

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 20th day of October, 2022.*

Present: All the Justices

Sarangerel Dagvadorj,

Appellant,

against

Record No. 210785  
Circuit Court No. 2000102400

Mohamad Nidal Aljabi, Executor of  
the Estate of Mark Gabi, Deceased, et al.,

Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Loudoun County.

Sarangerel Dagvadorj contends that the Circuit Court of Loudoun County misconstrued the terms of her husband's will. Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is error in the judgment of the circuit court.

### I. BACKGROUND

Mark Gabi executed a will on May 5, 2018. Gabi drafted the will using a template that he obtained from an internet site, presumably without the assistance of an attorney. In the "Preliminary Declarations" section of the will, Gabi stated that he was married to Dagvadorj and that he had two living children from a prior marriage: Amanda Wafa Algabi and Maya Noor Algabi. Gabi appointed his brother, Mohamad Nidal Aljabi, as the executor of the will. Gabi died on November 3, 2019.

Acting in his capacity as the executor of Gabi's will, Aljabi filed complaints seeking aid and direction regarding the administration of Gabi's estate. Aljabi asserted that Gabi's will

unambiguously named Aljabi as the sole beneficiary of Gabi's estate. Dagvadorj, however, maintained that Gabi's will named Dagvadorj and Gabi's daughters as beneficiaries.

The circuit court held a hearing in this matter on October 13, 2020. The parties relied on Gabi's will and certain factual stipulations to support their positions. Significantly, neither party presented any testimony regarding Gabi's testamentary intent.<sup>1</sup> Based on its interpretation of the pertinent provisions of Gabi's will, the circuit court determined that the will clearly and unambiguously named Aljabi as the sole beneficiary of Gabi's estate.

## II. ANALYSIS

The circuit court's interpretation of a will is reviewed de novo on appeal. *See, e.g., Larsen v. Stack*, 298 Va. 683, 688 (2020). In the present case, the operative provisions of Gabi's will are ambiguous. Therefore, the circuit court erred when it determined that the will clearly and unambiguously named Aljabi as the sole beneficiary of Gabi's estate.

A will is ambiguous if it is "susceptible to more than one interpretation." *Gaymon v. Gaymon*, 258 Va. 225, 230 (1999). The Court has defined "ambiguity" as the "condition of admitting of two or more meanings, of being understood in more than one way." *Baker v. Linsly*, 237 Va. 581, 586 (1989) (quoting *Berry v. Klinger*, 225 Va. 201, 207 (1983)).

"The paramount rule of will construction is that the intention of the testator controls, unless such intent is contrary to an established principle of law." *Bowles v. Kinsey*, 246 Va. 298, 300 (1993). "In ascertaining the testator's intent, 'a court must examine the will as a whole and give effect, so far as possible, to all its parts.'" *Id.* at 301 (quoting *Thomas v. Copenhagen*, 235 Va. 124, 128 (1988)).

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<sup>1</sup> The only extrinsic evidence presented to the circuit court was a prenuptial agreement between Dagvadorj and Gabi.

When Gabi's will is read as a whole, it fails to clearly identify the intended beneficiaries of Gabi's estate. Certain provisions of the will imply that Gabi intended to give his entire estate to Aljabi. Other provisions, however, imply that Dagvadorj and Gabi's daughters were intended to receive at least some portion of Gabi's estate.

The section of Gabi's will that is entitled "Distribution of the Estate" does not refer to any specific property. Furthermore, this section of the will does not expressly name Dagvadorj, Gabi's daughters, or Aljabi as beneficiaries.

Although the "Preliminary Declarations" section of the will refers to Dagvadorj and Gabi's daughters, another section of the will implies that Gabi intended to disinherit them. The "General Provisions" section of the will includes the following provision:

**18. Individuals Omitted From Bequests**

If I have omitted to leave property in this Will to one or more of my heirs as named above or have provided them with zero shares of a bequest, the failure to do so is intentional.

As Gabi named Dagvadorj and his daughters in the "Preliminary Declarations" section of the will, Section 18 suggests that Gabi intentionally refrained from giving them any part of his estate.

Nevertheless, other provisions of the will imply that Gabi intended to leave at least a portion of his estate to Dagvadorj and his daughters. While the section of the will entitled "Distribution of the Estate" does not expressly devise any specific property to Dagvadorj and Gabi's daughters, it sets forth the following two provisions:

**10. Distribution of Residue**

To receive any gift or property under this Will a beneficiary must survive me for thirty (30) days. Beneficiaries of my estate residue will receive and share all of my property and assets not specifically bequeathed or otherwise required for the payment of any debts owed, including but not limited to, expenses associated with the probate of my Will, the payment of taxes, funeral expenses or any

other expense resulting from the administration of my Will. The entire estate residue is to be divided between my designated beneficiaries with the beneficiaries receiving a share of the entire estate residue.

11. **Wipeout Provision**

Should my spouse predecease me, or fail to survive me for thirty (30) full days and should I leave no children, child, grandchildren or grandchild surviving me, or should they all die before becoming entitled to receive the whole of their share of my estate, then I direct my Executor to divide any remaining residue of my estate into one hundred (100) equal shares and to pay and transfer such shares as follows:

100 shares to Mhd Youssef Aljabi<sup>2</sup> of Sterling, Virginia for their own use absolutely, if they are alive.

These provisions imply that Gabi may have intended to name Dagvadorj and his daughters as beneficiaries when he listed them in the “Preliminary Declarations” section of the will. Section 10 refers to multiple “beneficiaries” rather than a single “beneficiary,” casting doubt on the inference that Gabi intended to give his entire estate to Aljabi. Moreover, Section 11 expressly refers to Gabi’s “spouse” and “children.” Accordingly, Section 11 suggests that Gabi may have intended to give at least some portion of his estate to Dagvadorj and his daughters.

In the section of the will entitled “Additional Provisions,” Gabi appears to give his entire estate to Aljabi. This section of the will states:

22. **Additional Provisions**

All my properties, assets, bank accounts, 401k, and everything I own will be given to my brother Mohamad Nidal Aljabi where he can administer my wishes after my death.

Although Section 22 gives Gabi’s entire estate to Aljabi, the provision contains language that may limit the scope of this transfer. Notably, Section 22 directs Aljabi to “administer

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<sup>2</sup> Mohamad Youssef Aljabi is Gabi’s nephew and Aljabi’s son.

[Gabi's] wishes after [his] death." As Aljabi is the executor of Gabi's estate, Gabi may have intended to leave his estate to Aljabi to hold in trust, for eventual distribution to other beneficiaries (i.e., Dagvadorj and Gabi's daughters). *See generally Gillespie v. Davis*, 242 Va. 300, 305 (1991) (explaining that precatory language is "usually deemed mandatory when addressed to an executor" of a will).

In summary, Gabi's will is subject to more than one interpretation. The will may give Gabi's entire estate to Aljabi. Section 18 of the will may disinherit Dagvadorj and Gabi's daughters, and Section 22 of the will may give Gabi's entire estate to Aljabi without any qualifications. Alternatively, Gabi may have intended to name Dagvadorj and his daughters as beneficiaries when he listed them in the "Preliminary Declarations" section of the will. Sections 10 and 11 of the will imply that Gabi intended for Dagvadorj and his daughters to receive some portion of his estate, and certain language in Section 22 of the will suggests that Gabi intended to give his estate to Aljabi to hold in trust, as the executor of the will, for further distribution.

### III. CONCLUSION

In light of the substantial ambiguity concerning Gabi's intended beneficiaries, the circuit court erred when it determined that Gabi's will clearly and unambiguously named Aljabi as the sole beneficiary of Gabi's estate. Accordingly, the Court reverses the circuit court's judgment and remands this case for further proceedings to resolve the ambiguity in the will.

This order shall be certified to the Circuit Court of Loudoun County.

A Copy,

Teste:

  
Clerk