Testator Intent & Entrinsic Evidence

Chapter 10

Denise S. Rahne
Robins, Kaplan, Miller & Ciresi
Minneapolis

Table of Contents

1. *In the Matter of the Trusts Created in and by the Last Will and Testament of Hartman* 10-1

1. *In the Matter of the Trusts Created in and by the Last Will and Testament of Hartman,*

347 N.W.2d 480 (Minn. 1984)

Brief Summary of Facts

The trustees filed a petition for instruction as to the final distribution of a residuary trust created by the testator—Hartman. The testator had previously executed a will with certain bequests and instructions as to the disposition of this trust. The provisions in the will included contingencies based upon whether the testator's only grandson at the time of execution was alive upon disposition of the trust proceeds and also whether there was "another child, or children" of the testator's only daughter. The will provided that were there not another child, or children of the testator's only daughter, then certain the trust funds would be distributed to non-lineal family members, including two siblings and a nephew.

The testator's great-grandchildren sought and were permitted to introduce evidence of the testator's intent regarding what was meant by "another child, or children." Specifically, they sought to demonstrate that the testator's intent was to benefit his lineal descendants to the exclusion of non-lineal relatives. The evidence included oral testimony of the testator's son-in-law and prior drafts of the will. The oral testimony was tailored to show that the testator's daughter never planned to have additional children, that the testator knew that, and that the daughter and grandson had a close relationship with the testator. The drafts of three prior wills was proferred to show that the testator had previously interchanged the terms "issue" and "children" to the point of ambiguity.

The trial judge admitted the oral testimony as evidence of surrounding circumstances. The judge also found that the will was ambiguous as to the use of "another child, or children" and admitted the draft wills prior to (and presumably related to) its finding of ambiguity. Ultimately, the trial court ruled that the testator intended to favor his lineal descendants and that they should take from the trust to the exclusion of non-lineal relatives. The Minnesota Supreme Court reversed. While the evidence of surrounding circumstances was admissible, the court found that the trial court went beyond the bounds of "consideration" and ventured into speculation. The court also ruled that the admission of the prior wills was improper, albeit harmless error in light of the reversal.

Holding

A. The cardinal rule of will construction is that the testator's intention must be gathered from the language of the will itself and the court may not consider unexpressed intentions that the testator may have had but did not express.

B. A court may consider evidence of surrounding circumstances, but cannot speculate what the testator would have done with the knowledge of events subsequent to his or her death and consequently rewrite the will.

Comment

Often, ambiguity is in the proverbial eye of the beholder. Even in traditional contract cases, questions regarding ambiguity and the use of extrinsic evidence can be enough to put judges and practitioners into existential crisis. In the case of a testamentary document, the challenge is exacerbated by the differences between the nature of such an instrument as compared to a negotiated contract. In negotiated contracts, two parties traditionally hammer out the language, instilling a greater theoretical confidence in relying on the four corners of the document. Testamentary documents are necessarily unilateral and usually untested by putative parties in interest during the drafting stage. Consequently, we handle the question of "what does this mean" somewhat differently than with a traditional contract.

Hartman demonstrates the difficulty not only in drawing a line between what is properly admitted as evidence of surrounding circumstances and more traditional extrinsic evidence but also in the challenges faced in corralling the use of any evidence of intent once that door is open. Practitioners need to think about the following:

> If, on the continuum between unambiguous and blatantly ambiguous, an instrument tends toward the latter, you are going to have greater latitude in using the entire range of extrinsic evidence. The converse is also true.

Evidence of surrounding circumstances should be tied closely to the actual language of the instrument. It is meant to inform what is there, not add to what one wishes were there.

Over-reach at your peril. While a trial court judge, in an understandable search for an answer, might be humanly prone to blur the use of "surrounding circumstances" evidence, your reviewing court will be much more clinical and circumspect.

Relevant Authorities

- Drafting Wills and Trust Agreements Deskbook (6th ed. 2013).
- *Estate of Ruth Cole*, 621 N.W.2d 816 (Minn. Ct. App. 2001). *Cole* is a somewhat academic but informative recitation on the history and policies behind the use of extrinsic evidence in judicial interpretation of testamentary instruments.
- *Estate of Ulseni*, 372 N.W.2d 759 (Minn. Ct. App. 1985). In the testamentary context we sometimes face the need to prove a negative. Consequently, we have the exception for the use of extrinsic evidence to demonstrate intent to disinherit or other intentional omissions. *Ulseni* is a useful case on this point.

Notes