AFFIRMED and Opinion Filed June 17, 2020

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00364-CV

JANIS RANEA BUTLER NEAL, INDEPENDENT ADMINISTRATRIX OF THE ESTATE OF GEORGE E. NEAL, JR., DECEASED, Appellant
V.
THE GEORGE E. NEAL, JR. IRREVOCABLE TRUST, GEORGE WHISLER, AND MELANIE PUGH, Appellees

On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-12278

MEMORANDUM OPINION

Before Justices Bridges, Molberg, and Carlyle
Opinion by Justice Carlyle

George E. Neal, Jr.'s estate appeals from the trial court's judgment declaring his sister's children the remainder beneficiaries of his trust in line with a prior agreed judgment. Because the issues are settled, we affirm with this memorandum opinion. *See* TEX. R. APP. P. 47.4.

Brucilla Neal[1] created a revocable living trust in 1991. The trust provided that, upon Brucilla's death, 45% of the residual trust estate would go to her daughter, Karen Pugh; 45% would go to her son, George E. Neal, Jr.; and 10% would go to her nephew, Homer Brown, III.

Brucilla's trust provided that, "[u]nder no circumstances shall the Trustee distribute any of the trust estate to Pamela Gay Faulkner." Further, the trust provided:

> [I]f GEORGE E. NEAL, JR. is involved or has any relationship with Ms. Faulkner, no funds from the trust estate shall be distributed to him, but they shall remain in trust until such time as this relationship is terminated. The Trustee shall have full discretion to determine if the relationship exists and/or when it is terminated. If Mr. Neal challenges this determination, he shall lo[]se all of his interest in the trust estate. Furthermore, if Mr. Neal should predecease [Brucilla] or challenge the determination described above, his share of the trust estate shall be given to his sons . . . provided they can be located within one year of [Brucilla's] death; if not, then the property shall be given to KAREN S. PUGH.
>
> If there is any conflict between the provisions of this section and the remainder of the trust agreement, the provisions of this section shall prevail.

Brucilla amended her trust twice before her death. In 2007 she changed it to say that, rather than giving Karen and George 45% each upon her death, she would give them each 45% in separate trusts established for their benefit. Karen and George

[1] Because several of the individuals mentioned in this opinion have the same last name, we refer to them by their first names.

could devise by will how to distribute any remaining trust funds to their respective descendants or they would be distributed per stirpes.

Brucilla amended her trust again in 2008. The Faulkner provisions remained, but Brucilla changed them to say that if George either predeceased her or challenged the trustee's determination whether he had a relationship with Faulkner, George's share of the trust would go to Karen. Brucilla also modified the trust to provide that any portion of George's trust remaining after his death would go first into a trust for Karen during her life and then to her descendants. Thus, George no longer had power to devise his share of the trust to his descendants, and his descendants no longer had remainder interests in his trust.

Brucilla died in January 2009. When Karen died later that year, Brown took over as trustee of both Brucilla's trust and the trust created for George. In 2010, Brown and George could not agree whether George should receive certain distributions from his trust. Brown filed a declaratory judgment action to determine his obligations as trustee. George counterclaimed, seeking among other things to invalidate the 2008 amendment. The trial court joined Karen's children, appellees George Whisler and Melanie Pugh, as necessary and indispensable parties.

After mediation, all parties entered into a preliminary settlement agreement including that "George confirms the second amendment to the trust and his lifetime beneficial interest with remainder in Karen's children." The parties later executed a

comprehensive settlement agreement, and the trial court entered an agreed final judgment in July 2012.

That agreed judgment, consistent with the comprehensive settlement agreement, modified subsection 3.03(b) of Brucilla's trust to remove all provisions concerning Faulkner. It kept the 3.03(b) provision stating that "[i]f Mr. Neal should predecease [Brucilla] or challenge the determination described above, his share of the trust estate shall be given to **KAREN S. PUGH**, or to her living descendants per stirpes." The "determination described above," which previously included the trustee's determination as to George's relationship *vel non* with Ms. Faulkner, now only referred to the split of specific property between George and Karen. The agreed judgment also kept another 3.03(b) provision stating: "If there is any conflict between the provisions of this section and the remainder of the trust agreement, the provisions of this section shall prevail."

The agreed judgment also added a sentence to subsection 3.03(d)(i), requiring income undistributed to George at the end of a calendar year to be added to his trust's principal. The agreed judgment neither altered nor removed the trust's subsections 3.03(d)(ii), (iii), or (iv), which dictated how the remainder of George's trust would pass to Karen for life and her descendants upon her death. The agreed judgment also stated the reality, given Karen's death: "George Whisler and Melanie Pugh are the only children of Karen S. Pugh, and are the only remainder beneficiaries of the George E. Neal, Jr. Trust."

When George died in 2017, his widow and estate administrator Janis sought to obtain trust funds for the estate. After the trustee informed her it intended to distribute those funds to Whisler and Melanie, Janis filed the declaratory judgment action underlying this appeal. The parties filed competing dispositive motions, and the trial court entered a judgment confirming Whisler and Melanie as the sole remainder beneficiaries of George's trust.

We review de novo a declaratory judgment entered upon competing dispositive motions based on undisputed facts. *See Wausau Underwriters Ins. Co. v. Wedel*, 557 S.W.3d 554, 557 (Tex. 2018); *Huffhines v. State Farm Lloyds*, 167 S.W.3d 493, 496 (Tex. App.—Houston [14th Dist.] 2005, no pet.). We interpret an agreed judgment like a contract between the parties, seeking to harmonize and give effect to all its provisions so that none are rendered meaningless. *See Mann v. Propst*, No. 05-19-00432-CV, 2020 WL 1472212, at *6 (Tex. App.—Dallas Mar. 26, 2020, no pet.) (mem. op.).

George's estate contends (a) the agreed judgment makes Whisler's and Melanie's remainder interests contingent on George either predeceasing Brucilla or challenging the trustee's determination concerning his relationship with Faulkner and (b) because neither occurred, Whisler and Melanie were divested of their remainder interests. His interpretation relies on an incorrect premise he assumes as true in his statement of facts: that the agreed judgment removed subsections 3.03(d)(ii), (iii), and (iv) from the second amendment, describing how any corpus of

his trust remaining at his death shall be distributed to Karen "in trust for her life" and disposed per her will or per stirpes upon her death. It ignores the parties' compromise settlement agreement and the agreed judgment based thereon, both of which clearly state that they agreed to amend subsection 3.03(d)(i), dealing with George's life estate, not to remove subsections 3.03(d)(ii), (iii), or (iv). It also ignores that the agreed judgment removed all reference to Pamela Faulkner from section 3.03(b).

The agreed judgment unambiguously states that Whisler and Melanie "are the only remainder beneficiaries of the George E. Neal, Jr. Trust." Upon George's death, his life interest went to Whisler and Melanie, "the only remainder beneficiaries" of his trust. We affirm.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JANIS RANEA BUTLER NEAL, INDEPENDENT ADMINISTRATRIX OF THE ESTATE OF GEORGE E. NEAL, JR., DECEASED, Appellant

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Trial Court Cause No. DC-18-12278.
Opinion delivered by Justice Carlyle.
Justices Bridges and Molberg participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees The George E. Neal, Jr. Irrevocable Trust, George Whisler, and Melanie Pugh recover their costs of this appeal from appellant Janis Ranea Butler Neal, Independent Administratrix of the Estate of George E. Neal, Jr., deceased.

Judgment entered this 17th day of June, 2020.