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ORIGINAL

NOT FOR OFFICIAL PUBLICATION
See Okla. Sup. Ct. R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN THE MATTER OF THE CHARLES)
D. ROYE TRUST, dated September 21,)
1992, as amended:)
KATINA PEEVYHOUSE, ALEXIS J.)
HEATH and HOLLY R. WOOD,)
Plaintiffs/Appellees,)
vs.)
CASEY ROYE,)
Defendant,)
KELLY DON FLOYD,)
Interested Party/Appellant,)
and)
CHARLES H. ROYE, THE)
IRREVOCABLE SPECIAL NEEDS)
TRUST FOR THE BENEFIT OF)
KATHY CHERYL ROYE, KIMARIE)
JEANETTE ROYE aka Kim Allison,)
and SHAYNA KAYELYNN MAINAR aka)
Shayna Roye,)
Interested Parties.

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

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APPEAL FROM THE DISTRICT COURT OF
HASKELL COUNTY, OKLAHOMA

HONORABLE BRIAN C. HENDERSON, ASSOCIATE DISTRICT JUDGE

AFFIRMED

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For Interested Party/Appellant

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Kelly Floyd appeals the court's grant of summary judgment in favor of the plaintiffs/appellees, Alexis Heath and Holly Wood.¹ Upon review, we find that the material facts in this case were not in dispute, and the plaintiffs were entitled to judgment as a matter of law. Accordingly, we affirm the court's grant of summary judgment.²

BACKGROUND

Charles D. Roye died on December 17, 2020. During his lifetime, he created the Charles D. Roye Trust, dated September 21, 1992. Charles also created the Special Needs Trust for the Benefit of Marlita Joy Roye, his daughter, on December 28, 2012. Charles created the special needs trust to provide supplemental support to Marlita during her lifetime. Marlita died on May 15, 2017, two and a half years before Charles. The trust explicitly states that it shall terminate upon the death of the primary beneficiary, Marlita.

¹ Katina Peevyhouse did not enter an appearance in this appeal.

² Kelly Floyd's request for leave to file an appellate brief is hereby denied.

The Charles D. Roye Trust was amended many times. The fourth and final amendment to the trust occurred on October 30, 2013. The trust provided that two of Charles's children were to inherit \$20,000; Casey Roye, his grandchild and trustee in the present action, was to distribute voting membership units in CDRFT, LLC, to herself; and forty percent of the residue of the Trust after the two prior divisions was to be allocated into two equal shares, "one for the benefit of Marlita Floyd Roye and one for the benefit of Kathy Cheryl Roye." ROA, Doc. 4, *Plaintiffs' Motion for Summary Judgment*, Exhibit 2, pg. 1. The trust also provided that the allocations for Marlita and Kathy "shall be distributed to the respective trustees of the Irrevocable Special Needs Trust I have created for the benefit of Marlita Floyd and Kathy Cheryl Roye, to be held and distributed under the terms of those Trusts." *Id.*

Appellees Alexis Heath and Holly Wood—as beneficiaries of a portion the remaining sixty percent residue of the Charles D. Roye Trust³—filed an action against Casey, as trustee, for breach of trust and removal of trustee in August 2022. The amended petition also listed the appellant, Kelly Don Floyd, as an interested party and beneficiary of the trust. Kelly is the son of Marlita and grandson of Charles. Casey filed and answer to the amended petition.

The next document contained in the record on appeal is the plaintiffs' motion for summary judgment which alleged that Marlita's special needs trust terminated prior to Charles's death and, therefore, the bequest to that trust in

³ Kelly is also a beneficiary of the residue of this trust. Kelly, Alexis, and Holly each stand to take one-seventh of sixty percent of the residue.

the Charles D. Roye Trust lapsed. Kelly filed a response to the motion for summary judgment as well as his own motion for summary judgment, alleging that when examining the two trust documents, Charles intended for Marlita's lineal descendants to inherit her share of the Charles D. Roye Trust.

The parties engaged in subsequent motion practice on this issue, and the court held a summary judgment hearing on January 15, 2025. After hearing argument from the parties, the court granted the plaintiffs' motion for summary judgment. On January 23, 2025, the order granting summary judgment in favor of the plaintiffs and denying Kelly's motion for partial summary judgment was filed. It is from this order that Kelly appeals.⁴

STANDARD OF REVIEW

The appellate standard of review of summary judgment is *de novo*. *Boyle v. ASAP Energy, Inc.*, 2017 OK 82, ¶ 7, 408 P.3d 183, 187. On appeal, this Court assumes plenary and non-deferential authority to reexamine a district court's legal rulings. *John v. St. Francis Hospital, Inc.*, 2017 OK 81, ¶ 8, 405 P.3d 681, 685. Summary judgment will be affirmed only if the Court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 11, 160 P.3d 959, 963-64.

⁴ In his petition in error, Kelly also attached a dismissal order which states that the parties entered into a settlement agreement whereby they agreed to dismiss all pending claims in this action "except the issue of the bequest to the Trustees of the [sic] Irrevocable Special Need Trust for the Benefit of Marlita Roye set forth in Section 3.3. of the Fourth Amendment to the Charles D. Roye Trust dated September 21, 1992."

ANALYSIS

Kelly argues that the trial court misinterpreted the language of the trust documents at issue and also misconstrued the intent of the testator. Upon review, we disagree.

The relevant portion of the fourth amendment to the Charles D. Roye Trust reads as follows:

3.1 I distribute the sum of Twenty Thousand Dollars (\$20,000) to each of Charles Henry Roye and Katina Roye Peevyhouse as their entire interest under my Trust. If either predeceases me this distribution shall lapse and become a part of the residuary distributions hereunder.

3.2 I direct the distribution of the voting membership units in CDRFT, LLC to Casey J. Roye Reasoner.

3.3 Forty Percent of the residue of the Trust after the distributions stated in Sections 3.1 and 3.2 above shall be allocated into two equal shares; one for the benefit of Marlita Floyd Roye and one for the benefit of Kathy Cheryl Roye. The allocations for Marlita and Kathy shall be distributed to the respective Trustees of the Irrevocable Special Needs Trust I have created for the benefit of Marlita Floyd Roye and Kathy Cheryl Roye, to be held and distributed under the terms of those Trusts.

ROA, Doc 4, *Plaintiffs' Motion for Summary Judgment*, Exhibit 2. The Special Needs Trust for the Benefit of Marlita Joy Roye provides that "Marlita Joy Roye shall be the sole beneficiary of the Trust during her life." *Id.* at Exhibit 3, pg. 1. Article III of the Marlita's special needs trust, which defines its primary purpose, reads as follows:

3.1 This Trust shall be an irrevocable trust to be managed by the designated Trustee for the benefit of and to supplement any private or public support for Marlita Joye Roye during her lifetime. Upon the death of Marlita Joye Roye, any assets remaining in this Trust shall then be distributed to her lineal descendants, per stirpes

Id. Article IX of the special needs trust provides the following regarding termination:

The Trust shall terminate upon the death of the Primary Beneficiary. Upon termination Trustee shall distribute the principal and income of the Trust as follows.

...

9.2 Residual Distribution. All the remaining balance of the Trust shall be distributed to the lineal descendants of the Primary Beneficiary, per stirpes. If there shall be no lineal descendants the Trust shall be distributed to the persons named as residual beneficiaries under the Charles D. Roye Trust.

Id. at 10.

Oklahoma courts have held that when “construing the terms of an instrument creating a trust, the intention of the settler of the trust should control when such intention is not in conflict with established principles of law. Such intention is to be gathered from the terms of the instrument as a whole.” *In re Dimicks Will*, 1975 OK 10, ¶ 10, 531 P.2d 1027, 1030 (internal citations omitted). The Oklahoma Trust Act provides: “When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.” 60 O.S. § 175.49. Meanwhile, where a specific duration of a trust is fixed by words, such as the duration of an individual’s life, the trust terminates upon the expiration of time set in the trust. Restatement (Second) of Trusts § 334 (1959).

We hold that Marlita’s special needs trust explicitly provided that it would terminate upon Marlita’s death and that, upon termination, the special needs trust could no longer receive assets for distribution. And, even if the trust did not contain such a provision, because the trust’s stated purpose was to

supplement any private or public support for Marlita during her lifetime, we find that when she died, the purpose for which the trust was created ceased and, therefore, so did the trust pursuant to 60 O.S. § 175.49. At the time of Marlita's death, the remaining balance of the trust consisted of ninety-five units in CDRFT, LLC, the family company. Tr. (Jan. 15, 2025), pg. 17. Those assets were distributed to Kelly Floyd, *id.*, consistent with the special needs trust's provision which provided that upon Marlita's death, "any assets remaining in this Trust shall then be distributed to her lineal descendants." ROA, Doc. 4, *Plaintiffs' Motion for Summary Judgment*, Exhibit 3.

Kelly contends that despite the clear termination language in the special needs trust, it was Charles's intent that the lineal descendants of Marlita be entitled to inherit her share of the Charles D. Roye Trust even if Marlita predeceased Charles. Kelly argues that included in the special needs trust's stated purpose is the provision that "[u]pon the death of Marlita Joy Roye, any assets remaining in this Trust shall then be distributed to her lineal descendants." *Id.* Thus, Kelly contends that the distribution of assets to the lineal descendants of Marlita falls within the primary purpose of the special needs trust. Additionally, Kelly notes that the special needs trust's provision on termination also states that "[u]pon termination, Trustee shall distribute the principal and income as follows" *Id.* Kelly concedes in his response to summary judgment that the language used in the termination section "clearly indicates that the Trust is to immediately 'terminate' upon the death of the primary beneficiary." ROA, Doc. 5, *Response to Summary Judgment*, pg. 4.

However, because the special needs trust then indicates that the trustee should distribute property to the lineal descendants even after the death of Marlita and termination of the trust, Kelly opines that “it is impossible to read any intention on the part of the Settlor other than the intention that the trustee be permitted to distribute assets of the [special needs] trust even after the event of Marlita’s death.” *Id.*

We agree with Kelly’s argument, as far as it goes. Clearly, the special-needs trustee was permitted—indeed, required—to distribute the assets of the special needs trust upon termination of that trust. We decline, however, to go further and hold that that language entitles Kelly to a percentage of the residue left in the Charles D. Roye Trust when the distributions called for in Section 3.3 could not occur until after Charles died in 2020, and the special needs trust terminated in 2017. We hold that the gift of the twenty percent of the residue of the trust to the special needs trust contemplated in Section 3.3 of the Charles D. Roye Trust lapsed and reverted to that trust’s corpus.

Alternatively, Kelly alleges that the special needs trust at issue was protected from lapse by 60 O.S. § 175.56. Section 175.56 reads as follows:

When the declaration or agreement of an express trust provides for any of the property held in trust to be distributed to a beneficiary related by blood to the grantor or to a grantor of the trust, and the beneficiary is living at the time the trust is created but dies before the time for distribution of the trust leaving one or more lineal descendants who are living at the time for distribution of the trust, and no provision is made in the trust declaration or agreement for disposition of the property in the event that the beneficiary is not living at the time for distribution of the trust, the beneficiary’s lineal descendants take the share of the trust property so given to the beneficiary in the trust declaration or agreement, by right of

representation, in the same manner as the beneficiary would have done had he been living at the time for distribution of the trust.

Id. Kelly argues that under this statute, Marlita's descendants are still entitled to an award of the subject residuary property. The Charles D. Roye Trust provided that twenty percent of the residue of the trust shall be allocated for the benefit of Marlita and, even though Marlita had passed before distribution, she left a living descendant. Further, there was no provision in the trust that provided for the disposition of that property in the event that Marlita predeceased Charles. Thus, Kelly reads § 175.56 to allow him to receive twenty percent of the residue of the Charles D. Roye Trust that was allocated to Marlita in Section 3.3. However, we note that the Charles D. Roye Trust did not state that Marlita as an individual beneficiary was entitled to a percentage of the residue; rather, it states:

3.3 Forty Percent of the residue of the Trust after the distributions stated in Sections 3.1 and 3.2 above shall be allocated into two equal shares; one *for the benefit* of Marlita Floyd Roye and one for the benefit of Kathy Cheryl Roye. The allocations for Marlita and Kathy *shall be distributed to the respective Trustees of the Irrevocable Special Needs Trust* I have created for the benefit of Marlita Floyd Roye and Kathy Cheryl Roye, to be held and distributed under the terms of those Trusts.

ROA, Doc. 4, *Plaintiffs' Motion for Summary Judgment*, Exhibit 2, pg. 1 (emphasis added).

We hold that § 175.56 does not apply to this gift. Although § 175.56 concerns property given to a descendant of a "beneficiary related by blood to the grantor," we hold that the Special Needs Trust for the Benefit of Marlita Joy Roye is not related by blood to the grantor. The special needs trust, as a distinct and

separate entity, was the beneficiary here. Kelly argues that because Section 3.3. states that one share is to be for “the benefit of Marlita Floyd Roye” and not the special needs trust by name, the settlor intended that the subject residuary property was to simply be distributed in the same manner as the property held under the special needs trust, *i.e.* distributed to her lineal descendants in the event of her death. We decline to adopt such a reading. As stated above, when “construing the terms of an instrument creating a trust, the intention of the settler of the trust should control when such intention is not in conflict with established principles of law. Such intention is to be gathered from the terms of the instrument as a whole.” *In re Dimick’s Will*, 1975 OK 10, ¶ 10, 531 P.2d 1027, 1030. In reading Section 3.3 and the trust as whole, we find that the settlor, Charles, intended that twenty percent of the residue be distributed to the Special Needs Trust for the Benefit of Marlita Joy Roye, a separate entity, not Marlita as a beneficiary herself. Because the special needs trust ceased to exist upon her death in 2017, there was no special needs trust in existence to receive the residuary distribution.

Although there is no Oklahoma case on point, we find the case *Barrett v. Barrett*, 274 So. 3d 269 (Ala. 2018), helpful in our analysis. In *Barrett*, the trustees were required to pay forty percent of the trust assets to an individual, George, when he turned twenty-five and the other sixty percent of the trust assets when he turned thirty-five, “at which time said Trust shall terminate.” *Id.* at 273. Thus, the Court found that the trust terminated by its own terms upon George’s thirty-fifth birthday. *Id.* The Court held that the trustees had a duty to

distribute the trust assets and wind up the affairs of the trust; however, the Court noted that the trial court could not later modify or revive the trust to extend its vesting provisions indefinitely and the trustees could not take any additional action regarding the trust. *Id.* at 274.

Here, the special needs trust terminated by its own terms upon Marlita's death in 2017. At that time, the trustee had a duty to distribute the assets in the trust to Kelly, her lineal descendant, per the terms of the trust. However, for reasons unclear to this Court, the winding up did not occur until Charles died and the litigation regarding the Charles D. Roye Trust began. Nevertheless, it is undisputed that Kelly ultimately received the assets of the special needs trust that were in the trust at the time of Marlita's death. We hold that just because the winding up of the special needs trust did not occur in 2017 when Marlita passed, that does not give this Court or the trial court the authority to revive Marlita's special needs trust so Kelly can take her portion of the residuary estate as if the trust still exists.

Ultimately, we agree with the plaintiffs that the distributions called for in Section 3.3 of the Charles D. Roye Trust could not occur until after Charles died on December 17, 2020. Because Marlita's special needs trust was a separate entity that terminated upon her death, the gift of the twenty percent of the residue of the Charles D. Roye Trust lapsed and reverted to the trust corpus. Kelly received and was entitled to the assets contained in the trust at the time of Marlita's death. However, he is not entitled to twenty percent of the residuary for

the reasons articulated above. Thus, we find that the trial court properly granted summary judgment in favor of the plaintiffs.

AFFIRMED.

BARNES, J., and HUBER, J., concur.

January 14, 2026