, 433; 637 NW2d 506 (2001).

A court's primary concern in interpreting a trust is to determine and give effect to the settlor's intent. *In re Kremlick Estate*, 417 Mich 237, 240; 331 NW2d 228 (1983). The court "must attempt to construe the instrument so that each word has meaning." *In re Kostin*, 278 Mich App 47, 53; 748 NW2d 583 (2008). Where the trust language is not ambiguous, the settlor's intent is to be determined by the trust's plain language alone. *In re Dodge Trust*, 121 Mich App 527, 541-542; 330 NW2d 72 (1982). If the language is ambiguous, the court is required "to look outside the four corners of [the trust document] in order to carry out the [settlor's] intent." *Kremlick*, 417 Mich at 240. Trust language is patently ambiguous if, on the document's face, there is uncertainty as to a term's meaning. *Id.* Latent ambiguity exists where the words are not patently ambiguous, but facts extrinsic to the trust document create the possibility of more than one interpretation. *Id.* Where an ambiguity *may* exist, extrinsic evidence can also be admitted to prove the existence of that latent ambiguity. *Kremlick*, 417 Mich at 241. However, the court is not required to consider extrinsic evidence which is unreliable, unpersuasive, or based only on unsupported conjecture of the settlor's intent. *In re Estate of Burruss*, 152 Mich App 660, 667-668; 394 NW2d 466 (1986).

Dean points to the following extrinsic facts to support an inference that Richard intended for "Barry County cottage" to include Lot 26: the fact that Richard owned both parcels and that Dean lived on one; the fact that Richard conveyed Lot 26 to the trust; the fact that Richard "promised" both parcels to Dean; the fact that Lots 32 and 26 are so close as to be considered a single lot; and that "common sense" dictates that Richard would want Dean to have access to Gun lake. None of these facts are persuasive or reliable in showing latent ambiguity. The fact that Richard owned both parcels does not give rise to an inference as to how he wanted the property distributed on his death. Likewise, the fact that Richard conveyed Lot 26 to the trust only supports an inference that he intended Lot 26 to be distributed in accordance with the trust terms, not an inference that he wanted it distributed to Dean. Dean's claim that he was "promised" Lot 26 is uncorroborated and its self-serving nature gives it questionable reliability. Dean's claim that the two parcels should be treated as one is also unpersuasive. Although the two parcels are close to each other, they are completely separated by a road and are legally identified by two separate titles. Though Dean may regard the two parcels as a single lot, we are not persuaded that their proximity gives rise to an inference that Richard intended for Dean to have both parcels. Finally, Dean's "common sense" argument is completely unsupported and has no relevance to Richard's intent. Accordingly, the trial court did not err by refusing to consider Dean's unpersuasive, unreliable, and speculative claims of extrinsic evidence demonstrating latent ambiguity.

Dean also argues that the trial court erred when it nevertheless relied on other extrinsic evidence to interpret the trust, which it found unambiguous. In making its ruling, the trial court referred to the 2003 conveyances of Lots 32 and 26. The trial court's referencing of extrinsic evidence in setting forth its reasoning was an error. If a court finds trust language unambiguous, its interpretation should not look beyond the trust's plain language. *Dodge Trust*, 121 Mich App at 541-542. Here, the conveyance of Lots 32 and 26 was completely extrinsic to the trust's plain language. However, even if its reasoning is incorrect, we do not reverse a lower court's decision so long as it reaches the correct result. *Fisher v Blakenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009). Having reviewed the evidence before the court below, we agree with the court's finding that "Barry County cottage" is unambiguous. Dean has failed to produce any reliable or persuasive evidence to show otherwise. Further, we agree with the court below that a plain reading of the trust language would exclude Lot 26 from "Barry County cottage." The trust gave Dean a cottage, which Lot 26 is not. Dean's argument that Lot 26 is a part of Lot 32 is contradicted by the lots' physical separation as well as their separate titles.

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens