IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

July 30, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

DELBERT L. HOLLINGSWORTH, REBECCA MARY LEQUIRE BUCHANAN, KATHRYNE HOLLINGSWORTH BARBEE, SARA JEANNE HOLLINGSWORTH CHANIOTT, ANTON KILGORE LEQUIRE, EVELYN B. O'MEARA, MARY HOLLINGSWORTH SHARP,	)	**Blount Chancery No. 96-033**
Plaintiffs/Appellees,	)	**Appeal No. 03A01-9707-CH-00278**
VS.	)	
JACK L. EDEN,	)	
Defendant/Appellant.	)	

APPEAL FROM THE CHANCERY COURT OF BLOUNT COUNTY
AT MARYVILLE, TENNESSEE
THE HONORABLE CHESTER S. RAINWATER, JR., CHANCELLOR

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REVERSED AND REMANDED

ALAN E. HIGHERS, J.

CONCUR:

DAVID R. FARMER, J.

HOLLY KIRBY LILLARD, J.

In this will construction case, defendant/appellant, Jack L. Eden ("defendant"),

appeals the judgment of the trial court finding (1) that the will of Amos J. LeQuire ("decedent") gave Irene LeQuire Eden a gift over of the exact interest that was held by her father, S. Clay LeQuire, namely, a contingent remainder subject to the condition precedent of surviving Trissie Lee LeQuire; (2) that Irene LeQuire Eden's interest never vested and was therefore not transmissible by her will; and (3) that the interest of S. Clay LeQuire passed to the surviving lineal descendants of decedent, *per stirpes*. For reasons stated hereinafter, we reverse the judgment of the trial court.

The facts of this case are not in dispute. In 1944, decedent died in Blount County, Tennessee, leaving a Last Will and Testament dated March 28, 1941 ("will"). The will was probated in the Probate Court for Blount County in the November term of 1944. The decedent had five children. Article II of the will established a life estate in all of decedent's real and personal property for the benefit of one daughter, Trissie Lee LeQuire. In Article III of the will, decedent made provisions for the distribution of the real and personal property upon the death of Trissie as follows:

> After the death of Trissie Lee LeQuire the residue of my property is to be divided equally between my other children, Jennie Belle Hollingsworth, S. Clay LeQuire, Elmer A. LeQuire, and Mary Rebecca Buchanan. If any of these children should die before Trissie Lee dies their children are to have the interest or share, hereby willed to their parent, should one or more of the four children die leaving no children the residue of my estate is to be divided among the surviving children or grand-children as the case may be. In other words my four children are to each receive a one-fourth undivided interest in my estate after the death of Trissie Lee or in case of the death of one or more of the four children, without children, the residue of my estate is to be divided among those who survive, each to share equally.

Trissie died on April 23, 1991. S. Clay LeQuire survived the decedent but predeceased Trissie. He was survived by one daughter, Irene LeQuire Eden who died on September 6, 1974, also predeceasing Trissie. Irene LeQuire Eden died without issue, but was survived by her husband, defendant in this matter and the sole beneficiary of Irene LeQuire Eden's last will and testament ("defendant"). After Trissie's death in April of 1991, the real property located in Blount County that was subject to the life tenancy was sold and the proceeds were to be divided pursuant to Article III of the will.

Plaintiffs/Appellees, Delbert Hollingsworth, Rebecca Mary LeQuire Buchanan, Kathryne Hollingsworth Barbee, Sara Jeanne Hollingsworth Chaniott, Anton Kilgore LeQuire, Evelyn B. O'Meara, and Mary Hollingsworth Sharp (collectively "plaintiffs"), filed a complaint on April 8, 1996, in the Chancery Court for Blount County, Tennessee, to quiet title to certain real property in Blount County, by construing the will of the decedent. On cross motions for summary judgment, the trial court granted a summary judgment in favor of appellees stating:

> The Court finds that the Will granted a contingent remainder with a condition precedent to S. Clay LeQuire. The condition precedent was that he survive Trissie LeQuire. As S. Clay LeQuire did not satisfy the condition precedent, he had no interest in the remainder at his death. Irene LeQuire took a gift over of the exact same interest as her father, subject to the same condition precedent. Therefore, she also had a contingent remainder subject to the condition precedent of surviving Trissie LeQuire. Since she also predeceased the life tenant, the Court holds that Irene's interest never vested, and was, therefore, not transmissible under her Will. The Court further holds that the remainderman's share that would have devolved to S. Clay LeQuire and his heirs had one survived the life tenant passed to the remaining surviving siblings and the surviving lineal descendants of the nonsurviving siblings, *per stirpes*.

This appeal ensued.

At the heart of the summary judgment procedure is the language contained in Rule 56.03 and Rule 56.05 of the Tennessee Rules of Civil Procedure. According to Rule 56.03, summary judgment is to be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56.05 provides that the nonmoving party "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or [otherwise], must set forth specific facts showing that there is a genuine issue for trial."

In determining whether or not a genuine issue of material fact exists for purposes of summary judgment, courts in this state have indicated that the question should be considered in the same manner as a motion for directed verdict made at the close of the

plaintiff's proof, i.e., the trial court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn.1991); *Poore v. Magnavox Co.*, 666 S.W.2d 48, 49 (Tenn. 1984); *Dunn v. Hackett*, 833 S.W.2d 78, 80 (Tenn. Ct. App. 1992); *Wyatt v. Winnebago Industries, Inc.*, 566 S.W.2d 276, 279 (Tenn. Ct. App. 1977); *Taylor v. Nashville Banner Pub. Co.*, 573 S.W.2d 476, 480 (Tenn. Ct. App. 1978). Then, if there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied. *Poore*, 666 S.W.2d at 49.

Rule 56 comes into play only when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Thus, the issues that lie at the heart of evaluating a summary judgment motion are: (1) whether a factual dispute exists; (2) whether the disputed fact is material to the outcome of the case; and (3) whether the disputed fact creates a genuine issue for trial. *See Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993).

When the facts material to the application of a rule of law are undisputed, the application is a matter of law for the court since there is nothing to submit to the jury to resolve in favor of one party or the other. In other words, when there is no dispute over the evidence establishing the facts that control the application of a rule of law, summary judgment is an appropriate means of deciding that issue.

To preclude summary judgment, a disputed fact must be "material". A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed. Consequently, when confronted with a disputed fact, the court must scrutinize the elements of the claim or defense at issue in the motion to determine whether the resolution of that fact will affect the disposition of any of those claims or defenses. By this process, courts and litigants can ascertain which issues are dispositive of the case, thus rendering other disputed facts immaterial.

When the evidence or proof in support of or in opposition to a summary judgment motion establishes a disputed fact, and the fact is material, the court must then determine whether the disputed material fact creates a genuine issue within the meaning of Rule 56.03. The test for determining whether an issue is “genuine" or not is whether a reasonable jury could legitimately resolve that fact in favor of one side or the other. If the answer is yes, summary judgment is inappropriate; if the answer is no, summary judgment is proper because a trial would be pointless as there would be nothing for the jury to do and the judge needs only to apply the law to resolve the case. In making this determination, the court is to view the evidence in a light favorable to the nonmoving party and allow all reasonable inferences in his favor. And, again, "genuine issue" as used in Rule 56.03 refers to disputed, material facts and does not include mere legal conclusions to be drawn from those facts.

In the case under submission, the facts material to the application of the rule of law are undisputed. The only question remaining is whether Irene LeQuire possessed a vested interest in residue of decedent’s property after the termination of the life estate upon the death of Trissie Lee LeQuire.

The chief object in the construction of wills is to discover and effectuate the intention of the testator, unless to do so would contravene some rule of law or public policy. *Stickley v. Carmichael*, 850 S.W.2d 127, 132 (Tenn. 1992). In applying this rule and ascertaining the testator's intent, it is necessary to look to the manifest language of the entire will. The testator's intent must be determined from the language of what he has written, not from mere surmise or supposition. *Martin v. Taylor*, 521 S.W.2d 581, 584 (Tenn.1975). Where the language of a will is clear and unambiguous, the language must control. *Moore v. Neely*, 370 S.W.2d 537, 540 (Tenn.1963).

Appellant cites this Court to *Jamison v. Poor*, 18 Tenn. (10 Yer.) 218 (1837), a case strikingly similar to the one at bar. In *Jamison*, testator devised the residue of his property to his wife by a second marriage during her life or widowhood, and at her death or

marriage, to be equally divided among his children of the second marriage with this additional provision: "If any of my children of the second marriage die before my wife, and before the division of the property, without lawful issue, it is my will that the share of such child form a part of the general stock, to be divided among the other children of the second marriage; if any of said children die before my wife, leaving lawful issue, such issue is to take the share of the deceased parent." *Id.* at 219. Subsequently, one of wife's children, a daughter, died during the life of wife, leaving a child (wife's grandchild) born in lawful wedlock. This grandchild, however, died shortly thereafter during the life of the wife. The Supreme Court of Tennessee held that the grandchild took a vested and transmissible interest in her mother's share, which, upon the grandchild's death, went to her father. *Id.* at 220.

In *Jamison*, the surviving children of the testator argued that the testator's apparent intent in postponing absolute vesting of the estate in them until after the termination of the life estate was to secure the property in his own blood until that period of time had passed. The *Jamison* Court disagreed and focused on the testator's will in its entirety and correctly interpreted the will with a meaning in accord with its general intent. In doing so, the Court recognized the reason why the decedent disallowed absolute vesting in the children until after the termination of the life estate. Indeed, the Court noted that decedent expressly stated his reason for such delay in vesting, namely, for the support of wife and children during her natural life or widowhood. Along those lines, the Court reasoned:

> He, no doubt, supposed it probable that of so many children some of them might die without issue before the death of their mother, as some of them were very young, and for that event he provided by directing that the share of such a one should form a part of the general stock to be divided. But we do not think the will affords evidence that he contemplated it as probable that any of his children would have issue and die, and then that issue would die before the life estate would terminate. Few men look beyond their grandchildren in disposing of their estates; and we think the testator in this case was content, after providing for his grandchildren, as in the latter part of the clause under consideration, to leave his estate to the disposition of the law. . .
>
> We do not think such general intention existed in his mind, and we therefore give to the words employed their obvious sense, which is that, if one of his children die, leaving a child or children living, such issue should be vested with an absolute

> title to such portion of the estate as the deceased parent would have been entitled to have received if living.

We are hard pressed to find a point at which *Jamison* is materially distinguishable from the case under submission. Like the testator in *Jamison*, decedent stated his reason for disallowing absolute vesting in the children until after the termination of the life estate, namely, for the use and benefit of Trissie during her lifetime.

We agree with the reasoning in *Jamison*. Undoubtedly, decedent imagined a situation in which it would be probable that of so many children some of them might die before Trissie without having children of their own. In fact, he provided for that occurrence by instructing that the share of such child should be "divided among the surviving children or grandchildren." However, when reviewing the entirety of the will, we are unconvinced that the will contains evidence that decedent entertained it as probable that any of his children would have children of their own and die, and then that child die shortly thereafter before the termination of the life estate. Unlike his children's interest, absolute vesting of decedent's grandchildren's interest was not made contingent on their survival of Trissie's life estate. If decedent had desired to make his grandchildren's interest contingent upon their survival of Trissie's life tenancy, he could have easily done so. Decedent chose not to do so. Decedent's failure to make his grandchildren's interest contingent upon surviving the life estate reveals his contentment in leaving his estate to the disposition of the law after providing for his grandchildren. In light of decedent's will in its entirety and the contentment implied therein, Irene LeQuire Eden's interest in decedent's estate was not contingent, either expressly or impliedly, upon her surviving Trissie's life tenancy. As such Irene's interest absolutely vested upon the death of her father, S. Clay LeQuire. Therefore, defendant, Jack L. Eden, is entitled to the portion of his late wife, Irene.

In light of the foregoing and after a careful review of the record, it is the considered opinion of this Court that after providing for his grandchildren, decedent was satisfied in leaving his estate to the disposition of the law. Accordingly, the judgment of the trial court is reversed. This case is remanded to the trial court for proper disposition of decedent's

estate.

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HIGHERS, J.

CONCUR:

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FARMER, J.

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LILLARD, J.