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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MORGAN STANLEY PRIVATE BANK, N.A., as Trustee, etc., et al., Plaintiffs and Respondents, v. CORNELIA PINSON, Defendant and Appellant.	B280582 (Los Angeles County Super. Ct. No. BP089296)

APPEAL from a judgment of the Superior Court for the County of Los Angeles, William P. Barry, Judge. Affirmed.

Noel & Associates and Ian Noel for Defendant and Appellant.

Feinberg Mindel Brandt & Klein and Gregory A. Girvan for Plaintiff and Respondent, Morgan Stanley Private Bank, N.A.

Phillips Law Partners and Gary R. Phillips for Plaintiff and Respondent, Pamela Williams Battle.

In *Estate of Duke* (2015) 61 Cal.4th 871 the Supreme Court reconsidered the historical rule that extrinsic evidence is not admissible to correct a mistake in a will when the will is unambiguous and held "an unambiguous will may be reformed to conform to the testator's intent if clear and convincing evidence establishes that the will contains a mistake in the testator's expression of intent at the time the will was drafted, and also establishes the testator's actual specific intent at the time the will was drafted." (*Id*. at p. 898.) Applying the analysis of *Estate of Duke*, the probate court considered extrinsic evidence of Mary Ella Pinson's intent in establishing an inter vivos trust in 1999 and reformed the trust to allow distribution of the trust's remainder assets to Pamela Williams Battle, the daughter of Mary's cousin. Cornelia Pinson, Mary's former husband,[1] appeals, contending the court erred in considering extrinsic evidence to reform the trust. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Trust*

After being diagnosed with cancer, Mary established the Pinson Trust Agreement, dated July 28, 1999, an inter vivos trust. Mary was the original trustee. The trust instrument provided all income was to be distributed to Mary during her lifetime, as well as whatever portion of trust principal she determined in her absolute discretion. Upon Mary's death $6,000 each was to be distributed to Ruth McCloud and Maria Zalamea. The remainder of the trust estate was to be distributed to Donna Kaye Pinson, Mary's only child, at the rate of $1,500 per month

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[1] For convenience and clarity we refer to Mary Ella Pinson, Cornelia Pinson and their daughter, Donna Kaye Pinson, by their first names.

until Donna was 50 years old, at which time she was to receive one-half of the estate. Donna was to receive the balance of the estate when she was 55 years old. In addition to the monthly distribution to Donna, the trust provided its principal could be invaded prior to Donna's 50th birthday for her education and maintenance.

Donna, who was in her late 30's when Mary created the trust in 1999, suffered from drug abuse and financial problems throughout her adult life. Mary understood this at the time she created the trust.

As relevant to the issue on appeal, the trust, in the final paragraph of Schedule B, provided, "In the event **DONNA KAYE PINSON** shall predecease Trustor, then her share shall be distributed to her children, then living, equally, share and share alike. In the event there are no children then her share shall be distributed to **PAMELA WILLIAMS BATTLE**." No other provision of the trust addressed distribution of trust assets if Donna died before she was 55 years old.

2. *The Petition*

Mary died in May 2000 from cancer. On November 5, 2002 Morgan Stanley Private Bank, N.A. was appointed trustee of the trust. Until Donna's death in December 2010 at the age of 49,[2] Morgan Stanley distributed trust assets in accordance with the trust provisions, including principal distributions to Donna in addition to the monthly distribution of $1,500.

Donna died intestate without any children. Her heir-at-law was her father, Cornelia, Mary's former husband. Mary and Cornelia had divorced in 1968.

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[2] Donna's death was apparently drug-related.

Uncertain how to distribute trust assets after Donna's death, Morgan Stanley petitioned the probate court on March 15, 2011 to interpret the trust and instruct it in accordance with the court's findings. According to the trustee, although the trust provided for distribution of the remainder of the estate to Battle if Donna had died before Mary and without living issue, it failed to specify the manner of distribution in the circumstances then presented. The petition posited three possible outcomes, depending on Mary's intent: (1) the remainder of trust assets went to Battle; (2) the remainder of trust assets passed to Donna's heir(s)-at-law; or (3) the intended gift to Donna failed and reverted to Mary's heir(s)-at-law. The petition argued distribution of the remainder to Battle was intended by Mary; and the prayer for relief requested the probate court construe the trust accordingly or, if such construction were not possible, modify the trust to provide for Battle's receipt of the remaining assets.

Cornelia filed his objections to the petition on June 17, 2011. Cornelia argued the unambiguous language of the trust established Mary had gifted the remainder of the trust estate to Donna, a gift that vested when Mary died. According to Cornelia, the trust's delayed distribution provision—that is, that Donna was to receive one-half of the estate at age 50; the remaining half at age 55—indicated Mary's intent to convey an immediate gift with a delayed right of possession, a circumstance that did not prevent the gift from passing to Donna's heir-at-law upon Donna's death. As Donna's heir-at-law, Cornelia requested an order he receive the gift intended for Donna. Cornelia also argued, because the language of the trust was unambiguous,

extrinsic evidence should not be used to determine Mary's actual intent.

Battle joined Morgan Stanley's petition and filed an opposition to Cornelia's objections on July 21, 2011. She requested construction of the trust or, alternatively, its reformation to provide for her receipt of the trust's remaining assets.

3. *The Commencement of Trial and the Supreme Court Decision in Estate of Duke*

A bench trial began in March 2013, focusing as an initial matter on the admissibility of extrinsic evidence to determine Mary's intent regarding distribution of the trust's assets. After hearing argument and taking the matter under submission in May 2013, the probate court vacated submission and continued the matter pending the Supreme Court's decision in *Estate of Duke*. The Supreme Court filed its decision in that case on July 27, 2015, holding an unambiguous will may be reformed to conform to the testator's intent if clear and convincing evidence establishes the will contained a mistake in the testator's expression of intent and also establishes the testator's actual intent at the time the will was drafted. (*Estate of Duke*, *supra*, 61 Cal.4th at p. 898.)

4. *The Resetting of Trial and the Probate Court's Decision*

The case was reset for trial in July 2016. The probate court heard testimony from four witnesses over two days: Cornelia; Battle; Ruth McCloud, Mary's friend and a former cotrustee of the trust; and Leslie Klein, the attorney responsible for drafting the trust.

Following the close of evidence and argument, the probate court found by clear and convincing evidence that Mary's intent

was to have Battle receive the entirety of the trust assets if Donna did not survive to receive a full distribution. Although the court determined the words of the trust were not ambiguous, it found the trust contained a mistake in the expression of Mary's intent. Accordingly, the court ruled the trust should be reformed to conform to Mary's actual intent.

Judgment in favor of Battle and against Cornelia was entered on November 4, 2016. The court reformed the trust by deleting the last two sentences of Schedule B of the trust and replacing them with the following language: "'In the event that [Donna] shall die before receiving full distribution of the Trust, the residue of [Mary's] estate shall be distributed to her children, then living, equally, share and share alike. In the event that [Donna] shall have no children at the time of her death, then the residue of the Trust shall be distributed to [Battle].'"

DISCUSSION

1. *Standard of Review*

Whether extrinsic evidence is admissible to reform an unambiguous trust instrument is a question of law we review de novo. (See *Estate of Duke*, *supra*, 61 Cal.4th at pp. 886-887; *Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 74.) Similarly, the interpretation of a trust instrument presents a question of law for our independent review when there is no conflict or question of credibility in the relevant extrinsic evidence. (*Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 604; *Burch v. George* (1994) 7 Cal.4th 246, 254; see *City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 395.) However, to the extent the probate court's decision rests on its findings of fact, those findings are reviewed only for substantial evidence. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750; *Ike*, at p. 87; see *Shupe v.*

Nelson (1967) 254 Cal.App.2d 693, 700 ["In order to reform a written instrument, the party seeking relief must prove the true intent by clear and convincing evidence. However, the clear and convincing evidence rule applies only at the trial level. On appeal, it is assumed that the trial court applied the proper standard and the judgment will not be upset if there is substantial evidence to support it."]; see also *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881 ["[o]n appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong'"].)

A trial court's exercise of its equitable powers is reviewed for abuse of discretion. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256; *In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, 1272.) Reformation of a trust involves the exercise of a court's equitable powers. (*Giammarrusco v. Simon* (2009) 171 Cal.App.4th 1586, 1603; *Ike v. Doolittle*, *supra*, 61 Cal.App.4th at p. 84.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478–479.)

2. *The Probate Court Properly Allowed the Introduction of Extrinsic Evidence To Correct a Mistake in the Trust*

As discussed, in *Estate of Duke*, *supra*, 61 Cal.4th 871 the Supreme Court reexamined and rejected the historic rule precluding the use of extrinsic evidence to correct a mistake in

the expression of a testator's intent in an unambiguous will. As the starting point for its analysis, the Court explained "extrinsic evidence is admissible to correct errors in other types of donative documents, even when the donor is deceased." (*Id.* at p. 886.) The Court cited in support of this established principle of law cases involving both irrevocable trusts and revocable inter vivos trusts, as well as cases in which contracts, insurance policies and deeds to property were reformed to correct drafting errors. (*Id.* at p. 887.)[3] The Court then held no sound basis existed not to extend this general rule to permit reformation of wills in appropriate circumstances, concluding that imposing the burden of proof by clear and convincing evidence adequately addressed concerns related to the circumstances that the principal witness (the testator) was deceased and not all statutory formalities required for the creation of a valid will were followed. (*Id.* at pp. 889-891; see also *id.* at p. 896 ["[i]f a mistake in expression and the testator's actual and specific intent at the time the will was drafted are established by clear and convincing evidence, no policy underlying the statute of wills supports a rule that would ignore the testator's intent and unjustly enrich those who would inherit as a result of a mistake"].)

The probate court properly applied the summary of governing law and analysis in *Estate of Duke* to allow the

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[3] The Supreme Court also observed, "California courts have admitted extrinsic evidence to apply to the *construction* of a will to accomplish what is arguably, or has the effect of, reforming a will." (*Estate of Duke*, *supra*, 61 Cal.4th at p. 887.) In addition, "[p]rinciples allowing the admission of extrinsic evidence to identify and resolve ambiguities in wills have also been invoked to correct attorneys' drafting errors and thereby to reform wills." (*Id.* at p. 888.)

introduction of extrinsic evidence to determine whether the Pinson Trust Agreement should be reformed to conform to Mary's actual and specific intent. (See *Estate of Duke*, *supra*, 61 Cal.4th at pp. 886-887; see also *Giammarrusco v. Simon*, *supra*, 171 Cal.App.4th at p. 1603 ["'[e]quity may intervene to correct a mistake in a trust whether it is an inter vivos trust or a testamentary trust and may *reform* an inter vivos trust even after the settlor is dead'"]; see generally Bogert et al., The Law of Trusts and Trustees (3d ed. 2006 & 2018 supp.) § 991 ["[i]f, due to a mistake, the trust does not contain the terms that were intended by the settlor, the settlor or other interested party may maintain a suit in equity to have the instrument reformed so that it will contain the terms that were actually agreed upon or that reflect the testator's actual intent"; fn. omitted].) Cornelia's argument to the contrary, based on *Ike v. Doolittle*, *supra*, 61 Cal.App.4th 51, is misplaced.

In *Ike* the court of appeal held trial courts have the authority to reform a trust agreement, including its distributive provisions, where necessary to correct a mistake and to accomplish the purpose of the trust. (*Ike v. Doolittle*, *supra*, 61 Cal.App.4th at pp. 83-85.) However, the court appeared to add as conditions for the exercise of this equitable power that there exist a "'peculiar' or 'exceptional' circumstance [that] made modification necessary to accomplish the purpose of the trustors" and "there was some expression in the trust instrument of the purpose of the trustors." (*Id.* at p. 83.) The *Ike* court found both conditions satisfied because there was a drafting error in the trust instrument that rendered the distributive intentions of the settlor ambiguous. (*Ibid.*) Cornelia argues that neither part of

what he labels *Ike*'s "two-prong test" was satisfied in the instant case.[4]

Although Cornelia may be correct on this limited point—the probate court here found the disputed language in the Pinson Trust Agreement unambiguous—to the extent imposing those conditions would preclude use of extrinsic evidence to reform an unambiguous trust instrument to conform to the actual and specific intent of the settlor, as Cornelia contends, that aspect of *Ike* does not survive the Supreme Court's decision in *Estate of Duke*. Indeed, in emphasizing that "extrinsic evidence is generally admissible to correct errors in documents, including donative documents other than wills," the Supreme Court cited *Ike* among the cases that supported this principle and described it as holding, "after trustors' deaths, reformation [is] allowed to correct a drafting error," without imposing any additional conditions on the proper use of that authority. (*Estate of Duke*, *supra*, 61 Cal.4th at p. 887.) Nowhere in its analysis of the general rules regarding reformation of donative documents or the new rule it announced with respect to reformation of unambiguous wills did the Supreme Court require the existence of any "peculiar" or "exceptional" circumstance other than a mistake in the expression of the settlor's or testator's intent, nor did it require any statement in the written instrument of the settlor's or testator's purpose. As long as clear and convincing evidence establishes the instrument contains a mistake in the

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[4] Cornelia has cited no case, and we are aware of none, that has applied the *Ike* two-pronged test and on that basis refused to reform an unambiguous trust instrument in the face of clear and convincing evidence a drafting mistake was made in expressing the settlor's actual and specific intent.

expression of the settlor's or testator's intent at the time it was executed and also establishes the actual and specific intent at the time of execution, a court is authorized to reform even an unambiguous donative document to conform to the settlor's or testator's intent. (See *Estate of Duke*, at p. 875.)

3. *Substantial Evidence Supports the Probate Court's Findings of Mary's Intent and Mistake in Drafting the Trust*

Substantial evidence supports the probate court's decision to reform the trust. Specifically, there was substantial evidence of Mary's actual and specific intent at the time the trust was drafted: In the event Donna died before receiving full distribution of the trust, the remainder of Mary's estate should be distributed to Donna's children; and, in the event Donna had no children at the time of her death, the remainder of the trust should be distributed to Battle. There was also substantial evidence the trust as drafted contained a mistake in the expression of Mary's intent.

Mary's attorney Leslie Klein testified Mary met with him in June 1999 to prepare a living trust and a will and described to Klein how she wanted her estate plan structured. Mary explained she had one daughter, who she thought was on drugs, and said she did not want to give her daughter any money until she reached age 50 except for $1,500 a month. At age 50 her daughter was to receive half of the estate, and at age 55 she was to receive the other half. Mary told Klein that, in the event her daughter passed away, she wanted the trust property to go to Donna's children, and, if Donna had no children, then it would go to Battle. Mary did not tell Klein she intended Donna's children or Battle to receive the trust property only in the event Donna

died before Mary did. Mary did not tell Klein she wanted Donna to have the right to direct where the trust property would go in the event Donna died before receiving it. In fact, there was no power of appointment in the trust because Mary did not trust her daughter to appoint beneficiaries; instead, she wanted the trust assets to stay with the trustees to be used for her daughter, then for her grandchildren, if any, and then for Battle.

Klein testified he prepared a draft of the estate plan and provided it to Mary. Mary told Klein she wanted the trustees to be able to give her daughter more than $1,500 a month in case her daughter needed medical or other care before she was 50. Mary wanted to make those changes to the draft herself. Klein testified Mary wrote out the part of Schedule B providing, "If [at] any time or times during the life of [this] Trust any of the income . . . beneficiaries shall [be in] want [of] additional monies for . . . support," through the end, including the last paragraph of Schedule B, which contains the disputed language at issue in this case. The document before the court was the trust Klein prepared with Mary's changes.

Klein testified Mary told him the words she used in the last paragraph of the trust were intended to mean, if Donna died before the trust was fully distributed, the trust property would go to Donna's children and, if she had no children, then to Battle. He explained, if he had written the last paragraph himself, he would have written "in the event Donna K. Pinson dies anytime, then everything goes to" Battle rather than "in the event Donna K. Pinson shall predecease trustor." Klein acknowledged as Mary's attorney he had made a mistake in failing to correct what Mary wrote.

The probate court's factual findings are also supported by the testimony of Ruth McCloud. According to McCloud, Mary discussed her intentions regarding administration of the trust during a meeting with her in November or December of 1999, several months after the trust had been established. Mary informed McCloud she was ill and was putting her affairs in order. With a copy of the trust in her possession, Mary told McCloud she wanted her to be a cotrustee. Mary said the trust was her attempt to continue to take care of Donna, but she also discussed with McCloud what she wanted to happen in the event that Donna died. Mary told McCloud, if Donna died, then the trust property would go to Donna's children, and, if Donna died without children, then it would go to Battle. Mary did not tell McCloud the trust property would go to Battle only if Donna died before Mary did, nor did she tell McCloud that there were any conditions to Battle receiving the trust property other than Donna dying without children.

Cornelia contends the testimony at trial does not support the probate court's findings concerning Mary's intent because it was Mary, not Klein, who drafted the clause at issue and Klein did not testify that Mary told him she wanted Battle to receive the trust property after Mary had personally made significant changes to Klein's original draft. In addition, Cornelia points out, McCloud did not testify whether Battle would receive the trust property regardless of whether Donna died before Mary.

It was reasonable for the probate court to interpret the evidence of Mary's intent as it did. (See, e.g., *Multani v. Knight* (2018) 23 Cal.App.5th 837, 857 ["[W]hen the findings of fact are challenged in a civil appeal, we are bound by the familiar principle that the power of the appellate court begins and ends

with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below. . . . In applying this standard of review, we view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . ."; internal citations and quotation marks omitted].) Klein testified Mary wanted to rewrite a portion of the trust herself to provide the trustees the ability to give her daughter more than $1,500 a month in case her daughter needed medical or other care, not to provide for distribution to Donna's children and to Battle only if Donna predeceased Mary. Any purported gap in Klein's testimony was filled by McCloud, who testified Mary told her, at a meeting that occurred after the trust instrument was executed, she wanted Battle to receive the remaining trust assets if Donna died without any living children. Even if McCloud's testimony were somehow insufficient to show Mary did not intend Donna's predeceasing Mary to be relevant to the manner of distribution of the trust property, Klein's testimony established that Mary wanted Battle to receive the trust property regardless of whether Donna died before Mary. That evidence is sufficient to support the probate court's judgment.

4. *The Probate Court Did Not Abuse Its Discretion in Reforming the Trust To Conform to Mary's Intent*

In light of the probate court's finding that Mary intended at the time the trust was drafted that the remainder of the trust estate should be distributed to Battle if Donna died without children whether or not Donna survived Mary, the decision to reform the trust to conform to that actual and specific intent was well within the court's discretion. Specifically, the probate court

did not abuse its discretion by deleting the last two sentences of Schedule B of the trust and replacing it with the following language: "In the event that [Donna] shall die before receiving full distribution of the Trust, the residue of [Mary's] estate shall be distributed to her children, then living, equally, share and share alike. In the event that [Donna] shall have no children at the time of her death, then the residue of the Trust shall be distributed to [Battle]."

DISPOSITION

The judgment is affirmed. Battle and Morgan Stanley are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.