

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION p

IN RE THE ESTATE OF RITA
BERNICE ROZSYPAL a.k.a.
RITA V. ROZSYPAL

Deceased

LOUISE S. ROZSYPAL,

Plaintiff/Appellant

v.

GENE CALVIN ROZSYPAL,
ET AL;

Defendant/Respondent

Appeal Court Case No.: B81023

Appeal from the Los Angeles
Superior Court

Case No VP009695

The Hon. Peter Espinoza, Judge

The Hon. C. Robert Simpson, Jr.,
Judge

APPELLANT'S OPENING BRIEF

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I. Statement of the Nature of the Action

This case is the appeal of a judgment after court trial denying a petition under Probate Code section 17200. Appellant Louise S. Rozsypal petitioned the court for an order construing the holographic instruments as a valid living trust; finding that by "my home" the Decedent meant her home; appointing Louise S. Rozsypal as trustee of the trust; and dismissing the petition for probate filed in case number VP009644.

This case was tried at the same time as case number VP009644, although arising from the same facts and circumstances, the two cases were never consolidated. The judgment in the petition for administration is the subject of Court of Appeal case no. B181024.

II. Summary of the Significant Facts

Rita Bernice Rozsypal, also known as Rita B. Rozsypal, passed away on May 15, 2003. She is survived by three children: Gene Calvin Rozsypal, who is respondent in this action; Louise Rozsypal, who is responded in this action; and Kristine King Rozsypal, who is also a respondent in this action. Decedent was a resident of Los Angeles County, California. Decedent's long time residence was a single family home commonly known as 14949 Templar Drive, La Mirada, Los Angeles, California and more particularly described as

Lot 132 of Tract 17945, as per Map recorded in Book 544, Pages 12 to 15, inclusive, of Maps in the Office of the Los Angeles County Recorder.

This is the only home owned by the Decedent at any time relevant to these proceedings.

Prior to her passing, Decedent, without the aid of counsel, drafted the a document she entitled "Revocable Living Trust." (Record at 12.) The document states:

REVOCABLE LIVING TRUST

I Rita Rozsypal give my home as a gift to Louise Rozsypal, my 1995 Jeep Car and Mustang, '67, '64 VW to Jene [?]. '83 Camero to Louise and the smart train set goes to Mike Rozsypal.

Rita B. Rozsypal
14949 Templar Dr.
La Mirada, Calif.

(Record at 3.) This document was executed by the Decedent in the Appellant's on April 25, 2003. The Document named Louise Rozsypal, Mike Rozsypal and "Jene" as beneficiaries. Jene's identity is not certain, but is possibly Gene Calvin Rozsypal, Respondent in these proceedings.

In addition, Decedent executed two other documents. The second document read:

I love you all.

My daughter Louise, and her daughter Justine and Mike her son Mike Rozsypal, will have my house and everything in it. The cars are all hers. It is up to her to do whatever she wants to do with them. My daughter needs a home for herself and the children, and I don't want anyone trying to throw her out in the street. Kristine will get whatever Louise gives to her, I love you Kristine. 12:00

(Record at 10, 13). The third document read:

My son Gene will get whatever Louise wants to give to Gene. Gene be nice to Louise. Don't cause trouble. Help her and everything will be fine. Love you all.

Kristine + Louise be nice to each other and everything will be fine. Love each other.

1 P.M. 25th
April 2003

(Record at 11, 14). These three documents constitute the entire estate plan of Decedent.

On August 29, 2003, Appellant Louise Rozsypal filed a "Petition to Determine the Existence and Validity of Trust, and For Appointment of a Trustee, Points and Authorities in Support of Petition." (Record at 4-15.)

On November 12, 2003, Respondent Gene Calvin Rozsypal filed his "Objection to Petition to Determine the Existence and Validity of Living

Trust, and for Appointment of a Trust; Points and Authorities in Support of Objection.” (Record at 16-29.)

This proceeding was consolidated with Los Angeles Superior Court case number VP009695 for trial before the Honorable C. Robert Simpson, Jr., Judge. The trial was held on June 28 through June 29, 2004.

III. Argument

A. Decedent Rita B. Rozsypal Created A Living Trust By The Holographic Document

The standard of review in this case is de novo. In the case *Ike v. Doolittle*, 61 Cal.App.4th 51, 73, 70 Cal.Rptr.2d 887 (1998), the Court of Appeal has said,

The interpretation of a written instrument presents a question of law, unless interpretation turns on the competence or credibility of extrinsic evidence or conflict therein. Accordingly, a reviewing court is not bound by the lower court’s interpretation by must independently construe the instrument at issue.

See also Well Fargo Bank v. Marshall 20 Cal.App.4th 447, 453-454 (1993).

Each case depends on its own facts. *Id.* The settlor’s intention must be ascertained from the whole of the trust instrument, not just the separate parts of it. *Id.* The California Supreme Court has held that the “cardinal rule” is that estate plans should be given “a liberal construction” and “all reasonable intendments indulged” with a view to sustain settlor’s intention. *Estate of Heywood* 148 Cal. 184, 82 P. 755 (1905). Sound public policy is to carry out the settlor’s intention so far possible, and the trust language must allow no interpretation other than an “illegality” before a court will declare a trust invalid. *Hamilton v. Ferrall*, 92 Cal.App.2d 277, 281, 206 P.2d 663 (1949).

The elements required to establish a trust are set by statute. *Dessar v. Bank of America* 353 F.2d 465 (1965). The first requirement is an express manifestation of the intention to create a trust. Probate Code § 15201. The

second requirement is for trust property. Probate Code § 15202. The third requirement is a beneficiary. Probate Code § 15205. The fourth element is a valid trust purpose. Probate Code § 15203-15204. *See also In re Estate of Powell*, 83 Cal.App.4th 1434, 100 Cal.Rptr.2d 501 (2000). Each of these elements is met in the present case.

Probate Code section 15201 states, "A trust is created only if the settlor properly manifest an intention properly manifests an intention to create a trust." Over a century ago, the United States Supreme Court, construing California law in a case under the Court's diversity jurisdiction, held,

No technical language, however, is necessary to the creation of a trust, either by deed or by will. It is not necessary to use the words "upon trust" or "trustee," if the creation of a trust is otherwise sufficiently evident. If it appear to be the intention of the parties from the whole instrument creating it that the property conveyed is to be held or dealt with for the benefit of another, a court of equity will affix to it the character of a trust, and impose corresponding duties upon the party received the title, if the be capable of lawful enforcement.

Colton v. Colton 127 U.S. 300, 310, 32 L.Ed. 138, 8 S.Ct. 1164 (1887); *see also In Re Bunn Estate* 33 Cal.2d 897, 900, 206 P.2d 635 (1949). In *Colton*, the language the Court was called upon to construe was

I give and bequeath to my said wife, Ellen M. Colton, all of the estate real and personal, of which I shall die seized, possessed, or entitled to. I recommend to her the care and protection of my mother and sister, and request her to make such gift and provision for them as in her judgment will be best.

127 U.S. at 307-308. The Court, in an opinion by Justice Matthews, overruled the trial court and concluded "that each of the complainants in these bills is entitled to take a beneficial interest under the will of David D. Colton." *Id.* at 321. One Court of Appeal remarked,

it is not essential that such intention [to create a trust] be manifested by express terms. It is immaterial that the language used is inartificial, ungrammatical and devoid of technical terms, provided the intention is evident from a reasonable construction of the document as a whole.

In Re Estate of Ingram, 104 Cal.App. 1, 7, 285 P. 365 (1930) Only the settlor's intention is relevant, *Booge v. First Trust & Savings Bank*, 64 Cal.App.2d 532, 149 P. 32 (1944), and, if a trust can be fairly implied from the language used that a trust is intended, a trust will be enforced, *Carr v. Carr*, 15 Cal.App. 480, 115 P. 261 (1911). The settlor's intention may be expressed in more than one writing. *Weiner v. Mullaney*, 59 Cal.App.2d 620, 631, 140 P.2d 704 (1943). In the *Weiner* case, the court construed six letters together as a single trust declaration. The question is not what the settlor intended to say, but what was intended by what was said. *First Trust & Savings Bank v. Costa*, 83 Cal.App.2d 368, 373, 188 P.2d 778 (1948).

The second requirement for a valid trust is a trust estate or res. Probate Code section 15202 states, "A trust is created only if there is a trust property." See also *Eaton v. Los Angeles* 201 Cal.App.2d 326, 20 Cal.Rptr. 456 (1962); *In re Lamb*, 61 Cal.App. 321, 215 P. 109 (1923).

The third requirement for a valid trust is a beneficiary which is "ascertainable with reasonable certainty." Probate Code § 15205.

The fourth element necessary for a valid trust is a trust purpose. Probate Code section 15203 states, "A trust may be created for any purpose that is not illegal or against public policy." Probate Code section 15204 states, "A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property come within that purpose."

The case *Estate of Reith*, 144 Cal. 314, 77 P. 942 (1904) is very close to the facts of the instant case. In *Reith*, the testatrix prepared a holographic will, without the advice of counsel. The will read, in relevant part,

To my husband, John Reith, Jr., I name one tenth of all such of my estate not mentioned as personal property, together with small personal bank interests, and together with Douglas A.

Lindley, Wallace A. Briggs, I name him trustees for my whole estate, to be so protected by them that my children shall receive at the age of twenty-five one half of all that is due and at thirty, the remaining half, and that these trustees shall receive a small commission each in consideration of their services. I also assign to said trustees the added duty of keeping my children in such circumstances as will permit them to have every comfort of dress etc., and all the needed education which shall fit them for a career in any position of life. In the event of my husband's death, I name my brother-in-law Jesse L. Reith, to act as trustee with the surviving ones, knowing him to be honorable, competent and justly fitted for such responsibility as are herein expected. Furthermore, I wish to state that if the trustees see fit to make over to my children because of good character and industrious propensities the whole rather than one half of my estate as they reach the age of twenty-five, it shall be in their power to do so.

/s/ Alice Lindley Reith.

Id. at 316. The Supreme Court, in an unanimous opinion by Justice McFarland, ruled that

no matter how poorly expressed, nor how ungrammatical may be the sentences, it is the duty of the court to interpret it and carry out the intention of the testatrix if that intention can be ascertained, provided no law is violated in so doing. The court must examine the will in all its parts with the honest and earnest purpose of arriving at the thing that the deceased intended should be done with her property. She had property and desired to dispose of it. She had four children of tender age and she desired to provide for their care and education. She had the right to dispose of her property as she saw fit, provided she violated no law in so doing.

Id. at 316-317. The Supreme Court affirmed the trial court with a few minor changes to the decree which are not relevant here.

In the instant case each of these three requirements is met. First, the settlor's intention is absolutely clear. The holographic document found at page 9 of the record clearly states "revocable living trust." By "giving" the home to Louise, the Decedent transferred the legal title to her. The trust res, or trust property, is absolutely clear—Decedent's house in La Mirada, California, the vehicles, and the "smart train set." Record, at 9. The beneficiaries are also very clearly identified—Louise, her daughter Justine,

and her son Mike. Record, at 10. The trust purpose is also clearly defined—"My daughter needs a home for herself and her children, and I don't want anyone trying to throw her out into the street." Record, at 10. Thus, each of required elements is met.

In the Statement of Decision, the trial court wrote:

We look in vain thru [sic] this record for any such declaration [of trust] or transfer [to a trust]. Entitling Exhibits A and B as "revocable living trust" is a far cry from that which might reasonably be construed as a declaration that Rita holds the family home as trustee, and there is not a shred of evidence that Rita, during her lifetime transferred the home to another person as trustee for some other person by deed or will, or some other interim transfer.

Record, at 49. This is simply an incorrect application of the law. As pointed out above, the law requires no set formulae or magic words to express an intention to create a trust. To a layperson—which the Decedent was—the phrase "revocable living trust" would seem to be enough to express the intention to create a trust. Further, the language used by the Decedent is not that different from the language used by the testator in *Colton v. Colton*, 127 U.S. at 307-308.

B. Appellant Louise B. Rozsypal Is Rightfully Entitled To Be Trustee Of The Living Trust

A person may create a trust in her own property by constituting herself as trustee. *In re Lamb*, 61 Cal.App. 321, 215 P. 109 (1923). The common law doctrine of merger has been repealed by statute. Probate Code § 15209(a). When a vacancy occurs in the office of trustee, as by the death of the trustee, Probate Code § 15643(d), the court may in its discretion appoint a trustee to fill the vacancy Probate Code § 15660. The proper procedure is found in Probate Code section 17200(b)(10). Probate Code section 17200(b)(10) allows the beneficiary of a trust to petition the court for an

order appointing a trustee.

In the instant case, the trustee, Rita Rozsypal, is deceased. A new trustee must be appointed. Louise Rozsypal is the most logical candidate. However, the trial court never addressed this issue in its Statement of Decision.

C. The Trust Documents Satisfy the Statute of Frauds Relative to Trusts

Probate Code section 15206 states, in relevant part, "A trust in relation to real property is not valid unless evidenced by . . . a written instrument conveying the trust property signed by the settlor."

In the instant case, the Decedent wrote a holographic document which establishes a living trust and satisfies the statute of frauds.

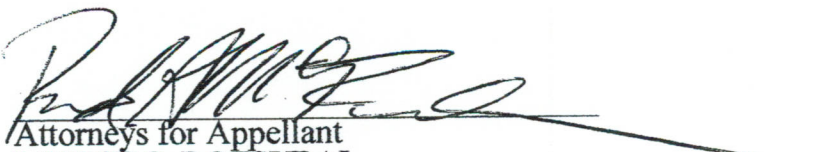
IV. Conclusion

The trial court erred in applying the law to the facts of this case. The three holographic documents in the record are a valid declaration of trust satisfying all of the basic requirements set by statute and common law. Therefore, the Court of Appeal should reverse the trial court and find that a valid trust exists.

Respectfully submitted,

Anthony N. Fonte

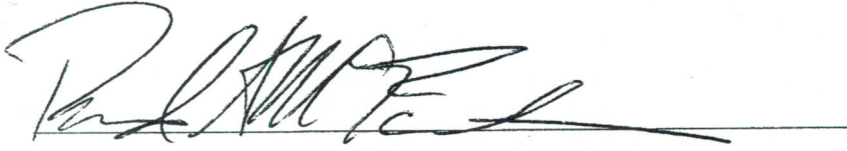
Richard A. McFarlane


Attorneys for Appellant
LOUISE S. ROZSYPAL

Date: May 18, 2005

Certification

I, Richard A. McFarlane, certify that the foregoing Appellant's Opening Brief consists of approximately 3,083 words.

A handwritten signature in black ink, appearing to read 'R. McFarlane', is written over a horizontal line.

Richard A. McFarlane

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF ORANGE

} SS

I am over eighteen years of age and not a party to the above titled action. My business address is 5681 Beach Blvd., Suite 200, Buena Park, California 90621

On May 18, 2005, I served a copy of the following documents:

APPELLANT'S OPENING BRIEF

on all parties in the above action by

☒ depositing a true and correct copy of each document in a sealed envelope(s) in first class United States mail with postage fully prepaid. The envelope(s) were addressed as follows:

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I declare the foregoing true and correct under penalty of perjury under the laws of California and of the United States of America.

Executed on May 18, 2005 at Buena Park, California.

Lamuel L. Pedersen