

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 8th day of December, 2022.

Present: All the Justices

Mouna Anderson, Appellant,

against Record No. 210798
Circuit Court No. CL18-464

Perry G. Bowen III, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of King George County.

Upon consideration of the record, briefs, and argument of counsel, for the reasons set forth below, the Court is of the opinion that there is error in the judgment of the Circuit Court of King George County.

I. BACKGROUND

Naji P. Maloof (Decedent) died owning 893 guns. Paragraph “n” of the codicil to the Decedent’s will (Codicil) provided for the disposition of the gun collection:

My gun collection is to be cared for, appraised, and sold in a reasonable manner with the exception of the following: I bequeath my father’s rifle to RICK THORNLEY. Before the sale of any guns, RICK THORNLEY, GEORGE OWINGS, PERRY GRAY BOWEN, III, and DR. JOHN SCHINNER are to each receive their choice of five (5) guns. Mr. Thornley is to have first choice, then Mr. Owings, then Mr. Bowen, then Dr. Schinner. WILLIAM CREAGER is then to receive his choice of two (2) guns. Any guns that CLARENCE EUGENE ATKINS currently has in his possession are his to keep. *It is then up to the discretion of, and I give full power to, my Personal Representative to gift such guns as he deems appropriate to my close friends and family. All of the rest are to be sold in an orderly manner.*

(Emphasis added).

The Codicil does not name a beneficiary of the sale proceeds. However, the Codicil does contain a broad residuary clause. Paragraph “q” of the Codicil (Residuary Clause) bequeathed “the entire rest and residue of my estate, whether real, personal, or mixed, of every kind, nature and description, whatsoever, and wherever situated” equally to Mouna Anderson, the Decedent’s sister, and Sami P. Maloof, the Decedent’s brother.

Perry G. Bowen, III qualified as executor, and the Decedent’s will, including the Codicil, was probated in the Circuit Court for King George County. After distributing certain guns to the five people specifically named in Paragraph “n,” Bowen sold the remainder of the gun collection and transferred the proceeds to himself.

After holding a trial in which it considered the interpretation of Paragraph “n,” the circuit court ruled that the language in Paragraph “n,” concerning the discretionary gifting of guns to unnamed and unidentified “close friends and family,” was void for vagueness; thus, the remaining guns not specifically bequeathed were required to be “sold in an orderly manner,” and the proper disposition of the proceeds from that sale needed to be determined.

The circuit court thereafter held that the proceeds of that sale should go to the five people identified in Paragraph “n,” in proportion to the number of guns specifically devised to them. In so ruling, the circuit court reasoned that the Codicil seemed to favor gifts to friends, unlike the initial will provisions favoring gifts to family.

Anderson filed a motion for reconsideration, arguing that because the remainder of the gun collection was not specifically bequeathed, the proceeds from its sale should go into the residue of the estate, and not to the five people who received specific bequests. The circuit court denied the motion for reconsideration.

Anderson appealed to this Court. The Court granted one assignment of error:

1. The trial court erred when it held that the remainder of Decedent’s gun collection and its proceeds should be distributed proportionately to the 5 persons who were bequeathed 23 guns and not to the residuary beneficiaries.

II. ANALYSIS

Anderson argues that the Codicil only gave the executor a power of sale regarding the guns that were not specifically bequeathed; the cash proceeds of any such sale should go to the residuary beneficiaries identified in the Residuary Clause.

No brief in opposition was filed.

This Court reviews the interpretation of a will de novo. *Larsen v. Stack*, 298 Va. 683, 688 (2020). The principal rule of will construction is that the intent of the testator controls, if it can be ascertained. *Prison Ass’n of Virginia v. Russell*, 103 Va. 563, 577 (1905). Whenever possible, a court must determine that intent “from the language of the document.” *Gillespie v. Davis*, 242 Va. 300, 303 (1991).

Code § 64.2-416(B) provides that if a bequest “fails for any reason,” it becomes part of the residue of the estate “unless a contrary intention appears in the will.” The “residue” of an estate encompasses everything that the testator did not specifically dispose of, as well as “everything which turns out not to have been effectually disposed of,” such as property identified in void bequests. *Russell*, 103 Va. at 568, 571 (citation omitted); *see also Sheridan v. Perkins*, 186 Va. 465, 476 (1947) (explaining that the purpose of a broad residuary clause disposing of “all the rest and residue of my estate, of every kind and description, real, personal and mixed, and wherever situated” is to “dispose of the remaining property of the testator not specifically devised or bequeathed”).

In this instance, the circuit court found that the discretionary bequest of the guns to the Decedent’s unnamed and unidentified “close friends and family,” at the executor’s discretion, failed for vagueness. There is no challenge to that ruling. The last part of Paragraph “n” provided that any guns remaining after the specific bequests were to “be sold in an orderly manner,” but it did not specify the disposition of the sale proceeds. Because the language of the Codicil failed to identify a disposition concerning the sale proceeds, those proceeds should have become part of the residue of the estate. There is no language in the will or Codicil which indicates a contrary intent.

III. CONCLUSION

The circuit court erred in ruling that the remainder of the Decedent’s gun collection and its proceeds should be distributed proportionately to the five persons who were bequeathed only 23 of the 893 guns. Any proceeds from the sale of the guns remaining after the specific bequests stated in the Codicil are part of the estate residue pursuant to Code § 64.2-416(B) and the language of the will and Codicil, and should be distributed to the residuary beneficiaries as provided in the Residuary Clause.

