[Cite as *In re Estate of Smith*, 2003-Ohio-1910.]

COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY

IN THE MATTER OF: **CASE NUMBER 13-02-37**

ESTATE OF PAUL S. SMITH **O P I N I O N**

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Probate Division.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: April 16, 2003.

ATTORNEYS:

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BRYANT, P.J.

{¶1} Appellant Ronald R. Smith ("Smith") brings this appeal from the judgment of the Seneca County Common Pleas Court, Probate Division.

{¶2} On May 12, 1973, Paul S. Smith ("Paul") died. His will provided as follows.

> **ITEM II. All the property which my wife Gladys Smith and I own jointly, I give, devise and bequeath to my said wife, Gladys Smith, to be hers absolutely.**
>
> **ITEM III. All the rest and residue of my estate, of whatsoever kind and wheresoever located, of which I may die possessed or of which I may have the power of disposal, I give, devise and bequeath to my wife, Gladys Smith, for and during her natural life.**
>
> **ITEM IV. Subject to the provisions in Item III of this my will, I give, devise and bequeath said residue of my said estate equally among my children, share and share alike. I, however, bequeath out of said residue the farm which I inherited from my father, Harry S. Smith, to my son, Ronald Smith; and if the same is more than his equal share of said residue, I direct that he shall pay the difference to my other children equally.**

{¶3} The only children at the time of Paul's death were Smith and Paula Jean Crum ("Crum").

{¶4} In December 1974, the attorney for Gladys Smith ("Gladys") filed a complaint requesting the trial court determine which property was hers outright and which was the product of a life estate for tax purposes. On December 20, 1974, Smith filed an answer requesting the trial court clarify the terms of the will. Specifically, Smith wanted to know when he was supposed to pay Crum her share of the estate.

{¶5} On March 17, 1975, the trial court entered its judgment. Specifically, the trial court's judgment stated the following.

> **In construing Item II of [Paul's] will the Court finds that in the phrase "all the property which my wife, [Gladys], and I own jointly," it was the testator's intention that "joint" property include all property owned in two names, whether the technical legal effect of the instrument by which title was acquired created a tenancy by the entirety, a joint tenancy with right of survivorship, or a tenancy in common, and that it was also the intention of said testator to devise any fee interest which he owned together with his spouse, [Gladys], so as to vest in her a fee simple absolute, and it is so ordered.**
>
> **4. In construing Item III of said decedent's will, the Court finds that a life estate exists belonging to decedent's wife, [Gladys], in "the farm which I inherited from my father;" that said farm is a part of the residue of decedent's estate, and that the duty to equalize the value of the residuary share of [Smith] with [Crum], the remaining residuary legatee in the event that the said [Smith] shall desire to exercise his option to acquire said farm, does not become effective until the termination of the life estate**

> **of [Gladys], provided that nothing herein shall prevent said parties from making a private and voluntary settlement of their interests at any time, and it is so ordered.**

No appeal was taken from this judgment. At no time have the parties reached a settlement of the estate.

{¶6} On December 21, 1996, Smith, holding a power of attorney for Gladys, as Gladys' attorney in fact, had the farm deeded to himself. The purpose for this transfer was alleged to be Medicaid planning. The result of the transfer was to terminate Gladys' life estate in the farm. On March 4, 1999, Gladys died.

{¶7} On July 25, 2001, Crum filed a motion to reopen the estate to determine the value of the farm. Smith filed a memorandum opposing this motion on October 24, 2001. On April 23, 2002, the motion to reopen the estate was granted and a hearing was held on June 26, 2002. At that hearing, the trial court received three different valuations of the farm. The value of the farm at Paul's date of death was found to be $35,000. The value of the farm at the termination of Gladys' life estate was found to be $166,815.[1] The value of the farm at Gladys' death was found to be $170,376.[2] The trial court reviewed the judgment from

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[1] The farm was appraised on January 14, 1997.
[2] The farm was appraised on October 21, 1999.

1975 and determined that the trial court had previously ruled that the duty to equalize the inheritance arose upon the termination of the life estate. The trial court noted that the 1975 entry did not state a value for the estate even though it had one available to it. Thus, the trial court concluded that the proper valuation of the real estate was $166,815, the value that passed to Smith at the time of the termination of the life estate. It is from this judgment that Smith appeals.

{¶8} Smith raises the following assignments of error.

> **The probate court lacks jurisdiction to reopen an estate and interpret a judgment entry in order to clarify a prior judicial opinion contrary to the statutes and Ohio Rules of Civil Procedure.**
>
> **The probate court's opinion is contrary to law as the law favors the vesting of estates at the earliest possible moment which includes the valuation of realty on the date of testator's death.**
>
> **The opinion of the probate court is against the manifest weight of the evidence as there was no evidence presented in support of [Crum's] motion.**

{¶9} In the first assignment of error, Smith claims that the trial court lacks jurisdiction to consider this matter. Smith argues that the administration of the estate was concluded in 1976, so the trial court lacks the authority to modify the decisions made then. However, in this case, the

trial court is not being asked to modify a prior decision, but rather to clarify the prior order.

{¶10} R.C. 2101.24 gives the probate court authority to settle and to supervise the distribution of estates. R.C. 2101.24(A)(1)(c). The statute also gives the probate court authority to construe wills. R.C. 2101.24(A)(1)(k). Neither party disputes that the original administration was properly before the trial court and that the prior judgment was valid.

{¶11} The decision whether to grant a motion to reopen a case is within the sound discretion of the trial court. *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 463 N.E.2d 98. The trial court's judgment will not be reversed upon appeal absent a showing of an abuse of that discretion. Id. An abuse of discretion is one in which the decision of the trial court is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶12} Here, the parties admit that they are disputing the amount to be paid by Smith to Crum pursuant to the 1975 order. The 1975 order does not set forth a specific amount. The order sets forth when the duty to pay Crum arises, but does not state when the value of the residual estate is to be

determined. According to the arguments set forth by Smith in 1975, the value of the residue estate could not be determined in 1975 which is why the duty to pay Crum did not arise at that time. Given the arguments of the parties, the trial court could reasonably have found that not only the duty to pay, but the valuation of the estate did not arise until a future time. This ambiguity in the entry is what gave rise to the motion to clarify. Thus, the trial court did not abuse its discretion in agreeing to clarify the prior judgment.

{¶13} Smith also claims that Crum's claim should have been dismissed because there was no valid service of the motion. Civ.R. 5 requires that all filings after the original complaint must be served upon each of the parties. The only parties remaining in this case are Smith and Crum. Crum sent a copy of the motion to Smith and certified the same. Smith does not allege that he did not receive service, but admits that he received service. Since the service was made on a prior case that was properly reopened, service was proper.

{¶14} Smith also argues that the trial court cannot enter its judgment because the doctrine of res judicata applies. If the trial court were

attempting to modify its prior judgment, the doctrine of res judicata would apply. However, the trial court in this case is not altering the 1975 judgment. Instead, the trial court is clarifying the orders of the trial court to be performed. The doctrine of res judicata does not apply in this case. The first assignment of error is overruled.

{¶15} The second assignment of error made by Smith asserts that the trial court's judgment is contrary to law. Smith argues that the law prefers that the valuation of all property occur at the earliest possible time, the date of Paul's death. Although this is generally true, there are exceptions. For instance, the law also provides that an estate can use a different valuation, such as a sale price. The trial court in its 1975 journal entry stated that the duty to equalize the estate would arise at the termination of Gladys' life estate. The task before the current trial court is merely to determine what this order meant. Thus, the only issue before this court is whether the trial court abused its discretion in determining what the prior order meant.

{¶16} Here, Smith argues that it is not a just result to permit Crum to benefit from the increase in value of the property over time. Instead,

Smith argues that Crum is only entitled to $17,500 which is half of the date of death value of the property. Smith claims that the purpose of the trial court's 1975 order was to set forth the date of payment. However, this court does not see how it is just for Crum to have lost the opportunity for her half of the estate to gain value over time while Smith's half of the estate has greatly gained value. The end result of this is that Smith gets a windfall and Crum loses more than 20 years worth of use of the funds. The trial court also found that this was not a just result. The trial court determined that the original intent of the 1975 order was to split equally between the parties the risks and potential gains or losses arising over time. Under the trial court's ruling, both parties were denied use of their inheritance for the same amount of time and both were subjected to the risk that the property value would decrease rather than increase over time. Both parties shared the opportunity for the property to appreciate equally as well.

{¶17} In addition, the trial court recognized that the farm was not the only asset making up the residue of the estate. Some of these items could have either appreciated or depreciated in value over time. It is possible that some of these assets could have been exhausted by Gladys.

The terms of the will required the distributions to be of equal value. Since the value of the distributions could not be determined until the termination of the life estate, it is reasonable for the trial court to determine that all of the assets should be valued at the time in which Gladys' interest in the asset was terminated. In the case of the farm, Gladys' interest was terminated in 1996, when Smith, as power of attorney for Gladys, transferred the property into his own name. This was the finding of the trial court, which set the value of the farm at $166,815. This finding is reasonable.

{¶18} Smith's argument that his interest in the property vested at the time of Paul's death is not at issue. All parties admit that his interest vested. However, the value of this interest was not necessarily determined then. *Ohio Natl. Bank of Columbus v. Boone* (1942), 139 Ohio St. 361, 40 N.E.2d 149.

{¶19} The purpose of the trial court, when interpreting wills, is to determine the intent of the testator. Id. The intent of the testator in this case was clearly to split the residue of his estate equally between his children. The trial court's ruling does this. Thus, the trial court did not

abuse its discretion in finding that the 1975 order intended this result. The second assignment of error is overruled.

{¶20} Smith argues in his final assignment of error that the trial court's judgment was against the manifest weight of the evidence for there was no evidence presented in support of Crum's motion. However, the trial court was not asked to determine factual issues. The only matter before the trial court was the clarification of its prior order. Evidence was provided to the trial court as to the values of the various appraisals. The trial court determined that the appropriate value, as set forth in the 1975 order, was the value based upon the appraisal performed immediately after Gladys' interest in the farm was terminated. Smith bases his argument on evidence that he believes the trial court ignored. A reading of the trial court's judgment shows that the trial court did consider this evidence and found it to be unpersuasive. The third assignment of error is overruled.

{¶21} The judgment of the Seneca County Common Pleas Court, Probate Division is affirmed.

Judgment affirmed.

WALTERS and CUPP, JJ., concur.

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