DA 23-0111

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 197

IN THE MATTER OF THE ESTATE OF:

JANET LEORA RONAN,

Deceased.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DP 18-82
Honorable Rod Souza, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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For Appellee:

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Submitted on Briefs: August 30, 2023

Decided: October 24, 2023

Filed:

Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Marilyn Long and Dean Ronan (Appellants) appeal from the January 13, 2023 Order on Insurance Monies Dispute issued by the Thirteenth Judicial District Court, Yellowstone County, Montana. The Order awarded insurance proceeds to Thomas Ronan (Thomas) for a house that was completely destroyed by fire.

¶2 We restate the issue on appeal as follows:

Did the District Court err by ordering insurance proceeds be distributed to Thomas Ronan?

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Janet Le Ora Ronan (Janet) died on February 6, 2018. Thomas, her son, initiated informal probate shortly thereafter. Appellants, two of Janet's children and Thomas's siblings, objected to Thomas's administration of the estate; the parties thereafter stipulated to their appointment as co-personal representatives.

¶4 Janet left a holographic will that specifically devised "my part of Paul [and] Hazel's farm which I have [one-half] int[erest] in . . . I leave to my son Thomas with him having preference to keeping the house [and] farmstead [and] acreage next to Little "Acres" subdivision." On April 27, 2020, Thomas petitioned the District Court to admit Janet's holographic will for probate. Initially, Appellants contested admission of the will, but later consented to it. At the hearing on application to admit or deny the holographic will, the parties advised the court they had reached agreement for admission of the holographic will.

The court recessed the hearing to allow the parties to confer regarding its proper interpretation.

¶5 The result of the negotiation was a Stipulated Settlement Agreement (SSA) that set forth the terms as to how to distribute Janet's estate. The District Court adopted the SSA on October 14, 2020. Paragraph three of the SSA provided, in relevant part, that Thomas shall receive 55% of the property referred to as "Paul and Hazel's farm" in the holographic will. That included the residence and outbuildings on the property, commonly referred to as the Farmstead. Additionally, the SSA stated the remaining heirs shall have no interest in the property conveyed to Thomas. The SSA divided the remaining 45% interest in the property equally among Janet's four other remaining heirs, Marilyn Long, Dean Ronan, David Ronan, and James Ronan, as tenants in common.

¶6 On June 16, 2021, the house was destroyed in a fire. Thomas died shortly after the fire on July 10, 2021. The Estate of Thomas Ronan took over and now stands in as Appellee. Appellants had previously insured the house with Janet's estate as the insurance beneficiary. As such, the insurance company issued two checks: one in the amount of $169,089.57 for the house, and one in the amount of $15,250.13 for personal property destroyed in the fire. The parties disputed how to distribute these proceeds.

¶7 In resolution of the parties' competing motions, the District Court issued an Order on Insurance Monies Dispute that awarded Thomas's estate the insurance money. The District Court relied on the doctrine of equitable conversion to distribute the proceeds to Thomas. The court reasoned it would not be in accordance with Janet's intent to give

Thomas the ruins of the house that she specifically devised to him, and which the SSA specifically conveyed to him, but not the money to restore it to its former condition. The court also pointed out that awarding Thomas the insurance money would be the result in four other states that have applied the doctrine of equitable conversion to insurance proceeds.

¶8 In its Order, the District Court found "[w]hile the parties dispute interpretation of [the SSA], the home belonging to the Estate of Thomas is not at issue." The court also mentioned § 72-2-616(1)(c), MCA, which deals with ademption of specifically devised property. The court briefly discussed ademption before noting the fire occurred after Janet's death. Finally, the court interpreted paragraph seven of the SSA to be the equivalent of a residuary clause in a will. However, the court relied on equitable conversion, rather than paragraph seven, to distribute the insurance proceeds to Thomas.

¶9 Appellants now appeal the District Court's award of insurance money to Thomas. We affirm.

STANDARD OF REVIEW

¶10 We review a district court's findings of fact for clear error. *In re S.T.*, 2008 MT 19, ¶ 8, 341 Mont. 176, 176 P.3d 1054. A district court's "finding of fact is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence or if, upon reviewing the record, this Court is left with the definite and firm conviction that the district court made a mistake." *In re L.H.*, 2007 MT 70, ¶ 13, 336 Mont. 405, 154 P.3d 622. "[W]e review a district court's conclusions of law de novo to determine

whether they are correct." *Giambra v. Kelsey*, 2007 MT 158, ¶ 28, 338 Mont. 19, 162 P.3d 134.

DISCUSSION

¶11 *Did the District Court err by ordering insurance proceeds be distributed to Thomas Ronan?*

¶12 Appellants assert the District Court should have distributed the insurance proceeds according to paragraph seven of the SSA. First, they argue the language in the holographic will is precatory, and thus does not create a specific devise of the house to Thomas. Specifically, Appellants point out that Janet's holographic will states that she prefers that Thomas keep the house, and thus the language is precatory, or not sufficient to create a devise. Next, Appellants assert that because the house was not specifically devised in the holographic will, the Court must distribute the proceeds according to paragraph seven of the SSA which mirrors § 72-2-111, MCA. Paragraph seven of the SSA states "[t]hat the Parties agree that any assets not specifically devised in the Holographic Will or pursuant to this Stipulated Settlement Agreement, shall be administered and devised through the laws of intestacy, with each of the Decedent's five (5) heirs each receiving a one-fifth (1/5) interest in any said property[.]" Section 72-2-111, MCA, states "[a]ny part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in chapters 1 through 5, except as modified by the decedent's will." Section 72-2-111(1), MCA. Appellants assert both paragraph seven of the SSA and

§ 72-2-111(1), MCA, require the insurance proceeds to be treated as a residuary asset and distributed equally among Janet's five heirs.

¶13 The District Court found paragraph seven of the SSA to be equivalent to a residuary clause in a will. The District Court also found Janet specifically devised the house to Thomas. Thus, according to the District Court, the insurance proceeds should follow Janet's intent and not be distributed through the residuary clause of the SSA.

¶14 Janet's holographic will provides "my part of Paul and Hazel's farm which I have one-half int[erest] in . . . I leave to my son Thomas with him having preference to keeping the house and farmland and acreage[.]" A specific devise is not intended to come from the general estate, rather it is a specific article given by the will to a devisee, not the residual pool. *Holtz v. Deisz*, 2003 MT 132, ¶ 25, 316 Mont. 77, 68 P.3d 828. Here, the house is a specific devise because Janet listed her exact interest in property she was devising to Thomas, and it was not in general terms of the estate.

¶15 Additionally, the SSA specifically addressed the property in question; the SSA gave 55% of the property, including the residence and outbuildings, to Thomas. The remaining 45% was split among the four other heirs as tenants in common. Paragraph seven of the SSA is equivalent to § 72-2-111, MCA, and, as applied, provides that any asset not specifically devised in the holographic will or pursuant to the SSA shall be split equally among the five heirs. Because the SSA explicitly provides for the distribution of the house, we agree with the District Court that paragraph seven of the SSA is not applicable. Appellants further argue that the house may have been specifically devised, but the

insurance proceeds were not, and thus the proceeds should be distributed as according to the residuary—any part of a decedent's estate not effectively disposed of by will. However, as explained below, equitable conversion does not support splitting the house and insurance proceeds as separate assets. Accordingly, the District Court was correct not to apply paragraph seven of the SSA or § 72-2-111, MCA, in distribution of the insurance proceeds.

¶16 Next, Appellants assert the District Court erred by applying § 72-2-616, MCA, to award Appellee the insurance proceeds. Section 72-2-616, MCA deals with ademption—when identified property no longer exists in the testator's estate—of testamentary gifts. Had the house burned down prior to Janet's death, the devise to Thomas would adeem—no longer exist in Janet's estate—and without § 72-2-616, MCA, Thomas would receive nothing. However, § 72-2-616(1)(c), MCA, provides for non-ademption of specific devises by providing that a designated devisee has the right to the specifically devised property together with any proceeds unpaid on fire or casualty insurance. Section § 72-2-616, MCA, protects against ademption of a specific devise because even if the property disappears by fire before the testator dies, the specific devisee is still entitled to the insurance proceeds derived from the damage to the devised property.

¶17 Appellants argue the District Court misapplied § 72-2-616, MCA, because it does not apply to the facts of this case. The District Court mentioned § 72-2-616, MCA, once in its Order on Insurance Monies Dispute briefly discussing the statute's non-ademption provision and noting the "Uniform Probate Code identifies a number of other special

situations where a specific gift should not be adeemed." The District Court noted cases where, as here, ademption did not apply as the testator owned the subject property at the time of death (*Estate of Worthy*, 252 Cal. Rptr. 462, 466 (5th Dist., Cal. Ct. App. 1988) and *In re Estate of Sagel*, 2006 PA Super 134, 901 A.2d 538) and cases where non-ademption provisions of the Uniform Probate Code applied as the testator did not own the subject property at the time of death (*Ott v. Ott*, 418 So. 2d 460, 462 (Fla. 4th Dist. Ct. App. 1982) and *In re Estate of McClow*, 290 N.W.2d 186, 189-90 (Neb. 1980)). The District Court also noted how the fire destroyed the property after Janet's death and after the parties reached agreement and the court adopted the SSA. From this, it is apparent the District Court understood § 72-2-616, MCA, which applies only in cases of ademption, did not apply here as Janet owned the property at the time of her death such that there was no ademption. The District Court's brief mention of § 72-2-616, MCA, and *Worthy*, *Sagel*, *Ott* and *McClow* merely provide the rationale as to why the District Court did not find this statute dispositive. We find no error in this regard.

¶18 Appellants next claim the District Court erred when it stated "[w]hile the parties dispute interpretation of [the SSA], the home belonging to the Estate of Thomas is not at issue." Appellants argue the house was owned as tenants in common by Janet's estate and Thomas's estate. Thus, according to Appellants, the District Court was wrong to say it was not at issue.

¶19 Appellees argue it is irrelevant whether Thomas is the sole owner of the house or is a tenant in common because the issue on appeal is the distribution of insurance proceeds.

Appellees assert even if Thomas and Janet were tenants in common, Janet specifically devised her interest to Thomas and Janet's estate agreed to convey its interest in the SSA. Thus, according to Appellees, discussion of who has what interest in the house is irrelevant to distribution of the fire insurance proceeds.

¶20 When the District Court stated "the home belonging to the Estate of Thomas is not at issue" it was referring to the fact that the parties are in dispute as to the interpretation of certain parts of the SSA, however, they do not dispute the SSA's conveyance of the house to Thomas. The District Court did not further discuss the ownership breakdown of the house at issue, and it did not state Thomas to be the sole owner of the property. Rather, the District Court relied on the will and the SSA which set forth the conveyance of the house to Thomas.

¶21 Additionally, Appellants present no arguments as to why the history of ownership interest in the house would support their position as to distribution of the insurance proceeds. Paragraph three of the SSA specifically provides the residence and outbuildings on the property, commonly referred to as the Farmstead, are included in Thomas's 55% ownership interest in the real property. The SSA also provides the remaining heirs have no interest whatsoever in the property conveyed to Thomas. In this context, the District Court's statement that "the home belonging to the Estate of Thomas Ronan is not at issue" is not error.

¶22 Equitable conversion typically applies in the context of the purchase and sale of real estate. However, the District Court applied this equitable doctrine in this matter to

effectuate Janet's testamentary intent. The District Court noted it would not be in accordance with Janet's intent to give Thomas the ruins of the house while distributing the insurance proceeds to the five heirs. The District Court also recognized equitable conversion does not override a specific contract provision, *Sharbono v. Darden*, 220 Mont. 320, 324, 715 P.2d 433, 435 (1986), and principles of equity cannot rewrite a contract, but can nevertheless be utilized in enforcement. *Myhre v. Myhre*, 170 Mont. 410, 424, 554 P.2d 276, 283 (1976). Thus, the basis for the District Court's decision was that by giving Thomas the insurance proceeds in place of the house, the principles of equitable conversion not only support Janet's specific intent in the holographic will but also the agreement between the parties set forth in the SSA.

¶23 Appellants claim they insured the house and listed Janet's estate as the insurance beneficiary. Appellants argue both Thomas and Janet had separate, insurable interests in the property as tenants in common. As such, they claim they insured Janet's estate's interest in the property, not Thomas's interest. Therefore, they assert the insurance money should be distributed according to the residuary clause in the SSA.

¶24 We have not found any Montana cases that apply the doctrine of equitable conversion to insurance proceeds. However, other jurisdictions, as the District Court pointed out, have utilized the doctrine in similar factual situations. *See In re Estate of McGee*, 66 Ill. App. 3d 994, 997, 383 N.E.2d 1012, 1015 (1978); *In re Estate of Elliott*, 174 Kan. 252, 255 P.2d 645 (1953). We find these cases to be highly persuasive.

¶25 In *McGee*, a husband and wife owned a house as joint tenants with the right of survivorship. *McGee*, 383 N.E.2d at 1013. The husband insured the property in his own name. The house burned down, and the insurance company paid the proceeds to the husband. The wife died shortly thereafter, and her estate tried to claim half of the insurance proceeds. *McGee*, 383 N.E.2d at 1013. The Appellate Court of Illinois applied equitable conversion and held "proceeds of the insurance policy are treated as if they were the dwelling and therefore the law of joint tenancy applies and vests the entire proceeds in the surviving joint tenant[,]" rather than splitting the proceeds with the wife's estate. *McGee*, 383 N.E.2d at 1015.

¶26 Appellants try to distinguish *McGee* by arguing it deals with insurance proceeds and joint tenancy. Appellants point out that Thomas and Janet had a tenant in common relationship, rather than a joint tenancy with right of survivorship. Appellants also point out the wife died after the fire destroyed the property. Appellants misinterpret *McGee*. The court reasoned that equity carries into effect the real *intention* of the parties. *McGee*, 383 N.E.2d at 1014. Because the parties intended the surviving tenant was to have the house, then the surviving tenant should also receive the insurance proceeds in place of the house.

¶27 In *Elliot*, a husband's will devised his real property to his children and the residue of his estate to his wife. *Elliot*, 255 P.2d at 646. A tornado destroyed his home, and husband died the next day. The home was covered by an insurance policy, but an issue arose as to whether the insurance proceeds were real property and passed with the house,

or personal property that passed according to the residuary clause. The district court applied equitable conversion to pass the insurance proceeds in place of the house as real property. *Elliot*, 255 P.2d at 649. The court noted this was most in line with the husband's intent as set forth in his will specifically devising the house to his children.

¶28 Appellants try to distinguish *Elliot* from this case by arguing Janet's holographic will did not specifically devise the house to Thomas because it used precatory language. As noted above, it is clear Janet intended Thomas to have her interest in the property, including the house. Appellants also try to distinguish *Elliot* by claiming the husband died hours after his house was destroyed, and an insurance claim was already pending before he died; whereas here, Appellants point out Janet died before the house was destroyed. Such distinction is without merit. Rather than focus on the timeline of the subject property's destruction, both the *McGee* and *Elliot* courts relied on the testator's intent in applying equitable conversion. *McGee*, 383 N.E.2d at 1014; *Elliott*, 255 P.2d at 649.

¶29 Here, we find the District Court properly applied equitable conversion. Janet specifically devised the house to Thomas. Additionally, Appellants agreed to convey the house to Thomas through the SSA. Although Appellants insured the property, they named Janet's estate as the beneficiary. The right to the insurance proceeds passed with the destroyed house to Thomas according to Janet's clear intent. Thus, the District Court did not err in applying the doctrine of equitable conversion to distribute the insurance proceeds to Thomas's estate.

CONCLUSION

¶30 We find the District Court did not err when it did not distribute the insurance proceeds according to Montana residuary law or paragraph seven of the SSA and appropriately applied the doctrine of equitable conversion to distribute the insurance proceeds in furtherance of Janet's intent in specifically devising the house to Thomas.

¶31 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE