

No. 1-21-1249

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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JOYCE E. BOHREN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 2018 CH 03292
PETER M. KARAZERIS, AS TRUSTEE OF THE	)	
MICHAEL P. KARAZERIS TRUST DATED MARCH 1,	)	
1995,	)	Honorable
	)	Pamela Meyerson,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* A provision in an antenuptial agreement permitting a wife to claim a one-third interest in her husband's estate did not allow the wife to claim such an interest in certain real property that the husband had placed in an *inter vivos* trust, and the trustee of that trust was not obligated to seek judicial instruction when faced with an apparent impossibility in the trust directions.

¶ 2 Joyce Bohren appeals adverse rulings on cross-motions for summary judgment in her suit against Peter M. Karazeris, trustee of the Michael P. Karazeris Revocable Living Trust Dated March 1, 1995 (“the Trust”). Joyce argues that the circuit court erred both in finding that she is not entitled to a one-third share of a certain residence under the terms of her antenuptial agreement with her late husband, Michael P. Karazeris, and in holding that Peter is not obligated to seek judicial instructions regarding an alleged impossibility in the Trust’s directions. We see no merit to either of Joyce’s arguments and affirm the circuit court’s rulings against her.

¶ 3 The following facts are derived from the pleadings and exhibits of record.

¶ 4 In March 1995, Michael P. Karazeris created the Trust and deeded to himself as trustee a residence that he owned in Inverness, Illinois. Three years later, in May 1998, Michael and Joyce entered into an antenuptial agreement in anticipation of their imminent marriage. The agreement set forth in an attached “Exhibit A” a list of assets that Michael and Joyce were each bringing into the marriage and declared that the property listed in Exhibit A would be nonmarital and that each party would make no claim to the other’s property by virtue of the marriage. Notably, listed among Michael’s assets was the Inverness residence that he had deeded to the Trust three years earlier. Notwithstanding the agreement’s provisions regarding the nonmarital nature of each party’s property, the agreement also provided that, “in the event that the parties are married at the time of the death of Michael, Joyce shall be entitled to her statutory share of one-third (1/3) of Michael’s estate, including those assets used in Michael’s Schedule A [*sic*] and provided by this Agreement.” Two days after the execution of the agreement, Joyce and Michael married.

¶ 5 Nearly a decade later, in June 2007, Michael restated the Trust *in toto*. Of relevance here, the restated Trust document contained a specific bequest to Joyce of \$25,000 as reimbursement

for money that she put into the Inverness home and further provided that, upon Michael's death, the trustee was to retain the Inverness residence for two years and allow Joyce to continue to reside in the home for that period of time, with the Trust covering some of the maintenance expenses. Upon the expiration of those two years, or upon the occurrence of other specified events, the trustee was to sell the residence, with the proceeds then divided equally between Michael's two children, Ellen Verlen and Peter. There was no provision for Joyce to take an ownership interest in the residence.

¶ 6 Two years later, in July 2009, Michael amended the restated Trust. This amended Trust allowed Joyce to reside in the Inverness home for the remainder of her life. As before, the amended Trust provided that Joyce was to have use of the home, but not an ownership interest.

¶ 7 In 2016, Michael died, leaving behind Joyce as his surviving spouse. Peter took on the role of trustee of the Trust, which at that time had only a single asset, the Inverness residence.

¶ 8 Shortly after Michael's death, several points of contention arose, leading Joyce to file the instant action against Peter in his capacity as trustee of the Trust. In her second amended complaint, the operative complaint for the purposes of this appeal, Joyce raised four counts for relief: in count one Joyce sought a one-third interest in the Inverness home, which she asserted she was entitled to under the terms of the antenuptial agreement; in count two Joyce sought to compel Peter to provide an accounting of Trust assets; in count three Joyce sought either to compel Peter to distribute the Trust's \$25,000 bequest to her or, in the event that the bequest is impossible due to insufficient Trust assets, to seek judicial instruction on how to proceed; and in count four Joyce sought to remove Peter as trustee for breach of fiduciary duty.

¶ 9 Peter moved for summary judgment on counts one and four, and Joyce filed a cross-motion for summary judgment on all four counts. The circuit court granted summary judgment in favor of Peter on count one, granted summary judgment in favor of Joyce on count two, denied Joyce's motion for summary judgment on count three, and found that disputed material facts existed precluding summary judgment for either party on count four. Although Peter did not move for summary judgment on count three, when the circuit court denied Joyce's motion for summary judgment on that count it then entered summary judgment in favor of Peter on that count, which it was authorized to do. See *West Suburban Bank v. City of West Chicago*, 366 Ill. App. 3d 1137, 1146 (2006) (“[W]hen a court denies one party's motion for summary judgment, it is authorized to enter summary judgment in favor of the other party, even though that party does not have a pending motion for summary judgment.”). Joyce eventually voluntarily dismissed counts two and four and filed this appeal of the circuit court's final order granting summary judgment in favor of Peter on counts one and three.

¶ 10 A motion for summary judgment may be granted where the “pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2020). When the parties file cross-motions for summary judgment, “only a question of law is raised, and our decision is based upon the record as a matter of law.” *County of Lake ex rel. Lake County Stormwater Management Comm'n v. Fox Waterway Agency*, 326 Ill. App. 3d 100, 104 (2001) (citing *American Family Mutual Insurance Co. v. Chiczewski*, 298 Ill. App. 3d 1092, 1094 (1998)). Accordingly, we review an order granting summary judgment *de novo*. *Unique Insurance Co. v. Tate*, 2022 IL App (1st) 210491, ¶ 15.

¶ 11 The first issue presented on appeal is Joyce’s argument that the circuit court erred in granting summary judgment in favor of Peter on count one of her second amended complaint in which she sought a one-third interest in the Inverness home. Our review of that issue requires us to interpret the terms of Joyce and Michael’s antenuptial agreement. “Premarital agreements are contracts, and thus the rules governing the interpretation of contracts apply.” *In re Marriage of Best*, 387 Ill. App. 3d 948, 949 (2009). “When a contract is unambiguous, a court must decide the intent of the parties solely from the contract’s plain language.” *Id.* (citing *FTI International, Inc. v. Cincinnati Insurance Co.*, 339 Ill. App. 3d 258, 259–60 (2003)). Our review of the circuit court’s interpretation of the antenuptial agreement is *de novo*. *Id.*

¶ 12 Joyce’s argument as to why she is entitled to a one-third interest in the Inverness residence is premised on several steps of reasoning. First, Joyce argues that Michael’s statement in the antenuptial agreement that she would be entitled to a one-third share of his estate, including his assets listed in Exhibit A, created a contractual obligation to convey such an interest in the assets in Exhibit A, particularly the marital residence. Second, Joyce contends that this unfulfilled promise makes her a creditor entitled to be made whole from Michael’s estate. Third, Joyce asserts that, because it was revocable, the Trust’s assets may be used to satisfy the outstanding claims of Michael’s creditors in accordance with section 503 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(5) (West 2016) (“After the death of a settlor, \* \* \* the property of a trust that was revocable at the settlor’s death is subject to claims of the settlor’s creditors \* \* \* to the extent the settlor’s probate estate is inadequate to satisfy those claims \* \* \* .”).

¶ 13 However, we view the plain language of the antenuptial agreement to be unambiguous and contrary to Joyce’s interpretation. Again, the provision in question states, “in the event that the

parties are married at the time of the death of Michael, Joyce shall be entitled to her statutory share of one-third (1/3) of Michael's estate, including those assets used in Michael's Schedule A [sic] and provided by this Agreement." The parties each hone in on separate parts of this provision, with Peter focusing on the language stating that Joyce would be entitled to part of Michael's "estate," while Joyce maintains that we must not ignore the subsequent language specifically referencing the assets in Michael's Exhibit A.

¶ 14 But we cannot look at any individual part of the agreement in isolation. Rather, "because words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others." *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007) (citing *Board of Trade of the City of Chicago v. Dow Jones & Co.*, 98 Ill. 2d 109, 122–23 (1983)). Indeed, "[t]he intent of the parties is not to be gathered from detached portions of a contract or from any clause or provision standing by itself." *Id.* (citing *Martindell v. Lake Shore National Bank*, 15 Ill. 2d 272, 283 (1958)). When we view this provision within the context of the agreement as a whole, as we must, a clear meaning is apparent.

¶ 15 We observe first that Joyce and Michael's antenuptial agreement rather comprehensively sets forth that each party's premarital assets were to be considered, effectively, nonmarital and to remain theirs individually. For example, among other provisions, the agreement stated that "[u]pon and after the consummation of said marriage between the parties, each of them shall retain, free and clear of any right or claim whatsoever on the part of the other, her and his respective property as listed on Exhibit A," and that each of the parties would "fully forever and irrevocably renounce, waive, release, relinquish, surrender, quit-claim and bar all rights title and interest of every kind and character whatsoever which either of them might or could have in or assert to the Exhibit A

Assets of the other by virtue of or incident to their marriage.” Indeed, that seems to have quite clearly been one of the primary purposes and accomplishments of the agreement.

¶ 16 At the end of the agreement, we see the provision at issue:

“Notwithstanding the provisions of this Agreement, either party may, voluntarily and without any obligation to do so, give, devise, or bequeath any property or interest therein to the other party, by Last Will and Testament on death or by gift or otherwise during the lifetime of the party so giving. In addition, in the event that the parties are married at the time of the death of Michael, Joyce shall be entitled to her statutory share of one-third (1/3) of Michael’s estate, including those assets used in Michael’s Schedule A [*sic*] and provided by this Agreement.”

This provision clarifies that, notwithstanding the agreement’s prior provisions declaring the parties’ individual property to be nonmarital, Joyce may still recover her statutory share of Michael’s estate upon his passing, including any Exhibit A assets that have been identified in the agreement as nonmarital. This provision is not a promise to convey to Joyce a one-third interest in each of the items in Michael’s Exhibit A and, therefore, does not make Joyce a creditor of the estate. Rather, it is a clarification that Joyce may still recover otherwise nonmarital assets as part of her statutory share if those assets are part of Michael’s estate. And therein lies the flaw in Joyce’s argument: the Inverness residence was not a part of Michael’s estate at the time of his death.

¶ 17 To the contrary, Michael divested himself of ownership of the residence when he transferred it to the Trust. Although, as Joyce points out, the trust was indeed revocable, that does not change the fact that a decedent’s *inter vivos* transfer of property to a trust with legitimate donative intent removes that property from the decedent’s estate. Indeed, the Illinois Supreme

Court provided some illumination on this issue in *Johnson v. La Grange State Bank*, 73 Ill. 2d 342, 363 (1978), when it stated, “[i]f the interest in the property passed [to a trust] under a valid *Inter vivos* conveyance it would then not become a part of the decedent’s estate and the surviving spouse would have no interest in it.” Further, the court in *Johnson* explained that the fact that a trust is revocable has no bearing on the matter, as long as the creation of the trust was not “colorable, illusory, or tantamount to fraud.” See *id.* at 363–64. Joyce has not made any such allegation of fraud in this case. Accordingly, Michael’s transfer of the residence to the Trust had the effect of removing it from his estate. See also *In re Estate of Boyar*, 2013 IL 113655, ¶ 15 n.1 (noting that property that a decedent had transferred into a trust prior to death was not part of the decedent’s estate).

¶ 18 With the Inverness residence not being a part of Michael’s estate, Joyce had no expectation of receiving any ownership interest in the property pursuant to the antenuptial agreement, as the agreement only entitled her to a one-third interest in Michael’s “estate.” Without such an interest in the home, she cannot claim to be a creditor of the estate with any outstanding interest in the Inverness residence, and Peter as trustee is not obligated to use trust assets to satisfy that would-be outstanding claim. Thus, Joyce’s first claim for an ownership interest in the Inverness residence fails.

¶ 19 We address next Joyce’s argument that the circuit court erred in granting summary judgment in favor of Peter on count three of her second amended complaint in which she sought to compel Peter to convey to her \$25,000, as specifically directed in the Trust document, or in the alternative, in the event that the conveyance cannot be accomplished due to insufficient trust funds, sought to compel Peter to obtain judicial instruction as to how to proceed. The circuit court found



that the Trust has no funds, and Joyce does not contest that finding. Accordingly, we focus on the alternative relief sought. For the reasons which follow, we conclude, as did the circuit court, that Peter has no legal obligation to seek the court's instruction.

¶ 20 Joyce's argument that Peter has an obligation to seek judicial instruction is largely premised on Peter's fiduciary duties as trustee. Indeed, it is true that Illinois law imposes several such duties, including the duty to "administer the trust in good faith, in accordance with its purposes and the terms of the trust" (760 ILCS 3/801 (West 2018)); the duty of loyalty (760 ILCS 3/802 (West 2018)); and the duty of impartiality (760 ILCS 3/803 (West 2018)), among others. Joyce further points to several cases holding that, depending on the circumstances, it could be appropriate for a trustee to seek judicial instructions, and she contends that one such case, *Northern Trust Co. v. Heuer*, 202 Ill. App. 3d 1066 (1990), is controlling here. However, while the cases upon which Joyce relies *allow* a trustee to seek judicial instruction when the trustee is uncertain of how to act, Joyce has not cited any Illinois case *requiring* a trustee to seek instruction. *Heuer* is emblematic of this distinction.

¶ 21 In *Heuer*, a corporate trustee filed a complaint seeking judicial construction of a trust agreement. *Id.* at 1066. The appellate court held that the trustee "acted properly in seeking the circuit court's construction of the trust agreement," but was nonetheless not entitled to have its fees paid from the trust because it breached its duty of impartiality by advocating for an interpretation that benefitted one beneficiary over another. *Id.* at 1072. Joyce cites this holding to support her argument that Peter must seek judicial instruction and cannot take a position that would be detrimental to her interest. But we do not reach the same conclusion. The *Heuer* court did not say that a trustee *must* seek judicial instruction when faced with uncertainty. Rather, it applied

prior precedent holding that “[w]hen there are conflicting claims to trust funds, a trustee is not required to make a determination as to the rights of the prospective claimants but should file an interpleader action to avoid acting at its own peril.” *Id.* at 1070–71 (citing *Chicago Title & Trust Co. v. Czubak*, 42 Ill. App. 3d 349, 352 (1976) (“When there are conflicting claims to a deposited fund or property, as we have in the instant case, the stakeholder is not required to make a determination as to the rights of the prospective claimants but should place the money or property before the court to avoid acting at his own peril.”)); see also *BMO Harris Bank N.A. v. Towers*, 2015 IL App (1st) 133351, ¶ 38 (“A trustee may, whenever a situation arises that justifies proceedings, ‘ask the court for instructions as to their duties under the circumstances under which they or the trust funds are placed.’ ” (quoting *Warner v. Mettler*, 260 Ill. 416, 421–22 (1913))).

¶ 22 As these cases observe, it is prudent and wise for a trustee to seek instruction when faced with genuine uncertainty because a trustee may be held personally liable for breaches of the trust agreement or of his or her fiduciary duties. See, e.g., *Piff v. Berresheim*, 405 Ill. 617, 622 (1950); *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605, 615 (2007); *Grot v. First Bank of Schaumburg*, 292 Ill. App. 3d 88, 91 (1997). But these cases do not hold that a trustee must do so; rather, a trustee may, as the cases say, proceed “at his own peril.” See *Czubak*, 42 Ill. App. 3d at 352; *Heuer*, 202 Ill. App. 3d at 1070–71.

¶ 23 In this case, for example, if Peter as trustee were to improperly violate his duty of impartiality by favoring his own interests as a beneficiary of the Trust over Joyce’s interest, he could be liable to Joyce for damages. It would certainly be wise for Peter to seek judicial guidance if he is unsure of how to proceed in this case due to the Trust’s inability to satisfy the \$25,000

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bequest to Joyce due to lack of funds, but the law does not impose a requirement that he do so.

Accordingly, we see no error in the circuit court's ruling on this issue.

¶ 24 For the foregoing reasons, we affirm the summary judgments entered by the circuit court in favor of Peter on counts one and three of Joyce's second amended complaint.

¶ 25 Affirmed.