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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN E. LEWCHANIN,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 67A01-0702-CV-88
)	
MADELEINE M. LEWCHANIN, Personal)	
Representative of the Estate of)	
Daniel F. Lewchanin,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0412-EU-67

December 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

John E. Lewchanin (“John”) challenges the trial court’s interpretation of his father’s will and trust. We affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

In February 1996, Daniel Floyd Lewchanin (“Settlor”) established the Daniel Floyd Lewchanin Revocable Trust (“Trust”) and executed his will. The will provided the bulk of Settlor’s estate would be paid over to the Trust. When Settlor died in 2004, his wife Madeleine became personal representative of his estate and successor trustee of the Trust.

The Trust, as amended, provides in part as follows:

ARTICLE IV: Dispositive Provisions

* * * * *

B. Upon the death of the Settlor, then the trust, as then constituted, shall be distributed leaving no surviving issue, to the following beneficiaries:

Spouse, MADELEINE M. LEWCHANIN; children, TERRY ALLEN LEWCHANIN, TINA LEWCHANIN, TRACY LEWCHANIN, JOHN EDWARD McCORMICK LEWCHANIN, JULIE MARIE LEWCHANIN, AMBER NICOLE LEWCHANIN; step-children, ALISON ANN COLVIN, KATHERINE ELIZABETH COLVIN; grandson, BRANDON LEWCHANIN; brother, JOSEPH LONNIE LEWCHANIN; half-brothers, MICHAEL LEWCHANIN, ROBERT HENDERSON, NORMAN HENDERSON; half-sister SHERRI LEWCHANIN; ex-spouses, KAREN LEWCHANIN, JACQULINE LEWCHANIN, and LYNN ANN LEWCHANIN.

Prior to the total distribution to the beneficiaries of their share of the trust, the trust shall be paid for the following uses and purpose, to-wit:

1. To receive the income from such trust property and to use the income for and on behalf of such spouse, step-child or step-children until the date the trust is settle[d]. Said net income shall be applied for the benefit of such spouse, step-child or step-children for their health, education, support or maintenance, as the Trustee in the Trustee’s discretion shall deem necessary to maintain the standard of living to which

such spouse, step-child or step-children have become accustomed,¹ and said sums to be paid upon documentation acceptable to the Trustee.

2. If the income of the trust be insufficient to provide adequately for the health, education, support or maintenance, all as provided for in paragraph 1. above, of the spouse, step-child or step-children hereunder, the Trustee is hereby authorized to use portions of the principal from time to time, for and on behalf of spouse, step-child, or step-children, in whatever amount the Trustee may regard as necessary and desirable, in order to provide properly for their health, education, support or maintenance. Such portions of principal shall not be charged against the share of principal to which such beneficiary is ultimately entitled.

3. The Trustee shall distribute to each beneficiary his or her share as follows:

[Terry, Tina, Tracy, Michael, Robert, Norman, Sherri, Karen, Jacqueline, Lynn, Brandon, Alexis Stella, Michael Lewchanin, and Savannah Marie Lewchanin²] the sum of One Dollar (\$1.00), in cash, to each.

[John], the sum of One Hundred Thousand Dollars (\$100,000.00) to be held in trust. The principal shall be divided into Ten Thousand Dollars (\$10,000.00), and be distributed each year until said trust is paid out. In the event that [John] shall predecease Settlor, or shall die prior to the total distribution to him, [sic] his share of trust principal, leaving surviving issue, the trust for his share or remaining share of trust principal shall return to [Madeleine], per stirpes.

[Settlor's daughters, Julie and Amber, each receive \$50,000, held in trust until the daughter turns 25, and then distributed \$10,000 per year. Each daughter's share reverts to Madeleine if the daughter dies prior to total distribution of her share of the trust principal. Settlor's brother Joseph receives \$50,000, held in trust, and distributed \$10,000 per year. Joseph's share is distributed to his wife and then to his children if he dies prior to total distribution of his share of the trust principal. Settlor's stepdaughters Allison and Katherine each receive \$100,000, held in trust until the stepdaughter turns 25, and then distributed \$10,000 per year.]

¹ This phrase was underlined by hand and "Ok" was written above it. (App. at 38.)

² Alexis, the second Michael, and Savannah are grandchildren added when the Trust was amended.

[Madeleine] will inherit the remaining trust estate. In the event [Madeleine] shall predecease Settlor, or shall die prior to the total distribution to her [sic] share of trust principal, leaving surviving issue, the trust for her remaining share of trust principal shall be distributed and divided equally to [John, Alison, and Katherine], leaving no surviving issue, per stirpes.

4. In the event that any other beneficiary shall predecease Settlor, or shall die prior to the total distribution to him or her of his or her share of trust principal, leaving surviving issue, the trust for his or her remaining share of trust principal shall return to [Madeleine], except [Joseph, as noted above].

(App. at 37-41, 59-61) (footnotes added, formatting altered).

In September 2006, Madeleine sought a declaratory judgment regarding the distribution of the estate assets through the Trust. John argued Settlor intended to establish “separate individual trusts” (*id.* at 15) for each named beneficiary, with the distribution of the trust corpus to begin at Settlor’s death, not after Madeleine’s death. The trial court concluded Settlor established a single trust and his intent “was to provide for his wife, Madeleine Lewchanin, during her lifetime as well as for her children’s educational needs and then distribute the corpus accordingly.” (*id.* at 9.) Therefore, it found, the trust income could be used to provide for Madeleine and for her children’s educational needs. Madeleine could use the trust principal if the trust income was “not sufficient to maintain the standard of living which [sic] Mrs. Lewchanin has become accustomed to,” (*id.*), but the court noted Madeleine had a fiduciary obligation to the residual beneficiaries for later distribution.

DISCUSSION AND DECISION

We believe Settlor intended to establish only one trust, with gradual distribution of the trust corpus to begin at his death. The interpretation of a will or trust is a question of law for the court. *Univ. of S. Ind. Found. v. Baker*, 843 N.E.2d 528, 531 (Ind. 2006). We review such questions of law *de novo* and owe no deference to the trial court's legal conclusions. *St. Mary's Medical Center, Inc. v. McCarthy*, 829 N.E.2d 1068, 1072 (Ind. Ct. App. 2005), *reh'g denied*. Our primary purpose in construing a trust instrument is to ascertain and give effect to the settlor's intent. *Baker*, 843 N.E.2d at 532. If possible, we must consider and give effect to every provision, clause, term and word of a trust instrument to determine that intent. *In re Estate of Owen*, 855 N.E.2d 603, 608 (Ind. Ct. App. 2006) (discussing wills); *see also In re Walz*, 423 N.E.2d 729, 733 (Ind. Ct. App. 1981) (rules dealing with construction of wills may aid court in determining intent of settlor). We look to the "four corners" of the document and the language used in it to determine the drafter's intent. *Owen*, 855 N.E.2d at 608-09. We assume the drafter used words in their common and ordinary sense and meaning. *Id.* at 609. If there is an ambiguity in the language of the document, we must first determine whether other provisions make clear the drafter's intent. *Id.*

John asserts: "There is nothing in the wording of the Trust that provides distribution to be only after the widow is deceased." (Appellant's Br. at 9.) Madeleine argues Settlor "clearly intended to provide for his surviving spouse by allowing her access to both the income and corpus of his trust prior to any distribution." (Appellee's Br. at 7.) We conclude Settlor intended the distribution to begin at his death.

The reversion clauses in the bequests indicate some distributions are to be made before Madeleine's death. For example, the bequest to John includes a reversion clause providing that if John dies "prior to the total distribution" of his share, his "share or remaining share of trust principal" reverts to Madeleine.³ (App. at 59.) His share could not revert to Madeleine if she had died. This indicates Settlor intended the beneficiaries to receive distributions prior to Madeleine's death.⁴

John asserts Settlor "[c]learly . . . intended at his death to divide this single trust into separate trust estates for each beneficiary named." (Appellant's Br. at 7). Provisions can be found in the trust document to support John's interpretation, but we conclude separate trusts would frustrate Settlor's intent.⁵

Article IV(B)(1) directs the trust income be paid to Madeleine and her children, while Article IV(B)(3) distributes shares of the trust principal to the other beneficiaries. These provisions are not inconsistent with a gradual distribution of a single trust

³ The general reversion clause and the reversion clauses for Amber and Julie operate similarly.

⁴ Settlor's stepchildren Alison and Katherine have the same beneficial interest in the Trust under Article IV(B)(1)-(2) as does Madeleine. This interest continues until the "date the trust is settle[d]." (App. at 38.)

⁵ The reversion clause in each bequest refers to "the trust for his share . . . of trust principal." (App. at 59.) The trustee is required to "consolidate and commingle . . . and hold and dispose of . . . as a single trust" "any one of these trusts" and "any other trust created by the Settlor" for the same beneficiary. (*Id.* at 45.) When the trustee must distribute a share of trust principal to a beneficiary under twenty-one and no other trust for that beneficiary has been created under the Trust document, the trustee "shall continue to hold it as a separate trust until the beneficiary reaches" twenty-one. (*Id.* at 46.) The trustee also has the power to "terminate any trust created hereunder" if it is no longer economical to administer. (*Id.* at 54.) The Trust also refers to "trust funds," (*id.* at 42), and "trust estates." (*Id.*)

In contrast, Article IV(B) refers to a beneficiary's "share of the trust," "the trust" being paid out to benefit Madeleine and her children, "the date the trust is settle[d]," and "the income of the trust" being insufficient. (*Id.* at 38.) Article V does address the "money or property payable or distributable under the trusts herein created," (*id.* at 44), but refers broadly to the "investment, administration and distribution of the trust created herein." (*Id.* at 41.)

beginning at Settlor's death. Bequests greater than one dollar are to be paid from trust principal in regular annual amounts over time. *E.g.*, "The Trustee shall distribute to . . . [John], the sum of One Hundred Thousand Dollars (\$100,000.00) to be held in trust. The principal shall be divided into Ten Thousand Dollars (\$10,000.00), and be distributed each year until said trust is paid out." (App. at 39.) This assures continuing trust income to Madeleine and her children while the trust principal is gradually distributed.

We are bound to follow the written trust provisions. *See* Ind. Code § 30-4-1-3 (terms of trust control unless clearly prohibited by rules of law). The language of Article IV(B) indicates Settlor intended the beneficiaries other than Madeleine and the children receive a share of the trust principal but not the income generated by that trust principal. The creation of individual trusts might prevent Madeleine from receiving all the trust income to which she and her children are entitled, and would therefore frustrate Settlor's intent to provide for them.

We direct the trial court on remand to commence distribution of the trust principal as provided in the trust document, with Madeleine and her children to receive income from all of the not-yet-distributed principal.

CONCLUSION

Settlor intended to permit Madeleine and her children to receive the Trust's net income, and corpus as necessary, and to gradually distribute the corpus of the Trust to his other beneficiaries. The distribution to the beneficiaries was to begin at Settlor's death. Separate trusts would frustrate Settlor's intent to provide for Madeleine and her children.

We accordingly affirm in part, reverse in part, and remand.

SHARPNACK, J., and BAILEY, J., concur.