

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 9, 2001 Session

IN RE: ESTATE OF JOHN D. GOODIN

**Appeal from the General Sessions Court, Probate Division for Washington County
No. P-36-60-99 John L. Kiener, Judge**

FILED JULY 23, 2001

No. E2000-01823-COA-R3-CV

In this will construction case, the children of John B. Goodin ("Children") and Shriner's Hospitals for Children ("Shriner's Hospitals"), a charity named as a beneficiary in Goodin's will ("Will"), are disputing Goodin's intent expressed in his Will, including the residuary clause, Article XI. The value of specific bequests to the Children far exceed the applicable state and federal estate tax exemption limit of \$650,000. Article XI, however, provides that the charities named in the Will ("Charities"), including Shriner's Hospitals, would receive "the sum of \$25,000 or an amount necessary to reduce [Goodin's] estate . . . to be a non taxable estate, whichever amount is greater. . . ." The Trial Court held that since Goodin's paramount intent was to provide for his Children, the specific bequests to his Children take precedence over Article XI's bequest to the Charities. Shriner's Hospitals appeals. We affirm as modified.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court
Affirmed as Modified.**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, J. and CHARLES D. SUSANO, JR., J., joined.

Joel A. Conkin and Tara B. Hinkle, Kingsport, Tennessee, for the Appellant, Shriner's Hospitals for Children.

John E. Sanders, Johnson City, Tennessee, for the Appellee, David Goodin; John L. Bowers, III, Elizabethton, Tennessee, and T.J. Little, Elizabethton, Tennessee, for the Appellee, Dee Goodin Couch; Bonnie Webster, Johnson City, Tennessee, and Jack Carrier, Johnson City, Tennessee, for the Appellee, John W. Goodin.

OPINION

Background

John B. Goodin, an attorney whose practice areas included wills and estate administration, died on March 18, 1999. The gross value of Goodin's estate was approximately \$1,468,000. The parties stipulated at trial that the state and federal estate tax exemption limit was \$650,000 at the time of Goodin's death. Goodin's Will was executed in June 1997 and probated in March 1999.

The Will contained several specific bequests of real and personal property in Articles II, III and V to Goodin's three Children, Dee Goodin Couch, John W. Goodin and David H. Goodin. The Will made specific, non charitable bequests totaling \$1,214,000, consisting of the specific bequests to Goodin's Children totaling \$1,164,000 plus specific bequests to a number of other individuals totaling \$50,000. In addition, the Will made charitable bequests and contained the following provision:

XI.

In addition, I bequeath the sum of \$25,000.00 or an amount necessary to reduce my estate after deductible expenses to be a non taxable estate, whichever amount is greater, to be given by pro rata share to my favorite charities as set out in Section VII above, along with the victims of the Oklahoma City bombing if such non taxable charity exists.¹

The remainder of my estate, after any of the charitable gifts necessary to reduce said estate, shall be distributed as follows:

- a. One third to John W. Goodin and wife, Pat Goodin
 - b. One third to David H. Goodin
 - c. The remaining one third to John W. Goodin and David H. Goodin, in trust for my daughter, Dee Goodin Couch
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¹ Article VII of the Will provided for specific bequests to thirteen Charities and stated that the bequests provided therein were contingent upon Goodin dying "in an accident on any public carrier." Article VII also provided that if Goodin "[did] not die as above stated, each of the above shall receive [10%] of the bequest listed." One of the Charities named in Article VII is Shriner's Hospitals for Children, the Appellant.

The co-executors of the Will filed a Motion to Construe Provisions of Decedent's Will, specifically Article XI. As grounds for their motion, the co-executors cited a number of issues, but most importantly, whether Goodin's paramount intention was to have a non-taxable estate despite the specific bequests in the Will which exceeded the applicable estate tax exemption limit.

After obtaining stipulations from counsel and hearing arguments, the Trial Court held it was Goodin's paramount intent for his Children to receive the bulk of his estate. The Trial Court held that Article XI's contingency that the estate be reduced to a "non taxable estate" was not met because the specific, non charitable bequests were greater than \$1,000,000; that the Charities were only entitled to receive a total sum of \$25,000 under Article XI; and that Goodin's three Children were residuary beneficiaries under Article XI. One of the Charities, Shriner's Hospitals, appeals. We affirm as modified.

Discussion

On appeal and although not exactly stated as such, Shriner's Hospitals contends that the Charities should obtain the amount of Goodin's estate that is in excess of the estate tax exemption amount of \$650,000 because Goodin's paramount intent was to have his estate be a "non taxable estate." Shriner's Hospitals next argues that if the specific bequests to the Children are to be funded, the remainder of the residuary estate should pass to the Charities under Article XI. Goodin's Children, the Appellees, raise no further issues on appeal.

Since this matter involves interpretation of Goodin's Will, the Trial Court's holding is a legal conclusion which is subject to a *de novo* review with no presumption of correctness. *Estate of Burchfiel v. First United Methodist Church of Sevierville*, 933 S.W.2d 481, 483 (Tenn. Ct. App. 1996); *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

Goodin's Will shows his intention to provide for his Children on the one hand and to render his estate tax-exempt through Article XI on the other. Both parties, however, agree that Goodin's stated intentions conflict. Accordingly, Goodin's Will must be interpreted to determine his overriding or paramount intention. In interpreting a will, our Supreme Court has held:

Under the law, . . . intent is of paramount importance. "The cardinal rule for interpreting and construing a last will and testament is the ascertainment of the intent of the testator. That intent, when known, will be given effect unless prohibited by some rule of law or public policy."

* * *

So, the clear intent of the testator will govern unless it is "prohibited by some rule of law or public policy."

Winningham v. Winningham, 966 S.W.2d 48, 50 (Tenn. 1998) (quoting *In re Walker*, 849 S.W.2d 766, 768 (Tenn. 1993); *Cowden v. Sovran Bank/Central South*, 816 S.W.2d 741, 744 (Tenn. 1991)).

The testator's intent is "ascertained from a consideration of the will as a whole and not from its disjointed fragments." *Trimble v. Holley*, 358 S.W.2d 343, 346 (Tenn. Ct. App. 1962) (quoting *Garner v. Becton*, 212 S.W.2d 890, 891 (Tenn. 1948)). This Court held:

In ascertaining the intention of the testa[tor], "it is presumed that every word is intended by the testa[tor] to have some meaning, and no word or clause in the will is to be rejected to which a reasonable effect can be given. . . . No part of the instrument is to be discarded unless in conflict with some other part, in which case that part will be enforced which expresses the intention of the testator. Provisions in conflict should be reconciled if this can be reasonably done."

Id. (quoting *McClure v. Keeling*, 43 S.W.2d 383, 384 (Tenn. 1931)). In addition, courts have a "duty . . . to effectuate [the testator's controlling or predominant purpose] and construe all subsidiary clauses so as to bring them into subordination of that purpose." *In Re Will of Bybee v. Westrick*, 896 S.W.2d 792, 793 (Tenn. Ct. App. 1994) (citing *Moore v. Neely*, 370 S.W.2d 537, 540 (Tenn. 1963)).

In this case, upon a consideration of the language of the entire Will, we hold that Goodin's intent was to provide for his Children. See *First Am. Nat'l Bank v. Cole*, 364 S.W.2d 875, 877 (Tenn. 1963) (holding that "the language of a single sentence is not to control as against the evident purpose and intent shown by the whole will.") The Will contains four articles of specific bequests of real and personal property to the Children, the total value of which is approximately \$1,164,000. By contrast, the Will provides much smaller, charitable, specific bequests in Article VII and a charitable residuary bequest in Article XI.

We also acknowledge, however, that the language of Article XI shows Goodin's intent to "reduce [his] estate after deductible expenses to be a non taxable estate." Due to the value of Goodin's estate, Goodin's stated intent to have a tax-exempt estate cannot be accomplished if the specific bequests are satisfied. Nevertheless, Goodin's estate taxes can be reduced, an outcome consistent with Goodin's intent to reduce the estate tax and with his intent to provide for his Children. As Goodin's stated intentions are in conflict, they must be reconciled, if possible. We believe the appropriate way to reconcile this conflict is to give effect to the specific bequests with the residuary estate passing to the Charities under Article XI. While this outcome does not make the estate a non taxable estate, it does provide for a reduction of the estate tax while still giving effect to Goodin's intention to provide for his Children through the specific bequests. This comes as close as possible to giving effect to Goodin's conflicting stated intentions.

We, therefore, modify the Trial Court's Order by first enforcing the specific non charitable bequests, totaling approximately \$1,214,000, with the remainder of the residuary estate,

approximately \$254,150, passing to the Charities in accordance with Article XI. *See Trimble v. Holley*, 358 S.W.2d at 346 (holding that “[p]rovisions in conflict should be reconciled if this can be reasonably done”) (citations omitted). While not making the estate tax-exempt, it does reconcile these provisions so as to give effect to Goodin’s intent to provide for his Children through the specific bequests and satisfies, to the extent possible, Goodin’s intent that the estate tax be lessened, even though not eliminated.

CONCLUSION

The judgment of the Trial Court is affirmed as modified and this cause is remanded to the Trial Court for such further proceedings as may be required, if any, consistent with this Opinion, and for collection of the costs below. The costs on appeal are assessed 50% against the Appellant, Shriner’s Hospitals for Children, and its surety, and 50% against the Appellees, David Goodin, Dee Goodin Couch, and John W. Goodin.

D. MICHAEL SWINEY, JUDGE