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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PAMELA LIFTON-ZOLINE et al.,

Plaintiffs and Respondents,

v.

THOMAS A. ZOLINE,

Objector and Appellant.

B288711

(Los Angeles County  
Super. Ct. No. BP172847)

APPEAL from an order of the Superior Court of Los Angeles County, Maria E. Stratton, Judge. Affirmed.

Rutan & Tucker, Lisa N. Neal, Gerard M. Mooney, and Damon D. Mircheff for Objector and Appellant.

Sheppard, Mullin, Richter & Hampton, Nicholas J. Van Brunt, Valerie E. Alter, Golnaz Yazdchi, and Meghan K. McCormick for Plaintiff and Respondent Pamela Lifton-Zoline.  
Hinojosa & Forer, Shannon H. Burns, and Jeffrey Forer for Plaintiff and Respondent Patricia Zoline.

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## I. INTRODUCTION

Thomas A. Zoline,<sup>1</sup> a beneficiary of a trust, appeals from the trial court's order interpreting the trust agreement. For many years after the trustors' deaths, the trustee did not distribute most of the real properties held as trust assets. Another beneficiary, Pamela Lifton-Zoline, petitioned for an order construing the trust agreement and instructing the trustee how to distribute the assets pursuant to Probate Code<sup>2</sup> section 17200, subdivisions (b)(1) and (6).

Thomas and Pamela, along with the third beneficiary Patricia Zoline,<sup>3</sup> agreed that the real properties should be distributed non-pro rata (distributing specific properties to specific beneficiaries), rather than distributed pro rata (distributing undivided interests in the properties or selling the

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<sup>1</sup> Because the parties and the trustors share last names, we will refer to them by first name for clarity. No disrespect is intended.

<sup>2</sup> Further statutory references are to the Probate Code.

<sup>3</sup> Patricia joins in Pamela's respondent's brief.

properties and distributing the proceeds). But they disagreed about how to value the properties for distribution. Pamela asserted the trust agreement required using the asset values on the date of distribution, a contemporaneous valuation. Thomas argued for using the earlier date of the surviving trustor's death in 2004. Because the real properties' values had increased at different rates, the time of valuation made a difference. Using a 2004 valuation would give the recipient of certain property, primarily a Beverly Hills property, a share of the trust assets worth more now than the properties the other beneficiaries would receive. Following a court trial, the court ruled in favor of Pamela's interpretation. We affirm.

## **II. BACKGROUND**

### *A. The Trust Agreement*

Joseph and his wife Janice (individually Trustor and collectively Trustors) established the Zoline Family 1982 Trust (the Trust). Joseph and Janice had three children, Thomas, Pamela, and Patricia, all beneficiaries of the Trust. The trust agreement was fully restated and amended on July 29, 1987, and then amended four more times. The operative trust agreement is the 1987 Amended and Restated Trust Agreement and the First through Fourth Amendments (the Trust Agreement). As of the Fourth Amendment, Joseph, Janice, and certified public accountant Gary Finkel (Trustee) were named as cotrustees of the Trust. Upon the surviving Trustor's death, Finkel became the sole trustee.

The Trust Agreement was lengthy and complicated. Its pertinent provisions included the following.

Paragraph 4.6.2 addressed the division of Trust assets into shares upon the surviving Trustor's death. The principal and income of the Trust (after certain distributions) were to be "divided into equal shares for the Trustors' then living children," one share for each child.<sup>4</sup> Paragraph 4.6.2 continued: "Each such share shall further be divided into two fractional shares, of which one share shall consist of assets that are wholly exempt from the generation-skipping tax . . . , and the other share shall consist of the remaining property of such share. The division of each such share shall be based on the fair market value of assets of such share at the time of division." Each of these shares was a separate trust pursuant to paragraph 8.22: "Each share of the trust estate shall constitute a separate and individual trust . . . ."

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<sup>4</sup> Paragraph 4.6.2 of the Trust provides in pertinent part: "Upon the surviving Trustor's death, the principal and accrued and undistributed income of the Family Trust, and all principal and accrued and undistributed income of the Survivor's Trust, the Marital Trust, and the Residuary Trust that has not been effectively appointed by the surviving Trustor . . . shall be divided into equal shares for the Trustors' then living children . . . as follows: One share for each of the Trustors' then living children . . . . Each such share shall further be divided into two fractional shares, of which one share shall consist of assets that are wholly exempt from the generation-skipping tax (pursuant to the provisions of [s]ub[ ]paragraphs 8.31.1, 8.31.4[,] and 9.43), and the other share shall consist of the remaining property of such share. The division of each such share shall be based on the fair market value of assets of such share at the time of the division."

Paragraph 4.6.3 next addressed the distribution of those shares.<sup>5</sup> The tax exempt shares were to be “held, administered and distributed” in an “exempt trust.” For the non-exempt shares, paragraph 4.6.3 stated in part: “Each such divided share allocated to a child of the Trustors that is not exempt from the generation-skipping tax shall be distributed thirty-three and one-third percent outright to such child on the death of the surviving Trustor, and the balance of such share shall be held, administered and distributed in a separate trust (‘non-exempt trust’), as provided in [p]aragraph 4.8.” Later, the Fourth Amendment revoked paragraph 4.8 and substituted: “The non-exempt trust allocated to a Trustors’ child shall be distributed to the child free of trust, subject to [p]aragraph 4.16.”

Paragraph 4.16<sup>6</sup> stated in part that the Trustors intended for the Trustee to hold, manage and dispose of real property held

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<sup>5</sup> Paragraph 4.6.3 was amended by the First Amendment.

<sup>6</sup> Paragraph 4.16 provides in pertinent part: “Notwithstanding any of the provisions of this Article IV . . . to the contrary regarding distribution of property on partial or final distribution of a trust to a beneficiary . . . so long as the Trustee holds title to any real property or to stock of any close corporation which owns real property or holds an interest in THE ZOLINE FAMILY PARTNERSHIP or any successor or other partnership which owns real property, outright distribution of the interest of a beneficiary, his or her appointees or distributees in such real property, stock or partnership interest shall be deferred until the disposition by the Trustee of such real property, stock or partnership interest or the disposition by the close corporation or such partnership of such real property. . . . The Trustors’ purpose with respect to this provision is to permit such real property, stock and partnership interest to be held, managed and disposed

in trust, to avoid “several parties with fragmented interests.” Therefore, paragraph 4.16 prohibited the Trustee from “outright distribution of the interest of a beneficiary . . . in such real property . . . until the disposition by the Trustee of such real property.” The Trustee had the “sole and absolute discretion in determining whether and when to dispose of such real property.” Paragraph 4.16 did “not apply to any non-pro rata distributions of real property that would result in a single beneficiary having sole title to a parcel of real property.” Paragraph 4.6.2 was subject to paragraph 4.16, which applies “[n]otwithstanding any of the provisions of this Article IV.”

In sum, Article IV of the Trust Agreement detailed the steps the Trustee was to follow for disposing of Trust assets after both Trustees died: (1) divide the Trust assets into equal shares for each of the Trustors’ children (paragraph 4.6.2); (2) further divide the shares into two fractional shares, one exempt and one non-exempt for each child (paragraph 4.6.2); (3) allocate an exempt share and a non-exempt share to each child (paragraphs 4.6.2 and 4.6.3); (4) distribute the shares in part directly to the children and in part to exempt and non-exempt trusts for each child (paragraphs 4.6.3 and 4.8); and (5) distribute the non-exempt trusts to each child free of trust (paragraph 4.8). The

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of by the Trustee as an entity instead of by several parties with fragmented interests. . . . [¶] Notwithstanding the foregoing, the provisions of this [p]aragraph 4.16 regarding deferred distribution of real property, stock or a partnership interest shall not apply to any non-pro rata distributions of real property that would result in a single beneficiary having sole title to a parcel of real property, a single beneficiary having sole title to all stock of a closely held corporation or a single beneficiary having sole title to all assets held in a partnership.”

parties disagreed about when some of these steps were to take place and the date of valuation to be used as discussed below.

Two more paragraphs are pertinent here. Paragraph 7.1.17<sup>7</sup> gave the Trustee the power “to pay, divide, allocate and distribute” Trust assets “provided, however, that assets . . . paid, divided, allocated or distributed in kind shall be valued at their fair market value on the date or dates of such payment, division, allocation or distribution.” This paragraph applied, “[e]xcept as otherwise provided herein.”

Paragraph 7.1.18 stated in part: “[T]he Trustee shall be under no obligation to make a pro rata payment, division, distribution or allocation; but rather, he may, in his discretion, make a non-pro rata payment, division, distribution or allocation, so long as the respective assets paid, divided, distributed or allocated have equivalent or proportionate fair market value.”

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<sup>7</sup> Paragraph 7.1.17 stated: “Except as otherwise provided herein, upon any payment, division or partial or final distribution of income or principal of any trust, including, without limitation, the satisfaction of pecuniary gifts and legacies outright and in trust, and upon allocation of shares of the trust estate or any trusts hereunder into fractional shares or upon distribution of any fractional shares, to pay, divide, allocate and distribute such income or principal, to satisfy such gifts and to allocate or distribute such fractional shares in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as he may deem necessary to make payment, division or distribution; provided, however, that assets, or interests therein, paid, divided, allocated or distributed in kind shall be valued at their fair market value on the date or dates of such payment, division, allocation or distribution.”

## B. *The Disposition of Trust Assets Upon Joseph's Death*

Janice died on April 18, 1998, and Joseph died on September 23, 2004.

The parties agree that upon Joseph's death, the Trustee aggregated the Trust assets, valued them, and filed an IRS Form 706 reporting the value. Thomas says the Trustee divided the *assets* into equal shares for the three children, and further divided those shares into exempt and non-exempt shares. Pamela contends the Trustee divided the *estate's value* into three shares, which he further divided into exempt and non-exempt shares. The Trustee testified that he received a list of assets and valued them, which was necessary to complete the Form 706. He explained that because there were three children "each child gets a third interest." He next determined the amount to be allocated to the exempt trusts with the remainder going to the non-exempt trusts. The exempt trusts were funded by "allocating an undivided interest in an L.L.C." that owned a particular property.<sup>8</sup>

The remaining Trust assets were mostly real property, and all three beneficiaries sought non-pro rata distribution. The Trustee testified that one non-pro rata distribution of trust assets occurred for what he called "Telluride properties 1, 2, and 3" (Telluride properties). Pamela was part of a real estate group that purchased the Telluride properties in 2013. The Trustee negotiated a sale price for the properties. Then a one-third interest in the Telluride properties was distributed to Pamela, the other two-thirds interest was sold to a joint venture partner,

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<sup>8</sup> Thomas choose to have his interest go to him personally rather than into a trust.



and the proceeds from that sale were distributed to Thomas and Patricia. The Trustee used the 2013 sale price to value the distributions. Because the property had appreciated since 2004, if the Trustee had used the 2004 value, the other two beneficiaries would have received less in cash, and Pamela would have received a windfall. Thomas did not object to this distribution, but he now contends that it was a pro rata distribution because the property was sold, not distributed to one beneficiary.

The following real properties were not distributed and are the subject of the dispute about the valuation date for non-pro rata distribution: (1) a 100 percent membership interest in Zoline CA Holdings, LLC, which owns a 100 percent interest in a Walgreens store in San Jose, California; (2) a 90.876165 percent share of J&J Telluride Properties, Inc., which owns the J&J building, a mixed-use commercial/residential building in Telluride, Colorado; (3) a 1 percent membership interest in 4901 Zuni LLC, a Colorado limited liability company; (4) a 100 percent interest in a house located on Canon Drive in Beverly Hills, California; and (5) a 100 percent membership interest in Family Estate LLC, which owns a 100 percent interest in the “Family Estate” property.

*C. Petition for Order Construing Trust and for Instructions to Trustee*

On January 4, 2017, Pamela petitioned for an order construing the Trust Agreement and for instructions to the Trustee pursuant to section 17200, subdivisions (b)(1) and (6). Pamela asserted that the Trustee was not distributing Trust assets because the siblings did not agree on valuation. Pamela

argued for using fair market values at the time of distribution. She claimed Thomas was seeking to inherit the most substantially appreciated asset (the Beverly Hills property), resulting in a windfall to Thomas if 2004 values were used. Patricia and the Trustee joined in Pamela's argument. Thomas claimed that fair market values at the time of Joseph's death in 2004 should be used, and that Pamela was seeking a windfall by arguing for current values.

The matter proceeded to court trial on November 13, 2017. Pamela's expert Kenneth Wolf testified, and Thomas called the Trustee as a witness. On January 5, 2018, the trial court ruled in favor of Pamela. The court interpreted "the Trust to mandate equal distribution of the assets among Pamela, Patricia Zoline, and Thomas Zoline . . . using contemporaneous, not date of death, valuations," and instructed the Trustee to distribute the Trust assets using contemporaneous valuations.

### **III. DISCUSSION**

Thomas argues the trial court erred by construing the Trust Agreement to require contemporaneous valuations. He contends the Trustors intended "for the Trustee to divide the assets based on valuations as of the surviving Trustor's death and thereafter distribute them on that basis" in 2004, pointing to paragraph 4.6.2.

Pamela argues paragraph 4.6.2 does not govern asset distribution and is limited to "the division of the Trust estate into shares, and . . . into sub-shares." According to her, other paragraphs address the distribution of assets, mandate

contemporaneous valuation, and did not require assets to be distributed upon the surviving Trustor's death in 2004.

*A. Standard of Review*

“The interpretation of a will or trust instrument presents a question of law unless interpretation turns on the credibility of extrinsic evidence or a conflict therein.” (*Burch v. George* (1994) 7 Cal.4th 246, 254.) When the record “discloses no conflict in the extrinsic evidence, and the parties have identified no issues of credibility, it is our duty to independently construe the trust instrument.” (*Ibid.*) Here, the parties did not identify issues of credibility or conflicts in the extrinsic evidence. Accordingly, we undertake a de novo review of the Trust Agreement.

*B. Interpretation of the Trust Agreement*

““In construing trust instruments, as in the construction and interpretation of all documents, the duty of the court is to first ascertain and then, if possible, give effect to the intent of the maker.” [Citations.]” (*Estate of Cairns* (2010) 188 Cal.App.4th 937, 944, quoting *Gardenhire v. Superior Court* (2005) 127 Cal.App.4th 882, 888.) We apply the following rules: “The words of an instrument are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative.” (§ 21120.) “All parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of an instrument is ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the instrument.” (§ 21121.) And, “[t]he words of an

instrument are to be given their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained. Technical words are not necessary to give effect to a disposition in an instrument. Technical words are to be considered as having been used in their technical sense unless (a) the context clearly indicates a contrary intention or (b) it satisfactorily appears that the instrument was drawn solely by the transferor and that the transferor was unacquainted with the technical sense.” (§ 21122.)

## 1. The Trustors’ Intent Regarding Equal Distribution

The Trust Agreement establishes the Trustors’ intent for their three children to share equally in the distribution of Trust assets. Paragraph 4.6.2 states the Trust assets “shall be divided into equal shares for the Trustors’ then living children,” with each living child receiving one share. Paragraph 7.1.18 reinforces this intent by requiring non-pro rata distributions to result in each child receiving assets with “equivalent or proportionate fair market value.” The parties agree the Trustors intended equal distributions, but they disagree about how to value the distributions, focusing their disagreement on paragraph 4.6.2.

## 2. The Requirements of Paragraph 4.6.2

Thomas argues that paragraph 4.6.2 “direct[s] the Trustee to divide and distribute the Trust assets using fair market values upon the surviving Trustor’s death” (i.e., in 2004), and that the Trustee’s failure to distribute assets for the last fourteen years

does not vitiate that directive. He bases this argument on the language in paragraph 4.6.2: “Upon the surviving Trustor’s death,” the Trust assets “shall be divided into equal shares for the Trustors’ then living children,” and “[t]he division of each such share shall be based on the fair market value of assets of such share at the time of the division.”

Thomas is incorrect that paragraph 4.6.2 governs the valuation of assets for distribution. The key sentence of paragraph 4.6.2—“The *division of each such share* shall be based on the fair market value of assets of such share at the time of the division”—by its plain language addresses the division of shares into fractional shares, not the initial division of Trust assets into shares or the distribution of assets. (Emphasis added.) The phrase “each such share” refers to the immediately preceding sentence requiring the Trustee to divide the children’s shares into exempt and non-exempt fractional shares. The syntax and placement of the sentence indicate that the sentence refers to valuing shares to divide them into exempt and non-exempt fractional shares for tax purposes. Indeed, the Trustee testified that he had the Trust assets valued to prepare the IRS Form 706 and determine the tax exempt amounts to be allocated to each tax exempt trust.

And, Thomas is misguided in arguing that paragraph 4.6.2, obligated the Trustee to distribute Trust assets immediately upon the division of assets into shares in 2004.<sup>9</sup> If the Trustors had intended for the Trustee to distribute the assets at that time, they could have inserted in paragraph 4.6.2 the simple directive

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<sup>9</sup> The Trustee testified that the assets could not have been distributed upon the surviving Trustor’s death because the IRS audited the estate.

that immediately after division into exempt and non-exempt shares, the assets were to distributed outright to the Trustors' then living children.

Instead, the Trust Agreement anticipated the Trustee would manage the assets for some time and distribute them at a later date. For example, in paragraph 4.16, the Trustors expressly stated their intent that the Trustee hold, manage and dispose of the Trust's real property, and defer the "outright distribution" of interests in the real property (i.e., pro rata distribution) to the children until the disposition by the Trustee of the real property. This was to avoid "several parties with fragmented interests." Paragraph 4.16 also gave the Trustee the "sole and absolute discretion in determining whether and when to dispose of such real property." If paragraph 4.6.2 required the distribution of the Trust assets upon the surviving Trustor's death, as Thomas argues, no real property would remain to be managed, and the deferment of "outright distribution" of interests in the property would be meaningless. Paragraph 4.16 would be largely superfluous.

### 3. Valuation on the Date of Distribution

While paragraph 4.6.2 does not cover valuation of assets for distribution, other paragraphs do. Paragraph 7.1.17 expressly addresses non-pro rata distribution and mandates that assets "distributed in kind shall be valued at their fair market value on the date or dates of such . . . distribution." This requirement is clear and unconditional, and corroborated by paragraph 7.1.18, which authorizes non-pro rata distributions "so long as the

respective assets . . . distributed . . . have equivalent or proportionate fair market value.”

Thomas counters that paragraphs 7.1.17 and 7.1.18 are inapplicable “catch-all provisions” and the “specific language” of paragraph 4.6.2 prevails. But as already discussed, paragraph 4.6.2 does not contain specific language concerning the valuation of assets for distribution. To the contrary, it is paragraph 7.1.17 that contains the specific language requiring valuation on the date of distribution.

Next, Thomas argues that re-valuing Trust assets for distribution would make valuing assets under paragraph 4.6.2 “an empty act.” Not so. The valuation and division of shares into exempt and non-exempt fractional shares under paragraph 4.6.2 allowed, at a minimum, the filing of IRS Form 706.

Thomas also asserts that the Trustee in fact divided the Trust assets among the children in 2004, and that Pamela and the Trustee so admitted. Thomas appears to suggest that in 2004 the Trustee earmarked specific assets for specific children. But no evidence in the record supports this assertion. Pamela alleged that the Trust assets were divided into shares, not that specific assets were divided up. The Trustee testified that he valued the Trust assets; divided the “estate” or “pot of assets” or “pool of assets” into shares; and then divided the shares into exempt and non-exempt shares.

The only evidence in the record showing the 2004 valuation of Trust assets is the IRS Form 706, which lists the values of the exempt and non-exempt shares and the total value of the estate. It does not show any specific assets divided among the children or the values of specific assets. Indeed, Thomas implicitly admits that the 2004 division did not designate specific assets to each

child when he says that he “assume[s]” he will receive certain assets, apparently the Beverly Hills property. But he does not point to anything establishing that in 2004 the Beverly Hills property was designated as his share of the estate.

In dividing the “pot of assets” into shares, but not dividing specific assets among the children, the Trustee followed the direction of paragraph 8.22, which states: “Each share of the trust estate shall constitute a separate and individual trust . . . *No physical segregation or division of the trust property among the trusts hereunder shall be required* except as may be necessitated by distribution from any trusts, but separate accounts shall be maintained for the interests of the respective beneficiaries.” (Emphasis added.) Thus, the division of assets into shares pursuant to paragraph 4.6.2 did not necessitate the division of specific assets among the children.

Finally, Thomas cites *Ammerman v. Callender* (2016) 245 Cal.App.4th 1058, in support of his argument that the trust assets should be distributed using 2004 values. That case is not instructive because the issue on appeal there—whether assets should be divided based on the “changing fraction method”—was different. (*Id.* at pp. 1062, 1064.)

In short, valuing assets on the date of distribution comports with the language of the Trust Agreement and achieves the Trustors’ intent that their children receive equal distributions of the Trust assets.



#### **IV. DISPOSITION**

The order is affirmed. Respondents are entitled to recover their costs on appeal.

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SEIGLE, J.\*

We concur:

BAKER, Acting P.J.

KIM, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.