NOTICE
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2019 IL App (4th) 180396-U

NO. 4-18-0396

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 1, 2019
Carla Bender
4th District Appellate
Court, IL

In re ESTATE OF M. ANNETT ORR, Deceased	)	Appeal from the
	)	Circuit Court of
(Darrell F. Orr,	)	Pike County
Petitioner-Appellee,	)	No. 16P33
v.	)	
Denise Hamilton, Individually and as Executor of the	)	
Estate of M. Annett Orr, Carol J. Bushmeyer, and	)	
David M. Orr,	)	
Respondents,	)	
and	)	Honorable
Cheryl D. Womack,	)	John Frank McCartney,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment in favor of petitioner when no material facts remained in dispute and the language in the will was not ambiguous.

¶ 2 Respondent, Cheryl D. Womack, appeals from the trial court's order granting petitioner, Darrell F. Orr, summary judgment. Petitioner had filed an action to quiet title to a parcel of land that he had the option to purchase from his mother's estate. Respondent, petitioner's sister, contested the cause of action, claiming her brother had not satisfied the requirements set forth in their mother's will so as to effectuate his option to purchase, causing the option to lapse. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Donald and M. Annett Orr, a married couple, owned several parcels of land in Pike County. They had five children: respondent, Carol J. Bushmeyer, Denise D. Hamilton, petitioner, and David M. Orr. When Donald died in 2011, Annett became the sole owner of this land, which consisted of three individual tracts. Only the parcel identified as tract I is at issue in this appeal.

¶ 5 Annett died on April 13, 2016. In her will, she named her youngest daughter Denise as executor. Annett's will, which was admitted to probate in May 2016, provided that petitioner had the option to purchase tract I within one year of her death. Specifically, section 2.2(c) of the will, executed in February 2007, provided as follows:

> "I give and grant an option to purchase all of my real estate located in [tract I] to my son, [petitioner], for cash, within one (1) year after the date of my death, for the sum of $1,800[] per acre. Such option shall be exercised by written notice to my [e]xecutor within the option period stated herein. In the event my son does not exercise the option and proceed to purchase said real estate within the option period, then the same shall lapse and be of no further legal force or effect."

¶ 6 On December 8, 2016, petitioner sent the executor a written notice of his intent to exercise the option to purchase tract I. He also provided a letter of conditional approval from Farmers State Bank for the unspecified loan amount. This loan approval stated it (1) was contingent on petitioner's "financial condition" remaining the same, (2) was contingent on a satisfactory appraisal, and (3) was valid through February 1, 2017.

¶ 7 On March 6, 2017, petitioner and the executor entered into a written sales contract for tract I. During the title search of this parcel, it was discovered that Donald and Annett owned

tract I as tenants in common, not as joint tenants. This discovery meant that either Donald's estate would need to be probated or the executor would need to obtain deeds from each heir (the five children) in order to convey clear title. Pursuant to a copy of an e-mail communication, which appears in the common law record, on the date of the one-year deadline, April 13, 2017, the executor's attorney notified petitioner's attorney that (1) two of the three daughters had signed the deed, (2) one son was going to "stop by [that] afternoon and sign," and (3) she "anticipate[d] receiving the signature page for [respondent] on Monday." However, respondent had apparently withdrawn her promise to execute the deed.

¶ 8 On May 30, 2017, petitioner filed a petition to quiet title and for other relief, asking the court to enter an order (1) directing respondent to specifically perform, (2) for a temporary restraining order and preliminary injunction enjoining the heirs from transferring tract I to anyone else, and (3) awarding costs. Respondent filed an answer and a petition to grant possession of tract I to her and her two sisters because petitioner had not "completed" the purchase by April 13, 2017.

¶ 9 In January 2018, petitioner filed a motion for summary judgment, claiming he had complied with section 2.2(c) of Annett's will by giving written notice of his intent to purchase tract I and proceeding with the purchase within one year of Annett's death. He claimed there was no genuine issue of material fact remaining on his petition to quiet title and that he was entitled to a judgment as a matter of law. Attached to his motion was his own affidavit filed in support, which stated (1) he was "personally familiar with the facts" associated with the petition to quiet title, (2) he could "competently testify as to the facts contained in this affidavit," (3) all statements of facts in his petition to quiet title and his motion for summary judgment "are true and correct," and (4) all attachments to the petition and the motion are "true and correct copies of

the original documents." He also attached a copy of an e-mail dated March 30, 2017, from the title company representative to his attorney informing the attorney that executed quit claim deeds from Donald's heirs would be an acceptable means for the estate to convey ownership of tract I to petitioner.

¶ 10 Respondent filed a motion to strike petitioner's motion for summary judgment and his supporting affidavit, claiming the affidavit did not comply with Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013). Petitioner filed a supplemental affidavit and, in response, respondent filed a subsequent motion to strike on the same general basis as her prior motion.

¶ 11 On March 30, 2018, the trial court conducted a hearing on the pending motions. After considering the pleadings and arguments of counsel, the court, on April 9, 2018, entered an order granting petitioner's motion for summary judgment on count two (the only disputed count and the only count relating to tract I) of his petition to quiet title. The court found petitioner had satisfied the two requirements set forth in section 2.2(c) of Annett's will. Specifically, the court found petitioner had given written notice to the executor of his intent to exercise the option to purchase tract I within one year of Annett's death. Further, petitioner "was a ready, willing[,] and able buyer who was 'proceeding' *** with the purchase as contemplated by the condition in the will." The court noted it did "not find that 'proceed' [was] an ambiguous term and [was] not the same as 'complete.' " The court found the material facts were not in dispute and petitioner was entitled to judgment as a matter of law. Respondent's motions to strike were denied.

¶ 12 Respondent filed a motion to reconsider as well as her own motion for summary judgment. She claimed the will required petitioner to have *completed* the purchase within the year. Since he had undisputedly not done so, there remained no genuine issues of material fact and his request to quiet title was precluded.

¶ 13 On June 4, 2018, the trial court conducted a hearing on respondent's motions and denied the same. The court stated:

> "Okay. The court having considered the arguments and I understand the purposes of a motion to reconsider that's been cited by [petitioner's attorney] in his response. The court's reading of that, it seemed to me that, one, the exercise of the option had to occur, which is undisputed, and also that [petitioner] needed to proceed to purchase the ground, which I believe they have shown through the pleadings, that he was proceeding to purchase the ground. I did not read that to say that it had to be completed within a year. Obviously, ideally, it would have been, but it did not happen, but I do not read that provision in the will to say that it had to be done within a year, only that he had to exercise the option and two, proceed to purchase.
>
> So—and I understand [respondent's attorney] disagrees with that, and perhaps the court is wrong but that's my reading of that provision so I'm gonna deny the motion for summary judgment and also deny the motion to reconsider. And I addressed it more in my order on April, I think, 9th, whenever that order was."

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 This appeal centers on the meaning of the word "proceed" as that term is used in Annett's will. Respondent claims the plain reading of the term "proceed," when read in conjunction with the first sentence of section 2.2(c) of the will, meant petitioner was required to purchase the property within the option period. Petitioner claims his acts of "carrying on the

action to close the purchase of the property" satisfied the ordinary meaning of "proceed." We agree with petitioner.

¶ 17 In reviewing a motion for summary judgment, the court determines whether the movant is entitled to judgment as a matter of law. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). In considering whether summary judgment is appropriate, the court must construe the pleadings, admissions, and affidavits most strictly against the moving party and liberally in favor of the opponent of the motion. *In re Estate of Hoover*, 155 Ill. 2d 402, 410-11 (1993). This court reviews such matters *de novo*. *Outboard Marine*, 154 Ill. 2d at 102.

¶ 18 The undisputed facts in this case are as follows. Petitioner was devised the option to purchase tract I. Within the prescribed timeframe, petitioner tendered to the executor a written notice of intent to purchase. He also tendered a conditional loan approval from Farmer's State Bank dated December 1, 2016, which noted an expiration date of February 1, 2017. (On March 6, 2018, Farmer's State Bank extended its conditional loan approval through June 6, 2018.) On March 6, 2017, petitioner and the executor entered into a purchase agreement for tract I with a scheduled closing date of March 28, 2017. During the associated title search, the examiner discovered that Donald and Annett owned tract I as tenants in common, not as joint tenants. This meant that Donald's interest in the property did not automatically pass to Annett by operation of law. Donald's will had not been probated. In order for Annett's estate to convey clear title, without probate, Donald's heirs would be required to execute quit claim deeds. Respondent was made aware of the title issue and acknowledged receiving two quit claim deeds for her signature on April 13, 2017. Due to matters unrelated to this appeal, respondent declined to sign the quit claim deeds. Without her signature, petitioner's purchase of the property could not be

effectuated. In response to petitioner's request for specific performance, respondent claimed petitioner had failed to satisfy the requirements of section 2.2(c) of the will and, as such, his option to purchase had lapsed.

¶ 19 Given these uncontested facts, this court is left only with the interpretation of section 2.2(c) of the will. That is, this court must determine whether an ambiguity lies within that provision. When construing a will, courts must ascertain the settlor's intent and give it effect. *Harris Trust & Savings Bank v. Beach*, 118 Ill. 2d 1, 3 (1987). "Courts search for intent by analyzing both the words used in the instrument and the circumstances under which they were drafted ***[.]" *Id.* at 3-4. In determining the settlor's intent, words must be given their ordinary meaning. *Peacock v. McCluskey*, 296 Ill. 87, 90 (1920).

¶ 20 Again, section 2.2(c) of the will provides as follows:

> "I give and grant an option to purchase all of my real estate located in [tract I] to my son, [petitioner], for cash, within one (1) year after the date of my death, for the sum of $1,800[] per acre. Such option shall be exercised by written notice to my [e]xecutor within the option period stated herein. In the event my son does not exercise the option and *proceed to purchase said real estate within the option period*, then the same shall lapse and be of no further legal force or effect." (Emphasis added.)

¶ 21 The above italicized language is the crux of respondent's appeal. According to Webster's Dictionary, the verb "proceed" means "to be in the process of being accomplished *** to move along a course ***[.]" Merriam Webster's Collegiate Dictionary 926 (10th ed. 1994). A person "proceeds" to do any task when he or she moves forward, advances, or makes progress toward that task. For example, courts often use the phrase "proceed to trial" or "proceed to

sentencing" when the court intends to take steps toward that occurrence. We assign a similar meaning to our interpretation of the will provision at issue. Accordingly, the phrase "proceed to purchase" can be reasonably interpreted that petitioner was required to take steps toward the purchase of the real estate within the option period. Taking the uncontested facts set forth above with the common and ordinary meaning of the phrase "proceed to purchase," we find summary judgment in favor of petitioner on his petition to quiet title with regard to tract I was appropriate.

¶ 22 In sum, we find no ambiguity exists in the language of section 2.2(c) of the will. The phrase "proceed to purchase" most commonly and logically meant that petitioner was required to take steps toward purchasing the property if he had exercised the option to do so within the one-year period. The fact that he submitted to the executor (1) a written intent to purchase, (2) a conditional loan approval, and (3) a purchase contract for the property within the required timeframe effectively demonstrated his due diligence and his intent to exercise the option in accordance with the language of the will. Petitioner was at all times ready and willing to satisfy the required conditions. The sale was delayed through no fault of his own. Based upon our *de novo* review, we find this result best effectually demonstrates Annett's intent.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's order granting summary judgment in favor of petitioner.

¶ 25 Affirmed.