

Matter of Garelik (Wilford)
2021 NY Slip Op 32003(U)
July 20, 2021
Surrogate's Court, New York County
Docket Number: 2015-2497/B
Judge: Nora S. Anderson
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

New York County Surrogate's Court
DATA ENTRY DEPT.
JUL 20 2021

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In the Matter of the Application of
David M. Garelik, for a Determination
as to the Validity, Construction, and
Effect of the Last Will and Testament
of

File No. 2015-2497/B

RONALD A. WILFORD,

Deceased.

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A N D E R S O N , S .

In this uncontested miscellaneous proceeding in the estate of Ronald Wilford, petitioner, the attorney-drafter, asks the court to (1) reform decedent's will by correcting an error in the will's identification of a separate instrument, and (2) determine that such instrument effectively amended an inter vivos trust created by decedent.

Decedent died on June 13, 2015, survived by his spouse and two children. Decedent's will, dated April 14, 2015, was admitted to probate and letters testamentary issued to petitioner. The date of death value of decedent's estate exceeds \$16 million.

Article THIRD of decedent's will refers to the "RW Trust," and defines it as the "Ronald A. Wilford Trust as amended and restated on June 26, 2013." The term is at issue because the "RW Trust" is, among other things, a beneficiary of \$3 million under the will.

Factual Background

On January 22, 1993, decedent, as grantor, created an

irrevocable trust for the lifetime benefit of his son (the "1993 Trust"), the remainder of which he left to his son's estate. If the son died without issue, the remainder would pass to a named charitable foundation (the "Foundation"). On June 26, 2003, decedent as grantor created another agreement, styled as an "amendment and restatement" of the 1993 Trust (the "2003 Agreement"), which eliminated the Foundation's contingent interest in the remainder of the 1993 Trust. Pursuant to EPTL 7-1.9, an irrevocable trust cannot be amended without the consent of "all the persons beneficially interested." Accordingly, grantor secured the written consent of all individual beneficiaries and the consent of the Foundation. After grantor's death, however, the executor learned that the consent of the Attorney General of the State of New York, on behalf of unknown charitable beneficiaries (see EPTL 8-1.1[f]), was required under EPTL 7-1.9. The Attorney General's consent has now been obtained.

Reformation

The petition seeks to reform the reference to June 26, "2013" in the Article THIRD definition of the "RW Trust." The court has the power to reform a will where there has been a mis-identification that, absent such reformation, would frustrate decedent's intent (see *Matter of Goldstein*, 46 AD2d 449 [4th Dept 1975], *affd* 38 NY2d 876 [1976]; *Matter of Irving*, NYLJ, Jan. 13, 2017, at 24, col 4 [Sur Ct, NY County]; *Matter of O'Reilly*, NYLJ,

Dec. 30, 2013, at 20, col 6 [Sur Ct, NY County]; *Matter of De Hedry*, NYLJ, Oct. 6, 1997, at 31, col 1 [Sur Ct, NY County]).

Here, the record makes clear that the will's reference to June 26, "2013" was either a typographical or scrivener's error, and that decedent intended to refer instead to June 26, "2003," the date of the 2003 Agreement. According to petitioner, decedent did not execute any amendment to the 1993 Trust on June 26, 2013, or to any trust-related document after June 26, 2003. The guardian ad litem appointed to represent the unknown trustee(s) of the Ronald A. Wilford Trust, as amended and restated on June 26, 2013, reports that there is "no reason to believe that the reference to a 2013 trust is anything more than a typographical error." Therefore, the court concludes that such reference is the result of a typographical or scrivener's error and will reform the will accordingly, as indicated below.

Effectiveness of Amendment

The petition also seeks a determination that the 2003 Agreement effectively amended the 1993 Trust. There being no dispute that the Attorney General has consented to the amendment contemplated by the 2003 Agreement, and that all other persons beneficially interested have consented (*compare Rosner v Caplow*, 90 AD2d 44 [1st Dept 1982], *affd* 60 NY2d 880 [1983]), the court


concludes that the 2003 Agreement effectively amended the 1993 Trust (see EPTL 7-1.9).

Based on the foregoing, the final phrase in Article THIRD of decedent's will is reformed to read as follows: "to the Trustees of the Ronald A. Wilford Trust as amended and restated on June 26, 2003 (the "RW TRUST") to be paid and administered as therein provided."

The award of the guardian ad litem is fixed in a separate order.

This decision constitutes the order of the court.

Dated: July 20, 2021



S U R R O G A T E