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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

CRAIG ALEXANDER, Plaintiff and Appellant, v. ROBERT ALEXANDER, as Successor Trustee, etc. et al., Defendants and Respondents.	2d Civ. No. B290055 (Super. Ct. No. 15PR-0338) (San Luis Obispo County)

Craig Alexander appeals a judgment entered by the probate court denying, among other things, his petition for an order requiring the trustee of the Alexander Revocable Family Trust (Trust) to distribute property.[1] (Prob. Code, § 850, subd. (a)(3)(A).)[2] We affirm.

[1] We will refer to members of the Alexander family by their first names, not from disrespect, but to ease the reader's task.

[2] All statutory references are to the Probate Code.

This appeal concerns an unsuccessful attempt by Craig, the youngest of four siblings, to exercise an option (Option) set forth in his deceased parents' family trust to purchase real property upon which the family-owned business is located. Craig's mother, Ruth, had disinherited Craig by amendments to her estate plan shortly before her death. Following trial of this and other issues (including undue influence and testamentary capacity), the probate court judge considered evidence of the Alexander family dynamics and commented: "Hurt feelings, wounded pride, years of stony silence, and social slights going back decades have generated anger, resentment, and acute animosity among the . . . siblings." The court then decided, based upon its interpretation of the Trust provisions, that Ruth had in effect eliminated the purchase Option by exercising a limited testamentary power of appointment that disinherited Craig.

FACTUAL AND PROCEDURAL HISTORY

Earle Alexander and his two sons, Robert and Craig, worked together for many years in the family-owned trucking business, Alexander Trucking, Inc. The profitable business engaged in hauling agricultural commodities and was located on 9.5 acres in Earlimart, near Bakersfield. Following Earle's retirement and later death in 1992, Robert and Craig operated the business jointly, having received equal shares of stock in the business. In 2013, Robert retired and sold his 50 percent ownership of the business and equipment to Craig.

The Earlimart real property is but one asset of the Trust. For many years, the Trust leased the Earlimart property to the business. In 2014, the year before her death, Ruth increased the monthly rental on the property from $2,500 monthly to $6,000 monthly. The $2,500 rental rate had been in effect since 2004

pursuant to a 10-year lease. Craig refused to pay the increased rent.

Specific Trust Provisions

The Trust terms provide that upon the death of the first settlor, the trustee was to divide the trust estate into four sub-trusts: the survivor's trust, the marital deduction trust, the disclaimer trust, and the exemption trust. Each of the four sub-trusts contains either a general or a limited power of appointment by will or codicil to be exercised by the surviving settlor.

The exemption trust consists of the balance of the trust estate that was not included in the other three sub-trusts. This includes the Earlimart real property. The surviving settlor retains a limited power of appointment by will or codicil regarding the assets of this sub-trust.

Section 4.04 D of the Trust provides: "D. Default Provision. After the death of the Surviving Settlor, any of the Exemption Trust not effectively appointed by the Surviving Settlor shall be held, administered, and distributed in accordance with the provisions relating to the Division of Trust Estate on Death of Surviving Settlor set forth below." Section 4.07 C provides that the trustee shall divide the residue of the trust estate into four equal shares for each of Earle and Ruth's four children or, if predeceased, their descendants, subject to the Option provision.

The purchase Option is set forth in section 4.07 D: "It is the Settlors' desire to provide their sons, Robert L. Alexander and Craig L. Alexander, with the opportunity to acquire ownership of said leased property. It is also the Settlors' desire that the trust estate receive fair consideration for said leased property. Therefore, the trustee shall grant the Settlors' sons, Robert L.

Alexander and Craig L. Alexander, or the survivor of the two, an option to purchase said leased property." Section 4.07 D (4) further provides: "It is the Settlors' intent to provide their sons with the option of continuing with the Settlors' business operation and provide their daughters with fair consideration for their not sharing in the business operation, and the above paragraphs shall be construed in light of this intent. The above option shall be in favor of the Settlors' sons, Robert L. Alexander and Craig L. Alexander, individually and personally, and shall not pass to either of their heirs, successors, or assigns."

Ruth's Actions Following Earle's Death

When Earle died in 1992, the sub-trusts were created and Ruth was the sole trustee. In 2004, Ruth sold her ownership interest in the trucking firm to her two sons, who then became the sole owners.

In the last years of Ruth's life, she and Craig were estranged. Ruth stated to her daughter Terry that she thought Craig was ungrateful and unappreciative of the assets his parents provided him. In 2006, Ruth met with an attorney to change her estate plan by reducing Craig's share of her estate from 25 percent to 10 percent. Although Craig lived near Ruth, he seldom visited her and did not invite her to the weddings of his children or to holiday celebrations with his family. Craig testified that Ruth was suffering from dementia and he believed that his visits might upset her.

On March 15, 2015, Ruth met with an estate planning attorney and executed a codicil to her 2006 will and other documents that effected her resignation as trustee over the sub-trusts. Robert became successor trustee of the exemption trust and the marital trust; Terry became trustee of the survivor's

trust. Ruth also exercised her powers of appointment and made gifts of her Grover Beach home to Terry and an Idaho residence to daughter Lynn, and directed that the remainder of the Trust after distribution of the specific gifts be divided in equal shares among Robert, Terry, and Lynn. Ruth expressly and intentionally disinherited and failed to provide for Craig and his issue.

Craig's Attempt to Exercise Option and Ensuing Litigation

Ruth died on July 17, 2015. Within a month of her death, Craig attempted to exercise the Option. Robert, as trustee, rejected the attempted exercise. Craig then filed a petition requesting an order requiring the trustee to distribute property. Later, Craig filed a second petition challenging Ruth's 2015 codicil based upon alleged undue influence, lack of testamentary and donative capacity, and elder abuse. The petitions were consolidated for trial.

Following trial, the probate court found that Ruth had sufficient testamentary and donative capacity and was not affected by any undue influence of Robert or Terry. In a statement of decision, the trial judge stated: "Based upon the totality of the evidence, the Court concludes that Ruth decided, for her own reasons (some articulated and some not), that Craig had profited enough from his employment and later ownership of Alexander Trucking to the result that, in her mind, Craig did not need or deserve further remuneration from the Trust." The court specifically found that some of Craig's witnesses were biased, their testimony impeached, and their statements implausible.

The probate court also interpreted the Option in light of the other provisions of the Trust, including the vesting of powers of appointment in the surviving settlor. The court concluded that

Ruth exercised her power of appointment regarding the Option when she bequeathed the remainder of her estate to three of her four children. The court then reasoned that it would be anomalous to conclude that Craig retained his right to exercise the Option. In any event, the court concluded that the settlors intended that the Option could not be exercised by one brother alone but must be exercised by the two brothers together.

Craig appeals and challenges the probate court's interpretation of the Trust Option.[3]

DISCUSSION

I.

Craig argues that the probate court erred as a matter of law in interpreting the Trust because the Option is not part of the Trust estate and is merely an offer vesting no estate or interest in property. He also asserts that Ruth's power to appoint did not authorize her to revoke the Option, but merely permitted her to decide who should receive the Trust estate. Finally, he contends that requiring both brothers to agree to the exercise of the Option does not comply with the settlors' intentions.

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; *Blech v. Blech* (2018) 25 Cal.App.5th 989, 1001.) As a general rule, it is solely a judicial function to interpret a written instrument. (*Blech*, at p. 1001.) Where the evidence is undisputed and the parties draw conflicting inferences, the reviewing court independently draws its own inferences. (*Id.* at

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[3] Craig does not challenge the probate court's decisions regarding undue influence, elder abuse, or lack of testamentary or donative capacity.

p. 1002.) Particularly in the interpretation of wills and trusts, each case depends upon its own facts and precedents have little value. (*Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 73.)

Section 21102, subdivision (a) provides: "The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument." (*Estate of Russell* (1968) 69 Cal.2d 200, 205 [" 'paramount rule' " in the construction of a will is that it must be construed according to the testator's intentions].) In our review, we may consider " 'the circumstances under which the document was made in order to place ourselves in the position of the trustor.' " (*Estate of Cairns* (2010) 188 Cal.App.4th 937, 944.) Section 21121 sets forth this rule in construing trust terms: "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."

In our independent review, we decide that Ruth implicitly eliminated the Option regarding Craig when she exercised her limited testamentary power of appointment concerning the assets in the exemption sub-trust. (*Sefton v. Sefton* (2012) 206 Cal.App.4th 875, 882 [powers of appointment provide flexibility in estate planning to take account of changes the first deceased settlor could not have foreseen].) The Earlimart real property was an asset in this sub-trust. By her 2015 codicil, Ruth divided the residue of the Trust into three equal shares and expressly and completely disinherited Craig. Ruth's estate-planning attorney and drafter of the 2015 codicil testified: "[Ruth] told me to disinherit [Craig]. . . . She wanted to do it a hundred percent. .

. . That was what I did. That's what she asked me to do." It would be anomalous for Ruth to expressly disinherit Craig completely but yet allow him to exercise the Option and obtain a significant Trust asset. Such a construction would subvert Ruth's stated intent to her attorney and as she expressed in her 2015 codicil. For this reason, we do not consider Ruth's 2015 ratification of all remaining terms of the Trust as permitting Craig to exercise the Option although he has been disinherited.

We also do not construe the probate court's decision as erroneously including the Option itself as an asset of the exemption sub-trust. The Option concerns or relates to the Earlimart property asset held in the exemption sub-trust, and we so interpret the court's reasoning. In any event, on review we independently interpret the Trust.

Moreover, Ruth validly exercised her limited power of appointment. The Trust terms expressly permitted the surviving settlor to choose an alternate asset distribution through a general (survivor's sub-trust) or limited power of appointment (remaining three sub-trusts). This Ruth did; the default Trust provision distributing one-fourth of the trust estate to each of the four siblings was not then invoked. Ruth did not revoke irrevocable Trust terms by the exercise of this express power.

We also independently construe the Option terms to require Craig and Robert to jointly exercise the Option. Earle and Ruth expressed their intent in Trust section 4.07 D (4) "to provide their sons with the option of continuing with the Settlors' business operation and provide their daughters with fair consideration for their not sharing in the business operation, and the [Option] shall be construed in light of this intent." Section 4.07 D requires the trustee to "grant the Settlors' sons . . . or the

survivor of the two, an option to purchase [the Earlimart property]." 4.07 D (4) provides that the Option "shall be in favor of the Settlors' sons, Robert L. Alexander and Craig L. Alexander, individually and personally, and shall not pass to either of their heirs, successors, or assigns." Joint exercise of the Option fulfills the settlors' intent of retaining the Earlimart property in the Alexander family and providing funds to the settlors' two daughters, Terry and Lynn. Joint exercise also requires the brothers to cooperate and maintain a familial relationship. Although there may be practical, business, and other reasons supporting a different interpretation, our interpretation carries out the settlors' expressed intentions.

The judgment is affirmed. Respondents are awarded costs.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Charles S. Crandall, Judge

Superior Court County of San Luis Obispo

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP, Todd W. Baxter for Plaintiff and Appellant.

Ogden & Fricks, LLP, Roy E. Ogden, and Sue N. Carrasco for Defendants and Respondents.