IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

IN THE MATTER OF THE ESTATE OF BARRY C. BLACKBURN, SR., DECEASED

CAUSE NO.: 14-CV-1067

GINGER RICHARDS and KIMBERLY ARCHER, CO-EXECUTRIX, and CO-TRUSTEES of the BARRY C. BLACKBURN, SR. REVOCABLE LIVING TRUST, DATED MARCH 11, 2014. **TRUSTEES**

VS.

JUNE HOLLEY OLIN, EXECUTRIX OF THE ESTATE OF BARRY C. BLACKBURN, JR.; REBECCA LOWRY, Individually and as Legal Guardian of DAVID WILLIAM LOWRY, ELEANOR REBECCA LOWRY, and PHOEBE ELIZABETH LOWRY; NASHVILLE CHRISTIAN SCHOOLS, INC.; HARPETH PRESBYTERIAN CHURCH, INC.; UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW; and BOYKIN SPANIEL RESCUE, INC. **DEFENDANTS**

AND

REBECCA LOWRY, Individually and DEBRA P. BRANAN as Guardian Ad Litem of DAVID WILLIAM LOWRY, ELEANOR REBECCA LOWRY, and PHOEBE ELIZABETH LOWRY **COUNTER-CLAIMANTS/ CROSS CLAIMANTS**

V.

GINGER RICHARDS and KIMBERLY ARCHER, CO-EXECUTRIX, and CO-TRUSTEES of the BARRY C. BLACKBURN, SR. REVOCABLE LIVING TRUST, DATED MARCH 11, 2014. **COUNTER-DEFENDANTS**

AND

JUNE HOLLEY OLIN, EXECUTRIX OF THE ESTATE OF BARRY C. BLACKBURN, JR.; NASHVILLE CHRISTIAN SCHOOLS, INC.; HARPETH PRESBYTERIAN CHURCH, INC.; UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW; and BOYKIN SPANIEL RESCUE, INC. **CROSS-DEFENDANTS**

amended

OPINION OF THE COURT

On the October 4, 5 and 6, 2017, and February 8 and 9th, 2018, this Court heard testimony of witnesses and admitted exhibits into the record concerning the Estate of Barry C. Blackburn, Sr., deceased.

STATEMENT OF THE CASE

Barry Christopher Blackburn, Sr. ("Barry) died on March 21, 2014, at the age of 48. Before he died, Barry executed and funded "The Barry C. Blackburn Sr., Revocable Living Trust" ("Trust") to provide income and principal to Barry, the Grantor and initial Trustee, during his lifetime and then income to his only son, Barry Christopher Blackburn, Jr. ("Christopher"), during Christopher's lifetime. Tragically, Christopher died in July of 2015.

This action was brought to determine the rightful beneficiaries of the remaining assets of Barry.

Ginger Richards and Kimberly Archer ("Co-Trustees") position is that (1) A scrivener's error rendered the Trust Agreement ambiguous and wants the Court to construe the Trust agreement to determine the proper beneficiaries to be Barry's nieces and nephews, or (2) That the Court may also reform the Trust Agreement pursuant to Mississippi Code Ann §91-8-415 to have the same effect of the nieces and nephews being designated as the rightful beneficiaries.

Barry's only sibling, sister, Rebecca Lowry ("Rebecca") individually, alternatively only, requested the Court to determine that she is the proper beneficiary under Section III, Paragraph 3.3 of the Trust Agreement in the event the Court were to determine the minors were not the proper beneficiaries.

Christopher's Estate, June Holley Olin, Executrix, request the Court to (1) Find that no ambiguity exists and therefore no parol evidence should be admissible and therefore Christopher's estate should take the remainder of Barry's estate assets or (2) Find that $200,000.00 of college expenses has vested in Christopher's estate.

The "Four Nonprofit" (Nashville Christian School, Harpeth Presbyterian Church, The University of Mississippi Law School, and the Boykin Spaniel Rescue League) would have the Court determine that Trust Section 2.3(D)(3) plainly and unambiguously states the Trust's corpus shall be distributed to them pursuant to the plain reading of the following:

"If (Christopher) shall predecease the Grantor prior to complete distribution of the trust principal, and has no living issue, then the remaining trust principal shall be retained for the benefit of Rebecca Lowry's children. If the Grantor has no surviving beneficiaries as specified herein, then any remaining trust principal shall be distrubuted as follows: one-four (1/4) to Nashville Christian School; one-four (1/4) to Harpeth Presbyterian Church in Nashville, TN; one -fourth (1/4) to Ole Miss Law School (to fund an estate planning program); and one-four (1/4) to the Boykin Spaniel rescue.

Therefore because Christopher died "with no living issue" and did not "predecease" Barry, Rebecca's children never became beneficiary under Section 2.3 (D)(3). There are no "surviving

beneficiaries as specified (in 2.3)" and "any remaining trust principal shall be distributed" to the Four Non-profits.

FINDINGS OF FACT

Ginger Richards worked for Barry for (19) years. They had more of a "brother-sister" relationship. She did more of his administrative work, e.g."accounting, the bookkeeping, worked with the accountant, worked with the bankers, collected rent, paid the bills,' until Barry's death on March 21, 2014. (Trial Tr. Vol. 1, 20-22, October 4, 2017).

Ginger discussed Barry's personal life with him as it related to Christopher and his ex-wife, Chanda Will.

She knew of Barry's untimely death of his parents in separate automobile accident, as well as his "close" relationship with his Blackburn grandfather, Stephen Blackburn, ID., at 37-38. Ginger started working for Barry as a paralegal when he was with his prior firm preparing estate planning documents based on Barry's instructions. ID at 22. Later that changed to handling more of his personal finances.

Ginger witnessed the relationship of Barry and Christopher as well as his ex-wife, Mrs. Will. She knew that Barry wasn't pleased with Christopher and had him emancipated effective August, 2012 when Christopher was 19.

She wrote checks for Barry and while handling his finances never had written a check for the ICRB's.

Ginger stated that in estate planning Barry would instruct her and Mrs. Archer on what the client wanted and they would "cut and paste from other documents". She also testified Barry "was very big on legacy". He thought everybody should leave things to generations. Legacy was

family and Barry was big on the "Blackburn Legacy".

Ginger was very emphatic that the "predecease" language omitting the phrase "or dies" behind it, shouldn't have been written that way. She stated that upon Christopher's death, "the intent was to go to his grandchildren. If his grandchildren were not around, it was to go to his nieces and nephews." Id at 110-111. She stated that the "mistake" was likely a continuation from a previous document, "probably in the form (she and Mrs. Archer) used." Id., at 112.

In December of 2013, a few months before Barry's death, "Barry went to MD Anderson... (and) had not gotten the results he thought he was going to get... That's when he began really discussing what he really wanted to do with his estate." Trial Tr. Val 1, 79, October 4, 2017.

Barry talked to Kimberly Archer specifically about the documents, but also to Ginger about how to administer the trust and how to administer his estate. He wanted her to know how to fund the estate. Her handwritten notes (Ex 8) reflect Barry's plans and intentions:

Christopher income at 30
- a. Pay for education-college
- ***b. Not trust fund kid***

Grandchildren beneficiaries of trust
- c. Income at 30
- d. College education
- e. Farms at 45 / [granddad's properties] at 45
- ***f. Principal at 45***

No grandchildren, then nieces and nephews – same provisions
No beneficiaries living then charities
- g. Boykin Spaniel
- h. Ole Miss
- i. H[arpeth] Presb[yterian] Church
- j. Nash[ville] Christain [School]

See **Ex. 8**.

Kimberly Archer testified she worked for Barry as a paralegal from 1999 until his death

(Trial Tr. Val 2,5 October 5, 2017). She became the primary person to draft estate planning documents for Barry until he died. ID. At 5-11. She "pulled forms from other existing wills and trusts" and utilized a "cut and paste" system from a "forms" folder comprised of existing estate planning documents. Id., at 8. She testified that Barry did not "personally prepare a will or a trust" for anyone; and he didn't pay close attention to the language and did not "read documents word for word." Id at 8-10. Kimberly testified that based upon her conversations with Barry, his intent was for "his estate to go to (his nieces and nephew) if Christopher were to pass away, if Christopher didn't have any children." Id., at 18. Kimberly took handwritten notes (Ex. 18) while conversing with Barry and later rewrote these notes (Ex. 19).

Ex. 18

How can [Blackburn Law Firm] collect fees, receivables, etc. – ask [Jason Bailey]
[Ginger Richard and Kimberly Archer] continue receiving salaries & Trustee/Executor Fees
Trust needs to pay for extra lights, lock, etc. for North [Alabama] warehouses
Hold on to [Orange Beach] condos if possible
Keep airplane for trust
Preserve personal items for Chris[topher] and [grandkids]
Let [Ginger Richard and Kimberly Archer] use trust assets condos, planes, etc.
Let family use condo @ [Ginger Richard and Kimberly Archer]'s discretion
Don't sell Tate & Quitman farms
Don't sell Grandad's warehouses or gourd farms & Grenada lot
Sell Grandad's Pickwick lot only if trust needs money
Pay Christopher's college & health
Net income to Chris @ certain age 30??
Let Chris know he isn't trust fund kid & farm, Granddad's farms – Blackburn legacy
If trust can keep Bella [condo] don't sell
Ask [Jason Bailey] how long trust go on for grandchildren
Trust never to vest with Chris
What age to vest trust in grandchildren 45
Keep assets in Blackburn name – legacy. Mom's blood money, dad's [blood money], Granddad's hard earned assets.
If Chris passes with no kids, then to sister's kids, same provisions per capita
If all sister's kids pass then to Nashville Christian [School], Harpeth Presbyterian, Ole Miss Law (fund [Estate Planning Program]), Boykin Spaniel Rescue

Skip generation so Blackburn legacy will be appreciated

She also was vocal about Barry's desire to keep inherited properties with the Blackburn family (Trial Tr. Vol 2, 41, October 5, 2017. Kimberly further testified to how Barry loved his nieces and nephew, and he kept pictures of them in both his office and in his condo at Orange Beach. Id at 19.

She testified that she drafted the 2014 Trust Agreement using both sets of her handwritten notes, specifically including her notes reflecting, "if Christopher is gone, and he has no children then it goes to his nieces and nephews". *Id.* at 59. Mrs. Archer testified that she drafted the 2014 Trust Agreement consistent with Barry's stated intentions concerning the distribution of his estate, *Id.*. at 221, with the exception of the language she mistakenly used in Section 2.3(D)(3) which she later realized caused Section 2.3(D)(3) to "make[s] no sense". *Id.* at 226. Mrs. Archer testified that "I wish I had caught [the error], but it's a mistake", and "[i]t's ambiguous. I think it needs to be modified". *Id.,* at 103. Mrs. Archer testified that she intended to draft Section 2.3(D)(3) consistent with Barry's stated intent that "if Christopher is gone, and he has no children then it goes to his nieces and nephews. If for some reason they're not living, then it would go to charities" as "default takers". *Id.* at 59. Mrs. Archer further testified it was simply "illogical that [Christopher] would have predeceased his father." *Id.*, at 65. Lastly, Mrs. Archer testified that, in order for the disputed sentence to "make sense," while it could be "revised a couple different ways" to conform to Barry's expressed intent, but she would include the phrase, "or dies". *Id.*

Witness John St. Claire, a consultant in the financial industry, met Barry twenty years ago. (Trial Tr. Vol. 2, 158-159), October 5, 2017). They worked on numerous estates. He

testified that Barry "trusted Kimberly and Ginger explicitly". Id. At 164-165. He opined that Barry would do very little drafting of the documents. "He would just hit the high points." Hit the top of the trees and move on." Id at 166. He testified Barry used trusts "to keep money in the blood line." He stated Barry used charities as a "catastrophic or catchall clause". Mr. St. Claire further testified he "never" experienced a time when Barry recommended giving charities everything if there were humans still alive that could have inherited. In particularity he said Barry would speak of his nieces and nephew and indicated there was love there.

Rob Brown, a financial advisor, worked with Barry for 20 years. They worked together for numerous clients. Mr. Brown testified Ginger and Kimberly did everything. He testified that Barry wanted "everything to stay within his family. He was very proud of the Blackburn family." He further said Barry's use of charities in estate planning was a "last resort". If the person had no family, then the charities... there's no family, so it would go to charity." Id., at 213.

Rebecca Lowry, Barry's only sister and only sibling, testified she has three children-David, Eleanor and Phoebe("the minors"). They are Barry's only nieces and nephews. Barry had their photos displayed at his office and home, and at Ginger Richards'home while he was there on hospice prior to his death. She recounted Barry's relationship with Stephen Blackburn, their grandfather and about "blood money" from their parent's tragic death in separate auto accident. She described Barry's use of the term "family legacy."

Bill Barkely, a cousin of Barry, testified that Barry was interested in family history. Family assets were important to Barry and preservation of such assets were important to Barry. In the last several days of his life, Barry conveyed that he "was going to leave Ginger and Kimberley in charge "of a significant amount of assets and money in Trust" Id., at 60. Further in

the last multiple visits with Barry, he never mentioned the ICRB's with respect to his estate planning.

Thomas Richard Davis is one of Barry's best friends. He attended law school with him. They worked together. He testified that Kimberly drafted all the documents. He testifies that Barry reviewed his documents "quickly" and "sloppily". He testified it wouldn't surprise him "if there was a drafting mistake in one of (Barry's) own estate planning documents." Barry just did a quick review when he was reading and "just flip through them".

Mr. Davis testified that Barry's philosophy was to leave assets to "heirs in the bloodline", and all humans had to be dead before "charities" received anything. Id., at 85-86. Mr. Davis testified that Barry told him that his estate would pass to his "nieces and nephews" if something were to happen to Christopher. Further Mr. Davis testified that, "out of several hundred" estate plans, he could only recall one instance where an estate was left entirely to charities; and that particular client (s) "had no children." Id., at 98-99.

Other testimony during the trial came from Bill Richards, Chanda Will, James Olin and June Olin.

DISCUSSION OF THE LAW

The ultimate purpose of any construction or reformation exercise is to ascertain the intent of the testator, it being the most solemn obligation any court can have to see that the true intent of a testator is fulfilled. *Matter of Estate of Vick*, 557 So. 2d 760 (Miss. 1989); *Last Will and Testament of Lawson v. Lambert*, 792 So. 2d 977 (Miss. 2001); and *New Orleans Baptist Theological Seminary v. Lacy,* 219 So. 2d 665 (Miss. 1969).

The trustor's testamentary intent is first to be determined from "four corners" of the testamentary instrument, ***as a whole***, with the aid of established rules of construction. *In re Loeb's Will*, 206 So. 2d 615 (Miss. 1968) and *Seal v. Seal,* 312 So. 2d 19 (Miss. 1975).

If the language in the testamentary instrument is plain and unambiguous, then such language must be given effect. *Hart v. First National Bank of Jackson,* 103 So. 2d 406 (Miss. 1958). However, if the testamentary instrument is susceptible to more than one construction, it is the duty of the court to apply the construction which is consistent with the testator's intent. *Estate of Williams v. Junis Ward Johnson Memorial Young Men's Christian Ass'n,* 672 So. 2d 1173 (Miss. 1996); *In re Granberry's Estate*, 310 So. 2d 708, 711 (Miss. 1975).

Whether ambiguity exists in a testamentary instrument is a question of law. *Barnes v. Barnes*, 68 So. 3d 763, 765 (Miss. Ct. App. 2011). In resolving ambiguity, the Chancellor's factual determinations are to be supported by substantial, credible evidence. *In re Last Will and Testament of Carney*, 758 So. 2d 1017 (Miss. 2000).

In applying the rules of construction, the Court must view the provisions of the trust instrument **as a whole**. The trustor's intent must, if possible be gathered from the entire instrument, giving due consideration and weight to every word in it. *See* WEEMS, *Wills and Administration of Estates in Mississippi* at 9:11 ("Rules of Construction"). As the Court stated in *Granberry*, "[t]he language used in a single clause or sentence does not control against the purpose and intention as shown by the whole will." The will must be construed in the light of the circumstances surrounding the testator at the time the will was written. *Granberry*, 310 So. 2d at 711. If, having done so, the Court is able to ascertain the "dominant" or "paramount" intent of the testator, "all minor, subordinate and technical rules of construction must yield to the

paramount intent thus ascertained." *Id.*

In this regard, the Mississippi Supreme Court has repeatedly held that a chancellor, in construing a testamentary document, may supply omitted words "where they are clearly implied or when necessary to effectuate the testator's expressed intent." *Hemphill v. Mississippi State Highway Commission*, 145 So. 2d 455 (1962); *Paine v. Sanders,* 135 So. 2d 188 (1961).

After considering the Trust Agreement as a whole, if the Court is still unable to ascertain the intent of the trustor, the Court must also then consider extrinsic or parol evidence of intent. If ambiguity exists, extrinsic or parol evidence is admissible to show the intent of the trustor. *See, e.g., Ross v. Brasell*, 511 So. 2d 492, 494 (Miss. 1987); *Estate of Carlisle*, 252 So. 2d 894, 895 (Miss. 1971); *In re McSwain*, 946 So. 2d 417, 420 (Miss. Ct. App. 2006); WEEMS at §9:10.

Parol evidence is also admissible to show the surrounding circumstances where that is necessary to establish the testator's true intent. *Keeley v. Adams,* 149 Miss. 201, 115 So. 344 (1928).

The Court finds that Section II, Paragraph 2.3, Subsection D(3) of the Trust Agreement is patently and latently ambiguous, does not correctly state Barry's clear intention to benefit the Minors in the event Barry at any time after his death had no lineal descendants, which clear intent is revealed by a thorough reading of the entire trust instrument as well as the uncontroverted extrinsic evidence presented at trial. The uncontroverted evidence presented at trial shows that this ambiguity and failure to state Barry's clear intent was the result of a scrivener's error on the part of Kimberly Archer.

PATENT AMBIGUITY

2. **Patent Ambiguity No. 1: "If [Christopher Shall Predecease the Grantor prior**

to the Complete Distribution of Trust Principal." In this case, the terms in Section 2.3(D) "If [Christopher] shall predecease the Grantor" and "prior to complete distribution of the trust principal," are directly contradictory and incompatible because they refer to totally different points in time—one refers to Christopher's death before *any* distribution of trust principal ("predecease the Grantor"), and the other to Christopher's death before distribution of *all* of the trust principal ("prior to the complete distribution of the trust principal"). The phrases are redundant and nonsensical. They are redundant because if Christopher had died before Barry, then *none* of the trust principal would have been distributed at that point. Any predeceasing by Christopher would necessarily have been "prior to the *complete* distribution of trust principal" since no trust principal was to be distributed under Section 2.3(D) until after Barry's death. *See* Trust Agreement at Section II ("Distribution and Administration of Trust *Following Death of Grantor"*). It defies logic and common sense that the gift would be conditioned on Christopher dying before *any* distribution of the Trust principal *and* before *complete* distribution of the Trust principal when no trust principal could be distributed until after Barry's death. *Id.* The two phrases clearly were not intended to be joined in such a nonsensical manner. It is obvious that transitional words are missing between the two phrases. This ambiguity is further demonstrated by the remaining language of Section 2.3(D)(3). As indicated from the full text of the provision, each gift to an identified beneficiary(s) is predicated on *survival* until the complete distribution of the Trust principal. Reading Section 2.3(D)(3), with appropriate emphasis, demonstrates this

point:

> Upon the death of [Christopher], the **undistributed balance** shall be divided equally among his **then living issue**, per stirpes, subject to the same trust provisions herein....If [Christopher] shall predecease the Grantor **prior to complete distribution** of trust principal and has **no living issue**, then the **remaining** trust principal shall be retained for the benefit or Rebecca Lowry's children (Grantor's nieces and nephews) subject to the same trust provisions here in specified for the Grantor's grandchildren. **Upon the death** of a child of Rebecca Lowry **prior to the complete distribution** of the trust principal, then the **remaining** trust principal shall be distributed to the **remaining surviving** niece or nephew, per capita. If the Grantor has no **surviving** beneficiaries as specified herein....

The references to "remaining" Trust principal is nonsensical and ambiguous if Christopher predeceasing Barry is a condition precedent to the creation of the trusts for Barry's nieces and nephews. The terms of the Trust Agreement are "confusing" because **all** of the Trust principal would be "remaining" if Christopher predeceased Barry. "Remaining" necessarily implies that some of the Trust principal had been distributed, but that some principal remained *after the death of the prior beneficiary. See Matter of Griffin's Will,* 411 So. 2d 767 (Miss. 1982)(where two opposing ideas are included together in a single phrase, there is ambiguity). Failure to properly resolve this first ambiguity in accord with Barry's dominant intent results in further ambiguities and confusion as addressed below.

3. **Patent Ambiguity No. 2: "[S]urviving Beneficiaries as Specified Herein."** A second ambiguity arises in the context of the alternative contingent gift to the ICRBs. The gift to the ICRBs is conditioned upon the non-survival of the prior-named blood-relative beneficiaries *as specified herein,* then any remaining trust principal shall be distributed [to the ICRBs]. *Id.* The word "specify" means "to state explicitly." *THE AMERICAN HERTIAGE DICTIONARY 1173* Second

College Ed. 1991). Likewise, "specific" means "explicitly set forth; definite." *Id.* There is no question that "Rebecca Lowry's children" are explicitly identified or "set forth" as beneficiaries and that they are *surviving*. Therefore, under the terms of the Trust Agreement, the ICRB's cannot take even if Rebecca's children also cannot take, unless the Court additionally finds that the word "specified" is capable of another meaning, and therefore ambiguous. *See* WEEMS §9:8 ("The words should be construed according to their ordinary and grammatical sense unless it is apparent that they were used in a different sense.")(citation omitted).

4. **Patent Ambiguity No. 3: "[N]o Beneficiaries Then Living."** If the Court were to construe the Trust Agreement to require that Christopher predecease Barry in order for Rebecca's children to take, then a further ambiguity would arise. This is so because a conflict exists between Section 2.3 and Section 3.3 of the Trust Agreement. Section 2.3(D)(3) states that if there are no "*surviving* beneficiaries", then the ICRBs take. Section 3.3, on the other hand, states that if the Trust has "no beneficiaries then *living*", the remaining trust principal passes to those persons who would have been Barry's heirs-at-law, assuming Barry had died at the time there were no remaining "living" beneficiaries. Section 3.3 provides (emphasis added):

> If at the time herein provided for the distribution of the principal of any trust created by or administered under this instrument there shall be no beneficiaries then **living**, the Trust shall immediately terminate and the remaining Trust Estate shall be distributed to the persons who would be entitled to receive the Grantor's property with such persons taking in the proportions provided by law as if the Grantor died at that time, intestate, and domiciled in Mississippi.

Were the Court to adopt the construction that Rebecca's children, *although living*,

are not beneficiaries due to failure of the contended condition precedent that Christopher must "predecease the Grantor," then there are no "living" beneficiaries, because institutions such as the ICRBs are not *living* beings. It would require an unordinary and uncommon meaning given to the word "living" to construe the provision in such a manner. *See* WEEMS at §9.8 ("The words should be construed according to their ordinary and grammatical sense unless it is apparent they were used in a different sense.") (citation omitted). This additional ambiguity is easily avoided, however, by a correct resolution of "Patent Ambiguity No. 1" as discussed above.

LATENT AMBIGUITY

5. **Latent Ambiguity: There Was No Reasonable Expectation That Christopher Would "Predecease" Barry.** Even if there were no patent ambiguities, Section 2.3(D)(3) would still be ambiguous because of a latent ambiguity. The following facts and circumstances clearly illuminate the latent ambiguity present in this case. The Trust Agreement was executed by Barry on March 11, 2014, at the time that he was receiving hospice care at the home of Mrs. Richards in anticipation that his death from cancer was imminent. Barry in fact passed away ten days following execution of the March 11, 2014, Trust Agreement. At the time of Barry's execution of the March 11, 2014, Trust Agreement, his son, Christopher, was a young man, twenty-one years of age, attending community college, and who had no known health problems. It is not credible that Barry actually intended his nieces and nephews to inherit his Trust Estate if he had no lineal descendants, **but only** if a young, healthy, twenty-one (21) year old died while Barry was literally lying in his death bed at Mrs. Richards' house. Barry clearly intended to benefit his nieces and nephews if he had

no lineal descendants at any time before the Trust became vested. It is plainly evident from the evidence presented that there was no reasonable anticipation by Barry at the time of his execution of the Trust Agreement that Christopher would "predecease" him, and, Christopher in fact did not predecease Barry. Barry even anticipated having grandchildren from his only child, Christopher, as evidenced in Section 2.3(D)(3). Also, the inclusion in the Trust Agreement of a successor corporate trustee, Cumberland Trust, implied Barry believed Christopher, being significantly younger than the Trustees, would survive the Trustees; therefore, he wanted to make sure there was another trustee to administer the assets upon the death of the Trustees. The admitted scrivener's error in inserting "predecease," without more, into Section 2.3(D)(3) creates a latent ambiguity. Barry could not have intended to place such an unreasonable, implausible and impossible-to-fulfill condition on the contingent gift to his nieces and nephews which, in reality, would have had no chance of fulfillment and would not amount to any gift at all considering the facts and circumstances existing at the time of Barry's execution of the Trust Agreement.

BARRY'S INTENT REVEALED FROM THE TERMS OF THE TRUST

1. Having determined that the Trust Agreement is ambiguous, the Court must construe it in accordance with the Grantor's intent. To do so, the Court must review the document itself to ascertain Barry's dominate and overarching intent, and, if Barry's intent cannot be determined from a careful reading of the Trust Agreement as a

whole, then the Court must also consider the extrinsic evidence.

2. The Court finds that Barry's dominant and paramount intent can be ascertained from a careful reading of the Trust Agreement as a whole. There is no doubt that Section 2.3(D)(3) contains contradictory and confusing provisions requiring construction to ascertain Barry's actual intent. However, when the provisions of the Trust Agreement are viewed as a whole, as the rules of construction require, Barry's intent becomes clear. Section 2.3(D)(3) reveals Barry's clear intent to set out a hierarchy, or layering, of contingent interests. It is clear from this Section that Barry did not intend to benefit the beneficiaries in a lower tier or layer unless the layer above it was left void of beneficiaries prior to vesting. Specifically, Barry intended to provide Christopher with a lifetime discretionary interest in the Trust. At Christopher's death, the Trust was to be divided equally among Christopher's issue; they were to receive the "family farms and trust principal upon the youngest grandchild attaining forty-five (45) years of age". Therefore, according to the plain terms of Section 2.3(D)(3) of the Trust Agreement, no trust property would vest in any beneficiary until Barry's youngest grandchild, or if no grandchildren, his youngest niece or nephew, attained the age of forty-five (45) years. This is sufficient to dispose of Olin's arguments on behalf of Christopher's Estate that trust property vested in Christopher's Estate. Moreover, pursuant to Section 2.3 (D)(3), only if Barry had no living lineal or collateral descendants ("surviving beneficiaries") would the ICRBs take as alternative contingent remainder beneficiaries. The ICRBs would only take if Barry had "no surviving beneficiaries as specified herein." Barry obviously had

"surviving beneficiaries" as specified in Section 2.3(D)(3) --- his nieces and nephew, the Minors.

3. Further internal evidence revealed in the Trust Agreement of Barry's overall intent to benefit his nieces and nephews if he had no living lineal descendants is found in Sections 2.2 and 2.3(B) of the Trust Agreement regarding tangible personal property and specific real property Barry inherited from his grandfather. Section 2.3(B) ("Retention of Real Property as Trust Assets") clearly demonstrates Barry's intent that the specifically identified real property "which were the Grantor's grandfather's [property]" **shall** be retained by the Trustees "for the duration of the trust" in order that the identified property inherited from his grandfather remained in the Blackburn family. To that end, Section 2.3(B) provides that "[Barry's] farms and his grandfather's farms ultimately vest with [Barry's] grandchildren upon the youngest grandchild attaining forty-five (45) years of age." Significantly, Section 2.3(D)(3) carries out this intent by providing that after Christopher's death the trust estate, specifically including "his family farms… and properties", "vest with [Barry's] grandchildren upon the youngest grandchild attaining forty-five (45) years of age". Section 2.3(D)(3) further provides that if Barry had no grandchildren, the family properties would vest in Barry's nieces and nephews under the same terms. This construction is both apparent and necessary in order to carry out Barry's expressed intent that his "family farms… and properties" remain in his family. Section 2.2 similarly shows Barry's specific intent was to preserve family memorabilia and various vehicles for ultimate distribution to Christopher or Barry's grandchildren at

the Trustee's discretion. Certain items were specifically bequeathed. Barry repeatedly leaves personal items to one or more of the Minors if he has no grandchildren, regardless of whether Christopher was living. For example, a Rolex watch was left to his "first born grandson," but if none, to David Lowry (nephew), and a heart-shaped diamond ring and mink coat was left to his first born granddaughter, but if none, to Eleanor Lowry (niece). Section 2.2 concludes by stating (emphasis added):

> If Grantor's son does not survive the Grantor ***or dies*** prior to said personal property being distributed, said personal property shall be distributed to the Grantor's grandchildren, at the Trustee's discretion. If Barry C. Blackburn, Jr. has no living children (Grantor's grandchildren), this property shall be equally divided among Rebecca Lowry's children, per capita, once they have attained fifty (50) years of age.

Sections 2.2 and 2.3(B) clearly indicate Barry's intent to benefit "Rebecca Lowry's children" in the event Christopher was deceased and Barry had no grandchildren in order to insure that Blackburn family property remained in the Blackburn family. Therefore, it is apparent that, when the Trust Agreement is viewed as a whole and in light of the surrounding circumstances, Section 2.2 is drafted exactly as Section 2.3(D)(3) should have been drafted absent the admitted mistake by Mrs. Archer in the drafting of that provision. When properly viewed in this context, the Court finds that Barry's intent was for Section 2.3(D)(3) to read consistent with Section 2.2., and Barry's intention to benefit his nieces and nephews in the absence of grandchildren given effect accordingly.

4. Further, in addition to the well-established rules of construction discussed above, the application of the following additional recognized rules of construction also support a construction in favor of the Minors: (1) a will should be interpreted most favorably toward the beneficiaries appearing to be special objects of the testator's bounty; (2) doubtful provisions should be constructed in a manner favorable to the testator's next of kin; (3) a will should be construed to avoid intestacy as to any of testator's property; and, (4) a will should be construed to achieve a just and reasonable disposition of property in accordance with the laws of descent and distribution.

5. In construing Barry's March 11, 2014, Trust Agreement, the Court finds that the words "or die" were inadvertently omitted and should be inserted into Section 2.3(D)(3) after the word "Grantor" and before the word "prior." By doing so, Barry's specific intent becomes readily apparent, every word is given a definite meaning, and each provision is brought into harmony with the other. As so construed, the language of Section 2.3(D)(3) would read: "If Barry Christopher Blackburn, Jr. shall predecease the Grantor **or die** prior to the complete distribution of the trust principal and had no living issue, then the remaining trust principal shall be retained for the benefit of Rebecca Lowry's children (Grantor's nieces and nephews) subject to the same trust provisions herein specified for the Grantor's grandchildren."

EVIDENCE OF BARRY'S INTENT

The substantial, credible extrinsic evidence adduced at trial and summarized above demonstrates both Barry's intent and the scrivener's error that threatens to thwart that intent. The

Court need not reiterate all of that testimony here; suffice it to say that the testimony of Mrs. Richards and Mrs. Archer concerning the scrivener's error was credible and uncontroverted, as both testified that it was a mistake in the language which was perpetuated over time as a result of the manner in which these types of instruments were prepared by them at Barry's direction --- i.e., "cut and paste" provisions from previous forms. Barry's paramount purpose of keeping his inherited wealth and "blood money" in his bloodline was likewise clearly established by multiple witnesses whose testimony is summarized above. The ICRBs offered no testimony or evidence of Barry's intent outside the "plain language" of the Trust Agreement. With respect to Olin, none of Christopher's Estate's evidence showed a contrary intent. No testimony was offered indicating any intent on Barry's part that the Trust's assets pass to anyone other than the Minors. Put simply, the testimonial and documentary evidence at trial unequivocally support Barry's intent that, should Christopher die without any children, his assets would continue to be held in trust for the benefit of this nieces and nephews and ultimately vest in the nieces and nephew, as directed by the Trust Agreement. Then, only if the bloodlines of the specified nieces and nephews died out prior to the Trust's assets vesting in them would the ICRBs inherit. This evidence is unrefuted.

REFORMATION

Even if Section 2.3(D)(3) were not ambiguous, the Court finds that there is abundant clear, convincing and uncontroverted evidence of a scrivener's error which has rendered the language used in Section 2.3(D)(3) of the Trust Agreement contrary to Barry's clear intent, and, as discussed above, there is abundant clear, convincing and uncontroverted evidence of Barry's

actual intent, and the Trust Agreement will be reformed pursuant to Miss. Code Ann. § 91-8-415 in the same manner as set out in paragraph 31 above.

It is therefore **ORDERED AND ADJUDGED AS FOLLOWS**:

1. That Section II, Paragraph 2.3, Subsection D(3) of the Trust Agreement is hereby construed, consistent with Barry's clear intent, that upon the death of Christopher without living issue, the Trust will continue for the benefit of Barry's nieces and nephew under the same terms as would have applied for Barry's grandchildren;

2. That Section II, Paragraph 2.3, Subsection D(3) of the Trust Agreement is hereby reformed to read as follows:

> "Upon the death of Barry Christopher Blackburn, Jr., the undistributed balance shall be divided equally among his then living issue, per stirpes, subject to the same trust provisions herein. It is the Grantor's specific intent and request that his family farms, trust principal and properties vest with the Grantor's grandchildren upon the youngest grandchild attaining forty-five (45) years of age. If Barry Christopher Blackburn, Jr. shall predecease the Grantor **or die** prior to the complete distribution of the trust principal and has no living issue, then the remaining trust principal shall be retained for the benefit of Rebecca Lowry's children (Grantor's nieces and nephews) subject to the same trust provisions herein specified for the Grantor's grandchildren. Upon the death of a child of Rebecca Lowry prior to the complete distribution of the trust principal, then the remaining trust principal shall be distributed to the remaining surviving niece or nephew, per capita. If the Grantor has no surviving beneficiaries as specified herein, then any remaining trust principal shall be distributed as follows: one-fourth (1/4) to Nashville Christian School; one-fourth (1/4) to Harpeth Presbyterian Church in Nashville, Tennessee; one-fourth (1/4) to the Ole Miss Law School (to fund an estate planning program); and one-fourth (1/4) to the Boykin Spaniel Rescue." (Emphasis added)

3. That all other claims or contentions among the parties are hereby fully and finally dismissed with prejudice. This Order is a final judgment pursuant to MISS. R. CIV. P. 54(b) resolving all claims raised in this Cause.

SO ORDERED AND ADJUDGED, this the 1st day of August, 2018.

CHANCELLOR