

00PR290 (4/25/00)

PROBATE COURT CITY AND COUNTY OF DENVER STATE OF COLORADO

Case No. 00PR290

IN THE MATTER OF

MARY C. LILIENTHAL GRANDCHILDREN'S TRUST.

ORDER

THIS MATTER comes before the Court upon a Petition to Accept Accounting as Filed and to Approve the Distribution of Assets to Successor Trustee of Personal Representative and a Petition to Fund Mary C. Lilienthal Grandchildren's Trust. The Petition to Accept Accounting as Filed was submitted by Hall & Evans, L.L.C., personal representative for the above named estate. The Petition to Fund Mary C. Lilienthal Grandchildren's Trust was filed by Shelli D. Lilienthal, beneficiary of the Mary C. Lilienthal's Grandchildren's Trust. A hearing was held on Friday, April 21, 2000.

The personal representative and Shelli D. Lilienthal dispute the interpretation of Article III(a)(ii) of the decedent's will. It reads as follows:

The sum of Two Hundred Thousand Dollars (\$200,000.00) offset by any money or property in-kind (valued at its fair market value at the time of the gift) given by me to the Trustee of the Shelli Dee Lilienthal Trust, UTAD, July 19, 1987, or to SHELLI DEE LILIENTHAL, outright. In the event that during my lifetime, I have transferred Two Hundred Thousand Dollars (\$200,000.00) or more in cash and/or property in-kind to said Trust or to SHELLI DEE LILIENTHAL, that the gift under this subparagraph (a)(ii) shall lapse.

The personal representative and Shelli D. Lilienthal dispute whether the payments made by the decedent to third parties for the benefit of Shelli D. Lilienthal qualify as "outright" gifts to Shelli Dee Lilienthal. The personal representative argues that payments made to third parties by the decedent constitute outright gifts and therefore should be subtracted from the \$200,000 given to the Trustee. Shelli D. Lilienthal, however, argues that these indirect gifts were not "outright" and therefore should not be subtracted from the \$200,000 sum.

The Court is guided by its obligation to ascertain the decedent's intent and give it effect. See *In Re the Estate of Dewson*, 509 P.2d 311, 312 (Colo. 1973); see also *Matter of Trust Created by Belgard*, 829 P.2d 457, 459 (Colo. App. 1991); *Brunton v. International Trust*,

164 P.2d 472, 475 (Colo. 1945). In reaching its conclusion, the Court assumes that the decedent's intent is expressed in the language of the instrument. *Denver Nat'l Bank v. Von Brecht*, 137 Colo. 88, 322 P.2d 667, 670 (Colo. 1958).

The Court will give the words used their plain and generally accepted meaning in the context of a testamentary instrument. *In re Estate of Daigle*, 642 P.2d 527, 528 (Colo. App. 1982); *Colorado Interstate Gas Co. v. Chemco, Inc.*, 833 P.2d 786, 788-89 (Colo. App. 1991), *aff'd* 854 P.2d 1232 (Colo. 1993).

"Outright," is defined as direct; free from reservations or limitations, positive; downright; altogether; entirely; openly. *Blacks Law Dictionary*, at 1255 (4th Ed. 1958); *The American Heritage Dictionary of the English Language* at 934 (1971). See also *Hughes v. First State Bank of Wagoner*, 235 P. 1097, 1099 (Okl. 1925).

It is clear that decedent made gifts of both kinds—direct and indirect. There is no dispute that meticulous records of the donative transfers from Mary C. Lilienthal to Shelli Lilienthal were maintained and all gifts, both direct and indirect, were properly reported and taxed. This evidence is not conclusive, however, on the issue of the intent regarding Article III(a)(ii) of decedent's will.

Decedent could have used language sufficiently broad to include gifts "to or for the benefit of" Shelli Lilienthal or she could have referred to all gifts to Shelli Lilienthal, "direct or indirect." Even "gifts" alone would have allowed the Court discretion to interpret her meaning to include both those gifts given directly to Shelli Lilienthal as well as those given to her by indirect means such as payment of bills. By choosing the language "outright" the Court must conclude that Mary Lilienthal intended some meaning be attached that could not be expressed by the simple use of the word "gifts."

The Court FINDS that "outright" gifts made to Shelli Lilienthal is limited to those gifts made directly from the decedent to Shelli, not gifts made by Mary Lilienthal to third parties for Shelli's benefit. Therefore, the Court DENIES the personal representative's Petition to Accept Accounting. The Court GRANTS Shelli D. Lilienthal's Petition to Fund Mary C. Lilienthal Grandchildren's Trust in the amount of \$59, 183.29.

April 25, 2000

C. Jean Stewart
Judge, Probate Court