Leimberg Information Services, Inc.

Steve Leimberg's Estate Planning
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Subject: Marc Soss on Knopf v. Gray: What Specific Verbiage Is Necessary To Create a Life Estate Interest In Texas

"In Knopf v. Gray, the Texas Supreme Court addressed the intent of the following dispository provision 'NOW BOBBY I leave the rest to you, everything, certificates of deposit, land, cattle, and machinery, Understand the land is not to be sold but passed on down to your children, ANNETTE KNOPF, ALLISON KILWAY, AND STANLEY GRAY. TAKE CARE OF IT AND TRY TO BE HAPPY.' In reversing both the Trial Court and Court of Appeals, the Texas Supreme Court found the provision resulted in a devise of a life estate interest in real property and not a fee simple interest (the determination reached in both lower courts). In reaching its conclusion it found the language to not be ambiguous and that a court must construe a will as a matter of law if it has a clear meaning.

The Supreme Court held that '[w]e need only read the provision as a whole to see a layperson's clearly expressed intent to create what the law calls a life estate. Reading all three clauses together, Allen grants the land to Bobby subject to the limitations that he not sell it, that he take care of it, and that it be passed down to his children. This represents the essence of a life estate; a life tenant's interest in the property is limited by the general requirement that he preserve the remainder interest unless otherwise authorized in the will.' Allen's words in the contested provision unambiguously refer to elements of a life estate and designate her grandchildren, two of the petitioners, as the remaindermen. The language thus clearly demonstrates that the phrase 'passed on down,' as used here, encompasses a transfer upon Bobby's death."

Marc Soss provides members with his analysis of Knopf v. Gray.

Marc Soss' practice focuses on estate planning; probate and trust administration and litigation; guardianship law; and corporate law in Southwest Florida. Marc is a frequent contributor to **LISI** and has

published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar, Association of the United States Navy and Military.Com. Marc also serves as an officer in the United States Naval Reserve.

Here is Marc's commentary:

EXECUTIVE SUMMARY:

In Knopf v. Gray, the Texas Supreme Court addressed the intent of the following dispository provision "NOW BOBBY I leave the rest to you, everything, certificates of deposit, land, cattle, and machinery, Understand the land is not to be sold but passed on down to your children, ANNETTE KNOPF, ALLISON KILWAY, AND STANLEY GRAY. TAKE CARE OF IT AND TRY TO BE HAPPY." In reversing both the Trial Court and Court of Appeals, the Texas Supreme Court found the provision resulted in a devise of a life estate interest in real property and not a fee simple interest (the determination reached in both lower courts). In reaching its conclusion it found the language to not be ambiguous and that a court must construe a will as a matter of law if it has a clear meaning.

The Supreme Court held that "[w]e need only read the provision as a whole to see a layperson's clearly expressed intent to create what the law calls a life estate. Reading all three clauses together, Allen grants the land to Bobby subject to the limitations that he not sell it, that he take care of it, and that it be passed down to his children. This represents the essence of a life estate; a life tenant's interest in the property is limited by the general requirement that he preserve the remainder interest unless otherwise authorized in the will." Allen's words in the contested provision unambiguously refer to elements of a life estate and designate her grandchildren, two of the petitioners, as the remaindermen. The language thus clearly demonstrates that the phrase "passed on down," as used here, encompasses a transfer upon Bobby's death.

FACTS:

Vada Wallace Allen (the "Decedent") created a Last Will and Testament ("Will") that disposed of her entire estate, including the 316 acres of land in question (the "Property"), through the following provision: "NOW BOBBY

(William Robert “Bobby” Gray) I leave the rest to you, everything, certificates of deposit, land, cattle, and machinery, Understand the land is not to be sold but passed on down to your children, ANNETTE KNOPF, ALLISON KILWAY, AND STANLEY GRAY. TAKE CARE OF IT AND TRY TO BE HAPPY.” Bobby subsequently conveyed the land in fee simple to Polasek Farms, LLC (“Polasek”). Annette Knopf and Stanley Gray (the “Petitioners”) challenged the sale to Polasek, filed a declaratory judgment action and argued that Bobby only possessed a life estate interest in the Property and could not deliver a greater interest to Polasek.

The Petitioners and Bobby and Polasek filed competing motions for summary judgment. The trial court granted Polasek's motion in two separate rulings and rendered final judgment in their favor. The Trial Court found that the contested Will provision contained an invalid disabling restraint that vested Bobby with a fee-simple interest in the Property. A divided Court of Appeals affirmed, agreeing with the trial court's findings and concluding that “the will's language regarding passing the land on down to the children was merely an instruction to Bobby rather than a gift to the children.”

Arguments:

The Petitioners appealed the Court of Appeals ruling to the Texas Supreme Court. The Petitioners argued before the court that the instructional language read in conjunction with other language throughout the Will demonstrated the Decedent’s intent to grant Bobby only a life estate with the remainder interest to her grandchildren. Bobby and Polasek argued the same instructional language confirmed the Decedent’s intent to devise the land to Bobby in fee simple or alternatively constituted an invalid disabling restraint.

Analysis:

A life estate is generally defined as an “estate held only for the duration of a specified person's life.” Life Estate, Black's Law Dictionary (10th ed. 2014). A will creates a life estate “where the language of the instrument manifests an intention on the part of the grantor or testator to pass to a grantee or devisee a right to possess, use, or enjoy property during the period of the grantee's life.” *Fin. Freedom Senior Funding Corp. v. Horrocks*, 294 S.W.3d 749, 755 (Tex. App.–Houston [14th Dist.] 2009, no pet.).

Under the Texas Property Code “[a]n estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words,” However, the code does not require any specific words or formalities to create a life estate. *Welch v. Straach*, 531 S.W.2d 319, 321 (Tex. 1975). As a result, the words used in the will must only evidence an intent to create what lawyers know as a life estate.

A court must construe a will as a matter of law if it has a clear meaning. However, when a will’s meaning is ambiguous, its interpretation becomes a fact issue for which summary judgment is inappropriate. A will is ambiguous when it is subject to more than one reasonable interpretation or its meaning is simply uncertain. Whether a will is ambiguous is a question of law for the court. The cardinal rule of will construction is to ascertain the testator’s intent and to enforce that intent to the extent allowed by law. We look to the instrument’s language, considering its provisions as a whole and attempting to harmonize them so as to give effect to the will’s overall intent. We interpret the words in a will as a layperson would use them absent evidence that the testator received legal assistance in drafting the will or was otherwise familiar with technical meanings.

Texas Supreme Court Ruling:

The Texas Supreme Court Justices found that “[w]e need only read the provision as a whole to see a layperson's clearly expressed intent to create what the law calls a life estate.” The Justices further found that “[r]eading all three clauses together, Allen grants the land to Bobby subject to the limitations that he not sell it, that he take care of it, and that it be passed down to his children. This represents the essence of a life estate; a life tenant's interest in the property is limited by the general requirement that he preserve the remainder interest unless otherwise authorized in the will.” (citing *Richardson v. McCloskey*, 276 S.W. 680, 685 (Tex. 1925).

In reaching their ruling the Justices held the Decedent’s words in the contested provision to be unambiguous, to refer to elements of a life estate with designated remaindermen and that the “[W]ill as a whole indicates an intent to keep her property in her family and to bequeath certain property to multiple generations.” As the result the Texas Supreme Court justices found the contested provision in the Decedent’s Will only granted Bobby a life estate interest and a remainder interest in Annette Knopf, Allison Kilway and Stanley Gray.

COMMENT:

What is clear and unambiguous to one Judge may not be to others. In *Knopf* the petitioners were forced to take their argument to the Texas Supreme Court to find Justices that concurred with their reading and interpretation of the Will when interpreting its words "as a layperson would use them."

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Marc Soss

CITES:

Knopf v. Gray, No. 17-0262, 2018 Tex. LEXIS 249 (Tex. March 23, 2018); Black's Law Dictionary (10th ed. 2014); *Fin. Freedom Senior Funding Corp. v. Horrocks*, 294 S.W.3d 749, 755 (Tex. App.–Houston [14th Dist.] 2009, no pet.); *Welch v. Straach*, 531 S.W.2d 319 (Tex. 1975); *Richardson v. McCloskey*, 276 S.W. 680 (Tex. 1925); Valence Operating Co. v. Dorsett, 164 S.W.3d 656 (Tex. 2005); El Paso Nat'l Bank v. Shriner's Hosp. for Crippled Children, 615 S.W.2d 184 (Tex. 1981); White v. Moore, 760 S.W.2d 242, 243 (Tex. 1988); Coker v. Coker, 650 S.W.2d 391 (Tex. 1983); In re Estate of Slaughter, 305 S.W.3d 804 (Tex. App.–Texarkana 2010, no pet.); Kelley–Coppedge, Inc. v. Highlands Ins. Co., 980 S.W.2d 462 (Tex. 1998); Bergin v. Bergin, 315 S.W.2d 943 (Tex. 1958) ; Stephens v. Beard, 485 S.W.3d 914 (Tex. 2016); Tex. Prop. Code § 5.001(a);