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MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JEFFREY S. FINLAW, as personal representative of the Estate of Twila Finlaw, deceased,

Appellant,

v.

ROGER S. FINLAW,

Appellee.

Case No. 2D19-3108

Opinion filed April 16, 2021.

Appeal from the Circuit Court for Lee County; Keith R. Kyle, Judge.

Daniel A. McGowan of Adrian Philip Thomas, P.A., Fort Lauderdale, for Appellant.

T. Brandon Mace and Kenneth E. Kemp, II, of Patrone, Kemp, & Bentley, P.A., Fort Myers, for Appellee.

KHOUZAM, Chief Judge.

This is a dispute over ownership of a partnership interest that the decedent attempted to devise by will to her grandson. Because the trial court correctly determined that the devise was contrary to the terms of a controlling partnership

agreement requiring the decedent to instead pass the interest to her son, we affirm.

BACKGROUND

In 1986, the decedent, Twila Finlaw, along with her husband and another couple, the Palmers, entered into a partnership agreement creating an Ohio partnership called Palmer-Finlaw Associates. Among other provisions, the partnership agreement provided:

> XIX. DEATH OF A PARTNER
>
> Any partner shall have the right and privilege of leaving his or her interest in the Partnership by last will and testament to his or her spouse or to his or her lineal descendants.
>
> To protect and preserve the family character of this Partnership, each of the undersigned partners agree to have prepared and to execute a last will and testament so as to ensure that his or her interest in this Partnership will, upon his or her death, pass to and vest in his or her surviving spouse. Each partner, who shall ultimately become a surviving spouse, further agrees to have prepared and execute a last will and testament so as to vest his or her interest in this Partnership in his or her **children** (lineal descendants). Should any partner neglect or fail to execute such last will and testament, so as to ultimately cause his or her partnership interest to pass to and vest in an individual, who is not a spouse or lineal descendant of these partners, then upon such event, the Partnership shall be liquidated and dissolved forthwith.
>
> However, should the legatee of any deceased partner wish to sell the interest in this Partnership, which he or she has acquired by virtue of the death of a partner, such shall be accomplished in the same manner and form as if the legatee desires to resign as an active partner, all as provided above.

(Emphasis added.)

During the subsequent decades, the original partners began to pass away. The decedent's husband predeceased her, after which she inherited his interest in the

partnership. After the Palmers passed away, their interests in the partnership were transferred to their son. At that point, the partnership was left with two partners, each holding a fifty percent interest: the decedent and the Palmers' son.

In 2014, the decedent executed a will that, as relevant here, named her grandson Jeffrey S. Finlaw as personal representative of her estate and devised the remainder of her estate to him. Although the will did not specifically address the partnership interest, the decedent's estate planning attorney testified that her intent was to gift it to her grandson through the will and thereby preserve the family character of the partnership.

After the decedent passed away, her will was admitted to probate in Florida and the grandson was appointed personal representative of her estate pursuant to its terms. The decedent's son, Roger S. Finlaw, filed a statement of claim asserting an interest in the partnership due to the decedent's failure to execute her will in conformity with the above-quoted provision of the partnership agreement. The grandson objected. Thereafter, the son filed this declaratory judgment action asking the court to construe the partnership agreement and determine that he, rather than the grandson, is the sole beneficiary of the decedent's interest in the partnership.

After a trial, the court entered an eleven-page final judgment in favor of the son. The court ruled that the partnership agreement required the partners to execute wills vesting their partnership interests in their spouses or children who are lineal descendants but that, contrary to those terms, the decedent had instead executed a will devising her partnership interest to her grandson. The court expressly concluded: "To expand the plain language meaning of 'children' to include any other lineal descendants

of the Decedent would unnecessarily expand the standard definition of 'child' or 'children' beyond its plain meaning." The trial court accordingly ordered the grandson as personal representative to assign all interest and rights in the partnership to the son on behalf of the estate.

ANALYSIS

On appeal, the grandson challenges the trial court's interpretation of the partnership agreement in two ways. First, he contends that he was an appropriate recipient of the decedent's partnership interest under the terms of the agreement because he is her lineal descendant. Second, he asserts in the alternative that, if he was precluded from inheriting the decedent's interest, then the court should have dissolved the partnership pursuant to the agreement's terms.

As explained below, although the decedent purported to leave her partnership interest to her grandson in her will, the partnership agreement contained significant restrictions on the partners' ability to transfer that interest. While the grandson is a "lineal descendant" of the decedent, he is not her "child," and thus he was outside the class of people who could receive the interest under the plain language of the agreement. And the agreement states further that the extreme act of dissolution is required only where the partnership interest ultimately passes to someone who is not a "spouse or lineal descendant" of the decedent, which did not occur here.

As a threshold matter, the parties agree that Ohio law governs the interpretation and effect of the partnership agreement. But they also agree that Ohio and Florida law are substantially similar in this regard. See Murley v. Wiedamann, 25 So. 3d 27, 29 (Fla. 2d DCA 2009) ("Ohio and Florida courts employ the same principles

of contract interpretation."). So this dispute is governed primarily by familiar contract principles.

A trial court's interpretation of a contract is an issue of law subject to de novo review. See, e.g., Saunier v. Stark Truss Co., 65 N.E.3d 330, 333 (Ohio Ct. App. 2016) ("In the case of contracts, deeds, or other written instruments, the construction of the writing is a matter of law, which is reviewed de novo."); Verandah Dev., LLC v. Gualtieri, 201 So. 3d 654, 657 (Fla. 2d DCA 2016) (same).

In support of his position that he was a valid beneficiary of the decedent's partnership interest, the grandson relies on the first sentence of section XIX of the partnership agreement, which generally grants the partners the "right and privilege" of leaving a partnership interest by will to spouses or lineal descendants. But the partners also expressly "further agree[d]" that each would prepare a will vesting the interests in the partnership in "his or her children (lineal descendants)." (Emphasis added.)

The grandson nowhere addresses this explicit further limitation on the devise, even though it was the basis of the trial court's ruling below. Instead, the grandson contends that because he is a "lineal descendant," the general grant of the right to bequeath the interest set forth in the first sentence of section XIX permitted the decedent to leave the interest to him.

In both Ohio and Florida, courts are required to read writings as a whole, giving meaning and effect to each part. See, e.g., Foster Wheeler Enviresponse, Inc. v. Franklin Cnty. Convention Facilities Auth., 678 N.E.2d 519, 526 (Ohio 1997) ("[A] writing . . . will be read as a whole, and the intent of each part will be gathered from a consideration of the whole."); Excelsior Ins. Co. v. Pomona Park Bar & Package Store,

369 So. 2d 938, 941 (Fla. 1979) ("Every provision in a contract should be given meaning and effect and apparent inconsistencies reconciled if possible."). Further, in construing a contract, the court must give common words "their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." Foster Wheeler, 678 N.E.2d at 526 (quoting Alexander v. Buckeye Pipe Line Co., 374 N.E.2d 146 (Ohio 1978)); see also Murley, 25 So. 3d at 29-30 ("Words and phrases are given their common and ordinary meanings absent specific contractual definitions." (quoting Knott v. Revolution Software, Inc., 909 N.E.2d 702, 712 (Ohio Ct. App. 2009))).

The grandson has not reconciled his position that all lineal descendants are appropriate recipients of the surviving spouse's partnership interest with the fact the parties specifically chose to limit the devise to "children" in the agreement. He does not explain how he could fit within that express limitation set by the partners. Instead, the grandson points to the decedent's attorney's testimony that the decedent intended to leave her interest to the grandson despite the contrary terms of the partnership agreement. That reliance is misplaced.

Under both Ohio and Florida law, where contracting parties expressly agree on the disposition of property upon death, that agreement generally controls over a testamentary disposition of the property. See Barnecut v. Barnecut, 209 N.E.2d 609, 612-13 (Ohio Ct. App. 1964) (holding that where a partnership agreement called for the settlement of a partnership interest, the interest did not become a part of the decedent's estate); Blechman v. Est. of Blechman, 160 So. 3d 152, 159 (Fla. 4th DCA 2015) (observing "the general principle that express language in a contractual agreement

'specifically addressing the disposition of [property] upon death' will defeat a testamentary disposition of said property") (alteration in original) (quoting Murray Van & Storage, Inc. v. Murray, 364 So. 2d 68, 68 (Fla. 4th DCA 1978))); see also Swanda v. Paramount Com. Real Est. Invs., No. C-030425, 2004 WL 1124587, at *2 (Ohio Ct. App. May 21, 2004) (holding partner's attempt to transfer partnership share by will ineffective where transfer was contrary to partnership agreement).

Thus, having agreed in the partnership agreement to devise the partnership interest only to her children who are lineal descendants, the decedent's subsequent devise to her grandson instead was contrary to the terms of the agreement. The trial court did not err in so concluding.

In the alternative, the grandson argues that if he was not entitled to inherit the decedent's interest in the partnership, then the trial court was required to dissolve the partnership. As the basis for this argument, the grandson relies upon the following sentence from the provision quoted fully *supra*:

> Should any partner neglect or fail to execute such last will and testament, so as to ultimately cause his or her partnership interest to pass to and vest in an individual, who is not a spouse or lineal descendant of these partners, then upon such event, the Partnership shall be liquidated and dissolved forthwith.

(Emphasis added.)

Under this plain language, dissolution is required only where the partnership interest passes to and vests in someone who is *not* a spouse or lineal descendant of the partners. It is undisputed that the decedent's grandson is her lineal descendant. Thus, this provision was not triggered.

Moreover, the stated intent for the restrictions imposed under section XIX

was to "protect and preserve the family character of" the partnership. Considering the section as a whole, it is clear the partners agreed that transfers that violate the restrictions—but which were still within the family, such as to the grandson here—would simply be ineffective by operation of controlling Ohio law, as set forth above. By contrast, transfers to individuals outside of the family would destroy the family character and thereby call for the drastic remedy of dissolution. Thus, because the decedent's attempted transfer to the grandson kept the interest within the family, the trial court correctly concluded that the dissolution provision was never triggered and properly declined to dissolve the partnership.

Affirmed.

CASANUEVA and KELLY, JJ., Concur.