UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 253

September Term, 2016

IN THE MATTER OF THE ALBERT G. AARON LIVING TRUST

Friedman,
Shaw Geter,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: April 14, 2017

This appeal arises out of a dispute between Jonathan, Cheryl, Lena, and Theda Aaron and Frances A. Rossi, appellants, and Steven G. Albert and Howard E. Goldman, co-trustees of the Albert G. Aaron Living Trust ("Trustees"), appellees. On July 8, 2015, the Trustees filed a "Petition to Approve Settlement and Modify Trust" in the Circuit Court for Baltimore City requesting the court to assume jurisdiction over the Albert G. Aaron Living Trust, dated August 27, 2008, as restated and amended by Albert G. Aaron (hereinafter referred to as "the Trust" or "the Trust Agreement") [1], for the purpose of approving the settlement of certain controversies between the parties and certain modifications to the Trust Agreement. Albert G. Aaron's Eleventh Amendment to the Trust Agreement is at issue in this proceeding. After a hearing on March 18, 2016, the court granted the relief sought in the petition, declared that references in the Trust Agreement to "my wife" did not automatically transfer from Albert G. Aaron's first wife to his second wife, and approved the Trustees' modification to and restatement of the Trust Agreement. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the circuit court erred in approving the Trustees' restatement of section 13.04 of the Trust Agreement with respect

[1] Maryland Rule 10-501, which governs petitions for the assumption of jurisdiction over a fiduciary estate other than a guardianship, provides, in relevant part, that "[a] fiduciary or other interested person may file a petition requesting a court to assume jurisdiction over a fiduciary estate other than a guardianship of the property of a minor or disabled person." Md. Rule 10-501(a).

to the survival of the Aaron Family Foundation ("Foundation"), a contingent beneficiary under the Trust Agreement. For the reasons set forth more fully below, we shall affirm.

FACTUAL BACKGROUND

On January 26, 2013, after a battle with esophageal cancer, 85-year-old Albert G. Aaron ("Mr. Aaron"), died. Upon his death, Steven G. Albert and Howard E. Goldman became the Trustees and trust advisors of the Trust. During the proceedings in circuit court, the Trustees identified numerous interested persons, but we shall focus only on those necessary for our resolution of the issue presented.[2] For several decades, Mr. Aaron was married to Eileen Aaron ("Eileen")[3]. They had one son, Jonathan P. Aaron. Jonathan P. Aaron is married to Cheryl Aaron and they have two daughters, Theda and Lena Aaron. At the time of his death, Mr. Aaron and his wife, Eileen, had been separated for many years, in excess of ten, but did not divorce. Eileen died on November 1, 2012. A few days later, on November 4, 2012, Mr. Aaron married Myrna Kaplan, his "longtime girlfriend" with whom he had lived for approximately ten years. Frances A. Rossi, Mr. Aaron's longtime assistant, is a beneficiary under the Trust.

On August 10, 2009, Mr. Aaron restated the 2008 Trust Agreement. Thereafter, he executed eleven amendments. The Eleventh Amendment was dated January 10, 2013,

[2] The named interested persons included: Myrna Kaplan Aaron, Jonathan P. Aaron, Cheryl Aaron, Theda R. Aaron, Lena S. Aaron, Frances A. Rossi, the Maryland Institute College of Art, the Palm Springs Art Museum, the Friends of Israel Defense Fund, The Associated: Jewish Community Federation of Baltimore, the Attorney General of Maryland, and William E. Richards.

[3] We shall identify Eileen Aaron by her first name to distinguish her from other persons with the name Aaron.

executed shortly after Mr. Aaron's marriage to Ms. Kaplan and just prior to his death. It was the only amendment made after Eileen's death and Mr. Aaron's marriage to Ms. Kaplan.

Article Two of the Trust Agreement, which was never amended, provided: "I am married to Eileen Aaron. Any reference in this agreement to 'my wife' is a reference to Eileen Aaron." Articles Six through Twelve of the Trust Agreement provided for specific distributions of property and the creation of " the Marital Deduction Trust", "the Myrna Kaplan Trust," "the Frances A. Rossi Trust," and "the Grandchildren's Trusts". Article Thirteen of the Trust Agreement provided that the remaining property was to be held in a "Consolidated Residuary Trust" for the benefit of Myrna Kaplan, Francis A. Rossi, Jonathan Aaron, and Jonathan Aaron's descendants. The Trustees were authorized to make distributions to those beneficiaries and use it as a source of payment for obligations created under other Articles. The Consolidated Residuary Trust was to continue as long as either Ms. Kaplan or Ms. Rossi was alive. At the death of the survivor of Ms. Kaplan and Ms. Rossi, the remaining trust property would be divided into two shares. Twenty-five percent of the property was to be designated the "Foundational Share" and the remaining seventy-five percent was to be designated the "Family Share." At all times, section 13.04 of the Trust Agreement provided, in part, as follows:

> My Trustee shall distribute the Foundation Share to the Aaron Family Foundation which shall be established and operated in accordance with the following provisions.
>
> My Trustee shall administer the Aaron Family Foundation as a private foundation as that term is used in section 509(a) of the Internal Revenue Code and as provided in this Section.

> **If my wife survives me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.**

(Emphasis added.) Over the next five pages, section 13.04, in detail, stated the purpose of the Foundation, established an advisory committee, and contained provisions pertaining to distributions and other matters relating to the Foundation.

In the First Amendment, Mr. Aaron stated that, when he created the Trust, he did not take into consideration that Eileen might survive him, pointing out that she had "stage 4 lung cancer." In that amendment, he effected changes to address the possibility that she might survive him.

Most of the changes in the first ten amendments related to distributions to Ms. Kaplan and Ms. Rossi. They did not reference section 13.04 and are not directly relevant to the issue before us.

The Eleventh Amendment made significant changes to the Trust Agreement. It amended section 6.01 to provide that "[t]he Jaguar is conveyed to Myrna Kaplan Aaron, my current wife." It also amended section 6.04, which provided for a distribution to the Marital Deduction Trust. The Amendment provided: "Section 6.04 originally intended to be relevant for provisions of my past deceased wife, Eileen Aaron, shall now be intended to be for my current wife, Myrna Kaplan Aaron." The amendment significantly increased the amount of the distributions to the Marital Deduction Trust, revoked certain provisions of the First Amendment which provided that specified sections of Article Seven were to be deleted "if my spouse survived me," and provided that those sections

"shall apply to Myrna Kaplan Aaron." The Eleventh Amendment also amended section 6.06, which dealt with certain real property that Ms. Kaplan had the right to occupy during her lifetime. The amendment provided that "[i]f Myrna Kaplan Aaron should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this Agreement." It also recognized that "The Myrna Kaplan Trust was part of this trust prior to our being married," and directed that certain sections of Article 10 "should be complied with in conjunction with the provisions of the marital trust."

Notably, the Eleventh Amendment changed the makeup of the advisory committee for the Aaron Family Foundation, providing:

> E. Section 13.04(c)(1) relating to the initial members of the Advisory Committee of the Aaron Family Foundation should delete Myrna Kaplan and Richard G. Wohltman. The remaining initial members shall select two other members so that there will be four members in total.

At the time of the Eleventh Amendment, Mr. Aaron had esophageal cancer, and Ms. Kaplan was in good health. According to statements made in a pleading filed by the Trustees' counsel and a similar statement made during oral argument by appellants' counsel, there was a "virtual certainty" that Ms. Kaplan would survive Mr. Aaron.

Shortly after Mr. Aaron's death, disagreements arose between Ms. Kaplan and the Trustees leading the Trustees to file a declaratory judgment action. Ultimately, in February 2015, a settlement was reached. Thereafter, the Trustees filed in the circuit court the petition mentioned above, seeking court approval of the settlement agreement and certain modifications to the Trust Agreement. The modifications were intended to

make the Trust Agreement consistent with the terms of the settlement agreement and to combine all relevant parts of the original Trust Agreement and the eleven amendments into one restatement for ease of administration. Attached to the petition was a proposed restatement of all the trust documents and amendments.

In their response, appellants agreed not to oppose court approval of the settlement agreement, but raised certain objections to the Trustees' restatement. Thereafter, the Trustees submitted an amended restatement of the Trust Agreement for the court's consideration. On February 4, 2016, appellants filed a supplemental response in which they challenged the Trustees' proposed deletion of that portion of section 13.04 that provided, "[i]f my wife survives me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement." The Trustees maintained that that language was no longer necessary because the reference to "my wife" was to Eileen Aaron, who had not survived Mr. Aaron, and as a result, the charitable trust should be established at the appropriate time. Appellants, on the other hand, argued that the term "my wife" referred to Ms. Kaplan, who survived Mr. Aaron, and accordingly, the charitable trust should not come into being. Consequently, appellants argued, the property remaining in the Consolidated Residuary Trust should be distributed among Mr. Aaron's remaining family members according to the terms of the Trust Agreement.

After a hearing on March 18, 2016, the circuit court concluded that, as used in section 13.04 of the Trust Agreement, the words "my wife" referred to Eileen. The court approved the settlement and declared the Trust Agreement modified as set forth in the

restatement proposed by the Trustees, effective retroactively to the date of Mr. Aaron's death.

We shall include additional facts as necessary in our discussion of the issues presented.

STANDARD OF REVIEW

We review the circuit court's approval of the restatement of section 13.04 of the Trust Agreement as it pertains to the Aaron Family Foundation on both the law and the evidence. Md. Rule 8-131(c). We shall "not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" Md. Rule 8-131(c). The clearly erroneous standard does not apply to legal conclusions. *Nesbit v. Gov't Employees Ins. Co.*, 382 Md. 65, 72 (2004). "When the trial court's order 'involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Id.* (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)). Finally, we note that the intention of the settlor governs the interpretation of a trust agreement. *Brent v. State of Maryland Central Collection Unit*, 311 Md. 626, 631-32 (1988). *Accord Helman v. Mendelson*, 138 Md. App. 29, 56 (2001)("settlor's intent is controlling in the management of a trust"); *Benadom v. Colby*, 81 Md. App. 222, 236 (1989)(the key to interpreting a trust is to discern the intent of the settlor). With these standards in mind, noting that the issue was determined based on the paper filings identified above and oral argument, we turn to the issue before us.

DISCUSSION

Appellants contend that the Foundation "should have disappeared" because Mr. Aaron, at the time of his death, had a surviving wife, Ms. Kaplan. They maintain that Mr. Aaron's "clear intent" was "to assure that his direct descendants had sufficient funds for their future[s.]" Appellants argue that Mr. Aaron's intent was clear in that "if his wife predeceased him, there would be sufficient monies for the future support of [Mr. Aaron's] direct descendants as well as the Family Foundation[,]" but if his "wife survived him, then there would be less monies available for his direct descendants thereby defying his intent that his direct descendants be adequately provided for." Accordingly, appellants conclude that Mr. Aaron intended the words "my wife" to refer to Ms. Kaplan, and because she survived him, any distribution to the Aaron Family Foundation lapsed. Our review of the record convinces us otherwise.

It has long been established that all of the language in a declaration of trust must be given effect where possible. *First Nat'l Bank of Maryland v. Dep't of Health and Mental Hygiene*, 284 Md. 720, 729 (1979); *Vickery v. Maryland Trust Co.*, 188 Md. 178, 188 (1947). In construing a trust, we consider its objects and purposes. *McCrory Stores Corp. v. Bennett*, 159 Md. 568, 152 A. 258, 261 (1930). *See generally* Restatement Third, Trusts, §4, Comment d (2003)("the terms of the trust are determined by the provisions of the governing instrument as interpreted in light of all the relevant circumstances and such direct evidence of the intention of the settlor with respect to the trust"). It has long been held that the intention of the settlor is determined from the language used in the four corners of the trust agreement, and it is the settlor's expressed

intention, not his or her presumed intention, that controls. *See Pfeufer v. Cyphers*, 397 Md. 643, 649 (2007) (When construing a will, the paramount concern of the court is to ascertain and effectuate the testator's expressed intent.) *Emmert v. Hearn*, 309 Md. 19, 23 (1987) (Ordinarily, intent is determined from the four corners of the document); *LeRoy v. Kirk*, 262 Md. 276, 279-80 (1971) ("This expressed intention must be gathered from the language of the entire will, particularly from the clause in dispute, read in the light of the surrounding circumstances when the will was made."); *Reedy v. Barber*, 253 Md. 141, 146 (1969) ("[t]he Court should consider the testator's intentions and the surrounding circumstances and conditions as they existed at the date of the execution of the will and not subsequent to it."). The process of construing a trust provision is not unique, and can be compared to that used in construing a provision in a will. *See* Restatement Third, Trusts, §4, Comment c (2003) (rules of interpretation are not peculiar to law of trusts)(citing Restatement Third, Property (Wills and Other Donative Transfers) §§10.2, 11.1-11.3 (2003)).

We begin our analysis with the clearest expression of Mr. Aaron's intent, which is the provision in Article Two of the Trust Agreement that states, "I am married to Eileen Aaron. Any reference in this agreement to 'my wife' is a reference to Eileen Aaron." At no time, either before or after Mr. Aaron's marriage to Ms. Kaplan, did he alter this definition. After his marriage to Ms. Kaplan, Mr. Aaron made significant changes via the Eleventh Amendment to the Trust Agreement. A number of those changes involved specific substitutions of Ms. Kaplan for Eileen Aaron, whom he referred to as "my past deceased wife, Eileen Aaron." Twice in the Eleventh Amendment, Mr. Aaron referred to

Ms. Kaplan as "my current wife," and on numerous occasions, he referred to her by name. Nowhere in the Eleventh Amendment did Mr. Aaron use the word "wife" without making a specific reference to either Eileen Aaron or Ms. Kaplan.

Certain provisions in the Eleventh Amendment expressly referenced the substitution of Ms. Kaplan for Eileen Aaron. For example, in paragraph C of the Eleventh Amendment, Mr. Aaron expressly stated that the Marital Deduction Trust that was originally intended for Eileen Aaron would exist for Ms. Kaplan, but with an increase in value. In paragraph C, Mr. Aaron revoked portions of the First Amendment, in which he had revoked certain provisions made for Eileen if she had survived him, and provided that those specific sections would apply to Ms. Kaplan. Mr. Aaron clearly distinguished his deceased wife, Eileen, from his then current wife, Ms. Kaplan.

As stated above, the governing principle in interpreting a will or trust is the intention of the testator or settlor. In determining that intention, in the context of considering whether a codicil revoked a bequest contained in the will, the Court of Appeals stated:

> 1st. That the codicil does not operate as a revocation of a devise or bequest in a will, unless there is an express clause of revocation, or unless the provisions in the codicil, are so inconsistent with the will, that the two cannot stand together.
>
> 2nd. If revocation is to be implied from inconsistent provisions, it will be limited to such provisions of the will, as are plainly inconsistent with the codicil.

Johns Hopkins University v. Pinckney, 55 Md. 365, 380-381 (1881).

The principles are relevant for two reasons. Here, there is no inconsistency between the Eleventh Amendment and Article Two, and there is nothing in the Eleventh

Amendment that plainly changed the nature of the contingency governing any distribution to the Foundation.

One of the significant changes in the Eleventh Amendment was to section 13.04, in which Mr. Aaron identified the members of the advisory committee for the Foundation. Initially, section 13.04(c)(1) identified Jonathan P. Aaron, Myrna Kaplan, Richard G. Wohltman, and Steven G. Albert as the members of the advisory committee. By the Eleventh Amendment, Mr. Aaron changed the composition of the advisory committee to Jonathan P. Aaron and Steven G. Albert, with the remaining two members to be selected by those members. That change in the composition of the advisory committee for the Foundation is consistent evidence of Mr. Aaron's intent that, notwithstanding his marriage to Ms. Kaplan, he intended that Foundation be established after the death of both Ms. Kaplan and Ms. Rossi. Had he intended otherwise, it is reasonable to infer that he would have provided that the Foundation would not be established if Ms. Kaplan survived him, or he could have amended Article Two so as to define "wife" as Ms. Kaplan. It is not reasonable to infer that Mr. Aaron intended to eliminate the distribution to the Foundation, when the sentence highlighted above in section 13.04 became operative upon Eileen's death on November 1, 2012; in light of his health; the specific provisions he made for Ms. Kaplan; and the changes he made to the advisory committee.

Moreover, as appellees point out, it is unreasonable to assume that the definition of the word "wife" in Article Two automatically changed upon Mr. Aaron's remarriage. The general rule on this issue has been stated, as follows:

> A devise to the husband or wife of a designated person raises a question, where the husband or wife who was living at the date of the execution of the will dies, and the person designated marries a second time. Prima facie a gift to a husband or wife means a husband or wife at the date of the will, and if the husband or wife then living dies, and the designated person marries a second time, the second spouse does not take. However, the context may show that the second spouse was intended. The context may show that testator intended that a second spouse of a named person should not take under the will.

4 Page, The Law of Wills 485-86 (Rev. 2004), § 34.2.

Although no Maryland case directly addresses this issue, cases arising in other contexts convince us that the second spouse does not necessarily take under a will, or in this case pursuant to the Trust Agreement, unless the context shows that the testator, or in this case, the settlor, intended the second spouse to take. In *Estep and Shaw v. Mackey*, the Court of Appeals recognized its duty to ascertain the intent of a testator by examining the will and considering its provisions. *Estep*, 52 Md. 592, 597 (1879). The Court acknowledged that the testator's intent must clearly appear from the language used in the various parts of the will and, "unless the intent is clearly and certainly different from that which the technical language [the testator] has used may impart, we must adhere to their technical signification, and give effect to the will accordingly." *Id.* at 598.

All parties before us discussed *Lavender et al. v. Rosenheim, et al.*, 110 Md. 150, 72 A. 669 (1909). In that case, Elizabeth Whalen, the testatrix, "devised and bequeathed all of her estate, of every kind and nature, to Benjamin Rosenheim, in trust to collect the rents, issues, and profits thereof, and to pay over such part as he should think proper to her son Oliver R. Whalen during his life[.]" 72 A. at 669. Upon Oliver R. Whalen's death, the corpus of the estate was "to become the property of the child or children of said

son surviving him." *Id.* In the event that Oliver R. Whalen died without surviving child or children, the testatrix directed the payment of a specified sum to certain nieces and nephews, and then provided, "I give, devise and bequeath, all the rest and residue of my estate, after the payment of the above mentioned legacies, unto the wife of my said son, Oliver R. Whalen, absolutely." *Id.* At the time the will was made, Mary A. Whalen was married to Oliver R. Whalen. Mary A. Whalen knew Elizabeth Whalen, lived in the same house with her, and was present at the time the will was made. *Id.*

Elizabeth Whalen died on December 13, 1891. Several years later, Mary A. Whalen was granted a divorce from Oliver R. Whalen and, thereafter, married Frank J. Lavender and became known as Mary A. Lavender. *Id.* Oliver R. Whalen died without having any children or any other wife. *Id.* The trustee under the will filed a bill to obtain the direction of the court as to the distribution of the trust estate. *Id.*

The Court of Appeals, acknowledging the principal that courts abhor intestacy, concluded that there was no expression in the will of any intent that Mary A. Lavender had to be the wife of Oliver R. Whalen on the date of the testatrix's death. In support of its holding, the Court relied, in part, on *Estep*, stating:

> Some analogy may be found in *Estep & Shaw v. Mackey*, 52 Md. 592….Mr. Jarman[4], on page 303, deduces from general principles and the authorities cited by him the following propositions: "First, that a devise or bequest to the wife of A. who has a wife at the date of the will relates to that person, notwithstanding any change of circumstances which may render the description inapplicable at a subsequent period, and by parity of

[4] This reference to Mr. Jarman may be to Thomas Jarman, author of "A Treatise on Wills," the first edition of which was published in London in 1844. The first American edition was edited by Jonathan Cogswell Perkins and published in Boston by Charles C. Little and James Brown in 1845.

> reasoning is under all circumstances confined to her; but that, secondly, if A. have no wife at the date of the will, the gift embraces the individual sustaining that character at the death of the testator; and, thirdly, if there be no such person, either at the date of the will or at the death of the testator, it applies to the woman who shall first answer the description of wife at any subsequent period." These propositions, we think, will be found to embrace fairly and wisely the greater part of all the cases which they are designed to meet, and to enable courts in applying them to effectuate fairly the intention of testators, always bearing in mind that, wherever there is a context which indicates a reasonably clear intention in conflict with any of these propositions, such context must prevail and effect be given to such intention.

Id. at 671-72.

In the case at hand, the context is consistent with a reasonably clear intention on the part of Mr. Aaron, expressed in the Trust Agreement and the Eleventh Amendment, to establish the Foundation. As a result, the circuit court did not err in concluding that the words "my wife," as used in section 13.04 of the Trust Agreement, referred to Eileen or in approving the restatement proposed by the Trustees, retroactive to the date of Mr. Aaron's death.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.