

NOTICE

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2016 IL App (4th) 160132-U

NO. 4-16-0132

FILED

December 6, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: the Estate of DAVID J. McNAUGHT, Deceased,)	Appeal from
TERESA McNAUGHT,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 14P313
MELINDA JOHNSON, Executrix of the Estate of David)	
J. McNaught, Deceased,)	Honorable
Respondent-Appellant.)	John M. Madonia,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Appleton concurred in the judgment.
Justice Turner dissented.

ORDER

¶ 1 *Held:* The trial court committed no error in granting the surviving spouse's motion for judgment on the pleadings in a probate action wherein she sought to renounce her late husband's will and claim her statutory share of his estate.

¶ 2 In a probate action, petitioner, Teresa McNaught, sought to renounce the will of her late husband, David J. McNaught, and claim her spousal share of his estate under section 2-8(b) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/2-8(b) (West 2014)). Respondent, Melinda Johnson, executrix of David's estate, opposed that action. Ultimately, the trial court granted Teresa's motion for a judgment on the pleadings and Melinda appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record reflects David and Teresa had one child, O.M., who was born in 2000,

while the couple was unmarried. In July 2003, David executed a will in which both Teresa and O.M. were named as beneficiaries. In his will, David made several specific bequests of property—including jewelry, pictures, books, clothing, an automobile, house furniture and furnishings, a motorcycle, and farm machinery and equipment—to his father, brother, and Teresa. He then directed that the residue of his estate be held in a trust, with his father serving as trustee. Relevant to this appeal, article 2.1 of the will stated as follows:

"If [O.M.] is living at my death, the trust shall be held and disposed of as follows:

(a) Until the first to occur of (i) my daughter attaining the age of eighteen years or (ii) my daughter's death, the trustee shall distribute one-half of the annual income of the trust to my friend, [Teresa] provided, however, her right to income shall cease in the event of her marriage, co-habitation with another person[,] or death.

(c) If my daughter is under age eighteen and living with her mother, then they may occupy rent-free any residential real estate included among the assets of the trust; provided, however, the amount of expenses for utilities, taxes, insurance, and normal maintenance incurred by the trustee with respect to such residence shall reduce the amount of income otherwise payable to my friend, [Teresa], as provided under sub-paragraph (a) above."

¶ 5 Article 3.2 of the will further provided that "income payments shall be made in quarterly or monthly installments as the beneficiary desires." Additionally, it stated as follows:

"Whenever the trustee considers that a beneficiary entitled to income or principal payments is incapacitated in any way so as to be unable to manage his or her financial affairs, such payments may be made directly to such beneficiary, to a duly appointed guardian or conservator of such beneficiary[,] or to a custodian for such beneficiary under a [*sic*] Uniform Transfers to Minors Act[,] or otherwise expended for such beneficiary's benefit as the trustee considers advisable."

¶ 6 In July 2006, David and Teresa were married. In June 2006, immediately prior to the marriage, they executed a premarital agreement. Paragraph 4 of the agreement provided that, during the marriage, David would "provide a home and be responsible for all costs and expenses associated with the home, except for taxes and utilities," which David and Teresa agreed would be paid from marital property. That paragraph further stated as follows:

"The home shall be included as part of David's non-marital property and [Teresa] shall acquire no interests in the home. In the event of the death of David, then David shall provide by will or a trust document that [Teresa] may continue to live in the same home which was utilized at David's death rent-free and expense-free, except for taxes and utilities, for as long as [Teresa] desires. [Teresa] shall be responsible for paying taxes and utilities relating to the

residence while she lives there. All property invested in the Parties' residence or residences during the marriage shall be allocated to David and not subject to division and allocation by the Court in the event a dissolution of marriage or legal separation is filed by either party."

¶ 7 In paragraph 6 of the premarital agreement, David agreed that within one month of the marriage, he would name Teresa as the beneficiary on a life insurance policy which insured his life in an amount equal to or greater than \$100,000, and thereafter maintain that policy for the duration of the marriage. Additionally, paragraph 7 of the premarital agreement addressed David's retirement accounts. It provided that all retirement accounts, "whether established before or after the marriage and all funds contributed after the marriage[,] *** shall be considered non-marital property and remain as David's separate property." However, David agreed to "cause [Teresa] to be named as primary beneficiary on at least 50% of the total value in all the accounts" within one month of the couple's marriage. Finally, paragraph 9 of the premarital agreement provided as follows:

"In the event that at the death of David, there is a child of David and [Teresa] then living who is under the age of eighteen, then David shall provide in his will or in his trust document that at his death a trust is created and have allocated to it all of David's farm real estate. The trust shall provide at a minimum that at least 50% of the income of the trust will be paid at least quarterly to [Teresa] until the earliest of (a) her death, (b) her remarriage[,] (c) her co-

habitation with a male person[,] or (d) there being no living child of David and [Teresa] under the age of eighteen. [Teresa] agrees that she shall only be entitled to receive the benefits provided above from the estate of David, and she agrees that she will make no other claim to any part of his estate. If David does provide for the trust required in this paragraph and the life insurance payment to [Teresa] required in paragraph 6 above and the retirement account designation as provided in paragraph 7 above, then [Teresa] hereby releases, waives and relinquishes all right of curtesy, dower, statutory interest, homestead, surviving spouse's award, right to renounce the Will or any codicil thereto of David or the provisions of any trust in which may [*sic*] have an interest, or any other right in and to the property, real or personal, which now [*sic*] owns or may hereafter acquire."

¶ 8 In June 2014, David died. The following month, his July 2003 will was admitted to probate. Melinda, David's sister, was the executrix of his estate.

¶ 9 In February 2015, Teresa filed an instrument of renunciation of the will pursuant to section 2-8(b) of the Probate Act (755 ILCS 5/2-8(b) (West 2014)). She asserted she was David's surviving spouse, declared her renunciation of his will, and claimed her share of one-third of David's estate after payment of all just claims. In March 2015, Melinda filed a response, opposing Teresa's renunciation. She asserted Teresa expressly waived her right to renounce the will in the premarital agreement executed by Teresa and David in June 2006. Melinda specifi-

cally referenced paragraph 9 of the premarital agreement and asserted David satisfied all of the conditions precedent necessary to trigger Teresa's waiver. In particular, she asserted David created (1) a trust in his 2003 will, which included his farm real estate and provided for trust income to be paid to Teresa; (2) named Teresa as the beneficiary of a \$100,000 life insurance policy, and (3) named Teresa as a death beneficiary to receive at least 50% of the value of his retirement accounts.

¶ 10 Also in March 2015, Teresa filed a motion for judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(e) (West 2014)). She alleged David's estate had an estimated value of at least \$2.5 million, not including "the value of hundreds of acres of real estate," and that David's will, which had been executed three years prior to the marriage, contained an "inequitable distribution" of property. Further, Teresa alleged David failed to perform his promised actions under the parties' premarital agreement. Specifically, she asserted the premarital agreement required David to execute a *new* will or trust, consistent with the terms mandated in the premarital agreement as a condition precedent to her waiver of her right to renounce the will.

¶ 11 Teresa alleged that, not only did David fail to execute a new will or trust after their agreement, his previous will, executed in 2003, failed to satisfy the terms of the premarital agreement. In particular, she asserted the 2003 will referenced only O.M., while the premarital agreement required the will or trust language to recognize the possibility that David and Teresa could have more children. Additionally, Teresa pointed out that the 2003 will provided that she could "occupy rent-free any residential real estate included among the assets of the trust" if O.M. was under 18 and living with her, while paragraph 4 of the premarital agreement required David

to provide by will or trust that Teresa "may continue to live in the same home which was utilized at David's death rent-free and expense-free, except for taxes and utilities, for as long as [Teresa] desire[d]."

¶ 12 In August 2015, Melinda filed a response to Teresa's motion for a judgment on the pleadings. She asked the trial court to deny the motion on the basis that extrinsic evidence was needed to determine issues regarding the intent of David and Teresa when executing the premarital agreement and because David's 2003 will satisfied the premarital agreement's requirements. Melinda further argued that the "residency provisions" in the 2003 will and paragraph 4 of the premarital agreement had no bearing on the issue of Teresa's waiver of her right to renounce "because the residency provision [was] not referenced in paragraph 9 of the" premarital agreement. She maintained paragraph 9, which contained the waiver provision at issue, only required David to provide for the trust set forth in that paragraph, *i.e.*, a trust into which David's farm real estate was allocated and from which Teresa would receive at least quarterly payments of at least 50% of the trust income until Teresa died, remarried, or cohabitated with a man, or O.M. died or reached the age of 18. Additionally, Melinda asserted that the premarital agreement's references to the possibility of David and Teresa having additional children did not prevent the 2003 will from satisfying that agreement because O.M. was, in fact, the parties' only child.

¶ 13 Also in August 2015, Teresa filed a reply to Melinda's response and Melinda filed a further reply. In January 2016, the trial court granted Teresa's motion for judgment on the pleadings, confirmed her instrument of renunciation, and declared her entitled to claim her 1/3 share of David's estate. It also filed a memorandum of opinion, setting forth its decision. In

reaching its decision, the court addressed and rejected Melinda's contention that a judgment on solely the pleadings was inappropriate and it was necessary for the court to receive extrinsic evidence to resolve the matter. It stated that neither David's July 2003 will nor David and Teresa's premarital agreement was "ambiguous to any degree that would support the need for admitting parole evidence to explain any intent of the parties."

¶ 14 The trial court also rejected Melinda's argument that Teresa waived her statutory right to renunciation. In so holding, the court stated it read the premarital agreement as a whole and found David "materially breached multiple provisions." It concluded "the effect of the entire [premarital] [a]greement [was] nullified by [David's] breach of material conditions in the [a]greement," and the agreement was "unenforceable as a matter of law." The court identified the relevant provisions of the premarital agreement as paragraphs 4, 6, 7, and 9, stating they conferred specific benefits upon Teresa and required the performance of specific acts by David. It found David complied with only paragraphs 6 and 7 of the premarital agreement and not paragraphs 4 and 9.

¶ 15 In reaching its decision, the trial court concluded David's 2003 will "provided substantially less benefits to" Teresa than what was promised in paragraph 4 of the premarital agreement. Specifically, it found David's will provided Teresa "with rent-free residential accommodations" as long as O.M. was under the age of 18, while in the premarital agreement, David agreed to "provide by [w]ill or trust document that" Teresa could have such accommodations as long as she desired. The court stated David died without complying with paragraph 4 of the premarital agreement, which resulted in a material breach of the couple's agreement. It concluded as follows: "[T]he underlying contractual agreement *** is nullified by the failure of [David]

to perform the conditions precedent to satisfy the requirements in Paragraph 4. Consequently, [Teresa] is not bound by the waiver provisions of Paragraph 9 of the nullified Pre-Marital Agreement."

¶ 16 The trial court also found David's 2003 will provided "different, as well as, insufficient benefits" from those Teresa bargained for in paragraph 9 of the premarital agreement. It characterized paragraph 9 as imposing a requirement on David to create a trust that had allocated to it all of his farm real estate and which provided that at least 50% of the trust income would be paid at least quarterly to Teresa until there was no living child of David and Teresa under the age of 18. The court concluded David's 2003 will failed to satisfy the trust requirements of paragraph 9 because the will (1) created a trust that included assets of David's entire estate rather than only his farm real estate, (2) placed conditions on the payment of trust income by giving the trustee the discretion to avoid direct payments to Teresa in the event the trustee determined Teresa to be "incapacitated in any way so as to be unable to manage *** her financial affairs," and (3) expressly terminated Teresa's right to receive income when O.M. turned 18 rather than when "there be no living child" of Teresa and David under the age of 18. The court determined that, because David failed to comply with the requirements set forth in paragraph 9 of the premarital agreement, Teresa's waiver of her statutory right to renounce the will was not triggered.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, Melinda argues the trial court erred in granting Teresa's motion for judgment on the pleadings. She contends extrinsic evidence was necessary to determine whether David's breach of paragraph 4 of the premarital agreement constituted a material breach such that

his estate could not take advantage of Teresa's premarital agreement to waive her statutory right to renounce the will. Additionally, with respect to paragraph 9 of the premarital agreement, Melinda argues David's 2003 will sufficiently satisfied the conditions precedent to Teresa's waiver.

¶ 20 "A motion for judgment on the pleadings could be described as a motion for summary judgment limited to the pleadings." *In re Marriage of O'Brien*, 247 Ill. App. 3d 745, 748, 617 N.E.2d 873, 875 (1993). Such a motion "is properly granted if the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455, 930 N.E.2d 1011, 1016 (2010). In ruling on such a motion, a court must "consider only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record." *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385, 830 N.E.2d 575, 577 (2005). The pleadings must be construed most strongly against the movant. *Daymon v. Hardin County General Hospital*, 210 Ill. App. 3d 927, 932, 569 N.E.2d 316, 319 (1991). "All well-pleaded facts and reasonable inferences therefrom are taken as true." *Gillen*, 215 Ill. 2d at 385, 830 N.E.2d at 577. The trial court's decision to grant a motion for judgment on the pleadings is subject to *de novo* review. *Id.* at 385, 830 N.E.2d at 578.

¶ 21 Section 2-8 of the Probate Act (755 ILCS 5/2-8 (West 2014)) provides for the renunciation of a will by the testator's surviving spouse and the spouse's entitlement to one-third of the testator's estate when the testator leaves a descendant. "The purpose of *** creating the right of a spouse to renounce the provisions of the will and setting forth the methods of its accomplishment is to enable the spouse to elect which method of taking would be most advantageous to

him or her." *First National Bank of Danville v. McMillan*, 12 Ill. 2d 61, 66, 145 N.E.2d 60, 64 (1957). Upon a surviving spouse's renunciation of the will, it is the duty of the executors to defend the estate. *In re Pollack's Estate*, 28 Ill. App. 3d 987, 990, 329 N.E.2d 553, 556 (1975). An agreement entered into between the decedent and his or her surviving spouse may be raised as a defense to renunciation. *Id*; see also *Golden v. Golden*, 393 Ill. 536, 539-40, 66 N.E.2d 662, 663 (1946) (stating that "under the law, a wife can effectively bind herself during the lifetime of her husband to accept the provisions of her husband's will and thereby estop her from renouncing it after his death").

¶ 22 Here, Melinda, as executrix of David's estate, raised David and Teresa's premarital agreement as a defense to renunciation. "Premarital agreements are contracts, and thus the rules governing the interpretation of contracts apply." *In re Marriage of Best*, 387 Ill. App. 3d 948, 949, 901 N.E.2d 967, 968-69 (2009). In this instance, the parties disagree on whether the terms of the premarital agreement prevent Teresa from renouncing David's will.

¶ 23 "In construing a contract, the primary goal is to ascertain and give effect to the intention of the parties at the time the contract was formed." *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 77, 51 N.E.3d 753. "Unless language in a contract is facially ambiguous, the four corners rule requires us to determine the parties' intention only from the language of the contract, without resorting to extrinsic evidence of intention." *Gillespie Community Unit School District No. 7, Macoupin County v. Union Pacific R.R. Co.*, 2015 IL App (4th) 140877, ¶ 88, 43 N.E.3d 1155.

"In applying [the four corners rule] rule, a court initially looks to the language of a contract alone. [Citation.] If the lan-

guage of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence. [Citation.] If, however, the trial court finds that the language of the contract is susceptible to more than one meaning, then an ambiguity is present. [Citation.] Only then may parol evidence be admitted to aid the trier of fact in resolving the ambiguity." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462-63, 706 N.E.2d 882, 884 (1999).

¶ 24 Further, "[a] contract must be construed as a whole, viewing particular terms or provisions in the context of the entire agreement." *Matthews*, 2016 IL 117638, ¶ 77, 51 N.E.3d 753. "[T]he parties' intent will not be ascertained by viewing a clause or provision in isolation." *Id.*

¶ 25 In this instance, paragraph 9 of David and Teresa's premarital agreement contained Teresa's agreement to waive her right to renounce the will. That paragraph also required David to provide for a trust into which his farm real estate was allocated and from which Teresa would receive at least 50% of the trust income on at least a quarterly basis until the occurrence of one of several specified events. Teresa agreed that she would only receive "the benefits provided above from" David's estate and that she would waive her statutory right to renounce David's will as long as David provided (1) for the trust "required in this paragraph," (2) the life insurance payment to Teresa required in paragraph 6 of the premarital agreement, and (3) the retirement account designation required in paragraph 7 of the premarital agreement.

¶ 26 Both before the trial court and on appeal, Teresa has asserted that paragraph 9 of

the 2006 premarital agreement required David to execute a *new* will or trust document after the parties' marriage as a condition precedent to Teresa's waiver of her statutory right to renounce. Conversely, Melinda has asserted David's 2003 will was sufficient to satisfy the requirements of paragraph 9 and the execution of new documents was not the intent of the parties. After reviewing the plain language of the premarital agreement as a whole, rather than paragraph 9 in isolation, we find the intent of the parties when executing the premarital agreement was that new estate planning documents executed by David were necessary to satisfy its terms.

¶ 27 When looking at the premarital agreement as a whole, as we are required to do, we must read paragraph 4 of the premarital agreement in conjunction with paragraph 9. Under paragraph 4, David agreed to provide "by will or a trust document that [Teresa] may continue to live in the same home which was utilized at David's death rent-free and expense-free, except for taxes and utilities, for as long as [Teresa] desires." Thus, a reading of the entire premarital agreement and not simply one paragraph in isolation clearly and unambiguously reflects the parties intended that David would provide for a will or a trust document that contained provisions consistent with both the requirements of paragraph 9 *and* the "residency provision" of paragraph 4. A will or trust document that did not meet the requirements of both paragraphs would not have satisfied the parties' intentions at the time they entered into their agreement.

¶ 28 In this instance, it is undisputed that the "residency provision" required by paragraph 4 was not provided for by David's 2003 will. Although the will contained a similar provision, it was much more restrictive of Teresa's rights and only provided her with rent-free accommodations until O.M. reached the age of 18. Because David's 2003 will did not conform to the parties' 2006 premarital agreement, it could not have been the parties' intention to rely on that

document. Rather, as argued by Teresa, it was contemplated that David would execute new estate planning documents, which he undoubtedly did not do.

¶ 29 In reaching our decision, we note the trial court identified additional differences between the terms of the 2006 premarital agreement, particularly paragraph 9, and the provisions in the 2003 will. These additional differences, as outlined by the court, lend further support to the finding that it was not David and Teresa's intention when drafting the premarital agreement to rely on David's 2003 will.

¶ 30 Finally, we note "[a] condition precedent is one *** which is to be performed by one party to an existing contract before the other party is obligated to perform." *McKee v. First National Bank of Brighton*, 220 Ill. App. 3d 976, 983, 581 N.E.2d 340, 345, (1991). "If the condition remains unsatisfied, the obligations of the parties are at an end." *Id.* Further, "[e]xpress conditions precedent in contracts that affect a party's performance are subject to rules of strict compliance." *Regency Commercial Associates, LLC v. Lopax, Inc.*, 373 Ill. App. 3d 270, 282, 869 N.E.2d 310, 321 (2007).

¶ 31 Here, because David did not execute new estate planning documents that met the requirements of the premarital agreement, he failed to meet all of the conditions precedent to Teresa's waiver of her right to renounce his will. Thus, her waiver was not triggered and the premarital agreement did not prevent her from renouncing David's will under section 2-8(b) of the Probate Act (755 ILCS 5/2-8(b) (Wet 2014)). Under these circumstances, the trial court committed no error in granting Teresa's motion for a judgment on the pleadings.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment.

¶ 34

Affirmed.

¶ 35 JUSTICE TURNER, dissenting.

¶ 36 I respectfully dissent. The real issue in this case is whether the language of David's 2003 will satisfies the "trust" requirement of paragraph 9 of the 2006 premarital agreement. I find it did as any differences in the will and the trust requirements are insignificant or to Teresa's benefit. Thus, I would reverse the circuit court's judgment on the pleadings in Teresa's favor.

¶ 37 The plain language of paragraph 9 of the premarital agreement imposed *three* requirements on David as a condition precedent to Teresa's waiver of her right to renunciation. David clearly fulfilled two of them. As to the remaining "trust" requirement, the plain language of paragraph 9 provided that, if David and Teresa had a living child under the age of 18 at David's death, then David must provide in a will or trust document for a trust created at his death in which he allocated all of his farmland to the trust. The premarital agreement placed further requirements on the trust. In her motion for judgment on the pleadings, Teresa chose to argue the premarital agreement required, as another condition precedent to her waiver of the right to renunciation, David's execution of new estate planning documents. Paragraph 9 of the premarital agreement does not expressly state new estate documents were required. However, the majority finds Teresa and David intended the creation of new estate planning documents by David. I find the majority's analysis of that argument is legally incorrect.

¶ 38 As the majority's order thoroughly explains (*supra* ¶ 23), extrinsic evidence cannot be considered in determining the drafter's intent unless the premarital agreement is ambiguous. The majority does not find the 2006 premarital agreement ambiguous, and I agree it is not ambiguous. Thus, in determining Teresa and David's intent, this court can only consider the

language of the premarital agreement. Paragraph 11 of the premarital agreement specifically addresses the execution of other instruments to carry out the intent of the agreement. That paragraph uses the language “whatever additional instruments may be required to carry out the intention of this agreement.” (Emphasis added.) “Illinois courts interpret the word ‘may’ as permissive and ‘shall’ as mandatory in private contracts.” *Professional Executive Center v. LaSalle National Bank*, 211 Ill. App. 3d 368, 379, 570 N.E.2d 366, 373 (1991). Thus, the premarital agreement itself used permissive, not mandatory language for the execution of additional estate planning documents by David. Accordingly, Teresa’s argument the premarital agreement contained another condition precedent fails. The majority errs by considering David’s 2003 will in determining David and Teresa’s intentions regarding the 2006 premarital agreement. The will is relevant and important in determining if David complied with the “trust” condition precedent for Teresa’s waiver of her right to renunciation, but it cannot be considered in determining David and Teresa’s intent since the premarital agreement is not ambiguous.

¶ 39 Additionally, any alleged breach of paragraph 4 is irrelevant to Teresa’s waiver of her right to renunciation because paragraph 9 did not condition Teresa’s waiver on David’s compliance with paragraph 4. Also, I note paragraph 22.2 of the premarital agreement provides, in pertinent part, the following: “The Parties hereto and their respective *** executors *** shall be bound by the provisions of this agreement.” Accordingly, David’s will should be honored subject to the conditions of the premarital agreement, including paragraph 4, which are binding and enforceable against Melinda, as David’s executrix.