

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-850

MARLA REEVES GARDNER ET AL.
APPELLANTS

V.

SHERRY BRITTON
APPELLEE

Opinion Delivered April 27, 2011

APPEAL FROM THE LEE COUNTY
CIRCUIT COURT

[NOS. PR-92-18; E-99-68]

HONORABLE KATHLEEN BELL,
JUDGE

REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

The late Elmer Reeves created a testamentary trust in his last will and testament that was filed and entered into probate on April 27, 1992. On March 6, 2009, the trustee in succession of the Elmer Reeves Testamentary Trust filed a petition seeking the trial court's approval of his proposed distribution of the 2008 income of the trust *per stirpes*, with three equal shares of twenty-five percent of the income to be distributed to Elmer Reeves's three living children, and the remaining twenty-five percent share to be distributed between the children of Marlin Reeves, Elmer Reeves's deceased child. The trial court found that the grandchildren were not beneficiaries under the terms of the trust and refused to approve the proposed distribution. Appellant argues that the trial court's interpretation of the trust was erroneous. We agree, and we reverse and remand.

In construing a trust, we apply the same rules applicable to the construction of wills.

Bailey v. Delta Trust & Bank, 359 Ark. 424, 198 S.W.3d 506 (2004). The cardinal rule in construing a trust instrument is that the intention of the settlor is controlling. *Id.*; see *In re: Estate of Lindsey*, 309 Ark. 596, 832 S.W.2d 808 (1992). This intention is to be determined from viewing the four corners of the instrument, construing the words and phrases in their ordinary sense and, whenever possible, giving meaning to all of its provisions. *Bailey v. Delta Trust & Bank*, *supra*.

The trust provisions of the will begin with a declaration in Paragraph 2.I that the purpose of the trust is to “provide for the health, education, support, and maintenance of my children and my wife at the time of my death and to provide for the distribution of my property as stated in the following paragraphs.” Paragraph 2.II contains spendthrift provisions to protect the share of Marlin Reeves from his creditors upon distribution of the trust estate after the death of the testator’s wife, and provides for the distribution *per stirpes* of the portion of any child of the testator who should predecease him. Paragraph 2.III enumerates the powers of the trustee.

The proposed distribution of trust income in this case is governed by Paragraph 2.IV, which deals with distribution of trust income or principal during the time between the testator’s death and the death of his wife. This section allows the trustee to make distributions to the testator’s spouse, children, or grandchildren. These distributions are to provide for the health, support, education, or maintenance of these persons. The trustee has unrestricted

discretion to make such distributions to fulfill the purposes of the trust.¹

The trial court's order concluded that the children of Marlin Reeves were not entitled to receive income from the trust as follows:

The Court finds the provisions of Paragraph 2.I of the Will/Testamentary Trust are paramount. The grandchildren are not mentioned in Paragraph 2.I. Accordingly, until the death of [the testator's wife], the grandchildren will not share in the income of the trust. Upon the death of [the testator's wife], the grandchildren of Elmer Reeves shall then share in the income of the trust.

We hold that the trial court erred in this interpretation of the settlor's intent. The trustee unquestionably had the authority to make the distribution that he proposed. It is true that grandchildren are not expressly mentioned in the testator's brief declaration of intent, but the provisions are not directly conflicting and, in resolving any possible conflict, the applicable rule of construction is that the last clause in the will governs in ascertaining a testator's intentions. *Walt v. Bevis*, 242 Ark. 644, 414 S.W.2d 863 (1967); *see also Bowen v. Frank*, 179 Ark. 1004, 18 S.W.2d 1037 (1929). Furthermore, as a general rule, in cases of inconsistency between general and specific provisions of a writing, the specific expressions ordinarily qualify

¹"IV. Commencing with the date of my death and until the death of my spouse so much of the income or principal of the trust shall be distributed to or for the benefit of my spouse or my children or my grandchildren as the case may be as hereinabove provided without regard to equality as the Trustee shall deem necessary for their health, education, support or maintenance. Said distribution shall be made to those persons and in such manner as said Trustee in his unrestricted discretion believes will fulfill the purpose of this trust regardless of the existence of other funds available for such purposes; said Trustee is authorized to make said distributions directly to said beneficiary, to his guardian, or to any other person in behalf of said beneficiary without the Trustee being liable to see to the application thereof."

meaning of the general terms. *See Pate v. Goyne*, 212 Ark. 51, 204 S.W.2d 900 (1947). Here, Paragraph 2.IV expressly and unmistakably authorizes the trustee discretion to make distributions of trust principal or income for the health, education, support, or maintenance of the testator's grandchildren, and the general statement of intent in Paragraph 2.I must be read in light of this express and specific provision.

Appellant also argues that the trial court erred in finding that Marlin Reeves violated Paragraph 2.VII of the trust by transferring real property to a third party without offering his siblings a prior opportunity to purchase the property on the same terms. Paragraph 2.VII deals with "bequests of real property," which are declared to be void if the recipient attempts to sell the property to a third party without giving right of first refusal to the other children and grandchildren. However, Marlin Reeves never received any devise of real property. Although, pursuant to Paragraph 2.V, all real estate was to be distributed to beneficiaries in kind upon the death of the testator's wife, the testator's wife was still living at the time of the hearing, and no such distribution had yet been made. The trustee's petition in this case dealt only with a proposal to distribute trust income pursuant to Paragraph 2.IV, and we think that any question relating to final distribution of real property is premature.

Reversed and remanded.

ROBBINS and GRUBER, JJ., agree.