

Legal Chat - What to do When a Will is Not Clear

By Greg T. Rinckey

Q.

My late grandfather's will includes some instructions that are ambiguous. Depending on how you read it, either my sister or I should receive his antique cars. What do you do when a will has ambiguous language?

A.

It is not uncommon for a last will and testament – especially if it is drafted without a lawyer's assistance – to contain unclear or contradictory directions. Unfortunately, the person who made the will, referred to as a "testator," is not able to clear up the confusion. That task, instead, sometimes falls on the courts.

During the estate administration process, a court's objective is to ensure the testator's instructions are properly carried out. That could prove difficult, for example, if the testator referred to his or her property in general and overlapping terms. To achieve the goal of distributing a testator's assets as intended, "a sympathetic reading of the will as an entirety" is required, as the New York Court of Appeals called for in *Matter of Fabbri*. As stated within the *Fabbri* matter, this sympathetic reading requires consideration of the "facts and circumstances of the will's framing," it does not include a mechanical reading that takes a narrow view. As reaffirmed in *Matter of the Estate of Elizabeth H. B.*, a subsequent matter with similar circumstances, the will must be considered as a whole.

Courts can rely on everything from the rules of grammatical construction, to what is called the "last antecedent doctrine" to help them determine intent. The New York County Surrogate's Court in *Matter of the Judicial Settlement of the Account of Marianne C. Gourary* (2011) warned, however, that these methods "are not, in themselves, dispositive and, indeed, when literally applied, often lead to opposite results." The *Gourary* matter, for example, involved a will contest between a deceased testator's wife and her son. In his will, the testator left to his wife "[a]ll household furniture and furnishings, books, pictures, jewelry and other article of personal or household use." Outside of this bequest, two-thirds of the residuary (i.e. remainder) of his estate was to go to his wife and the remaining third was to go to his son. The will contest arose over whether the "books...and other article of personal or household use" that the testator left to his wife included his \$5.2 million collection of rare books, or just novels and other books he had read and kept. If the antique books were not included in this category, then a portion of them would pass to the son through the residuary estate.

To help the court determine what the testator meant by "books," the court weighed everything from insurance policy documentation, to testimony from a rare books collector, to a letter the testator wrote after executing the will. Noting that if the rare book collection was distributed solely to the testator's wife and not included in the residuary estate, his son would receive only a sixth of his estate. In the letter, however, he stated he wanted his son to receive

one-third of his estate. Ultimately, the court relied on math to solve this problem and ruled that the collection passed through the will's residuary clause.

Beneficiaries who believe they have been denied a bequest due to a will's unclear directions should immediately consult with an estate planning attorney.