HARBOUR v. SUNTRUST 082023

ASSIGNMENTS OF ERROR

1. The trial court erred in holding that the remainder interests of Hazel B. Harbour and James C. Boaz did not vest at the time of Mollie Boaz Johnson's death.

2. The trial court erred in reading the trust agreement as a whole to divine the testator's intent when the plain language of the trust agreement clearly and unambiguously expressed Johnson's desire that the remainder interests vest at her death and not the death of the life tenant.

082023

Final order

VIRGINIA: IN THE CIRCUIT COURT OF PATRICK COUNTY

SUNTRUST BANK,	)	
	)	
Plaintiff,	)	ORDER
	)	CASE NO.: CL08-04
v.	)	
	)	
STEVE M. HARBOUR, ET ALS	)	
	)	
Defendant	)	

Venue having been moved to Patrick County by agreement, it being agreed that the Court has jurisdiction and that all of the proper parties were before the Court, this cause came on to be heard June 23, 2008, upon the Complaint seeking Aid and Guidance of the Court filed by SunTrust Bank, answers and responsive pleadings filed by the respondents herein, the trust agreement and will of Mollie B. Johnson, stipulated facts as set forth in the Complaint, the memoranda of law filed by said respondents, and the argument of counsel,

UPON CONSIDERATION ALL OF WHICH, after reviewing the trust instrument in its entirety, the Court finds that the shares of the three deceased siblings lapsed and should be added to the share to be delivered to the Stuart Baptist Church. This is in accordance with the Court's letter opinion, June 23, 2008, which is incorporated herein.

It is therefore ADJUDGED, ORDERED, AND DECREED that, subject to the attorney's fees and costs hereinafter authorized to be charged and deducted by the trustee, the entire remainder of the corpus of the trust, consisting of all four shares, shall be distributed by delivery to the Stuart Baptist Church to be kept in a separate trust account entitled "Mollie Boaz Johnson Educational Fund", to be used for scholarships for deserving students from Patrick County, Virginia, in accordance with the last will and testament of Mollie Boaz Johnson and the provisions of the trust agreement considered herein.

LAW OFFICES
OUNG, HASKINS, MANN,
GREGORY, MCGARRY
& WALL, P.C.
MARTINSVILLE, VA
STUART, VA

The Court further finds that attorney's fees and costs incurred in this matter by Gardner, Gardner, Barrow & Sharpe are a necessary and appropriate expense which should be charged against the corpus of the trust. It is therefore ADJUDGED, ORDERED, AND DECREED that the trustee is authorized to pay said attorney's fees and costs incurred by counsel of record for SunTrust Bank from the corpus of the trust. Upon receipt of a petition for attorney's fees and costs incurred by Young, Haskins, Mann, Gregory, McGarry & Wall, PC, counsel for the prevailing party, such petition to be signed by counsel and the treasurer of the Stuart Baptist Church, and submitted to counsel for SunTrust Bank, it is further ADJUDGED, ORDERED, AND DECREED that the same be paid from the Stuart Baptist Church's share of the trust.

ENTER this 25th day of July 2008.

JUDGE

I ask for this:

Robert W. Mann, Esquire (VBS #07622)
Scott C. Wall, Esquire (VSB #47508)
400 Starling Avenue, P.O. Box 72
Martinsville, VA 24114-0072
Counsel for Stuart Baptist Church

Seen and objected to for reasons appearing in the Answer and in the Memorandum of Law previously filed and additional reasons stated in open Court:

Martin F. Clark, Esquire
Attorney at Law
P.O. Box 407
Stuart, VA 24171
Counsel for Steve M. Harbour and Jimmy Aubrey Boaz

Seen:

Philip G. Gardner, Esquire
231 E. Church Street
Martinsville, VA 24112
Counsel for SunTrust Bank

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letter opinion

Twenty-first Judicial Circuit of Virginia

Henry County • Patrick County • City of Martinsville

JUDGES

DAVID V. WILLIAMS
MARTINSVILLE, VIRGINIA 24114

MARTIN F. CLARK, JR.
STUART, VIRGINIA 24171

G. CARTER GREER
MARTINSVILLE, VIRGINIA 24114

JUDGES

KENNETH M. COVINGTON, RETIRED
MARTINSVILLE, VIRGINIA 24114

CHARLES M. STONE, RETIRED
MARTINSVILLE, VIRGINIA 24114

June 23, 2008

Mr. Philip G. Gardner
GARDNER, GARDNER, BARROW & SHARPE
Fidelity Bank Building, 4th Floor
231 E. Church Street
Martinsville, VA 24112

Mr. Martin F. Clark
Attorney at Law
P. O. Box 407
Stuart, VA 24171

Mr. Robert W. Mann
YOUNG, HASKINS, MANN, GREGORY,
MCGARRY & WALL
P. O. Box 72
Martinsville, VA 24114

RE: SunTrust Bank v. Steve Harbour, et als
CL08-04

Dear Counsel:

I have reviewed the facts as stipulated by the parties, the arguments of counsel and the excellent memoranda of counsel.

After doing so, I find the position of Mr. Mann to be more compelling when I review the instrument in its entirety. I therefore find that the shares of the deceased siblings lapsed and should be added to the share of Stuart Baptist Church. All costs and fees of this action should be paid by the trust before distribution.

I ask Mr. Mann to prepare the appropriate order, noting the objection of Mr. Clark.

Sincerely,

David V. Williams

DVW:jf