

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

In Re the Matter of:)	
BRUCE G. ROBERT QTIP)	No. ED93836
MARITAL TRUST,)	
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Gary M. Gaertner, Jr.
JOAN M. GRASSO,)	
)	
Appellant.)	FILED: December 28, 2010

Joan M. Grasso (Grasso) appeals from the trial court's Order and Judgment granting the motion for summary judgment filed by the petitioners in a probate action and simultaneously denying Grasso's motion for summary judgment regarding the proposed distribution of assets from a trust formed by her deceased father as part of his estate planning. The trial court's Order and Judgment allowed the cash distribution from the Trust to Grasso to be offset by Grasso's indebtedness by promissory note to the Trust. Grasso claims that the spendthrift provisions of the Trust and the non-recourse provisions of the promissory note precluded any offset. Because the Trust provisions mandating an equal distribution of assets supersedes the separate spendthrift provision of the trust or the terms of the promissory note, we affirm the trial court's Order and Judgment allowing the distribution of Trust assets with the corresponding offset of Grasso's promissory note indebtedness.

AFFIRMED.

Division Four holds: The record clearly demonstrates that Mr. Robert, the testator, intended to devise his property equally among his ten children. The testator's intent controls, and corresponds with the right of equitable retainer for property that each of the ten children received in advance of the asset distribution at issue. We find no genuine issue of material fact that the asset distribution proposed by the Trustees does not violate the spendthrift provision of the Trust or the Non-Recourse Promissory Notes. Grasso's first point on appeal is denied.

Further, in arguing that the value of the Notes must be determined by a trier of fact, Grasso makes conclusory statements, cites to an original petition that has since been abandoned, and admits a balance of the Non-Recourse Promissory Note. Thus, we find no evidence in the record to support her argument that the valuations of the Notes are erroneous. Grasso's second point on appeal is denied.

Opinion by: Kurt S. Odenwald, P.J. Robert G. Dowd, Jr., J. and Nannette A. Baker, J., Concur.

Attorney for Appellant: Michael T. George

Attorneys for Respondent: Patricia D. Gray, Robert J. Selsor, W. David Wells, Thomas H. Mug, David D. Crane, and Joel Weeks.

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