

The Living Trust, as restated on October 17, 2008, named the decedent as Trustor and Pournaras as Successor Trustee. It directed the Trustee to pay the decedent's residuary estate to Pournaras and further provided that "[i]f my trust own liquid resources, [the] trustee shall pay to . . . ELAINE A. JAFFE[] the sum of Fifty-Thousand (\$50,000) Dollars from those liquid resources." The Second Amendment and Restatement of the Living Trust, Article IV, Section 1.b.

The Irrevocable Trust similarly named the decedent as Trustor, but named Pournaras as Initial Trustee rather than Successor Trustee. Upon the decedent's death, the Trustee of the Irrevocable Trust was directed to divide "into separate and equal shares . . . all of the Trust Estate not previously distributed," Irrevocable Trust, Article VIII, Section 1, and to "create one share for each of [the decedent's] then living children," *id.* at Section 1.a.

The Irrevocable Trust also reserved to the decedent the power, "exercisable by written instrument during [his] lifetime or by Will or any Codicil thereto, to appoint any part or all of the Trust Estate to or for the benefit of any of [his] descendants, in equal or unequal amounts, either directly or in Trust, as [he] may direct." *Id.* at Article IV, Section 2. This "limited power of appointment" was not to be exercised "in favor of [the decedent's] estate, the creditors of [his] estate or in any way that would result in any economic benefit to [the decedent]." ¹ *Id.*

The Will directed the decedent's Personal Representative to "distribute [the decedent's] residuary estate to the then acting Trustee of the . . . Living Trust." Last Will and Testament, Section 6.01. The Will defined the decedent's residuary estate as "any property over which [he] may have a power of appointment and any insurance proceeds which may be payable to [his]

¹ If the decedent failed to exercise his power, or if he failed to provide the Trustee with notice of such exercise "within six (6) months after [his] death," the Trustee would be expected to "distribute the assets of the Trust as though this power of appointment had not been exercised." Irrevocable Trust, Article IV, Section 2.

estate, less all valid claims asserted against [his] estate and all expenses incurred in administering [his] estate, including expenses of administering non-probate assets and expenses of determining any tax occasioned by [his] death.” Id. at Section 5.01.

In January 2014, Pournaras filed a Petition for Probate of the Will in the City of Cranston Probate Court. The Will was admitted for Probate, and Pournaras was appointed Personal Representative of the estate. Shortly thereafter, Jaffe brought her Declaratory Judgment action.

In her Complaint, Jaffe alleged that Pournaras intends to “recognize . . . Article Four, Section 2 provision of the Irrevocable Trust as a valid exercise of the Limited Power of Appointment,”² Complaint ¶ 25, and will “transfer assets from the Irrevocable Trust to [the decedent’s] estate,” id. Jaffe further alleged that this “contravenes [the decedent’s] clear and unequivocal intention as expressed in Article Four, Section 2 of the Irrevocable Trust,” id. at ¶ 26, “is contrary to . . . applicable law,” id., and “would deprive [her] of her entire inheritance . . . with the exception of the \$50,000 gift she is to receive under the terms of the Living Trust,” id. at ¶ 27. Jaffe has asked this Court to rule that the decedent’s limited power of appointment has not been properly exercised, and to grant summary judgment in her favor as to the construction of the testamentary instruments. Jaffe also asks the Court to remove Pournaras as Trustee of the Irrevocable Trust and to issue a preliminary injunction prohibiting Pournaras from transferring the assets of the Irrevocable Trust into the decedent’s estate.³

In his Counterclaim, Pournaras alleged that “[t]he inclusion of the language provisions of Section 5.01 of the [Will] was an intentional and planned exercise of that limited power of

² The Court notes that Article Four, Section 2 of the Irrevocable Trust is the provision which grants the limited power of appointment. Section 5 of the Will, rather than Article Four, Section 2 of the Irrevocable Trust, is the means by which the decedent attempted to exercise the limited power of appointment.

³ Because the issue of whether Pournaras should be removed as Trustee of the Irrevocable Trust has not been briefed by the parties, the Court will not address it at this time.

appointment contained within Article IV, Section II of the [Irrevocable Trust].” Counterclaim at ¶ 17. Pournaras then requested, in his capacity as Personal Representative of the decedent’s estate and as Trustee of the Irrevocable Trust, a judgment declaring that the Will contains a valid exercise of the decedent’s limited power of appointment and that he may distribute the Irrevocable Trust assets.

II

Standard of Review

Before granting a motion for summary judgment, the trial court is required to review the pleadings, as well as affidavits and other appropriate evidence, from a perspective most favorable to the nonmoving party. Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981). If no issue of material fact exists after such review is complete, the moving party is entitled to judgment as a matter of law, and the trial justice is permitted to grant the motion for summary judgment. Id. See also Hale v. Marshall Contractors, Inc., 667 A.2d 1252, 1253-54 (R.I. 1995); Super. R. Civ. P. 56(c). A trial justice presented with a motion for summary judgment may not rule on the weight or credibility of the evidence presented. Instead, his or her only function is to determine whether any issues of material fact exist and, if they do, to deny the motion for summary judgment. Indus. Nat’l Bank v. Peloso, 121 R.I. 305, 307, 397 A.2d 1312, 1313 (1979).

III

Discussion

The “primary objective when construing language in a will or trust is to ascertain and effectuate the intent of the testator or settlor as long as that intent is not contrary to law.” Steinhof v. Murphy, 991 A.2d 1028, 1033 (R.I. 2010) (quoting Fleet Nat’l Bank v. Hunt, 944 A.2d 846, 851 (R.I. 2008)). “When construing the trust instrument words should be given their

primary, ordinary, and common meaning unless it plainly appeared that they were used in some other sense.” Prince v. Roberts, 436 A.2d 1078, 1081 (R.I. 1981).

Jaffe argues that the decedent’s clear intent, as expressed in Article Four, Section 2 of the Irrevocable Trust, was to have the limited power of appointment exercised for the benefit of his descendants, not the creditors of his estate. Jaffe contends that, if the Court agrees with Pournaras’ reading of Section 5 of the Will as a valid exercise of the Power of Appointment, Pournaras will act in his capacity as Trustee of the Irrevocable Trust to transfer the Irrevocable Trust assets to the decedent’s estate, where they would be exposed to the claims of the decedent’s creditors. Pournaras disagrees with Jaffe and argues that the decedent clearly intended through Section 5 of the Will to exercise the limited power of appointment to allow the transfer of assets from the Irrevocable Trust to the estate.

Under the Uniform Declaratory Judgments Act, the superior court has the power upon petition “to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” G.L. 1956 § 9-30-1. “Any person interested under a deed, will, written contract, or other writings constituting a contract . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Sec. 9-30-2. Here, Jaffe and Pournaras have asked the Court to determine a question of construction arising under the testamentary instruments created by the decedent.

The Court finds that the decedent’s clear intent, as expressed in Article Four, Section 2 of the Irrevocable Trust, was that the limited power of appointment be exercised for the benefit of his descendants, rather than his creditors. The Court notes that this finding is consistent with the language of Article Four, Section 2 of the Irrevocable Trust. The Court further finds that, if it were to adopt Pournaras’ reading of Section 5 of the Will as a valid exercise of the decedent’s

limited power of appointment, the Irrevocable Trust assets would become part of the decedent's residuary estate and would then be subject to the claims of the decedent's creditors. See Will Section 5.01.

Pournaras argues that, under local and extra-jurisdictional case law, the transferred assets would not become part of the estate of the decedent as a result of the exercise of the decedent's limited power of appointment. As support for his position, Pournaras cites, inter alia, Hooker v. Drayton, 69 R.I. 290, 33 A.2d 206 (1943); R.I. Hosp. Trust Co. v. Anthony, 49 R.I. 339, 142 A. 531 (1928); and U.S. v. Baldwin, 283 Md. 586, 391 A.2d 844 (1978). As Pournaras contends, Hooker, Rhode Island Hospital Trust Co., and Baldwin stand for the proposition that property subject to a power of appointment does not become part of the estate of the holder of the power. See Hooker, 69 R.I. 290, 33 A.2d at 210; R.I. Hosp. Trust Co., 49 R.I. 339, 142 A. at 533; Baldwin, 283 Md. at 595, 391 A.2d at 849.

Here, however, Section 5 of the Will defines the decedent's residuary estate as "any property over which [the decedent] may have a power of appointment and any insurance proceeds which may be payable to my estate, less all valid claims asserted against my estate and all expenses incurred in administering my estate, including expenses of administering non-probate assets and expenses of determining any tax occasioned by my death," Will Section 5.01 (emphasis added). In Rhode Island, a settlor may not perform an act inconsistent with the terms of the trust that he created unless he has reserved for himself the power to do so. Garneau v. Garneau, 63 R.I. 416, 9 A.2d 15, 18 (1939). Although the exercise of the limited power of appointment would not, ipso facto, result in the assets of the Irrevocable Trust becoming part of the decedent's estate, Pournaras' reading of Section 5 of the Will would have the effect of placing Irrevocable Trust assets in the residuary estate where they would be subject to the claims

of the decedent's creditors. Because this result would contravene the intent of the settlor as expressed in Article IV, Section 2 of the Irrevocable Trust, and because the decedent did not reserve for himself the power to perform such an act, the Court rejects Pournaras' argument.

IV

Conclusion

Pournaras' Motion for Summary Judgment is therefore denied, and Jaffe's Motion for Summary Judgment is granted with respect to her request for Declaratory Judgment. Consistent with this ruling, and with the terms of the Irrevocable Trust, Pournaras is prohibited from transferring the assets of the Irrevocable Trust into the decedent's estate. The Trustee of the Irrevocable Trust is hereby directed to divide the trust estate into two equal shares, see Irrevocable Trust, Article VIII, Section 1, to be distributed as otherwise provided in the trust instrument, see id. at Section 1.a; see also id. at Section 2.

The prevailing party shall prepare an order consistent herewith to be entered after due notice.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Jaffe v. Pournaras**

CASE NO: **PB 14-2228**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **June 23, 2016**

JUSTICE/MAGISTRATE: **Silverstein, J.**

ATTORNEYS:

For Plaintiff: **Rebecca M. Murphy, Esq.**

For Defendant: **James A. Bigos, Esq.**