VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION

Case No. 22-CV-00715

In re: Paula Lee Marcus

Opinion and Order on Motion for Summary Judgment

Appellant Daniel Marcus appeals from a Probate Court determinations that he had disclaimed his interest in his mother's will; that he did not effectively revoke the disclaimer; and that, in light of the effective disclaimer, his mother's will contemplated that his portion of her estate be distributed among certain charitable organizations. He also appeals the Probate Court's denials of his motions to reconsider. Appellant has moved for summary judgment. The motion was served on interested parties, including the charities. No opposition has been received. The Court makes the following determinations.

Standard

Summary judgment procedure is "an integral part of the . . . [Civil] Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Morrisseau v. Fayette*, 164 Vt. 358, 363 (1995) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Summary judgment is appropriate if the evidence in the record, referred to in the statements required by Vt. R. Civ. P. 56(c), shows that there is no genuine issue as to any material fact and that the moving

party is entitled to a judgment as a matter of law. Vt. R. Civ. P. 56(a); *Gallipo v. City of Rutland*, 163 Vt. 83, 86 (1994).

On an appeal from the Probate Court, this Court considers the matter de novo. *See In re Trustees of Marjorie T. Palmer Trust*, 2018 VT 134, ¶ 34, 209 Vt. 192, 206.

Facts

Because Appellant's Statement of Undisputed Material Facts is unopposed, the Court accepts those facts as being established. Vt. R. Civ. P. 56(e)(2).

The facts material to the pending motion are few.

The decedent, Paula Marcus, was the mother of Daniel Marcus (Daniel) and Matthew Marcus (Matthew) and Joan "Amba" Connors. Her will made bequests to her children.

Over the years, Matthew had become financially secure, and he decided that he wished to have his share of the estate shifted to his brother, Daniel.

He enlisted counsel and signed a document stating:

> NOW COMES, Matthew Marcus and states that he hereby relinquishes any rights or claims he may have in the Estate of Paula Lee Marcus, late of Berlin, Vermont. He is fully aware that the estate is worth approximately $361,923. He wishes any share of this Estate that he would have been entitled to become the property of his brother, Daniel Marcus.

See Disclaimer [hereinafter "Exhibit 1"].

He filed the Exhibit 1 with the Probate Court and delivered it to the Executor.

Matthew did not intend, by signing and filing Exhibit 1, to disclaim his inheritance. Instead, his intent was that any inheritance should go to his brother. After the Probate Court found that Exhibit 1 was an effective disclaimer under Vermont law, Matthew sought to revoke it. The Probate Court concluded that such a revocation was not timely, nor was it supported by an appropriate factual basis. . *See* Probate Division Order (filed Dec. 6, 2021) (Kilgore, J.).

The result of the Probate Court's construction of Exhibit 1 and decedent's will, was that a number of charities inherited a portion of the Estate.

Discussion

The instant appeal requires the Court to analyze the provisions of the Uniform Disclaimer of Property Interests Act, 14 V.S.A. §§ 1951-59 (the "Act"), as applied to the fact of this case. The Act provides guidance on the form of disclaimers, how they are to be filed, and their effect. After considering the law and form of Matthew's declaration, the Court reaches a different conclusion than did the Probate Court.

Section 1953 of the Act provides some minimal guidance as to what is necessary to create an effective "disclaimer." It states that:

> The disclaimer shall:
>
> (1) describe the property or interest disclaimed;
>
> (2) declare the disclaimer and extent thereof; and
>
> (3) be signed by the disclaimant.

Id. § 1953.

In construing this provision, the Vermont Supreme Court has noted that a proper disclaimer must have some level of particularity as to the interest being disclaimed. *See Carvalho v. Est. of Carvalho*, 2009 VT 60, ¶ 14, 186 Vt. 112, 119 (approving clear disclaimer of "all right, title and interest" the estate without requiring greater specificity). The Court believes the same is true as to the "disclaimer and the extent thereof" language. In other words, to disclaim a property interest effectively, the disclaimer must be clear and noncontingent as to the interest disclaimed and the scope of the disclaimer. Indeed, other Courts have focused on the need for such clarity in this context. *See, e.g., In re Pedrick's Est.*, 19 Pa. D. & C.4th 360, 364 (Pa. Com. Pl. 1993) (approving disclaimer which said, without limitation: "I hereby irrevocably disclaim all powers and beneficial rights and interests enjoyed by me, with respect to the income of [the trust]."); *Davis v. Davis*, 494 So. 2d 393, 397 (Ala. 1986) (approving disclaimer that was "express, clear, and unequivocal" by stating: "'I do hereby disclaim any interest in and to all assets of the estate of said deceased.'"); *Zaegel v. Kuster*, 51 Wis. 31, 7 N.W. 781, 783 (1881) (approving language court found to be a "clear, unequivocal disclaimer").

Here, Matthew's declaration is internally inconsistent as to the nature and scope of the disclaimer. The first two sentences describe what the Court would accept as a clear disclaimer of his interest in his mother's estate. The third sentence, however, plainly couches that waiver in a contingency. While the Probate Court dismissed that sentence as merely "precatory," this Court sees the

contingency as being inextricably intertwined with the disclaimer set out in the preceding language.

To the extent it is appropriate to examine the drafter's intent surrounding the execution of the declaration, the undisputed facts support the conclusion that Matthew did not intend to disclaim his interest in his mother's estate absent it going, instead, to Daniel. *Cf. In re Est. of Holbrook*, 2016 VT 13, ¶ 29, 201 Vt. 254, 266 (to determine testator's intent, "the court is to take the instrument by its four corners, consider it in all its parts, and give effect to its language read in the light of the relation of the parties concerned and the circumstances attending its execution") (internal quotation omitted).

Purported disclaimers that contain internally inconsistent provisions, are unclear, or attempt to make disclaimers "contingent" on other happenings, simply do not provide the express clarity needed to meet the minimal standards of Section 1953.[1] Further, the Vermont Supreme Court has opined that one of the purposes of the Act is to bring some level of consistency to the interpretation of disclaimers. *See Carvalho*, 2009 VT 60, ¶ 16, 186 Vt. at 120. Attempting to construe or interpret purported disclaimers like the one in this case, fails to further that goal.[2]

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[1] An opposite conclusion would allow disclaimers such as "I disclaim all interest in the estate provided my family always welcomes me in their homes." Such provisional disclaimers, do not meet the standards of the Act.

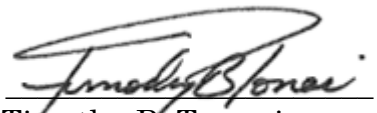
[2] The Court notes the narrowness of its ruling, however. It is the internal inconsistency that impacts the effectiveness of the instant disclaimer. Had the declaration only included the first two sentences, the disclaimer would have been effective despite Matthew's express intent. *See Carvalho*, 2009 VT 60, ¶ 24, 186 Vt. at 123 (mistakes of law, alone, will not invalidate clear disclaimer).

The Court concludes that Matthew's declaration does not provide an unequivocal and noncontingent disclaimer concerning his mother's estate. The declaration is not sufficient to be deemed an effective disclaimer under Section 1953.

Conclusion

In light of the foregoing, Appellant's motion for summary judgment is granted. Given that determination, the Court need not address Appellant's remaining arguments.

Electronically signed on February 3, 2023, pursuant to V.R.E.F. 9(d).



Timothy B. Tomasi
Superior Court Judge