

NOTICE
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2014 IL App (5th) 130521-U

NO. 5-13-0521

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> THE LOLA F. ZEEB REVOCABLE TRUST,)	Appeal from the
Dated January 27, 1998, as Amended)	Circuit Court of
)	Bond County.
(Linda Z. Murphy,)	
)	
Petitioner-Appellant and Cross-Appellee,)	
)	
v.)	No. 12-CH-45
)	
James Zeeb, Individually and as Trustee of the Lola F.)	
Zeeb Revocable Trust, Dated January 27, 1998, as)	
Amended,)	Honorable
)	Donald M. Flack,
Respondent-Appellee and Cross-Appellant).)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Spomer and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred in granting partial summary judgment to James Zeeb, the successor trustee and a beneficiary of the Lola F. Zeeb revocable trust, where section 7.01(b)(3) of the trust set forth alternative methods to determine the price to be paid by James to Linda, a beneficiary of the trust, upon James exercising his option to purchase real estate granted to Linda under the trust. The circuit court also erred in granting partial summary judgment in favor of Linda where section 7.04 of the trust did not require James to elect special use valuation under section 2032A of the United States Code (26 U.S.C. § 2032A (2012)).

¶ 2 Linda Murphy, a beneficiary of the Lola F. Zeeb revocable trust, appeals a portion

of the order entered by the circuit court of Bond County granting James Zeeb, successor trustee and a beneficiary of the trust, partial summary judgment that the appropriate method under section 7.01(b)(3) of the trust to determine the price to be paid by James to Linda upon exercising his option to purchase real estate granted to Linda under the trust was the value used for the federal estate tax return. James cross-appeals the portion of the order in which the court granted Linda's motion for partial summary judgment that James had violated section 7.04 of the trust when he failed to elect special use valuation under section 2032A of the United States Code (Code) (26 U.S.C. § 2032A (2012)) for the real estate owned by the trust. For the reasons that follow, we reverse and remand for further proceedings.

¶ 3 Linda and James are the only children and heirs of Lola Zeeb. During her lifetime, Lola executed a revocable trust agreement in which she was the trustee in January 1998, which was amended four times. In 2005, Lola formally resigned as trustee and James began acting as successor trustee. In March 2011, Lola died.

¶ 4 On August 20, 2012, Linda filed a petition for accounting and distribution of trust, seeking a declaratory judgment as to the proper methodology to determine the option price that James was to pay Linda for her interest in the trust real estate under section 7.01(b)(3) of the trust. Section 7.01(b)(3) of the trust stated as follows:

"If as a result of the division of real estate to Grantor's son, James Zeeb, to satisfy his share, there are not sufficient other assets of the Grantor to satisfy the Grantor's daughter, Linda E. Murphy's, one-half (1/2) plus share, then it would be necessary for the Grantor's daughter, Linda E. Murphy, to receive real estate in addition to

the other properties she has received as part of her one-half (1/2) (plus share), Grantor's son, James Zeeb, *** shall have a right and option to purchase that real estate which would otherwise be distributed to the Grantor's daughter, Linda E. Murphy, either from Grantor's estate, trust, or immediately upon distribution to Grantor's daughter, at the value used for Grantor's Federal Estate Tax Return, if applicable, or at a value agreed upon between Grantor's daughter, and Grantor's son *** or if a value cannot be agreed upon, the Grantor's daughter shall select an appraiser, Grantor's son shall select an appraiser *** and, if the lower appraisal is within 90% of the higher, then the average of the two appraisals shall be the price paid. If the lower appraisal is less than 90% of the higher and it has been less than two years since the date of death of the Grantor, then any fair market value appraisal *** used for the Federal estate tax return shall be used and the three appraisals shall then be averaged for the purchase price. If there is no fair market value appraisal used for the Federal estate tax return or if it has been more than two years since the date of death of the Grantor, then the two appraisers selected shall select a third appraiser and the average of the three appraisals shall be the purchase price. The cost of the third appraiser shall be split between the parties."

¶ 5 At the date of Lola's death, the trust held cash assets, stock, personal property, life insurance, and farmland. There were not sufficient assets remaining in the trust to satisfy Linda's share, and therefore, Linda was to receive real estate in addition to the other assets that she would receive. As a result, James had an option to purchase the real estate which would have otherwise been distributed to her. On July 22, 2011, James sent to

Linda a notice exercising his option to purchase the real estate. James had retained Daniel Davis to appraise the property, and Davis valued it at \$2,829,000. The notice stated that James, as trustee, intended to use the value in the Davis appraisal "for Federal Estate Tax purposes" and that he, individually, intended to use the value of the Davis appraisal to set the option price. He notified Linda that she had a right to obtain her own appraisal of the property under the terms of the trust. Linda exercised her right to obtain her own appraisal, which was performed by Steve Clausen on September 13, 2011. The total value of the farm property according to the Clausen appraisal was \$3,515,000, which was \$686,000 more than the Davis appraisal. On November 15, 2011, James sent an email to Linda stating that he was obtaining a third appraisal and proposed that they average the three appraisals to establish the price. The third appraisal was never provided to Linda.

¶ 6 In December 2011, James, as executor of Lola's estate, filed an Illinois estate tax return in which he reported tax due of \$156,448. The Illinois return attached federal estate tax return form 706, which contained the Davis appraisal's value for the property. In January 2012, James filed the federal estate tax return form 706 with the Internal Revenue Service (IRS). After Linda filed her petition for accounting and distribution of trust, James sent Linda an amended notice of his decision to exercise his option. James claimed that the amount payable under the option should be determined from the Davis appraisal and the federal estate tax return pursuant to section 7.01(b)(3) of the trust. In the petition, Linda argued that this interpretation of section 7.01(b)(3) was "incorrect and self-serving" because no federal estate tax return was required to be filed; that she was

expressly invited to obtain her own appraisal in recognition of the proper procedure that should be used under section 7.01(b)(3) of the trust; and that James had agreed to obtain the third appraisal in further recognition of the appropriate method of valuing the property.

¶ 7 With regard to the section 2032A election, Linda argued that James was in breach of section 7.04 of the trust for failing to elect special use valuation as provided for in section 2032A of the Code (26 U.S.C § 2032A (2012)) for the real estate owned by the trust and for reporting tax due in the amount of \$156,448.00 on the Illinois estate tax return. Linda argued that section 7.04 of the trust required James, as trustee, to make a section 2032A election. Section 7.04 stated as follows: "If any descendant of the Grantor fails to fully comply with Internal Revenue Code Section 2032A *** so as to allow Grantor the lowest death tax possible that descendant shall be required to pay all tax generated by such failure."

¶ 8 In February 2013, James filed a motion for partial summary judgment on the issues concerning the option price and the election of the special use valuation. First, James argued that the correct interpretation of section 7.01(b)(3) of the trust indicated that the proper procedure for valuing the trust property was using the values from the federal estate tax return when a federal estate tax return was filed. He explained that the plain language of the trust did not indicate that the value used in the federal estate tax return could only be used for setting the option price where federal estate taxes were due and a return was required to be filed. He acknowledged that a federal estate tax return was not required to be filed because the gross estate was less than the federal minimum

filing requirement, but explained that a federal return may be filed where no estate tax is owed in order to establish the fair market value or the newly established tax basis of the estate's assets. Further, James argued that the federal return form 706 or a document containing the same information was required for the estate's Illinois tax return.

¶ 9 Regarding the option price issue, James argued that he had acted in good faith and in the best interest of the beneficiaries by not electing the special use valuation under section 2032A of the Code, which would have restricted the beneficiaries' use and transferability of the property for 10 years. He argued that pursuant to section 6.04 of the trust, which states that the trustee "may make elections under tax laws and employee benefit plans laws and may make allocations of any available GST exemption as the Trustee deems advisable," he had discretion, as trustee, to make elections under the tax laws, which included the decision to make the section 2032A election. He acknowledged that section 7.04 of the trust penalized beneficiaries who, through their action or inaction, caused their inherited properties to fall out of compliance with section 2032A, but argued that such language assumed that the election had already been made. He argued that section 7.04 did not require him, as trustee, to make the election and the penalties imposed in section 7.04 were inapplicable to his actions as trustee in deciding whether to make the election. In his affidavit, James explained that he had exercised his discretion and chose not to make the election because it would have prevented a total step-up in income tax basis for the land, created the potential for an estate tax recapture for the next 10 years, required qualifying heirs to farm or materially participate in the management of the farmland, and prevented qualified heirs from either using or disposing of the land.

¶ 10 In response, Linda argued that the plain language of the trust indicated that Lola intended to provide for the contingency that a federal estate tax return might not be required to be filed by using the words "if applicable" and that the use of this qualifying phrase established a "condition precedent" in that a federal estate tax return must be legally required to be filed in order to use the value from the return to set the option price. She argued that James did not follow the terms of the trust when he filed a federal estate tax return when none was required to be filed. Also, Linda argued that the word "return" should not be interpreted to mean "any document filed with the IRS regardless of the legal requirement to do so" because a tax return is commonly understood as a document that the taxing authority required to be filed, not a document voluntarily filed. With regard to the section 2032A election, Linda argued that the plain language of the trust indicated that the elimination of death taxes was "a high priority" for Lola and that she "expected" the use of the section 2032A election to allow the lowest death tax possible. Linda argued that the specific language of section 7.04 of the trust controlled over the general language of section 6.04 in which James, as trustee, was given authority to make tax elections. She argued that Lola intended to impose the burden associated with making the election on James if he exercised his option.

¶ 11 Linda filed a cross-motion for partial summary judgment, seeking a declaratory judgment as to the proper method to value the option price of the trust property, arguing that it was "clear" from the trust document that Lola had intended to create a mechanism to assure that a fair price would be paid for any farmland that James decided to purchase from Linda and that Lola's "overall plan" was to divide her property equally between her

two children. To achieve an equal division, Lola established three alternative methods to set the option price: it could be established from the value used in the federal tax return as long as a federal return was required to be filed; or regardless of whether a federal return was filed, the beneficiaries may agree on the price; or if the beneficiaries could not agree on the price, the multiple-appraisal method should be used to determine the price.

¶ 12 In April 2013, a hearing was held on the cross-motions for summary judgment. On September 23, 2013, the circuit court ruled as follows. First, the court found that the appropriate value of the farm property as it related to James's exercise of the option was that assigned by the Davis appraisal and submitted to the IRS on the federal estate tax return. Specifically, the court found that the proper construction of section 7.01(b)(3) of the trust was that the value used on the federal estate tax return should be used, if applicable, and the alternatives that follow should be used only if the federal return value was not applicable. In construing the phrase "if applicable," the court relied on the definition of "applicable," which means "capable or suitable of being applied; appropriate." Assigning the phrase "if applicable" its plain and ordinary meaning, the court found that the trust established that the "option property was to be valued at the amount established by the federal tax return, so long as such a return was filed." The court further concluded that this interpretation "fits with" Lola's intent, which was to "establish an easily established and reliable measure of the property's real value."

¶ 13 The circuit court disagreed with Linda's contention that James's only possible motive for filing the federal estate tax return form 706 was to establish a property tax value favorable to him in exercising his option. The court found that James had

established through the affidavit of Steven Pembroke, a certified public accountant, that he had the following two motives for filing the federal return with the IRS: establish the fair market value or the newly established tax basis of the assets of the estate and provide decedent's family members a degree of comfort that the property values included in the return would not be questioned by the IRS in the future except under limited circumstances. The court also noted that James had submitted federal return form 706 to the State of Illinois as a document in support of the Illinois tax return, "which was required." Therefore, the court found "sufficient evidence that the [f]orm 706 was not filed as a subterfuge to establish a below-market value for the exercise of [James's] option." However, the court found that, regardless of James's motive, the express language of the trust established Lola's intent that the federal estate tax return value be used.

¶ 14 Next, the circuit court found that James's failure to comply with section 2032A of the Code was a violation of the trust and that he was therefore liable for the additional taxes due. In making this decision, the court concluded as follows: "the authority granted by [s]ection 6.04 is general in nature, whereas Grantor's demand that all descendants comply with [s]ection 2032A *** is specific, even explaining the particular purpose of Grantor's demand—to allow Grantor the lowest death tax possible.' " The court found that section 6.04 of the trust did not grant to James "the right to ignore [s]ection 7.04 and elect to not comply with [s]ection 2032A." The court concluded that Lola's intent was clear, which was to ensure the lowest possible death tax, and that her chosen method of ensuring this was to apply a tax section that maintained the property's use as a farm. The

court concluded that Lola intended to require that any "descendant" who defeated that purpose was to pay the resulting tax bill. The court found sections 7.75 through 7.83 of the trust significant, explaining that the sections restricted the use and transfer of the farm property in an attempt to ensure that it remained a family farm, which was consistent with section 2032A of the Code.

¶ 15 Further, the circuit court concluded that Lola "did not distinguish between 'descendants' who may be trustees and those who may be beneficiaries or in some other position" when requiring that all "descendants" comply with section 2032A or pay the resulting tax consequences. The court found that Lola did not qualify section 7.04 to require all descendants to comply with section 2032A if the trustee made the election. The court concluded that Lola "made [s]ection 7.04 a mandate, without exception or limitation, that all descendants—without regard to whether any such descendant was also a trustee, beneficiary, or possessed any other rights or obligations under the [t]rust—comply with these provisions." Linda now appeals the portion of the circuit court's order relating to the interpretation of section 7.01(b)(3). James cross-appeals the portion of the court's order in which the court found that he violated the language of the trust by not making the section 2032A election and finding him liable for the additional taxes due.

¶ 16 Initially, we have ordered taken with the case James's motion to dismiss the appeal in which he argues that the appeal should be dismissed for lack of jurisdiction because the entire case was not disposed of and the circuit court did not make the written finding required under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) that "there is no just reason for delaying either enforcement or appeal or both." Rule 304(a) addresses

appeals from final judgments that do not dispose of an entire proceeding. Normally, appeals may be taken from a final judgment as to one or more but fewer than all of the parties or claims only where the circuit court has made this express written finding. However, Rule 304(b) sets forth multiple classes of orders that are immediately appealable without the written finding. The first of these classes, and the one at issue here, consists of judgments or orders entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party. Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010).

¶ 17 James argues that the circuit court's order does not finally determine a right or status of a party because the order "only ruled upon two discreet issues in the case" and that neither "issue established a particular right or status of either party." Specifically, he argues that the court has only offered its interpretation of the trust language and has not ordered the trustee to take any particular action. He notes that the circuit court proceedings are "ongoing, with many issues and claims left to be resolved" and that this court does not have jurisdiction to "weigh in on just two of the many issues in this case." James also argues that "although the [o]rder interpreted some provisions of the [t]rust, the underlying litigation is not a proceeding similar to an estate." Accordingly, he argues that this court should dismiss the appeal.

¶ 18 *In re Estate of Russell*, 372 Ill. App. 3d 591, 593 (2007), sets forth the standard to determine when a case related to the administration of a trust will be considered a "similar proceeding" under Rule 304(b)(1). According to *Russell*, 372 Ill. App. 3d at 593, a "proceeding relating to the administration of a trust is a 'similar proceeding' that

can generate orders appealable under Rule 304(b)(1) if court involvement has occurred that makes the proceeding similar to the comprehensive court proceedings associated with the administration of an estate." The appellate court concluded that the circuit court was involved in the details of the trust administration when it approved payment of expenses of the trust at issue, removed a cotrustee, and appointed a replacement, thus making the proceeding similar to the administration of an estate and capable of generating orders appealable under Rule 304(b)(1). *Id.*

¶ 19 James directs this court to *In re the Living Trust of Miller*, 396 Ill. App. 3d 910, 915 (2009), where the appellate court had concluded that the circuit court "was not involved so intimately with the administration of the trust" for the purposes of Rule 304(b)(1) where it had denied motions to compel distributions from the trust and had ordered the trustee to list trust property for sale. Further, the appellate court found that the circuit court did not enter an order that finally determined the right or status of a party because the order did not resolve all matters on the particular issue so that the only thing remaining to be done was to proceed with the execution of the judgment. *Id.* at 915-16. The court explained that "no party's rights regarding the trust were finalized" and that the rights of the parties to the distribution of the trust assets had not been established. *Id.* at 916.

¶ 20 Linda contends that the portion of the order setting the option price was entered in a proceeding similar to the administration of an estate because the order construed the trust and set forth the price at which the option could be exercised, and that option concerned real estate constituting the "most valuable" of the trust assets. She further

argued that the circuit court's order represented nearly the entire value of the trust and concerned the most significant issue in the lawsuit. She argues that setting the option price on the trust's primary asset constituted far more court involvement in trust administration than a court resolving issues concerning the payment of bills. Further, she argues that the court's order finally determined the right of a party, *i.e.*, James's right to purchase the real estate at a specified price. She argues that resolution of the option price issue resolved the parties' dispute as far as the option was concerned and that the order was "critically instructive" to the trustee as it set the price at which the option must be exercised. She notes that, absent an appeal, James would be free to rely on the court's construction of the trust language to exercise the option.

¶ 21 First, we conclude that the circuit court's order interpreting the option price for the farm real estate was entered in a proceeding similar to the administration of an estate. The court's involvement in the trust administration was significant in that it had to consider the entire trust document to determine Lola's intent in establishing the methods for determining the option price for the most valuable asset of the trust. The order set the value at which the option could be exercised, a decision that James was free to rely on absent an appeal. Also, we find that the resolution of this issue determined James's right to exercise the option at a specific price and the court's interpretation of the trust language was instructive to James, as trustee and individually, because it set the option price. Accordingly, contrary to James's contention, we conclude that the circuit court entered an order that fell within the purview of Rule 304(b)(1) in that it was entered in a proceeding similar to the administration of an estate and that it finally determined the right of a party.

¶ 22 We now address the merits of Linda's appeal and James's cross-appeal. First, Linda argues that the circuit court erred in its interpretation of section 7.01(b)(3). She argues that section 7.01(b)(3) provides possible methods of valuing the real estate, each of which is equally permissible. She explains that the plain language of section 7.01(b)(3) allows the federal return value to be ignored in two instances: where the parties have agreed on a different option price or where the multiple appraisal method is used, but the federal return is greater than two years old. She argues that the court failed to give meaning to the phrase "federal estate tax return" and explained that not every document filed with the IRS is a federal return. Instead, a tax return is a document that the taxing authority *requires* to be filed. Additionally, she argues that the court erred in its construction of the phrase "if applicable," explaining that it should be interpreted as follows: "if federal tax laws requiring a return are applicable to the estate." Specifically, she makes the following arguments: the court's construction of the phrase renders it redundant because before a document can be considered a federal return, it must be filed with the IRS; her construction of the phrase fits with the common understanding of "applicable," which is defined as appropriate; and that such construction is consistent with Lola's intent of achieving an equal distribution of the trust's assets and to provide alternatives to setting the option price that would result in a reliable and fair option price.

¶ 23 In the alternative, Linda argues that a binding contract was formed when James exercised his option to purchase the property. She explains that James's notice of exercising the option was acceptance of an offer extended from the trust to James. She argues that James is bound by the contract to exercise the option at the price determined

by the multiple-appraisal approach. Furthermore, Linda argues that James's notice of exercising option is strong evidence as to the meaning of section 7.01(b)(3).

¶ 24 In response, James notes that section 7.01(b)(3) sets forth the method of using the value contained in the federal return first and therefore intended for that method to be used "if applicable." He argues that the parties can only reach an agreement concerning the option price if a federal return is not "applicable." Then, failing an agreement, the provision contemplates the multiple-appraisal approach, but only as a last resort. He also argues that the circuit court correctly interpreted the phrase "if applicable" as "if filed." James argues that had Lola wanted to restrict the federal-return method in circumstances where the federal return was filed but not required, she could have done so.

¶ 25 Summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, demonstrate no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Richard W. McCarthy Trust v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 533 (2011). "By filing cross-motions for summary judgment, the parties invite the court to determine the issues as a matter of law and posit that judgment in favor of one of the parties is proper." *Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 215 (2001). We review an order granting summary judgment *de novo*. *McCarthy Trust*, 408 Ill. App. 3d at 533.

¶ 26 The primary goal of interpreting a trust is to determine the settlor's intent from the trust as a whole, which the court will effectuate if it is not contrary to law or public policy. *Harris Trust & Savings Bank v. Donovan*, 145 Ill 2d 166, 172 (1991). The

settlor's intent will be ascertained by examining the entire trust document and considering the plain and ordinary meaning of the words used. *Id.* If the language of the trust is clear and unambiguous, the settlor's intent must be determined solely from the language of the trust and it should be enforced as written. *McCarthy Trust*, 408 Ill. App. 3d at 535. That the parties disagree on the meaning of a term in a trust does not, in itself, render that term ambiguous. *Id.*

¶ 27 The essence of this dispute is the parties' differing interpretations of section 7.01(b)(3) of the trust. Section 7.01(b)(3) sets forth the following three methods to establish the option price of the trust property: the value used for the federal estate tax return, if applicable, or at a value agreed upon between Linda and James, or, if a value cannot be agreed upon, at the value resulting from the multiple-appraisal method. First, we conclude that the use of the disjunctive (the word "or") here indicates that Lola intended that the three methods of valuation be considered as alternatives to setting the option price. "As used in its ordinary sense, the word 'or' marks an alternative indicating the various members of the sentence which it connects are to be taken separately." *People v. Frieberg*, 147 Ill. 2d 326, 349 (1992). Nothing in section 7.01(b)(3) of the trust indicates that if the federal estate tax return is "applicable" that the value used in the return *must* be used to determine the option price.

¶ 28 As support for our conclusion that the filing of a federal estate tax return does not mandate that the value used in the return must be used to determine the option price, we note that the language of section 7.01(b)(3) contemplates a situation where a federal tax return exists, but the values do not automatically establish the price. For example, in the

multiple-appraisal method, if Linda and James obtained appraisals that were not within 10% of one another and it was less than two years since Lola's death, then any fair market value appraisal used for the federal estate tax return should be used and the three appraisals should be averaged for the option price. Further, we conclude that this construction is consistent with Lola's intentions of achieving an equal distribution of the trust's assets among the beneficiaries, an intention which is expressed throughout section 7.01(b), and providing a reliable and fair means to value the property. As the trust assets were insufficient to satisfy Linda's one-half share, she was entitled to a distribution of the farm property equal in value to that received by James. However, because James chose to exercise his option, Linda was entitled to a cash value equal to the land's value.

¶ 29 Next, we need to interpret the phrase "if applicable" to determine whether using the values from the federal return was a viable alternative for setting the option price. The circuit court construed this phrase to mean that the federal return must be filed, regardless of whether it was required to be filed under federal law. After careful consideration, we disagree with the circuit court and instead interpret the phrase "if applicable" to mean if federal law *requires* a federal estate tax return to be filed. Under our construction, where federal law requires a federal return to be filed, the values used in the return *may* be used to set the option price of the trust property. The court used Merriam-Webster's online dictionary definition of "applicable," which was defined as "capable or suitable of being applied; appropriate." This definition fits with our interpretation of the phrase "if applicable" as it is appropriate for an estate to file a federal estate tax return where federal law requires. It would not be appropriate for a federal

estate tax return to be filed where no return was required to be filed under federal law for the purpose of manipulating the option price, a result that could occur from the circuit court's interpretation and would be contrary to Lola's overall intent. Also, the court's interpretation of "if applicable" to mean "if filed" renders the phrase "if applicable" redundant as a federal return is filed with the IRS.

¶ 30 Further, James acknowledges that Lola's estate was not required to file a federal estate tax return under federal law because the estate was below the minimum federal amount. Nevertheless, James argues that he was required to file a federal return for the estate because it was required to be filed with the estate's Illinois tax return. However, regardless of whether the estate was required to file a federal return with the Illinois return, it was not required to file an estate tax return under federal law. Accordingly, we conclude as a matter of law that although section 7.01(b)(3) of the trust set forth alternatives to establish the option price of the trust property, only one of those methods was a viable option, *i.e.*, the multiple-appraisal method, as the parties could not reach an agreement on the option price and a federal return was not required to be filed under federal law.

¶ 31 Further, Linda requests that we set out the process of how the parties are to apply the multiple-appraisal method. However, we conclude that such action is not appropriate for our court and that the process of employing the multiple-appraisal method should be determined by the circuit court. Accordingly, we reverse the circuit court's order granting partial summary judgment in favor of James on the option-price issue and grant partial summary judgment in favor of Linda on this issue.

¶ 32 On cross-appeal, James argues that the circuit court erred in granting partial summary judgment in favor of Linda on the issue of the section 2032A tax election. He argues that the court erred in finding as a matter of law that section 7.04 of the trust required him, as trustee, to utilize section 2032A of the Code in order to ensure the lowest death tax possible for Lola's estate. He argues that section 6.04 of the trust granted him the discretion as trustee to make tax elections and that he had properly exercised that discretion in choosing not to utilize section 2032A on behalf of the trust.

¶ 33 Section 6.04 of the trust granted James, as trustee, the discretion to make tax elections. Specifically, section 6.04 states as follows: "The [t]rustee may make elections under tax laws and employee benefit plans laws and may make allocations of any available GST exemptions as the [t]rustee deems advisable." Section 7.04 of the trust states as follows: "If any descendant of the Grantor fails to fully comply with Internal Revenue Code Section 2032A *** so as to allow Grantor the lowest death tax possible that descendant shall be required to pay all tax generated by such failure." As stated by the circuit court, in order to resolve this issue, it must be determined to what extent, if any, Lola limited James's discretion under section 6.04 by including section 7.04 in the trust. As previously stated, the primary rule of construction of a trust is to ascertain the grantor's intent from the trust as a whole, giving effect and meaning to each and every clause if possible. *Harris Trust & Savings Bank*, 145 Ill 2d at 172; *In re Estate of Kirchwehm*, 211 Ill. App. 3d 1015, 1019 (1991). Whenever possible, a court should construe the will or trust in a manner that no language used by the settlor is treated as a surplusage or rendered void or insignificant. *Harris Trust & Savings Bank*, 145 Ill. 2d at

172.

¶ 34 James argues that section 7.04 assumes that a section 2032A election has already been made and therefore does not limit his authority to determine whether to make the election. He argues that the penalties imposed under section 7.04 are inapplicable to his actions as the trustee because it is not directed at the trustee. Instead, he argues that under section 7.04, he should only be penalized if, in his capacity as a descendant, he later failed to continue a qualified use for the property for which a section 2032A election had been made.

¶ 35 Section 6.04 of the trust explains the scope of the trustee's power. Under section 6.04 of the trust, "The Trustee may make elections under tax laws and employee benefit plans laws and may make allocations of any available GST exemption as the Trustee deems advisable." Making a section 2032A election is thus clearly within the scope of the trustee's power. However, the key phrase in section 6.04 determining whether or not the trustee must make a section 2032A election is "as the Trustee deems advisable." Section 2032A is a complex section of the Internal Revenue Code which was designed to allow qualified heirs (as defined in Internal Revenue Code section 2032A) to continue a family business, such as a farm, without having the business crippled by death taxes. Section 2032A can reduce death taxes by valuing real estate based on its income-producing potential pursuant to a formula that often results in a much lower valuation than fair market value determined by appraisal. Under the 2032A valuation formula, farmland is valued "by dividing *** the excess of the average annual gross cash rental for comparable land" used similarly "and local real estate taxes for such comparable land, by

*** the average annual effective interest rate for all new Federal Land Bank loans." 26 U.S.C. § 2032A(e)(7)(A) (2012). However, in order to receive this potentially lower estate tax valuation, the descendants are subjected to major restrictions. For a period of 10 years after the decedent's death, an additional estate tax will be imposed to recapture any estate tax savings if the qualified heir sells the land to anyone other than a qualified heir and/or uses the land for any other use than farming. Additionally, the land must be farmed by a qualified heir or a qualified heir must materially participate in the farming of the land. 26 U.S.C. § 2032A(c)(1) (2012).

¶ 36 The trustee, in exercising his discretion on whether to elect 2032A valuation of the land, must weigh the potential death tax savings against the restrictions placed on the land in determining what is in the best interest of the trust and beneficiaries. For a period of 10 years following the death of the grantor, the trustee must consider: whether there is a qualified heir who will continue to farm the land or materially participate in the farming of the land; whether there is a higher and better use for the land than farming such as developing or subdividing; and whether sale of the land should be restricted to only qualified heirs as opposed to third parties. The trustee must also consider the potential personal income tax liability created by capital gain recognition on the sale by a qualified heir of section 2032A valued land. The tax base of the land for capital gain tax purposes is set by the valuation for estate tax purposes. If a 2032A election is made, then the selling qualified heir would have a lower tax base. Thus, when the qualified heir sells that land to another qualified heir, the seller would be subject to a larger personal capital gains tax liability on the land than if no 2032A election had been made. See Donald H.

Kelley, David A. Ludtke, and Burnell E. Steinmeyer, Jr., 2 Estate Planning for Farmers and Ranchers § 16:34 (3d ed. 2014). As trustee, James had a duty to consider all of these possible scenarios and determine what course of action was most advisable for the trust and beneficiaries. Section 6.04 granted James discretion as trustee to determine whether or not a 2032A election would be in the best interest of the trust and beneficiaries.

¶ 37 Section 7.04 of the trust states, "If any descendant of the Grantor fails to fully comply with Internal Revenue Code Section 2032A *** so as to allow Grantor the lowest death tax possible that descendant shall be required to pay all tax generated by such failure." Linda and the circuit court mistakenly understand this provision to override James's general trustee power to make tax elections since, as a general rule, general provisions must give way to specific provisions when interpreting a trust document. See *McCreery v. Burmood*, 332 Ill. 645, 648 (1928). However, this section actually indicates that if the trustee made the election to value the farmland pursuant to 2032A, the grantor wanted her descendants to comply with the decision of the trustee, and further to comply with the recapture provisions of 2032A. It is the responsibility of the trustee, under section 6.04, to determine what course of action, whether a 2032A election or other tax election, will best serve the trust and beneficiaries. If the trustee determined that a 2032A election was not in the best interest of the trust and beneficiaries and did not make the election, then the descendants have no obligation under section 7.04 to comply with the requirements of 2032A.

¶ 38 The trust's lack of a provision explicitly requiring the trustee to make a 2032A election shows that the grantor intended for the trustee to have discretion in whether to

make a 2032A election. The trust explains the duties of the trustee quite clearly, but it never mandates that the trustee make a 2032A election. If the grantor did intend that the trustee make a 2032A election, she could have included a provision preventing the trustee from exercising any discretion with regards to making such an election.

¶ 39 "In interpreting trusts, *** the goal is to determine the settlor's intent, which the court will effectuate if it is not contrary to law or public policy." *Citizens National Bank of Paris v. Kids Hope United Inc.*, 235 Ill. 2d 565, 574 (2009). "In determining this intent, courts consider the plain and ordinary meaning of the words used, taking into consideration the entire document." *Id.* "Moreover, because words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others." *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007). "The intent of the parties is not to be gathered from detached portions of a contract or from any clause or provision standing by itself." *Id.*

¶ 40 The only portion of the trust that stresses either 2032A or achieving the lowest death tax possible is section 7.04. If the grantor's intent was to force a 2032A election or to achieve the lowest death tax possible at all costs, she could have referenced her intentions throughout the whole document rather than in one section applicable only to descendants. Instead, the grantor gave the trustee full discretion under section 6.04 to make appropriate tax elections and imposed a duty on descendants under section 7.04 to comply with section 2032A if such election were made. Reading the trust as a whole, section 6.04 and section 7.04 complement each other by granting powers to the trustee to make tax elections in the best interest of the trust and beneficiaries and penalizing any

descendant who frustrates the trustee's actions.

¶ 41 Further, section 7.04 cannot override section 6.04 because doing so may lead to conflicting results. As noted in section 9.05 of the trust, if all named trustees are unable or refuse to serve as trustee, "any other person qualified and willing to act or any corporation authorized under the laws of the United States or of any state to administer trusts may be appointed as Successor Trustee" by either the grantor or two-thirds of the current beneficiaries. Thus, the trustee could have been a nondescendant and, as such, would not have been subject to section 7.04. In that scenario, section 7.04 would have no ability to force that trustee to make a 2032A election. The trustee could choose not to make a 2032A election without restriction by section 7.04. In other words, the circuit court's decision would interpret the duties of the trustee differently depending on who was trustee. By reading section 7.04 as a provision that conflicts with and overrides section 6.04, the circuit court seems to assume that the grantor had two intents for the duties of the trustee: one if a descendent is trustee, and one if a nondescendent is trustee. Since the grantor never stated that she wanted the duties of the trustee to change dependent upon who was trustee, this interpretation seems at odds with the plain language of the trust.

¶ 42 Because section 6.04 applies only to the trustee and section 7.04 applies to descendants, the two provisions do not conflict. Thus, section 6.04 (as a "general" provision) does not give way to section 7.04 (as a "specific" provision). The two sections were designed by the grantor to work together. Section 6.04 allows the trustee to determine what tax elections, such as a 2032A election, will best serve the trust and

beneficiaries. Section 7.04 enforces the trustee's decision by penalizing any descendant who fails to comply with the trustee's plan and therefore causes a greater death tax. The grantor, in choosing to structure her trust in this way, developed a plan to have both the trustee and the descendants work together for the benefit of the trust. To hold otherwise would render the trustee's powers under section 6.04 meaningless, contrary to Illinois law. See *Feder v. Luster*, 54 Ill. 2d 6, 12-13 (1973).

¶ 43 We also note that the circuit court, in granting summary judgment to Linda, failed to acknowledge that Linda never asked for summary judgment. Linda's March 14, 2013, cross-motion for partial summary judgment only sought judgment on count III, seeking a declaratory judgment as to the proper method to value the option price. In her April 22, 2013, reply, Linda addressed why she had not requested partial summary judgment on whether James had violated his duties as trustee by not making a 2032A election. According to Linda, "[a] prayer for relief on this issue was not expressly requested *** because the facts alleged by [James] for not making the tax election are in dispute." While Linda invited the circuit court to enter summary judgment for her "to the extent the Court construes the Trust language to impose liability," her own reply confirms that questions of fact regarding the reasons James did not make a 2032A election are not settled. This court thus, as Linda herself suggests, denies summary judgment to her until these questions of fact are settled.

¶ 44 Likewise, we do not grant summary judgment for James because there are still genuine issues of material fact regarding whether or not he breached his duty as trustee by failing to make a 2032A election. James asserts that he could not have continued to

operate the farm for an additional 10 years, that he did not believe that either his children or Linda and her children would operate the farm for the requisite period, and that he therefore did not make a 2032A election to avoid recapture. Further, he claims that the election would have prevented a step-up in income tax basis on the land, which in turn would have increased the tax imposition if the land were later sold. Linda asserts that James likely would have continued farming, that she was never asked if she would consent to a 2032A election, and that a step-up in income tax basis only benefits James.

¶ 45 The trial court has yet to make a ruling on these issues. While James, as trustee, had the option, pursuant to the plain language of the trust, to decide not to make a 2032A election, he still had a duty to act in the trust's best interest. To determine the propriety of James's actions, the trial court must hold a hearing to determine whether James "carr[ie]d out the trust according to its terms and *** act[ed] with the highest degrees of fidelity and utmost good faith" by not making a 2032A election. (Emphasis and internal quotation marks omitted.) *Herlehy v. Marie V. Bistersky Trust*, 407 Ill. App. 3d 878, 896 (2010).

¶ 46 The record is deplete as to what would have been the Illinois estate tax liability if James would have made the 2032A election. The trial court must determine what amount would have been saved had James made the 2032A election. The trial court held that James "is liable for the additional taxes due." However, neither Linda nor James has shown what, if any, additional tax burden was incurred by James's failure to make a 2032A election. Even if this court affirms the trial court's ruling on this issue, the trial court will have to conduct additional hearings to determine whether a 2032A election would have saved the estate any additional amount in taxes.

¶ 47 Without more findings regarding whether James breached his fiduciary duty as trustee by failing to make a 2032A election and regarding what amount of taxes, if any, the estate would have saved with an election, this court cannot offer a definitive ruling. Instead, we reverse the trial court's grant of summary judgment on this issue and remand for further factual findings regarding whether or not James, under his section 6.04 trustee powers, breached his fiduciary duty by failing to make a 2032A election. Without such findings, summary judgment on this issue is premature.

¶ 48 Pursuant to the trust's plain language, section 6.04 grants the trustee powers to make tax elections, while section 7.04 imposes duties upon the descendants solely in their capacity as descendants. Tax elections made by James as trustee under his section 6.04 powers cannot be the basis for his liability under section 7.04 as a descendant. We reverse the circuit court's order finding otherwise. Further, because questions of fact remain regarding whether or not James as trustee had a duty to make a section 2032A special use valuation election, we remand to the circuit court for further findings.

¶ 49 In conclusion, for the foregoing reasons, the portion of the circuit court's order granting James's motion for partial summary judgment on the issue involving the option price is reversed, and Linda's motion for partial summary judgment on this issue should be granted. Further, the portion of that order granting partial summary judgment in favor of Linda on the issue of the section 2032A tax election is reversed. The case is remanded for further proceedings.

¶ 50 Reversed; cause remanded.