Vermont Superior Court
Filed 10/30/26
Chittenden Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 25-CV-04760

In re: Arloene Kronk

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 2)
Filer: Molly Bucci
Filed Date: June 15, 2026

This case involves a request by the trustee of the Arloene Kronk Revocable Living Trust Agreement ("the Trust") for instructions as to the final distribution of the Trust's assets. The only issue before the Court is whether a debt by a beneficiary to the settlor that has been discharged in bankruptcy can be offset against that beneficiary's share of the trust assets.

The case was initially filed in the Probate Division and was transferred to the Civil Division upon request by the probate judge without objection by the parties. *See* 14A V.S.A. § 203(b) (Civil Division and Probate Division have concurrent jurisdiction over proceedings involving a trust when administration of the trust is not at issue); V.R.P.P. 73 (setting forth procedure for petition filed in Probate Division to be transferred to Civil Division). The Trustee, Eric Kronk ("Trustee") represented by Molly Bucci, Esq., has moved for summary judgment. The beneficiary, Andrew Kronk ("Andrew") represented by Erin Miller Heins, Esq., opposes the motion.

For the reasons explained below, the Court grants the motion for summary judgment.

Undisputed Facts

The parties agree to the following. Andrew Kronk, Gail A. Kilkelly ("Gail), and Eric J. Kronk ("Eric," when referred to individually) are siblings and the children of Arloene and Arthur Kronk. On January 10, 1997, Arloene executed the Arloene L.M. Kronk Revocable Trust ("1997 Trust") naming Eric as Trustee.

Arthur Kronk died in May 1998 and in February 1999, Andrew signed a promissory note ("the Note") in favor of Arloene in the amount of $153,827 together with interest accruing at the

rate of 5% per annum on the unpaid balance, compounded annually. He did not make any payments on the principal amount.

In November 2000, Andrew filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code, which was converted into a Chapter 7 proceeding. Arloene was aware of Andrew's bankruptcy filing. Andrew received a discharge from bankruptcy in May 2006 that the parties agree included Arloene's debt.

In July 2009, Arloene executed a new will revoking all prior wills ("2009 Will"). Arloene named Eric as the Executor of the 2009 Will, and she divided her real property as follows:

> I give and devise my real property and all improvements thereon, and all of its contents, located at Lake Umbagog, New Hampshire, to GAIL A. KILKELLY, ERIC J. KRONK, and ERIC J. KRONK, as Trustee for ANDREW (DREW) KRONK, equally as tenants in common, per stirpes, and not per capita, subject to the following protective covenants which shall be included in the Decree of Distribution and Executor's Deed, and such protective covenants shall run with the land:
>
> . . .
>
> 7. Upon the sale or subdivision of the subject property, ANDREW (DREW) KRONK's share of the sale proceeds must be reduced by any outstanding debt owed to me by ANDREW (DREW) KRONK as noted in ARTICLE V. When ANDREW (DREW) KRONK's share of the sale proceeds is reduced, then the equivalent amount shall be credited and given to GAIL A. KILKELLY and ERIC J. KRONK, equally, per stirpes.

Article V of the 2009 Will provided for the distribution of Arloene's life insurance policy proceeds:

> I give and bequeath my life insurance policy with proceeds of policy [xxxxxxxx] with New York Life Insurance and Annuity Corporation, to my children, GAIL A. KILKELLY, ERIC J. KRONK, and ANDREW (DREW) KRONK, equally, per stirpes, subject to the condition that the share provided to ANDREW (DREW) KRONK must first be reduced by any outstanding debt owed to me by ANDREW (DREW) KRONK, before the balance of ANDREW (DREW) KRONK's share, if any, thereafter shall be paid to him. The debt owed by ANDREW (DREW) KRONK to me may be evidenced by a promissory note, history of distributions to him, or family correspondence with him. The shares of GAIL A. KILKELLY and ERIC J. KRONK shall be increased equally by the equivalent amount equaling the repayment of ANDREW (DREW) KRONK's debt paid to my estate, through the reduction of the equivalent amount of ANDREW (DREW) KRONK's share of life insurance. If the share provided to ANDREW (DREW) KRONK is not sufficient to cover any outstanding debt that he owes to me, then the share

> provided to ANDREW (DREW) KRONK shall be paid instead to GAIL A. KILKELLEY and ERIC J. KRONK, equally, per stirpes.

Arloene named Eric as her agent under all Durable Powers of Attorney she executed starting in 1996. In May 2022, in his role as Arloene's agent, Eric executed a Revocable Living Trust Agreement ("the Trust") for the purpose of avoiding probate and based the Trust on the 2009 Will. Article 6 of the Trust concerns Arloene's New Hampshire property at Lake Umbagog, and provides:

> Upon the sale or subdivision of the subject property, ANDREW A. KRONK's share of the sale proceeds must be reduced by any outstanding debt owed to me by ANDREW A. KRONK. The debt may be evidenced by a promissory note, history of distributions to him, or family correspondence with ANDREW A. KRONK. When ANDREW A. KRONK's share of the sale proceeds is reduced, the equivalent amount shall then be credited and given to GAIL A. KILKELLY and ERIC J. KRONK, equally, per stirpes.

The Trust's provision about the distribution of insurance proceeds similarly states:

> ANDREW A. KRONK's share must first be reduced by any outstanding debt owed to me by ANDREW A. KRONK before the balance of ANDREW A. KRONK's share shall be paid to him. The debt may be evidenced by a promissory note, history of distributions to him, or family correspondence with ANDREW A. KRONK.

The New Hampshire property was transferred to the Trust after it was established. Arloene died in September 2022. Andrew did not pay Arloene the amounts due under the Note before she died. The New Hampshire property was sold in April 2025 for $925,000. When the Trustee filed his petition with the Probate Division, the Trust's assets totaled approximately $918,696 ("Trust proceeds"), which consists primarily of the proceeds from Arloene's life insurance policy and the sale of the New Hampshire property.

Discussion

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). "Where the moving party does not bear the burden of persuasion at trial, it may satisfy its burden of production by showing the court that there is an absence of evidence in the record to support the nonmoving party's case." *Caldwell v. Champlain Coll. Inc.*, 2025 VT 17, ¶ 7, 221 Vt. 10 (quotation omitted). "The nonmoving party may survive the motion if it responds with specific facts raising a triable issue," and courts "give the nonmoving party the benefit of all

reasonable doubts and inferences." *Id*. (quotations omitted). Summary judgment is "mandated," however, "where, after an adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which the party has the burden of proof at trial." *Id*. (quotation omitted).

The Parties' Positions

The parties disagree about how the Trust proceeds should be distributed, as a matter of law. The Trustee argues that Andrew's debt to Arloene from the 1999 Note should be set off against his distributive share. As of the date of Arloene's death, the Trustee alleges that Andrew's debt to her under the terms of the Note exceeded $450,000. This includes the principal amount of $153,827 and the interest that accrued at the rate of 5% per year on the unpaid balance, compounded annually.

Andrew, however, argues that he should share in the Trust proceeds on an equal basis with his siblings because the Note was discharged in bankruptcy and the statute of limitations has run on enforcement of the Note. Alternatively, Andrew argues that even if the principal amount is to be deducted from his share, the Trust should not be interpreted to allow twenty-three years of interest to be added with the result that Andrew receives no part of the Trust assets.

The Trustee does not dispute that Andrew's debt to Arloene was discharged by the bankruptcy court or that the statute of limitations has run on an action by the estate to enforce the Note. He argues, however, that the language of the 2009 Will and Trust evidence Arloene's intent that the outstanding amount of Andrew's debt calculated at her death be deducted from his share of her estate.

Analysis

When interpreting a trust, "the intent of the settlor, as revealed by the language of the instrument, is determinative." *In re Estate of Brown*, 148 Vt. 94, 97, 528 A.2d 752, 755 (1987) (citations omitted). "The trust instrument must be construed to give effect to the grantor's intent as manifested by the language used, and if words are unambiguous there is no necessity for judicial interpretation." *Destitute of Bennington Cnty. by Van Santvoord v. Henry W. Putnam Mem'l Hosp.*, 125 Vt. 289, 293, 215 A.2d 134, 137 (1965) (citations omitted). "[A] testamentary provision is ambiguous 'only to the extent that reasonable people could differ as to its interpretation,' and the mere 'fact that a dispute has arisen as to proper interpretation does not

automatically render the language ambiguous.'" *Inouye v. Estate of Hugo*, 2026 VT 33, ¶ 27 (quoting *Isbrandtsen v. N. Branch Corp.*, 150 Vt. 575, 577, 581, 556 A.2d 81, 83, 85 (1988)). Neither Andrew nor the Trustee contend that the Trust contains an ambiguity. *See* Mot. at 12 ("[T]he terms of the Trust are clear and unambiguous[.]"); Opp. at 10 ("Pursuant to the plain and unambiguous language of the Trust . . . ."). The Court agrees and interprets the Trust as a matter of law.

Andrew signed the Note evidencing his debt to his mother in the amount of $153,827 in February 1999. Although the parties made arguments in their filings based on the language used in prior wills and trusts, because the Court finds the 2009 Will and Trust to be unambiguous, it does not analyze those earlier documents.

In 2009, years after Andrew received his discharge in bankruptcy, Arloene drafted the 2009 Will. Despite the bankruptcy discharge, Arloene stated that Andrew's share of the proceeds from her life insurance policy and from the sale of the New Hampshire property "be reduced by any outstanding debt [Andrew] owed," whether "evidenced by a promissory note, history of distributions to him, or family correspondence with him."

The Trust, which was drafted in 2022, tracked the dispositive provisions of the 2009 Will and was prepared at Eric's direction, as Arloene's agent. Like the 2009 Will, the Trust directed that Andrew's share of the proceeds from the sale of the New Hampshire property and his share of the insurance proceeds be "reduced by any outstanding debt" Andrew owed Arloene.

Andrew's primary argument is that the phrase "reduced by any outstanding debt owed to [Arloene]" must mean enforceable debts that could be collected because of the use of word "owed." Andrew contends that he did not owe anything to his mother when she died because his debt was discharged by the bankruptcy court and no legal action could be taken against him in an effort to collect that money.

Andrew cites the Minnesota case *In re Will of Cargill*, 420 N.W.2d 268 (Minn. Ct. App. 1988), in support. In that case, a trust beneficiary owed the settlor's estate a debt that was discharged in bankruptcy, similar to the situation here. 420 N.W.2d at 271. However, unlike Arloene's testamentary acknowledgement of Andrew's debt and direction of how to account for it, the settlor in the Minnesota case made no reference to the beneficiary's debt in the trust instrument. *Id*. at 269. The court held that the trustee could not deduct the amount of the beneficiary's debt from his share of the trust assets in those circumstances. *Id*. at 271.

However, the *Cargill* court distinguished the facts before it from another case, *In re Fussell's Estate*, 105 N.W. 503 (Iowa 1905), where a testatrix referenced in her will a debt her daughter owed and directed that certain property be sold to pay the debt if it was not paid within a year of the testatrix's death. *In re Will of Cargill*, 420 N.W.2d at 271 (citing *In re Fussell's Estate*, 105 N.W. at 504). The daughter's debt to her mother was discharged in bankruptcy, yet the court allowed the executors to reduce the daughter's distribution by the amount of the debt because "notwithstanding their discharge in bankruptcy, the notes were never paid" and "the testatrix 'had the right to impose such conditions as she might choose'" in having the amount of the notes deducted from the beneficiary's inheritance. *Id*. at 272 (citing and quoting *In re Fussell's Estate*, 105 N.W. at 504). The facts here are more like those in *Fussell's Estate* than in *Cargill*, with the result that Andrew's reliance on *Cargill* is misplaced.

Andrew does not cite to any other case with a similar fact pattern that reaches the results he desires. Courts in other states that have considered facts similar to those here have found that debts discharged in bankruptcy may be deducted from a beneficiary's share of a trust distribution or will bequest if the testamentary instrument so provides. *See, e.g.*, *Groden v. Kelley*, 415 N.E.2d 850, 853 (Mass. 1981) ("by using specific language, a [testator] may provide for the deduction of debts discharged in bankruptcy"); *In re Marjorie Q. Ward Revocable Trust*, 2011 MT 308, ¶ 18, 265 P.3d 1260 (Mont. 2011) (holding settlor may distribute trust property as she deems appropriate even if beneficiary receives discharge of debt from bankruptcy court); *In re Estate of Firebaugh*, 897 P.2d 1088, 1090–91 (Mont. 1995) (deducting amount of unpaid debt from son's inheritance despite bankruptcy discharge due to language of will); *In re Estate of Watson*, 965 P.2d 409, 411 (Okla. Civ. App. 1998) ("A testator is free to fashion bequests based upon previous gifts or loans, and is free to reduce bequests in the amount of such loans, whether they are enforceable, or unenforceable via discharge in bankruptcy or barred by limitations.").

Andrew argues that the Trustee is impermissibly attempting to collect a debt that has been discharged in bankruptcy. These cases all stand for the proposition that "discharge in bankruptcy does not extinguish the debt but is merely a bar to its enforcement." *Groden*, 415 N.E.2d at 853.

At least one Bankruptcy Court that has considered this same issue came to the same conclusion. In *In re Rhyne*, No. 09-72100, 2015 WL 5634401 (Bankr. W.D. Va. Sept. 24, 2015), the debtor's mother executed a will two years following the debtor's discharge in bankruptcy in

which she directed her representative to "take into account" the outstanding loan she had made to the debtor when dividing her estate among her three children. *Id*. at *1. When the testator's representative sought to account for the outstanding loan when distributing the estate, the debtor filed a complaint in the bankruptcy court, arguing that the representative was violating the Bankruptcy Code by attempting to collect a debt that had been discharged. *Id*. at *2. The Bankruptcy Court disagreed, explaining that accounting for the outstanding loan in the estate was neither a claim to enforce a lien that survived the bankruptcy discharge nor an action to recover a post-petition debt that was discharged in bankruptcy: "The Defendants do not seek to collect an obligation owed by the Debtor, but merely seek to carry out the intention of [the decedent] as expressed in her Will." *Id*. at *5; *accord In re Mellem*, 625 B.R.172, 175 (B.A.P. 9th Cir. 2021) (bankruptcy injunction protects against personal liability of debtor, and individual's discharge from bankruptcy "does not constrain an individual's ability to make a testamentary disposition"). The Court finds the same analysis applies here.

Andrew fails to cite any case where a decedent specified in a will or trust that a beneficiary's share was to be reduced by the amount of an unpaid debt and a court disregarded that directive due to a discharge in bankruptcy or the running of the statute of limitations. This makes sense because the Trustee is not seeking to collect a debt on behalf of the estate. He is merely trying to carry out the wishes of Arloene as set forth in her 2009 Will and Trust.

Andrew argues that his mother used different language in prior trusts and wills, including language that explicitly stated that his debts would offset his inheritance even if they had been discharged in bankruptcy and language that disinherited him. He argues that because the 2009 Will and Trust do not use language as explicit as those prior documents, it must indicate that the phrase "reduced by any outstanding debt owed to me" means something different. First, as noted above, because the 2009 Will and Trust are unambiguous, the Court does not look beyond the plain meaning of the language used in those documents to discern the settlor's intent.

But, even if the Court were to look at those other documents, there is no requirement that Arloene use the same language in the Trust or the 2009 Will that she had used in earlier versions. She was aware of Andrew's bankruptcy when she executed the 2009 Will, yet she still opted to define the "outstanding debt owed " by Andrew to include any amount "evidenced by a promissory note." She continued to consider that to be his debt to her, regardless of whether it was discharged or collectible in a court of law.

Andrew's arguments here fundamentally confuse the principles of debt collection with the principles of estate planning. A settlor has a nearly absolute right to determine how to distribute her assets after she passes away. A settlor can always make a distribution contingent on an act that she would otherwise have no authority to require someone to perform. A settlor also has the power to ensure that the distribution of assets is equal or equitable, with those words carrying whatever meaning is dictated by the language of the controlling document.

To allow Andrew's argument to carry the day would allow him to subvert the will of the settlor. Disallowing that clause of the Trust and 2009 Will because Andrew discharged the debt in bankruptcy would thwart her intention. *See* Restatement (Second) of Trusts § 251A ("If a testator leaves property in trust and a beneficiary of the trust was indebted to the testator, the interest of the beneficiary in the trust estate is subject to a charge for the amount of his indebtedness, unless the testator manifested an intention to discharge the debt, or manifested an intention that the beneficiary should be entitled to enjoy his interest even though he should fail to pay his indebtedness.").

Finally, there is no legal support for Andrew's argument that he should not be obligated to pay the accrued interest. Arloene Kronk decided that Andrew's share should be reduced by the promissory note he gave her. She did not simply state that she wanted to reduce it by $153,827. She referenced any outstanding promissory note. The Note that Arloene referenced provides for the payment of 5% interest per annum, compounded annually. If she did not intend for the interest to be included in the calculation of his "debt," she could have made that clear. It does not matter that Arloene could not have recovered on the Note by filing an action against Andrew.

In addition to following Arloene's intent, this offset of the full amount owed under the promissory note is consistent with the doctrine of retainer. *See Tinkham v. Smith*, 56 Vt. 187, 190–91 (1883) ("[A]n administrator has the right to apply the indebtedness from an heir to the estate, in part or whole satisfaction of the share of such heir in the estate; and . . . the Statute of Limitations does not bar, nor apply, to such application, as it bars and applies to actions only."); 34 C.J.S. *Executors and Administrators* § 639 (right of retainer is equitable in nature, constituting equitable lien, and is based on principle that it would be inequitable for indebted legatee to receive distributive share while retaining portion of assets represented by indebtedness).

The Court concludes that the Trustee is entitled to summary judgment. The Trustee represents that the Trust proceeds totaled approximately $918,696 when he filed his petition in 2025. If Andrew's one-third share of the Trust proceeds exceeds the principal and interest of Andrew's debt under the Note, calculated as of the date of Arloene's death, he shall be entitled to that amount. Otherwise, Andrew is not entitled to any portion of the Trust assets.

Order

The Court grants the Trustee's motion for summary judgment. The Court concludes that Andrew's share must be deducted by the outstanding debt he owed to Arloene Kronk as of the date of her death.

The Trustee asked the Court to approve an accounting, but there was no accounting filed with the petition. The Court also questions whether that is necessary, since the only issue presented appears to be resolved. The Court orders the Trustee to send to the parties a proposed final accounting within thirty days. The parties must then confer with each other in good faith, through counsel if appropriate, by telephone, video call, or in person discussion, to determine if there are any objections beyond the objection raised by Andrew and decided here. The parties must notify the Court within sixty days if any further action is needed on the accounting by either filing a final accounting or a request for entry of final judgment.

Electronically signed on October 30, 2026, pursuant to V.R.E.F. 9(d).



Navah C. Spero
Superior Court Judge