NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2379-14T4

IN THE MATTER OF THE ESTATE OF
KATHLEEN BOYER, deceased.

Submitted December 9, 2015 – Decided January 8, 2016

Before Judges Fuentes and Koblitz.

On appeal from the Superior Court of New Jersey, Chancery Division, Gloucester County, Docket No. 14-01408.

DeSimone Law Offices, LLC, attorneys for appellant Kathleen Boyer (John G. DeSimone, on the brief).

Law Office of Charles A. Fiore, attorneys for respondents Richard and Steven Boyer (Barbara F. Dumadag, on the brief).

PER CURIAM

Decedent's daughter, also named Kathleen Boyer,[1] appeals from the Chancery Division's December 10, 2014 orders refusing to issue an order to show cause and dismissing with prejudice her complaint that sought to set aside deeds executed by decedent in 2008 and 2011 before decedent's death in 2013. We affirm.

---

[1] For ease of reference, we refer to the litigants by their first names.

On August 22, 1997, decedent Kathleen Boyer executed a will and a revocable trust. The will stated decedent's intention to dispose of "all tangible personal property owned by [her] at [her] death and all insurance policies on such property," and to "pour-over" into the trust "the residue of [her] estate." The trust instrument divided the corpus equally among her children. The only asset decedent transferred to the trust at the time it was created and throughout her life was $100. Decedent, as grantor, named herself as trustee of the trust and retained complete authority to manage the corpus of the trust during her lifetime. She also appointed her two sons, Richard and Steven, as co-executors of the will. The language and intent of decedent in drafting and executing these instruments are clear.

On October 23, 2008, decedent executed a revocable deed of trust in which she deeded her real property in Franklinville to herself as trustee in trust for her son Richard. The 2008 deed included a provision dissolving the trust upon decedent's death and conveying complete title to the property to Richard, his heirs, and assigns. On July 5, 2011, decedent executed another deed transferring the same Franklinville property outright to Richard and vesting title directly in him. In this 2011 deed, decedent retained a life estate interest in the property. Decedent passed away on October 21, 2013.

Richard and Steven filed a notice to probate decedent's will with the Gloucester County Surrogate's Office and the will was probated on November 6, 2013. Almost one year after receiving notice of probate, Kathleen filed suit against her two brothers, requesting that the trial court set aside the 2008 and 2011 deeds and order the parties to create a new deed dividing the property evenly among decedent's four children.[2]

"[I]t has long been the practice in reviewing chancery decrees for appellate courts 'to make an independent investigation of the facts.'" In re Estate of Mosery, 349 N.J. Super. 515, 522 (App. Div.) (quoting Graham v. Onderdonk, 33 N.J. 356, 360 (1960)), certif. denied, 174 N.J. 191 (2002).

"Unless a will expressly provides otherwise, it is construed to pass all property the testator owns at death including property acquired after the execution of the will, and all property acquired by the estate after the testator's death." N.J.S.A. 3B:3-34 (emphasis added).

Kathleen rests her legal argument predominantly on a 1928 Court of Chancery decision, Hamilton Trust Co. v. Bamford, 102 N.J. Eq. 454 (Ch. 1928), aff'd, 105 N.J. Eq. 249 (E. & A. 1929). In Hamilton Trust Co., Vice Chancellor Lewis held: "If a trust has been once perfectly created, with an intelligent

[2] The fourth sibling, Denise, is not a party to this litigation.

comprehension of the nature of the act, it is irrevocable, even though it be voluntary; and the subsequent acts of the settlor or the trustee cannot affect it." Hamilton Trust Co., supra, 102 N.J. Eq. at 454 (citing Bill v. Cureton (1835) 39 Eng. Rep. 1036, 1039-40 (PC); and then citing Rycroft v. Christy (1840) 49 Eng. Rep. 93, 94 (PC)).

Unlike the situation in Hamilton Trust Co., here decedent's first trust was set up as a revocable inter vivos trust. See id. at 455. Further, the "subsequent act" of revocation was not a subsequent will as in Hamilton Trust Co., but valid deeds transferring property prior to decedent's death. See id. at 456, 458.

Kathleen's remaining legal arguments "are without sufficient merit to warrant discussion in a written opinion." See R. 2:11-3(e)(1)(E). As the trial judge determined, Kathleen has no legal basis to disrupt decedent's transfer of her real property years before her death to her son Richard.

Affirmed.