

NOTICE

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2014 IL App (4th) 131086-U

NO. 4-13-1086

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 5, 2014

Carla Bender

4th District Appellate

Court, IL

In re: the Estate of GLENN I. KLEINLEIN,)	Appeal from
Deceased,)	Circuit Court of
DORIS E. KLEINLEIN,)	Pike County
Petitioner-Appellee,)	No. 13P5
v.)	
IDABELLE KAUFFMAN, BETTY RIGG, EVA)	Honorable
PRUDEN, and BRION KAUFFMAN,)	J. Frank McCartney,
Respondents-Appellants.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly awarded summary judgment to the decedent's wife; an antenuptial agreement that required the decedent leave his estate to his wife if she survived him was not ambiguous.

¶ 2 Decedent Glenn Kleinlein died in November 2012. His will left one-fourth of his farm and equipment to his wife, Doris E. Kleinlein, and the remaining three-fourths to his sisters. Doris filed a claim against the estate, asserting Glenn's will violated the terms of an antenuptial marital agreement (Antenuptial Agreement). In September 2013, the trial court agreed with Doris and concluded Glenn was unambiguously required to leave his entire estate by will to Doris should she survive him. In November 2013, the court entered summary judgment in

Doris's favor. Glenn's sisters appeal, arguing the Antenuptial Agreement is incurably ambiguous on the issue of Glenn's right to dispose of his property as he pleased upon his death and thus cannot stand. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In February 1997, Glenn and Doris signed the Antenuptial Agreement. At the time, Glenn owned property valued at almost \$1.1 million. This property included farmland, a residence, and farm machinery. Doris's assets were valued at approximately \$150,000. The bulk of Doris's property was in certificates of deposit or other bank accounts, but her assets also included real estate valued at \$7,000.

¶ 5 In the recitals of the Antenuptial Agreement, the parties stated they intended to enter a marriage, and both possessed property they owned separately. The recitals further set forth: "Each of the parties mutually desires to retain, manage or dispose separately by gift, will or otherwise all of his or her estate to the same extent as if each of the parties remained single."

¶ 6 Section III of the Antenuptial Agreement, entitled "Retention of Title, Management and Control of Separate Estate" states the following: "Each of the parties shall retain the title, management and control of the estates now owned by each of them *** entirely free and unmolested by the other party and may encumber, sell, dispose, give or provide by will for the disposition of any or all of such estates ***." Section III provides "[e]ach of the parties agrees and consents that each shall have full power and control in all respects to exercise free and undisputed ownership, management and disposition of each of the estates and increases thereto now owned and possessed by the parties." Section III further mandates "[e]ach of the parties waives and renounces any legal and statutory rights that might under any law, be set up

against any part of the estate of the other and consents the estate of each shall descend or be disposed of by will to the heirs or legatees or devisees of each of the parties, free and clear of any claim by inheritance, dower, surviving spouse award, maintenance or any claim otherwise given by law to a husband and wife."

¶ 7 Section V states: "Nothing herein contained shall, in any manner, bar or affect, the right of either party to claim and receive any property of any nature or character that the other party, by last will, or by any other instrument, may give, devise, bequeath, transfer or assign to the other party."

¶ 8 Section VIII shows Glenn was represented by counsel in drafting the Antenuptial Agreement, and Doris proceeded without counsel.

¶ 9 Section IX is entitled "Each Party to make Will Embodying Terms of Agreement." It states the following regarding Glenn's will: "The will executed by GLENN IRVING KLEINLEIN shall provide that he will leave his estate to DORIS E. LONG, if she survives him." Section IX states the following regarding Doris's will: "The will executed by DORIS E. LONG, shall provide that she will leave her assets in trust and that GLENN IRVING KLEINLEIN will receive the net income, during his lifetime, and that upon the death of GLENN IRVING KLEINLEIN, the assets will be given to the children of DORIS E. LONG ***." Section IX further prohibits the alteration or revocation of such wills without consent of the other party and states the requirements of this section "will be void if the marriage of the parties would be dissolved."

¶ 10 Glenn and Doris married in March 1997. In October 2011, Glenn executed a last will and testament. In his will he gave one-quarter of his farm real estate and farm machinery

and equipment each to Doris and his three sisters, Betty Ribb, Eva May Pruden, and Ida Bell Kauffman. If Doris predeceased him, the estate was to be left to only Glenn's sisters in equal shares, *per stirpes*. Glenn died in November 2012. Doris and Glenn remained married until that time.

¶ 11 In January 2013, Glenn's October 2011 will was admitted to probate. In March 2013, Doris filed her claim against the estate, alleging Glenn's will violated his promise in the Antenuptial Agreement to leave her his estate. A "supplemental estate inventory," filed by Doris, the executrix, indicates the farmland was sold for over \$1.7 million, and the farm equipment for over \$225,000.

¶ 12 A hearing was held on the issue of whether the Antenuptial Agreement required Glenn to execute a will leaving his estate to Doris and whether the Antenuptial Agreement was vague or ambiguous. In September 2013, the trial court determined the Antenuptial Agreement was not ambiguous and was an enforceable contract. The court relied on "the four corners" of the Antenuptial Agreement and determined section IX, the specific provision, controls over the general provisions of section III.

¶ 13 In November 2013, the trial court granted summary judgment to Doris. The court found the September 2013 order is final and appealable under Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010) and, for purposes of Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), found no good or just cause existed to delay an appeal.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Appellants contend the trial court erred in finding the Antenuptial Agreement

unambiguous. They maintain the language in sections III and V, granting each party the unhindered right to dispose of their individual property, conflicts irreparably with section IX's language mandating Glenn dispose of his property in a specific manner. Appellants argue because the contract cannot be interpreted in a way that preserves the meaning of each provision, the contract is fundamentally flawed and should be deemed void.

¶ 17 The question whether a contract is ambiguous is one of law and thus one for the court to determine. *Clay v. Illinois District Council of the Assemblies of God Church*, 275 Ill. App. 3d 971, 978, 657 N.E.2d 688, 692 (1995); see also *Premier Title Co. v. Donahue*, 328 Ill. App. 3d 161, 166, 765 N.E.2d 513, 517 (2002) (quoting *Harris Trust & Savings Bank v. Hirsch*, 112 Ill. App. 3d 895, 900, 445 N.E.2d 1236, 1240 (1983) (" [I]t is a basic principle of contract construction that where two clauses conflict, it is the duty of the court to determine which of the two clauses most clearly expresses the chief object and purpose of the contract.' ")). This court reviews questions regarding contract construction *de novo*. *K's Merchandise Mart, Inc. v. Northgate Limited Partnership*, 359 Ill. App. 3d 1137, 1142, 835 N.E.2d 965, 970 (2005). "A contract is ambiguous if it is subject to more than one reasonable interpretation." *R.W. Dunteman Co. v. Village of Lombard*, 281 Ill. App. 3d 929, 936, 666 N.E.2d 762, 767 (1996).

¶ 18 When faced with an argument regarding a conflict in the provisions, a court's primary objective is to give effect to the parties' intent. *Matthews v. Chicago Transit Authority*, 2014 IL App (1st) 123348, ¶ 106, 9 N.E.3d 1163. The first step is to examine the language of the contract, construing it as a whole while viewing each provision in light of the other provisions. See *Thompson v. Gordon*, 241 Ill. 2d 428, 441, 948 N.E.2d 39, 47 (2011); see also *Matthews*, 2014 IL App (1st) 123348, ¶ 106, 9 N.E.3d 1163. Courts should make a reasonable

effort "to harmonize apparently conflicting provisions." *Khan v. BDO Seidman, LLP*, 404 Ill. App. 3d 892, 918, 935 N.E.2d 1174, 1196 (2010). If contractual provisions conflict or create an ambiguity, case law establishes the more specific provision controls. *Grevas v. United States Fidelity & Guaranty Co.*, 152 Ill. 2d 407, 411, 604 N.2d 942, 944 (1992); see also *R.W. Dunteman*, 281 Ill. App. 3d at 936, 666 N.E.2d at 767 ("Where ambiguities exist in a contract between two provisions, the more specific controls over the more general provision.").

¶ 19 Construing the contract as a whole, we find it is not ambiguous. The parties, in the Antenuptial Agreement, show the parties intended the Antenuptial Agreement to protect their rights to the property they acquired before the marriage. Attached to the Antenuptial Agreement is a list of the properties owned by Doris and Glenn separately. According to the recitals, each desired "to retain, manage or dispose separately by gift, will or otherwise all of his or her estate to the same extent as if each of the parties remained single." In section III, it shows the parties intended to manage their properties as they saw fit, and thus not treat the property as marital property. Section III expresses each party's desire to be able to control their premarital property. In section III, they also agreed each individually could determine what to do with the property. In section IX, entitled "Each Party to Make Will Embodying Terms of Agreement," both exercised the rights section III reserved and defined for them.

¶ 20 Section V is consistent with this construction of the Antenuptial Agreement. In section V, the parties agree "Nothing herein contained shall, in any manner, bar or affect, the right of either party to claim and receive any property of any nature or character that the other party, by last Will, or by any other instrument, may give, devise, bequeath, transfer or assign to the other party." Section III preserves the parties' rights to their individual property, section V

states the contract should not be read in such a manner as to prevent the parties from giving the property to each other later, and section IX expresses each party's decision how to dispose of their individual estates.

¶ 21 This interpretation is the only reasonable interpretation of these provisions. It is also consistent with the guiding principle courts should "not interpret a contract in a manner that would nullify or render provisions meaningless, or in a way that is contrary to the plain and obvious meaning of the language used." *Thompson*, 241 Ill. 2d at 442, 948 N.E.2d at 47.

Section III is not rendered meaningless by this interpretation. Section III serves the purpose of establishing to each other as well as third parties, such as creditors, the parties' intent to keep their property separate. It does not prevent either party from agreeing with each other on how their estates should be disposed upon their death. It also does not prevent either party from disposing of the property at any time before their deaths.

¶ 22 Even if the trial court found the sections conflict to the extent there is some ambiguity, specific provisions prevail over general provisions. *Grevas*, 152 Ill. 2d at 411, 604 N.E.2d at 944. Both provisions are not equally specific. Section III expresses the parties' intent to have the right to manage and dispose of their individual property, by will or otherwise, as if they remained single. Section III does not mandate a party act or not act in a certain way. In contrast, section IX states the parties' specific plans for how to dispose of their property. Section IX is the only specific provision.

¶ 23 Appellants' remaining arguments fail. For example, appellants cite *Whitelaw v. Brady*, 3 Ill. 2d 583, 121 N.E.2d 785 (1954), for the proposition contracts, to be binding and enforceable, must be clear, definite, and certain. This is a misstatement. *Whitelaw* quotes

"Williston on Contracts, Revised Edition (1938), at page 42" as stating "an agreement in order to be binding must be *sufficiently* definite to enable a court to give it an exact meaning." (Emphasis added.) *Whitelaw*, 3 Ill. 2d at 590, 121 N.E.2d at 790. In addition, appellants contend Doris's argument the Antenuptial Agreement should be interpreted within the four corners of the contract is undermined by her attempts to introduce extrinsic evidence. Appellants, however, cite no authority to show how Doris's arguments in the trial court prevent this court from interpreting the Antenuptial Agreement based solely on the language in the Antenuptial Agreement. This argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived ***."); *People v. Ward*, 215 Ill. 2d 317, 332, 830 N.E.2d 556, 564 (2005).

¶ 24 Moreover, in their reply brief, appellants contend the trial court skipped the step of finding the Antenuptial Agreement ambiguous before improperly considering extrinsic evidence. Appellants point to the September 2013 order, in which the court observed "a draft will was drafted by Glenn's attorney, Hollahan, which was consistent with the Antenuptial Agreement, but it was never signed." Appellants further reference Doris "repeatedly cited to the intention of the parties in creating the Antenuptial Agreement."

¶ 25 This argument is flawed. The trial court did not rely on extrinsic evidence. Although the court referenced the existence of an unsigned will when summarizing the case, the court expressly held its finding was "[b]ased on the four corners of the Antenuptial Agreement." The record does not contradict the court's statement.

¶ 26 III. CONCLUSION

¶ 27 We affirm the trial court's judgment.

¶ 28 Affirmed.