NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2183

IN THE MATTER OF THE SUCCESSION OF CARLOS SHUNDALE WHITE

Judgment Rendered: June 8, 2012

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Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Case No. 15,471

The Honorable Alvin Turner, Jr., Judge Presiding

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

GAIDRY, J.

This is an appeal of a declaratory judgment rendered by the Twenty-Third Judicial District Court, Parish of Ascension, in connection with the succession of Carlos Shundale White ("the decedent"). The appellant in this matter is Rev. Van Brass, Sr. as tutor of the decedent's two minor children, Cayden White and Carlson White. Appellee in this matter is Rodgrika Quarles, trustee of the Lauren Elizabeth White Trust ("the Trust"). For the following reasons, we affirm the judgment of the trial court to declare Lauren Elizabeth White, another of the decedent's children, to be the sole beneficiary of the Trust, as well as affirm the trial court's dismissal of the appellant's own petition for declaratory judgment, with prejudice.

FACTS AND PROCEDURAL HISTORY

At the time the decedent's Last Will and Testament ("the Will") was executed on January 29, 2004, his only living child was Lauren Elizabeth White, born on May 22, 2000.[1]

In his Will, the decedent included the following pertinent provisions:

> 1.4.1 To the extent I have not designated a beneficiary, I bequeath any interest I have in qualified retirement plans, individual retirement accounts, investment accounts, and insurance policies to the trust created herein for the benefit of my daughter, Lauren Elizabeth White.
>
> 1.4.3 The remainder of my estate I leave in trust for the benefit of my child(ren). I name and appoint my sister, Rodgrika LaShandra Pugh[2], as trustee, for the Lauren Elizabeth White Trust... I name my wife, Latangia Conway White trustee for any trust [sic] that are created by this instrument for any children that she and I may have together.
> (footnote added)

The Will provides for the creation and administration of the Trust and other subsequently created trusts as follows:

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[1] Lisa Long is the mother of Lauren Elizabeth White.
[2] Rodgrika LaShandra Pugh and Rodgrika Quarles is the same person.

2.1.1 The trust(s) is/are created for the benefit of Lauren Elizabeth White and any other child born or adopted.

2.1.2 The trust(s) created by this instrument will be known by the name of the child for which it is meant.

A miscellaneous provision states:

4.2 My will shall not be revoked by the posterior birth of a child or children or by the subsequent adoption of a child or children by me. In such event, my subsequent child or children will be included share and share alike in the bequest to Lauren Elizabeth White.

The decedent subsequently modified the beneficiaries named on two life insurance policies in his name. Effective February 16, 2004, the proceeds of the decedent's Met Life insurance policy were to be distributed as follows:

> Specifically I designate 3 parts to my wife, Latangia C. White
> 2 parts to my daughter's Trust: Lauren E. White Trust, Trustee:
> Rodgrika L. Pugh...

On February 23, 2004, the decedent modified the beneficiary designation in an Amica Life Insurance Company policy[3] in his name to reflect its beneficiaries as "Trustee(s) named in the Last Will and Testament of CARLOS S. WHITE."

Carlson White was born to the decedent and his wife on May 23, 2004. Their second son Cayden was born June 12, 2008. The decedent died on October 13, 2009.

The judgment of possession in association with the decedent's estate was signed by Judge Turner on March 26, 2010. Rev. Van Brass was designated as the tutor of the property of Carlson and Cayden on September 9, 2010. Brass filed a petition to annul the judgment of possession and reopen the succession on November 19, 2010 on the ground that the

[3] The Amica Life insurance policy is not an issue of the appeal; however, it is mentioned in this opinion to contrast the beneficiary provision of the Met Life policy, which is an issue of the appeal.

proceeds of the Met Life policy were not properly distributed among the decedent's three children. Specifically, Brass claimed that the policy's proceeds were only allocated to Lauren, when the proceeds should have been allocated equally to Lauren, Carlson, and Cayden.

Brass filed a petition for declaratory judgment on April 21, 2011, asking the court to declare that two parts of the proceeds from the Met Life policy should be equally divided between the trusts created for Lauren White, Carlson White, and Cayden White. In her answer and reconventional demand for declaratory judgment, Rodgrika Quarles claims that the Met Life proceeds properly went into the Trust for the sole benefit of Lauren and the other two children are not entitled to any part of the proceeds.

In his judgment, signed July 25, 2011, Judge Turner found the Met Life proceeds were properly distributed and dismissed Brass's petition with prejudice. Brass's motion for devolutive appeal in this matter was granted on August 29, 2011.

STANDARD OF REVIEW

The intent of the testator is the paramount consideration in interpreting the provisions of a will. *Pittman v. Magic City Memorial Co., Inc.,* 2007-1567, p. 6 (La. App. 1 Cir. 3/26/08), 985 So.2d 156, 159. Interpretation of an instrument's language is a question of law that this court reviews to determine whether the trial court was legally correct. *In re Succession of Collett,* 2009-70, p. 2 (La. App. 3 Cir. 6/3/09), 11 So.3d 724, 725, writ denied, 2009-1485 (La. 10/2/09) 18 So.3d 112.

DISCUSSION

To understand how Carlos White intended to dispose of his estate after his death, we only have to look to the common meaning of the language in his will. "[T]he first and natural impression conveyed to the

mind on reading the will as a whole is entitled to great weight. The testator is not supposed to be propounding riddles, but rather to be conveying his ideas to the best of his ability so as to be correctly understood at first view." *Carter v. Succession of Carter,* 332 So.2d 439, 442 (La. 1976). This rule of the Louisiana Supreme Court follows the Louisiana Civil Code's Rules for the Interpretation of Legacies:

> **Art. 1611. Intent of the testator controls**
> A. The intent of the testator controls the interpretation of his testament. If the language of the testament is clear, its letter is not to be disregarded under the pretext of pursuing its spirit.

Looking back at provision 1.4.1 of the Will, the decedent specifically designates interests from insurance policies to the Trust created for Lauren Elizabeth White, to the extent he has not designated another beneficiary. The chronology of events is noteworthy here. The decedent modified his Met Life policy beneficiary provision on February 16, 2004, to include his wife Latangia White as a 60% beneficiary, and the Lauren E. White Trust as a 40% beneficiary. No other persons are included. One week later, on February 23, the decedent modified the Amica Life insurance policy to make its beneficiary or beneficiaries the trust or the trusts named in his will. Where the decedent specifically named beneficiaries in the Met Life policy, the Amica Life policy contained a variable. The number of beneficiaries would depend on the number of trusts existing for the benefit of his children at the time of his death.

According to provisions 2.1.1 and 2.1.2 of the Will, the Trust for the benefit of Lauren White was already in existence at the drafting of the will. Should other children later be born to the decedent, or should he subsequently adopt other children, a separate trust would be created in each child's name. Two children were born to the decedent after the will was

drafted and after the insurance policies were modified. By the Will's provisions, a trust was therefore created in the name of Carlson White and another in the name of Cayden White upon their births. Upon the decedent's death, the Amica policy proceeds would be distributed equally to all three children's trusts, according to the policy's beneficiary provision.

The appellant believes the benefits of the Amica Life policy were distributed properly, since provision 4.2 of the Will requires children born or adopted after Lauren White to share equally in her bequest. The appellant also believes the same should be true for the Met Life policy, but neither the Will nor the Met Life policy are in agreement with the appellant's interpretation. First of all, provision 1.4.1 opens with the phrase "To the extent I have not designated a beneficiary." If this phrase were absent, then arguably any interest in the policies that were designated for Lauren could be split evenly among the three children by provision 4.2. 1.4.1, however, is a more specific provision, as it makes an exception to the general rule in 4.2. The decedent did indeed designate certain beneficiaries by name for the Met Life policy. They are Latangia White and the Lauren E. White Trust.

The appellant misreads provision 2.1.1 to state that the Trust is created for the benefit of Lauren, as well as any other child subsequently born or adopted. By this misreading, the appellant suggests that there is one Trust of which all three children are equal beneficiaries. This cannot be true because of provision 2.1.2, which states each trust created will be known by the name of the child for which it is meant. The decedent obviously anticipated on having more children than only Lauren at the time he wrote his will, and had to know he would be having more children at the time he changed the beneficiary provisions of his two insurance policies. In February of 2004, Lantangia White would have been approximately six

months pregnant for her first son Carlson. The decedent modified first the Met Life policy in that month, then one week later modified the other policy. If the decedent had meant for the policies to have the same effect for all his children, as the appellant contends, why, then, did the decedent use such strikingly different language to modify the two policies? The logical answer is that the decedent specifically meant for the Met Life policy to benefit only his wife and the Trust, while the Amica Life policy was meant to benefit the Trust and any other trusts that may be created upon the birth or adoption of a new child. Our interpretation of the will and insurance policies holds with that of the trial court.

The appellant supports a different possible interpretation of the decedent's will for the benefit of Carlson and Cayden. While we do not doubt Rev. Brass's noble intentions in this appeal, we nevertheless cannot deny that if two possibilities present themselves in the interpretation of a will, the document must be read to carry out the "wishes" of the testator, not defeat them. *Succession of White,* 2006-1002, p. 3 (La. App. 1 Cir. 5/4/07), 961 So.2d 439, 441[4]. The appellant submits in his brief that the decedent wrote his will without the aid of counsel, and that "the law is indulgent in such cases. It exempts language from technical restraint and obeys the clear intention however informally conveyed." *Id.* The instant appeal, however, is not one of those cases. To say that the decedent did not have the aid of counsel in drafting his will, or to suggest that the will conveys intent in an informal manner goes against what is given in the record.

To say the decedent drafted his will without the aid of counsel is completely untrue. The Will is notarized by David E. Marquette, attorney at law. Although provision 4.8 of the Will is a Notarial Disclaimer that states

[4] This case is in no way related to the instant appeal. The decedent in this case is not Carlos Shundale White.

the notary did not consult with the decedent nor prepare the Will, Mr. Marquette still admits at trial to advising the decedent in drafting a will:

> [The decedent] came back to see me four years later and said I want to draft a will. And being an engineer and a smart man that he was, he wanted to save money. And so I gave him samples of various wills that I had names cut out so he could pick and choose the language he wanted including an entire will that I'd normally charge a thousand dollars for including the testamentary trust.

It is evident from this testimony that the decedent received the assistance of legal counsel in drafting his will. Mr. Marquette goes on to say the decedent was an "engineer" and a "smart man" who was sophisticated enough to know exactly what he wanted his will to accomplish and was able to pick specific language to include in the Will to accomplish it. The decedent and the Will do not fit the *White* description of a testator who has written a will without the aid of counsel, or of a will that contains language so informal it deserves the indulgence of the law. On the contrary, the Will is so well written that we have no difficulty whatsoever in determining the decedent's intent. Where the language of the testament is clear and unambiguous, forced interpretations are not permissible. *Succession of Martin,* 262 So.2d 46, 48 (La. App. 1 Cir. 1972), writ denied 263 So.2d 729 (La. 1972).

CONCLUSION

A testator's intent must be followed in the interpretation of his last will and testament. In the instant appeal, there is no question from the clear and unambiguous language of the decedent's Will that 40% of the proceeds from his Met Life policy were intended for the Lauren E. White Trust, which was created for the sole benefit of his daughter, Lauren White. The decedent's other two children, Carlson and Cayden White, do not receive any proceeds from that policy. The declaratory judgment of the trial court is

correct and we affirm. The appellant's petition for declaratory judgment is dismissed, with prejudice.

DECREE

The declaratory judgment of the Twenty-third Judicial District Court, finding that the proceeds of Carlos Shundale White's Met Life insurance policy were properly distributed is affirmed, and the court's dismissal with prejudice of the petition for declaratory judgment filed by the appellant, Rev. Van Brass, is also affirmed. Costs of this appeal are assessed to the appellant.

AFFIRMED.