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Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 20, 2023 Session

IN RE ESTATE OF MARY HUTCHESON MOON BALLARD

Appeal from the Chancery Court for Hamilton County
No. 19-P-511 Jeffrey M. Atherton, Chancellor

No. E2022-01147-COA-R3-CV

In this matter concerning the interpretation of a will, John Moon and Shannon Moon ("John" and "Shannon") ("Claimants," collectively) filed a claim in the Chancery Court for Hamilton County ("the Trial Court") against the estate of their late sister, Mary Hutcheson Moon Ballard ("Mary").[1] Arthur Ballard ("Arthur"), Mary's husband, filed an exception to the claim. Mary's grandmother, Elise Chapin Moon ("Elise"), had established a trust for her grandchildren, including Mary. It is Claimants' position that a bloodline provision in Elise's will ("the Moon Will") excludes spouses of grandchildren from receiving trust proceeds. The Trial Court, having put certain questions to a jury, ruled in favor of Arthur. Claimants appeal. We hold that once Mary received the funds from the trust, which dissolved in 2016, the funds were hers outright and no longer subject to the will's "bloodline" restriction. We hold further that the Trial Court erred by putting questions to a jury when the case was resolvable as a matter of law. However, the error was harmless. We affirm the judgment of the Trial Court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II and KRISTI M. DAVIS, JJ., joined.

Alvin Y. Bell and R. Dee Hobbs, Chattanooga, Tennessee, for the appellants, John Moon and Shannon Moon.

Ira M. Long, Jr., Chattanooga, Tennessee, for the appellee, Arthur Ballard, personal representative.

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[1] Because this is a family dispute and in order to avoid needless repetition of surnames, we will refer to parties by their first names. We intend no disrespect in doing so.

OPINION

Background

Mary, the decedent whose funds are at issue in this appeal, was born in August 1957. Mary and Arthur were married in 1989. In 2019, Mary executed a will. Her will named Arthur as residual beneficiary. In June 2019, Mary died at age 61. Arthur thereafter opened Mary's estate. The present controversy stems from the disposition of certain funds which Mary received from the trust established by her grandmother, Elise. Mary's brothers, Claimants, contend that they are entitled to those funds in keeping with their grandmother's will. John, born in 1952, is Mary's oldest brother. Shannon, born in 1954, is Mary's older brother. Elise was Mary and Claimants' paternal grandmother.

In July 1968, Elise executed the Moon Will. The Moon Will established a trust funded by Elise's residuary estate. Named as trustees were American National Bank and William Deaderick Moon, Jr. ("W.D."), son of Elise and father of Mary and Claimants. Item V of the Moon Will provided that the Trust be divided into three parts: one part for W.D. and his children, and two parts for Elise's daughters and their children. Item VI of the Moon Will designated Elise's living grandchildren as primary beneficiaries of the trust and set out a distribution schedule. Income was to be distributed when a grandchild reached the age of 27 at which time each grandchild would receive half the corpus and accumulated income. The other half would remain in trust until the grandchild turned 32. Item VII stated, in part: "I would like for all income from my estate to be distributed with reasonable promptness after my death to my various beneficiaries, but direct that a substantial part of the income from estate assets be used toward meeting inheritance and estate taxes and obligations of my estate, to the end that no more of the principal than is absolutely necessary shall be disposed of." Item VII stated further: "My Trustees shall make all income payments to all beneficiaries not less frequently than quarterly."

The Moon Will provided that the grandchildren were to be the "major recipients" of each part of the trust but that the corporate co-trustee had the discretion to encroach upon the corpus of each child's part for the use and benefit of that child. Item VI stated: "Upon the attaining of twenty-seven (27) by the oldest grandchild, no grandchild thereafter born or adopted shall share in the trust proceeds. Wherever 'grandchild' or 'children of children' are referred to in this will, it shall mean issue, and not adopted children." Item VI stated further:

> All income and any distribution of corpus as regarding a grandchild shall be paid by my Trustees to the beneficiaries receiving the same, free from the claim or right of any spouse of any beneficiary, either during said

> beneficiary's lifetime or after their death, and said payments shall be made free from the claim or right of any creditors of any of said grandchildren, and there shall be no power in any of said grandchildren to anticipate, assign or pledge their interest in either principal or income and none of their creditors shall have the right to reach either principal or income in any manner whatsoever. All income and corpus payments made by said Trustees shall be direct into the hands of said beneficiaries, or in case of minors, to such minor's legally qualified Guardian, or in the discretion of Trustees, to those furnishing necessaries to said minors.

Item VIII granted discretion to the corporate trustee to encroach upon principal for W.D. or his sisters. Item VI afforded discretion to trustees to encroach upon any grandchild's principal before the distribution date upon marriage for purposes of acquiring or making a down payment on a suitable home.

Item VII addressed a contingency in which one of Elise's children died without surviving issue. In that case, that child's share would be directed into other parts of the trust for her surviving children and their children. Item VII did not address a contingency whereby a grandchild died without issue with her assets still in trust. Item VIII conferred limited appointment power on W.D. and his sisters to modify the age of distribution of corpus to each of their children and grandchildren.

In December 1968, when Mary was 11 years old, Elise died. Mary's brother John turned 32 in December 1984 and the trustees distributed to him in a timely way all of the trust's assets to which he was entitled. Shannon turned 32 in May 1986, and he also received what he was entitled to from the trustees. In August 1984, Mary turned 27. However, Mary did not receive a distribution of corpus. W.D., Mary's father, was a trustee as of July 1986. He resigned in December 2008. Over the years, various financial institutions served as corporate trustee of Mary's trust. The last such institution was Southeastern Trust Company ("SETCO"). In 2008, Claimants, Mary, Arthur, and W.D. executed the "Nonjudicial Trust Settlement Agreement," under which SETCO consented to serve as corporate successor trustee to Mary's trust.

In 2014, SETCO determined that the trust had terminated when Mary turned 32. Until 2016, the proceeds of Mary's trust were in a trust account held by SETCO. The trust account was closed, with the assets transferred to an investment account in Mary's name. Arthur, as personal representative, had the funds in the agency account paid into the Mary Ballard Estate account. In support of their argument that they are entitled to Mary's funds, Claimants point to a copy of a letter dated July 24, 1986 from W.D. to American National Bank, "cc" Mary H. Moon, which purports to alter the ages of distribution to Mary to 85

and 87.[2] Shannon said that he found the letter during a search for documents at his father's home. The letter referenced ages 32 and 37 as though W.D. had previously designated those ages.

In October 2019, Claimants filed a claim against Mary's estate in the Trial Court, requesting a jury determination. In December 2019, Arthur filed an exception to the claim. Arthur also filed a motion for judgment on the pleadings, which the Trial Court denied. In February 2022, Claimants filed a motion for summary judgment, stating in part that "there is no genuine issue of material fact as to the proper distribution of the only asset currently held by the Estate and because Claimants are entitled to summary judgment as a matter of law." Claimants stated further that "[s]uch asset consists of funds that pass outside probate and are the property of the Claimants, and summary judgment to this effect should be granted on their behalf." Arthur filed a response in opposition to Claimants' motion for summary judgment as well as a motion for summary judgment against Claimants. In April 2022, the Trial Court heard the parties' motions for summary judgment.

In May 2022, the Trial Court entered an order denying the parties' respective motions for summary judgment. In its order, the Trial Court stated, in part:

> [T]he Court finds that each party has demonstrated the existence of specific material facts that defeat the other party's summary judgment motion.
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> With respect to the motion of the Estate, the Court holds that there are disputed questions of material fact regarding the following: whether distributions of corpus were made prior to the death of the Decedent; whether W.D. Moon, Jr. exercised his power of appointment given him in the will of his mother; whether Southeastern Trust Company was aware of the exercise of his power of appointment; whether the power of appointment could not extend the date for the final distribution of corpus; whether W.D. Moon, Jr. acted in bad faith in extending the ages of distribution; and whether he followed the requirements of his mother's will by stating in writing an initial exercise of the power of appointment.
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> Meanwhile, with respect to the motion of the Claimants, the Court holds that there are disputed questions of fact regarding the following: Whether there is sufficient proof of the existence, delivery, and receipt of a July 24, 1986, letter from W.D. Moon, Jr. to the Trust Department of

[2] When asked why he changed the ages of distribution for Mary, W.D. testified:

> She didn't have sense enough to come in out of the rain. She was a pitiful thing. She had gone off, disappeared for a number of years and had been to California, some such place, and joined a horrible group of people that told her if you turn over all your money, you can -- we will look after you, and they failed to do that. I don't know who they were.

> American National Bank: whether each trustee recognized the designation of ages 85 and 87 as the dates of distribution of corpus; whether the proceeds of the Trust were placed in an account only after the Trust was terminated; whether the funds held by the trustee were commingled with from other sources; and whether the sole asset held in the Estate is distributable only in accordance with the will of the Decedent.

Their motions having been denied, the parties submitted a Proposed Joint Statement of Undisputed Facts. The Trial Court then heard additional argument. In its final pre-trial order, the Trial Court stated, in relevant part:

> **Termination of the Trust**
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> First, the Court finds that Mary's Trust did not terminate as a matter of law upon her attaining age 32. Item VIII of the will of Elise C. Moon ("Moon Will") granted her children, including Decedent's father, W.D. Moon, Jr., the authority to change both the age for the initial distribution as well as the age for final distribution. In other words, the references to "age" and "ages" in Item VIII of the Moon Will are intended as plural. Moreover, as counsel for the parties seemed to agree at the conference, the trust continued to be administered and quarterly checks were sent to Decedent by the trustee(s) long after Decedent had turned 32 years old. Thus, the Court finds, principally as a matter of interpretation of the Moon Will, that Mary's Trust did not, as a matter of law, terminate at age 32.
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> **Bloodline Provision and Omission of Grandchild Without Issue**
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> The Court finds that the intent of the testatrix, Elise C. Moon, was to create a bloodline provision and exclude non-blood relatives, such as Mary's spouse, from taking trust funds. The Court derives such as the clear intent of the testatrix when reading Items VI, VII, and VIII of the Moon Will together, and considering the whole of the document, the omission regarding the distribution of trust funds where a grandchild dies without issue does not create an ambiguity, either latent or patent, requiring any extrinsic evidence. As harsh as the provision may seem, the intent of the testatrix is clear when stating that "[a]ll income and any distribution of corpus [. . .] shall be paid [. . .] free from the claim or right of any spouse of any beneficiary, either during the said beneficiary's lifetime or after their death."

Whether a Parent's Change of Distribution Ages to 85 & 87 Would be Invalid as a Matter of Law

If W.D. Moon, Jr. changed the distribution ages for Mary's Trust from ages 27 and 32, as provided in Item VI of the Moon Will, to ages 85 and 87, as indicated by the purported 1986 letter, the Court finds that such a change would not be invalid as a matter of law, particularly when considering the broad discretion granted to the parents of the grandchildren in Item VIII of the Moon Will. The only limitations provided in the Moon Will are that such changes must be made in writing to the executors or trustees while the parent, W.D. Moon, Jr., in this instance, is alive. Both the Court and counsel were unaware of any authority that such a change would be, as a matter of law, invalid. The Personal Representative's argument would be more persuasive if the effect of such a change would have been to entirely prevent the beneficiary, Decedent, from ever receiving income from the trust, given the primary purpose of the trust to transfer wealth to the grandchildren of the testatrix. However, whether W.D. Moon, Jr. did in fact change the ages or not, Decedent continued to receive quarterly income from Mary's Trust, and the argument could be made that such a change gave effect to the purpose of the trust rather than frustrate it, especially considering the stipulation that the other grandchildren were less than prudent in managing their trust assets. Furthermore, any change or modification by W.D. Moon, Jr., given the discretion afforded him in Item VIII of the Moon Will, would have been a revocable modification, not an irrevocable modification that could not be undone. Moreover, and perhaps of the least importance, ages 85 and 87, are ages that could arguably have been possible for Decedent to attain. Thus, while a jury may find that such a change would have been an abuse of the discretion granted to W.D. Moon, Jr., the Court cannot find that such a change would be invalid as a matter of law.

III. REMAINING QUESTIONS OF FACT FOR JURY

The Court finds that three questions of fact appropriate for a jury still remain, namely, (1) whether W.D. Moon, Jr. changed the distribution ages for Mary's Trust in accordance with the writing requirement set forth in Item VIII of the Moon Will, (2) if so, whether W.D. Moon, Jr. abused the discretion granted him under the power of appointment in changing the ages for distribution to 85 and 87, and (3) whether Decedent, Mary Ballard, consented to or ratified such change. With regard to the second question of fact above, though a duty of "good faith" was discussed at the April 19, 2022 pre-trial conference, the Court finds that this is more appropriately framed as

> a question of abuse of discretion. Although a limited power of appointment may not be exercised "collusively and for the benefit of the party exercising it," which entails good faith, the testatrix here granted the parents of her grandchildren broad discretion as parents to determine, "insofar as each of their own children or grandchildren may be concerned," different ages for distribution of trust assets. Hence, whether the parental discretion conferred by testatrix was abused or not is the focus of the inquiry.

(Footnote omitted).

The matter proceeded to a jury trial. At the conclusion of proof, the Trial Court submitted a verdict form to the jury posing three questions: (1) "Did W.D. Moon, Jr. comply with the requirements of Item VIII of the will of Elise C. Moon in changing the ages for distribution of the trust assets?"; (2) "Were the changes to age 85 and age 87 within the discretion granted to W.D. Moon, Jr. in Item VIII of the will of Elise C. Moon?"; and (3) "Did Mary H. Moon Ballard ratify, consent to, or acquiesce in the continuation of the trust to the time of her death in 2019?" The jury answered no on all questions.

In May 2022, the Trial Court entered its Memorandum Opinion and Order Denying the Claim Against the Estate. In its order, the Trial Court stated, in pertinent part:

> This matter concerns the claim of John Moon and Shannon Moon ("Claimants") against the Estate of Mary Hutcheson Moon Ballard (the "Estate"). Both the claim and the exception to the claim were timely filed pursuant to TENN. CODE ANN. § 30-2-301 *et seq*. The subject of the claim is $403,428.22 held as an asset of the Estate. Claimants argue that these funds were prematurely distributed from a trust formed under the will of Elise Chapin Moon (the "Will"), Mary Hutcheson Moon Ballard's ("Decedent") and Claimants' paternal grandmother, and that they are entitled to the funds under the terms of the Will. In its April 21, 2022 "Final Pre-Trial Order," this Court ruled on several issues as a matter of law, but held that it could not render a final ruling on the claim until certain outstanding factual questions were resolved. Accordingly, pursuant to TENN. CODE ANN. § 30-2-313, the matter proceeded to trial before a jury on April 27 and April 28, 2022 for the limited purpose of determining the three outstanding factual questions as discussed herein. A copy of the "Jury Verdict Form" is attached hereto as "Exhibit 1" and incorporated by reference as if recited verbatim herein. For the reasons that follow, applying the findings of the jury, which this Court accepts, to the applicable law, this Court denies the claim.
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The Court must deny the claim on the three bases below.

A. W.D. Moon, Jr. did not comply with the requirements of Item VIII of the Will in changing the ages for distribution.

The jury found that W.D. Moon, Jr. did not "comply with the requirements of Item VIII of the will of Elise C. Moon in changing the ages for distribution of the trust assets." Accordingly, the ages for distribution were not changed.

"The cardinal rule in construction of all wills is that the court shall seek to discover the intention of the testator and give effect to it unless it contravenes some rule of law or public policy." *Fisher v. Malmo*, 650 S.W.2d 43, 46 (Tenn. Ct. App. 1983); *In re Walker*, 849 S.W.2d 766, 768 (Tenn. 1993). Here, Item VIII of the Will clearly provides that the power of appointment granted to W.D. Moon, Jr. for the purpose of changing the distribution ages of Mary's Trust must be exercised in writing during the life of W.D. Moon, Jr. and directed to the "Executors or Trustees." There is no rule of law or public policy contrary to such requirements. Thus, to give effect to the intent of the testatrix, Elise C. Moon, the Court must construe the Will such that the power of appointment could have only been exercised in accordance with the requirements set forth in Item VIII.

Claimants argue that the power of appointment was in fact exercised by W.D. Moon, Jr. in compliance with the Will, and on two occasions: once prior the 1986 Letter, changing the age for distribution of half of the corpus from 27 to 32 and the age for final distribution from 32 to 37 (evidenced by a reference to such prior change in the Letter, but the actual "first" age-changing letter was not located by the parties, and thus, not admitted into evidence), and again by the Letter itself, changing the respective ages to 85 and 87. However, in light of the evidence presented at trial, the jury found that W.D. Moon, Jr. did not properly exercise his power of appointment to effect any change from the original specified ages of 27 and 32, and therefore, no such change occurred. However, this finding alone is not conclusive with regard to the claim against the Estate.

B. Decedent did not ratify, consent to, or acquiesce in the continuation of Mary's Trust.

The next logical consideration is whether, despite the fact that the ages for distribution were never changed, Decedent nonetheless ratified, acquiesced in, or consented to the continuation of Mary's Trust. The concept

of ratification has been articulated by the Court of Appeals in *Osborn Co. v. Baker*, 245 S.W.2d 419, 421 (Tenn. Ct. App. 1951) as "confirmation after conduct" manifested by ["]acts or statements." Additionally, "[s]ilence can amount to a ratification where a party with knowledge of the transaction fails for a reasonable time to protest or dissent. However, there can be no ratification unless a party is informed of the facts necessary to form an opinion." *Valley Fid. Bank & Tr. Co. v. Cain P'ship, Ltd.*, 738 S.W.2d 638, 640 (Tenn. Ct. App. 1987) (internal citation omitted); *see also Wherry v. Union Planters Bank, N.A.*. No. W2006-00256-COA-R3CV, 2007 WL 431317, at *5 (Tenn. Ct. App. Feb. 9, 2007). Similarly, "acquiescence" is "a person's tacit or passive acceptance, or an implied consent to an act" or transaction, which may be considered an "implied ratification" invoking principles of equitable estoppel. *See Keith v. Jackson*, No. E2012-01056-COA-R3CV, 2013 WL 672491. at *5 (Tenn. Ct. App. Feb. 22, 2013) (citing 31 C.J.S. *Estoppel and Waiver* § 175 (2008)).

The jury in this case ultimately found that the preponderance of the evidence did not demonstrate ratification, consent to, or acquiescence in the continuation of Mary's Trust by Decedent. Because the power of appointment was not properly exercised so as to effect a change in the distribution ages of Mary's Trust, and because Decedent did not otherwise ratify, consent to, or acquiesce in the continuation of the trust, the result of these two factual findings taken together is that the claim against the Estate must be denied. In light of these facts, rather than being a premature distribution of the trust funds, the 2016 distribution by SETCO was, if anything, nearly three decades late. Therefore, the approximately $403,000 of funds are properly held by the Estate as an asset of the Estate, and are thus no longer subject to the bloodline provision of the Will or otherwise subject to this particular claim.

C. Changing the distribution ages to 85 and 87 years old would have been beyond the discretion granted to W.D. Moon, Jr. under Item VIII of the Will.

The claim must be denied on the two grounds discussed above. Moreover, even if W.D. Moon, Jr. had complied with the requirements of Item VIII of the Will and effected a change in the distribution ages, the jury nonetheless found that a change to 85 and 87 was not "within the discretion granted to W.D. Moon, Jr. in Item VIII" of the Will.

The providing of a power of appointment is not imperative nor mandatory, but leaves the action of the party receiving it to be exercised at his discretion; that is, the donor or grantor, having full confidence in the

> judgment, disposition, and integrity of the party, empowers him to act according to the dictates of that judgment and the promptings of his own heart. *See Law Guaranty & Trust Co. v. Jones*, 58 S.W. 219, 220 (Tenn. 1900). This discretion, being extended to a parent, is not limited to a "reasonableness" standard, as the rights, responsibilities and privileges of parents in relation to their children are so unique that the ordinary standards of care that regulate conduct between others are not applicable to conduct incident to the particular relationship of parent and child. *Broadwell v. Holmes*, 871 S.W.2d 471, 475 (Tenn. 1994). However, the exercise of the discretion extended in the power of appointment is not absolute. Specifically, it cannot be exercised (1) to benefit the party exercising it, (2) fraudulently, or (3) in bad faith, meaning, with a dishonest purpose, consciousness of wrong, or ill will. 58 S.W. 219 at 220; *Dick Broadcasting Co.. Inc. of Tennessee v. Oak Ridge FM, Inc.*, 395 S.W.3d 653 (Tenn. 2013).
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> The power of appointment here was granted by Elise C. Moon in the Will as donor to W.D. Moon, Jr. as donee. Though W.D. Moon, Jr. was certainly afforded broad discretion as a parent, such discretion was not unlimited, and under the facts of this case, the jury found that the significant discretion extended still did not permit the change asserted by Claimants to have been effected. Accordingly, even if such a change had occurred, it would have been invalid, constituting an additional basis for the denial of the claim at issue.

(Footnotes omitted).

In June 2022, Claimants filed a motion to amend or add findings, or to alter or amend the judgment, or for a new trial. Following a hearing, in July 2022, the Trial Court denied Claimants' motion. Claimants timely appealed to this Court.

Discussion

Although not stated exactly as such, Claimants raise the following issues on appeal: 1) whether the Trial Court erred in denying Claimants' pretrial motion for summary judgment and post-trial motion to amend or add findings, or to alter or amend the judgment, or for new trial despite recognizing the existence of the bloodline provision by which a trustor intended to exclude non-blood relatives from taking assets of a trust; and 2) whether the jury verdict was contrary to the law and evidence presented and unsupported by material proof.

This matter involves the interpretation of a will. This Court discussed the standard of review to be applied in cases involving the construction of a will in *In re Estate of Milam*,

stating:

> “The purpose of a suit to construe a will is to ascertain and give effect to the testator’s intention.” *In re Estate of Eden*, 99 S.W.3d 82, 87 (Tenn. Ct. App. 1995) (citations omitted). “The construction of a will is a question of law for the court.” *Briggs v. Briggs*, 950 S.W.2d 710, 712 (Tenn. Ct. App. 1997) (citing *Presley v. Hanks*, 782 S.W.2d 482, 487 (Tenn. Ct. App. 1989)). Accordingly, we review the probate court’s conclusions of law *de novo* without affording any presumption of correctness to those conclusions. *In re Estate of Vincent*, 98 S.W.3d 146, 148 (Tenn. 2003) (citing *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993)).
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> “It is the absolute right of the testator to direct the disposition of his property and the Court’s [sic] are limited to the ascertainment and enforcement of his directions.” *Daugherty v. Daugherty*, 784 S.W.2d 650, 653 (Tenn. 1990) (citing *Nat’l Bank of Commerce v. Greenberg*, 195 Tenn. 217, 258 S.W.2d 765 (1953); *Third Nat’l Bank in Nashville v. Stevens*, 755 S.W.2d 459, 462 (Tenn. Ct. App. 1988)). “The cardinal rule in construction of all wills is that the court shall seek to discover the intention of the testator and give effect to it unless it contravenes some rule of law or public policy.” *Fisher v. Malmo*, 650 S.W.2d 43, 46 (Tenn. Ct. App. 1983); *see also Briggs v. Briggs*, 950 S.W.2d 710, 712 (Tenn. Ct. App. 1997); *Presley v. Hanks*, 782 S.W.2d 482, 487 (Tenn. Ct. App. 1989). In seeking out the testator’s intent, we have several rules of construction to aid us in that effort. However, all rules of construction are merely aids in ascertaining the intent of the testator. *Sands v. Fly*, 200 Tenn. 414, 292 S.W.2d 706, 710 (1956).
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> In gleaning the testator’s intent, we look to the entire will, including any codicil. *Stickley v. Carmichael*, 850 S.W.2d 127, 132 (Tenn. 1992); *Presley*, 782 S.W.2d at 488. The testator’s intent is to be determined from the particular words used in the will itself, *Stickley*, 850 S.W.2d at 132, and not from what it is supposed the testator intended. *Briggs*, 950 S.W.2d at 712; *Presley*, 782 S.W.2d at 488; *Fisher*, 650 S.W.2d at 46. “Where the will to be construed was drafted by the testator himself who was not versed in the law and without legal assistance the court in arriving at the intention of the testator should construe the language of the will with liberality to effectuate what appears to be the testamentary purpose.” *Davis v. Anthony*, 53 Tenn. App. 495, 384 S.W.2d 60, 62 (1964) (citations omitted). We are also guided by an additional principle of construction; when a decedent undertakes to make a will, we must presume that the decedent intended to die testate, and we must seek to construe the will, where possible, as including all of the

> testator's property at death. *Davis*, 384 S.W.2d at 62 (citations omitted). The legislature of this state has provided as follows:
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> > A will shall be construed, in reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, and shall convey all the real estate belonging to the testator, or in which the testator had any interest at the testator's decease, unless a contrary intention appears by its words in context.
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> Tenn. Code Ann. § 32-3-101 (2003). Since this statute is in derogation of the common law, it must be strictly construed. *Davis v. Price*, 189 Tenn. 555, 226 S.W.2d 290, 292 (1949); *see also McDonald v. Ledford*, 140 Tenn. 471, 205 S.W. 312, 313 (1917).
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> "Every word used by a testator in a will is presumed to have some meaning." *In re Estate of Jackson*, 793 S.W.2d 259, 261 (Tenn. Ct. App. 1990) (citing *Third Nat'l Bank v. Stevens*, 755 S.W.2d 459 (Tenn. Ct. App. 1988)).
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> "[F]or the testator's will to be given effect, there must be some evidence of that intent: 'We cannot determine the devolution of estates based upon the mere surmise as to the testator's intention.' " *In re Walker*, 849 S.W.2d 766, 768 (Tenn. 1993) (quoting *Pinkerton v. Turman*, 196 Tenn. 448, 268 S.W.2d 347, 350 (1954)).

In re Estate of Milam, 181 S.W.3d 344, 353-54 (Tenn. Ct. App. 2005). The dispositive question in this appeal is one of law. A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

We first address whether the Trial Court erred in denying Claimants' pretrial motion for summary judgment and post-trial motion to amend or add findings, or to alter or amend the judgment, or for new trial despite recognizing the existence of the bloodline provision by which a trustor intended to exclude non-blood relatives from taking assets of a trust. In their brief, Claimants assert that they are entitled to the funds at issue. They argue that the Moon Will intended for trust proceeds to pass free from the claims of any spouse of a grandchild. Claimants point out that Mary stated that she wanted the trust to continue even

after SETCO determined that the funds should no longer be considered a trust asset. They also state that the funds are identifiable and have not been co-mingled. In response, Arthur asserts, among other things, that once the funds were no longer assets of the trust, there were no restrictions on them. Arthur also argues that age 32 was the hard end date for termination of the trust notwithstanding any attempted modification by W.D., and that W.D. lacked authority to push the date of termination beyond Mary's life expectancy and thus undermine the very point of the trust.

In 2016, the trustee transferred all trust assets to Mary's personal account. Although the parties argue extensively about when the trust was supposed to terminate, the fact remains that in 2016, the trust terminated and the assets were distributed.[3] The effect of this is significant for the issues on appeal. Generally, restrictions such as spendthrift provisions "do not carry over once the beneficiary receives property from the trust." *In re Wachter*, 314 B.R. 365, 373 (Bankr. E.D. Tenn. 2004) (citing *First Nat'l Bank of Nashville v. Nashville Trust Co.*, 62 S.W. 392, 402 (Tenn. Ch. App. 1901)); *see also In re Marriage of Sharp*, 369 Ill. App.3d 271, 281, 307 Ill. Dec. 885, 860 N.E.2d 539 (2006) ("[O]nce trust income is paid to the beneficiary, the income is no longer subject to the protection of the spendthrift provisions in the trust. . . .") (citations omitted); *Matter of Rolfe*, 34 B.R. 159, 161 (Bankr. N.D. Ill. 1983)) ("Once transferred by the Trustee to the beneficiary under the terms of the trust, however, [the beneficiary's interest] becomes the legal property of the beneficiary and is transferable by him and leviable by his creditors.") (citation omitted).

Here, the funds at issue are not held in trust. The trust has been dissolved. Mary received the funds in her lifetime. It is beside the point that these funds may remain identifiable and separate as Claimants state; they belonged to Mary. While Claimants argue that the Trial Court's ruling is contrary to Elise's intent that the assets of the family trust remain in the family, what transpired in this case is fully consistent with Elise's stated wishes. The Moon Will reflects an intent to provide for Elise's grandchildren. Mary, like Claimants, was a grandchild of Elise. Once Mary received the funds from the trust, she could do with them as she wished—give them to charity, leave them to her husband, spend, save, or use them for any other purpose. The so-called bloodline provision simply meant that Mary's husband did not have a right to the funds before they were released from trust. As Arthur points out in his brief, the Moon Will put a grandchild's spouse on the same footing as a creditor. After the funds were released to Mary, it was of no legal concern to Claimants what Mary did or failed to do with them. Arthur did not receive monies directly from the trust. He is simply a residual beneficiary of Mary's estate. This is consistent with the Moon Will and its bloodline clause. What the Moon Will cannot do, and does not attempt to do, is dictate the fate of funds <u>after</u> they are distributed to Elise's grandchildren.

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[3] In their reply brief, Claimants state that "any issue of whether the proceeds of Mary's Trust should have been distributed free of trust is a matter of pending and related litigation that is not before this Court on appeal."

After distribution, whether funds go to non-blood relatives, spouses, or anyone else is of no moment. We, therefore, affirm the Trial Court's denial of Claimants' claim against the estate.

The second and final issue we address is whether the jury verdict was contrary to the law and evidence presented and unsupported by material proof. Our standard of review is very limited on matters decided by a jury. "Findings of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict." Tenn. R. App. P. 13(d). However, this case presents, and is resolved, on a pure question of law. This Court has stated that "deciding purely legal questions is the court's responsibility, not the jury's." *In re Estate of Marks*, 187 S.W.3d 21, 27 (Tenn. Ct. App. 2005).[4] Indeed, at oral argument, both parties agreed that this case should not have been tried, albeit to different ends. Our determination that there were no restrictions on Mary's use of the funds once they were distributed to her resolves this matter as a question of law. There are no material factual disputes requiring a trial. The Trial Court thus erred in referring questions to the jury. Nevertheless, in view of the correct result reached, the Trial Court's error was harmless because it did not "more probably than not [affect] the judgment or . . . result in prejudice to the judicial process." Tenn. R. App. P. 36(b). We affirm the judgment of the Trial Court.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellants, John Moon and Shannon Moon, and their surety, if any.

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D. MICHAEL SWINEY, CHIEF JUDGE

[4] Relatedly, Tenn. R. Civ. P. 49.01 provides:

The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answers or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instructions concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.