

**COURT OF COMMON PLEAS  
PROBATE DIVISION  
HAMILTON COUNTY, OHIO**

BETTY ALLEN, Executrix of  
the Estate of Joseph W. Elble, deceased

Plaintiff

-vs-

MICHAEL ELBLE, et al.,

Defendants

CASE NO. C94534

OPINION AND ENTRY  
CONSTRUING WILL

This cause came before Judge Wayne F. Wilke on June 18, 1996 for final hearing on a contest to construe the decedent's will. Present before the Court were Timothy R. Cutcher, representing Executrix Betty Allen; Leonard G. Rowekamp, who represents Beverly Mugel, Stephen Mugel, Julie Mugel, Melissa Mugel Harper and Lori Mugel (the "Mugel Defendants"); and Robert T. Butler, representing Defendants Michael Elble, Andrew L. Elble, and Amber L. Elble (the "Elble Defendants"). After the parties had rested, the Mugel Defendants were granted leave to file a memorandum regarding the construction of the decedent's will.

FACTS

The decedent herein, Joseph W. Elble, died testate on September 18, 1993. The decedent's will was admitted to probate on November 5, 1993, and Plaintiff Betty Allen was appointed Executrix on that same day. The decedent was survived by one son, Michael Elble. Michael Elble, in turn, has two children, to wit, Andrew L. Elble and Amber L. Elble.

The decedent refers to another child in his will, but that individual, Defendant Beverly Mugel, was in fact adopted away from the decedent in 1938. On March 20, 1995, Plaintiff Allen filed her second amended complaint for the construction of the decedent's will. The issue before the Court concerns whether Defendant Beverly Mugel, or her children, as "grandchildren" of the decedent, are beneficiaries of the estate.

### CONCLUSIONS OF LAW

It is axiomatic that the role of a probate court in a will construction action is to ascertain and give effect to the testator's intent if it is legally possible. *Wendell v. Ameritrust Company, N.A.* (1994), 69 Ohio St.3d 74, 76; *Townsend's Exrs. v. Townsend* (1874), 25 Ohio St. 477, paragraph one of the syllabus. Ascertaining a testator's intent, in turn, requires an examination of the pertinent provisions of the decedent's will. When interpreting a will, words employed should be given their ordinary meaning and natural effect if the language is such that its meaning is clear and if the words employed are unequivocal and unambiguous. *Kretzer v. Brubaker* (1996), 74 Ohio St.3d 519, 522.

The decedent's use of paradoxical language throughout his will makes an accurate interpretation of his intent a challenge. For example, in Article I, Section 1 of the will, the testator states in the singular that "[m]y child is MICHAEL ELBLE." In Section 2, the testator states, "I have another child named BEVERLY MUGEL. I deliberately make no provision in my will for BEVERLY MUGEL for reasons personal to me."

In Article II of the will, the decedent states that the terms "'my child,' 'my children,' 'child of mine,' or 'children of mine' shall mean those persons set forth above in **Section 1 of Article I**" (emphasis added). As stated above, Section I pertains exclusively to Michael Elble.

In contrast to the decedent's desire to **not** provide for Beverly Mugel, he made specific bequests to two of her children, Julie Mugel and Stephen Mugel. To cloud matters further, the decedent referred to Julie Mugel and Stephen Mugel as his granddaughter and grandson. This language is critical because Article VI of the decedent's will requires the Executrix to "distribute as she sees fit among my children and grandchildren in percentages as she decides at her discretion."

With the conflicting verbiage in this inartfully drawn will as a guide, the Court must determine whether Beverly Mugel or her children are to be included as residual beneficiaries of this estate. Clearly, with respect to Beverly Mugel, she is not to be included as a beneficiary. The plain language used by the testator with regard to Beverly Mugel is that the testator consciously and willfully made no provision for her. Therefore, she is not to be a member of the class of residual beneficiaries. Less clear is the answer with respect to Beverly Mugel's children.

The testator's use of the terms "granddaughter", when describing Julie Mugel, and "grandson", when describing Stephen Mugel, negate any inference the decedent meant to disinherit Beverly Mugel's children. The testator took great pains to make clear the terms "my child", "my children", etc., referred to Michael Elble alone, but no such effort was made to distinguish Michael Elble's children from Beverly Mugel's children. The testator never availed himself of the opportunity to limit the class of residual beneficiaries aside from the express prohibition against Beverly Mugel. Instead, Article VI of the decedent's will provides for the Executrix to "distribute as she sees fit among my children and grandchildren in percentages as she decides at her discretion."

As described above, the term "my children" means Michael Elble only, in accordance with Article II of the will. However, no definition is supplied to help construe the terms "my

grandchildren”. It is apparent the testator considered Julie Mugel and Stephen Mugel his grandchildren. As there was no language negating such an inference, it is reasonable to assume the decedent also considered Melissa Mugel Harper and Lori Mugel to be his grandchildren.

As a result, the Court hereby construes the will of Joseph W. Elble to include as residual beneficiaries the following individuals only:

1. Michael Elble
2. Andrew Elble
3. Amber Elble
4. Stephen Mugel
5. Julie Mugel
6. Melissa Mugel Harper
7. Lori Mugel

SO ORDERED.

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WAYNE F. WILKE, JUDGE

cc: Timothy R. Cutcher  
Leonard G. Rowekamp  
Robert T. Butler