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Determining Settlor Intent from an Ambiguous Trust

Ambiguity is an enemy of planning lawyers, so we try to draft using clear language. Sometimes, however, parties and a court are confronted with a trust open to conflicting interpretations. The Tennessee Court of Appeals addressed this situation in its *Osborne* opinion,[1] illustrative of how trusts are interpreted in Tennessee.

CARL OSBORNE'S TRUST

Carl Osborne amended a revocable living trust (the "Trust") to benefit his wife of approximately two months ("Wife"), Mid-South Christian College ("Charity"), one living child ("Child"), and two grandchildren by a deceased child ("Grandchild" or "Grandchildren").[2] Among other things the Trust provided the following (emphasis added):

Article Six:

- Gave Wife *life estates* in (1) income from specific stock, (2) the couple's primary residence and (3) a time share.
- Did not dispose of the *remainder interests* in those assets.
- Said "[a]ny property *not distributed* under this or prior Articles … will be distributed as provided in the following Articles."

Article Seven:

- Established a separate Marital Trust to be comprised of "the *remaining* trust property."
- Required the trustee to distribute to Wife "as much of the principal of the

[Marital Trust] … as she requests in writing."

- Granted Wife a testamentary general power of appointment over [the Marital Trust] and provided, *if* Wife failed to exercise the power of appointment prior to her death, the *remaining* balance was to be administered "as provided in Article Eight."

Article Eight:

- Specific distribution to Charity of the *remainder* at Wife's death in the stock (or the remaining sale proceeds) and the time share property.
- "[D]istribute all *remaining* trust property *not distributed* under this or prior Articles … as provided in the Articles that follow."

Article Nine:

- After making the specific devises listed in Article Eight, the trustee "shall administer and distribute [the] *remaining* trust property (*not distributed* under prior Articles of this instrument), or other trust property allocated to this Article, under the terms of this Article," one-third to Child and one-third to each Grandchild.

The parties disputed whether the remainder interests in the assets in which Wife had been granted life estates (1) were included in "the remaining trust property" in Article Seven or (2) were distributed by Articles Eight and Nine. If included in the Article Seven provision, the remainder interests were part of the Marital Trust and subject to Wife's principal demand.[3] If instead they were disposed of by Articles Eight and Nine, they were not part of the Marital Trust and were not subject to Wife's principal demand.

SETTLOR INTENT

The opinion lays out the following governing legal principles:

> "The interpretation of trust language … [is an] issue[ ] of law, which Tennessee appellate courts review *de novo* with no presumption of correctness." Quoting *In re Est. of Bone*, 677 S.W.3d 644, 650 (Tenn. Ct. App. 2023).
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> "The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property." *Tenn. Code Ann.* § 35-15-112.
>
> The important thing in the construction of the trust instrument is to determine the intention of the settlor as evidenced by all the provisions of the instrument, giving no portion any greater emphasis than any other. … The peculiar facts and circumstances … are considered to determine what is this intention. It is not necessarily so much the language that is used by the settlor as it is his or her evident intention which governs. Quoting *Marks v. S. Trust. Co.*, 310 S.W.2d 435, 38 (Tenn. 1958) at 438 (internal citations omitted).
>
> [W]hen a controlling or predominate purpose of the testator is expressed, it is the duty of the court … to construe all subsidiary clauses so as to bring them into subordination to such purpose. The language of a single sentence is not to control as against the evident purpose and intent shown by the whole will. Quoting *Moore v. Neely*, 370 S.W.2d 537, 540 (Tenn. 1963).
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> Every word contained in a testamentary document is presumed to have meaning and a construction giving effect to all of

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> a document's terms is to be favored over one disregarding certain terms. *McClure v. Keeling*, 43 S.W.2d 383, 384 (Tenn. 1931).

Wife argued that, because no remaindermen were named in Article Six, Osborne intended that those interests pass into the Marital Trust pursuant to the "remaining trust property" language in Article Seven. Charity, Child and Grandchildren argued that the remainder interests did not pass into the Marital Trust, claiming that Osborne creating life estates and providing in Articles Eight and Nine specific directions as to the disposition of the life estate property after Wife's death demonstrated his intent to care for Wife during her life but "then to provide for his other beneficiaries via the remainder interests[.]"

MAJORITY OPINION

Two judges joined the majority opinion and found that Osborne's intent to benefit the remainder beneficiaries was made evident by the terms of the Trust:

> While not identified immediately after the creation of the life estates, the remaindermen are identified in Articles Eight and Nine. … Mr. Osborne dedicated pages of the Trust explaining to whom the future interests were to pass after Wife's death. … As the remainder interests were disposed of by [Articles Eight and Nine], they did not constitute "remaining trust property" as cited by Article Seven. … It would have been illogical for [Mr. Osborne] to use restrictive life estate language to convey Wife interests in this property but then to grant her "unfettered discretion" over the property in the ensuing article. … Had he intended for Wife to hold such control over the life estate property, he could have conveyed it to her in fee simple. Mr. Osborne used the term "life estate" and we believe this demonstrates that he intended for Wife to hold the present right to possession of the property, but not the future rights associated with the property.

Ultimately, the court found:

> Wife's interpretation places undue importance on … the phrase 'remaining trust property' of Article Seven. … We find it telling that the trust document identifies the petitioners as those to whom the future interests in the life estate property will pass. From this, we derive Mr. Osborne's intent to provide for Wife during her life, but for those assets to eventually pass to the other beneficiaries. This intent would be defeated if we were to adopt Wife's reading of the trust document. The petitioners' construction is plainer and gives more credence to Mr. Osborne's intent. … Accordingly, it would be against the evident purpose of the Trust to hold that a single provision contained in Article Seven grants Wife such extensive power over the property at issue.

Thus, the court held that the remainder interests were not part of the Marital Trust (subject to Wife's withdrawal power) but passed pursuant to Articles Eight and Nine.[4]

DISSENTING OPINION

One judge authored a separate opinion, concurring as to a side issue but dissenting as to the majority's interpretation of the Trust. The dissenting judge believed the language in Article Seven stating that "the remaining trust property" passed to the Marital Trust included the remainder interests because they had not yet been disposed of.[5] The dissenting opinion followed the terms of the trust mechanically to determine everything was disposed of by Articles Six and Seven.

TRUST DRAFTING TAKEAWAYS

Neither position fully reconciles all the terms of the trust. Either (1) "the remaining trust property" in Article Seven included the remainder interests and much of Articles Eight and Nine could become irrelevant or (2) "the remaining trust property" in Article Seven did not include the remainder interests and much of Article Seven was irrelevant for those interests. The judges had to determine what Osborne's likely intention was. Both opinions are rational because the trust had several features that made it ambiguous. Various drafting and planning dynamics could have made it clearer.[6]

First, there was no explicit distribution of the remainder interests before the generic language "the remaining trust property." *Clearer drafting: When a document gives someone a life estate in an asset, the document should say explicitly who receives the remainder interest before or as part of the residuary or remainder clause.*

Second, the Marital Trust included an unusual provision giving Wife the power to withdraw all principal. Such a provision cuts against a common reason for leaving assets in trust: the settlor wants a beneficiary to receive lifetime benefits but others to inherit the property at the death of the life beneficiary. Why would Osborne create a trust for Wife that provided she could end the trust by withdrawing all principal?[7] *Clearer drafting: Leave an asset outright when the beneficiary is to have unfettered control and leave it in trust (without unlimited power to withdraw principal) when limiting the beneficiary's control.*[8]

Third, it seems strange to use both life estates and a marital trust for the same beneficiary. Both strategies separate term enjoyment from enjoyment after the end of the term. While there can be situations where both life estates and trusts might be used, it seems awkward to have both here. *Clearer planning: The Trust could have given Wife life estates with no Marital Trust OR transferred fee simple interests to the Marital Trust (without unlimited power to withdraw principal) and named the beneficiaries after Wife's death.*

CONCLUSION

There always will be ambiguous trusts in a world with websites that offer legal

documents and lay persons emboldened by artificial intelligence to create their own estate plans, but drafting attorneys can help parties and courts avoid the interpretive problems in *Osborne* through clear language and thoughtful trust provisions.

NOTES

1. *In re The Carl Edwin Osborne Jr. Living Trust, Dated May 19, 2020,* No. W2024-01768-COA-R3-CV (May 28, 2026).

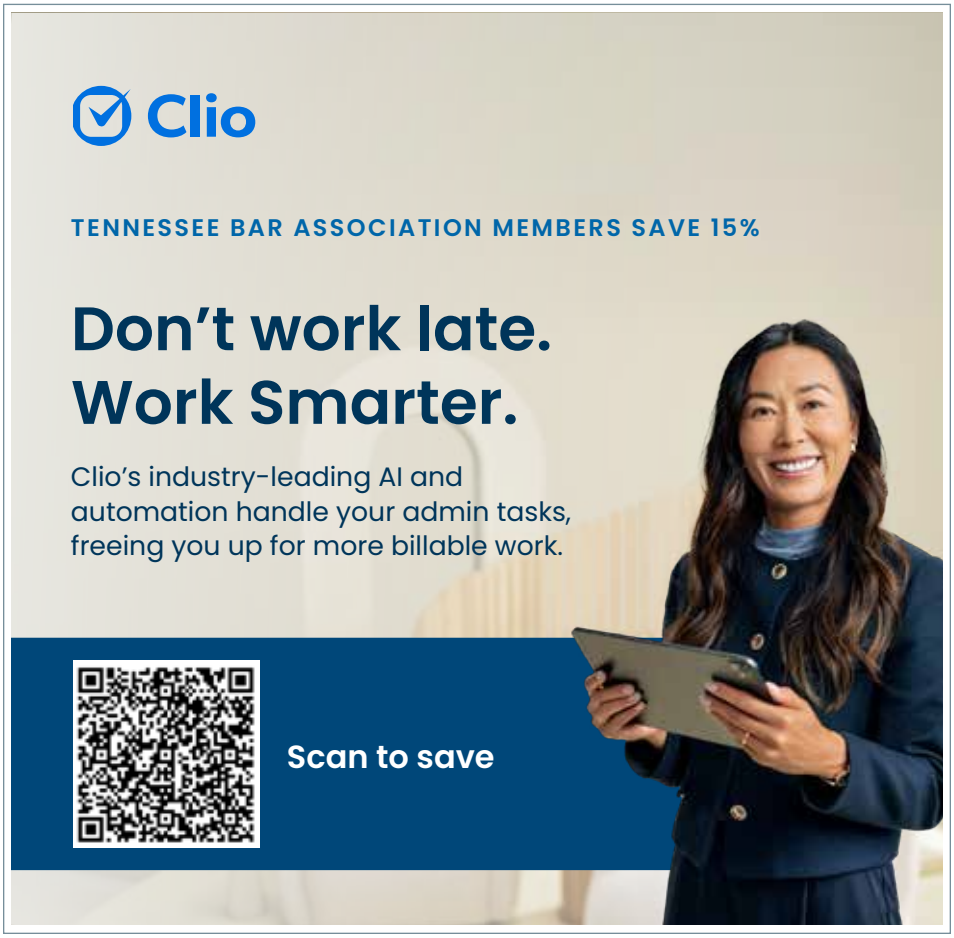
2. The opinion tells us that Osborne originally created the trust in 2020 when he was widowed and unmarried. He then married on May 27, 2021 and amended and restated the trust "[s]hortly thereafter." *Id.* at page 2. Review of the restated trust instrument shows it was executed on July 23, approximately eight weeks after the marriage and eight weeks before Osborne's death on Sept. 17. Query, in their analysis, how much did the judges weigh the short intervals from marriage to restatement of the trust to Osborne's death as "peculiar facts and circumstances"?

3. Wife, through counsel, took the position that the remainder interests had passed into the Marital Trust and communicated that Wife intended to sell the house, distribute the life estate proceeds to herself, and request that the remainder be distributed to her from the Marital Trust.

4. *Osborne*, *supra* note 1, majority opinion at 10.

5. *Osborne, supra* note 1, concurring and dissenting opinion.

6. We learn little about the drafting attorney from the opinion and should be cautious in judging the Trust. Some clients stiff-arm my advice and end up with planning elements I believe are less than ideal. We do not know what Osborne required to be part of his Trust.

7. In addition to making the trust provisions after Wife's life seem illusory, such a trust provision likely (a) made all income tax attributes (including capital gain tax) taxable to Wife, whether or not distributed, and (b) made all trust assets available to Wife's creditors.

8. Many trusts have the beneficiary as sole trustee with broad control, but the most common use of a trust is to limit beneficiary control, such as when a child is too young to control inheritance.