

In the Circuit Court of Berkeley County, West Virginia

Justina Gabbert,
Plaintiff,

vs.)

Richard T. Coyne,
Defendant

)
)
)
)
)
)
)
)
)
)

Case No. CC-02-2021-C-137

Order Denying Plaintiff’s Motion Pursuant to West Virginia Rule of Civil Procedure 59(e) to Alter or Amend 11/24/2021 “Order Granting Defendant’s Motion to Dismiss Complaint”

Pending before this Court is the Plaintiff’s Motion Pursuant to West Virginia rule of Civil Procedure 59(e) to Alter of Amend 11/24/2021 “Order Granting Defendant’s Motion to Dismiss Complaint.” The Plaintiff, Justina Gabbert (hereinafter “Plaintiff” or “Ms. Gabbert”), filed her Motion by her counsel, Anthony I. Werner, Esq., Joseph H. John, Esq., and the law firm of John & Werner Law Offices, PLLC., on November 29, 2021. The Defendant, Richard T. Coyne, Esq., Trustee of Gerald Coyne Trust (hereinafter “Defendant” or “Coyne Trust”), filed his Response by his counsel, Joseph L. Caltrider, Esq., and the law firm of Bowles Rice LLP, on September 10, 2021. Plaintiff filed her Reply on December 14, 2021.

Finding that no oral argument is necessary, the issue is now ripe for decision. Based upon the pleadings of the parties, the underlying case file, and the following, this Court DENIES the Plaintiff’s Motion Pursuant to West Virginia rule of Civil Procedure 59(e) to Alter of Amend 11/24/2021 “Order Granting Defendant’s Motion to Dismiss Complaint.”

Rule 59 of the West Virginia Rules of Civil Procedure provides that a “motion to alter or amend a judgment shall be filed not later than 10 days after the entry of the judgment.” Plaintiff brings her motion before this Court upon the concern that the Court was operating under the incorrect belief that the Plaintiff alleged that the 2006 handwriting is an amendment to the 2016 trust document, and not an amendment to the August 17, 2006 original trust document. She further requests relief in the form of allowing her to file an amended complaint attaching and incorporating the original trust document and adjust her allegation in clarification to be consistent with her arguments in her Response to Defendant Richard T. Coyne’s Motion to Dismiss.

A motion under Rule 59(e) of the West Virginia Rules of Civil Procedure should be granted where: “(1) new evidence not previously available comes to light; (2) there is an intervening change in controlling law; (3) it becomes necessary to remedy a clear error of law; or (4) to prevent obvious injustice.” Syl. Pt. 1, *Acord v. Colane Co.*, 228 W. Va. 291, 719 S.E.2d 761 (2011). None of the Rule 59(e) elements are satisfied in this case.

Plaintiff’s Rule 59(e) Motion must be denied because this Court’s Order dismissing her Complaint clearly found that the 2016 restated trust replaced the original 2006 trust and any amendments to the original 2006 trust. The 2016 restated trust explicitly states that it is both “**Amended** and **Restated** Effective November 18, 2016” (emphasis added). Regardless of whether Gerald Coyne “amended” his original 2006 trust and the 2006 handwritten note by replacing them with his 2016 restated trust or “restated” his original 2006 trust, as amended, with his 2016 restated trust, the result is the same: the 2016 restated

trust replaces all of his prior trust documents, represents a complete statement of his intent, and provides all of the terms of his trust. This Court clearly resolved this issue: "The 2016 restated trust replaces all of Mr. Coyne's prior trust document[s], represents a complete statement of his intent, and provides all terms of his trust." *See* Order Granting Defendant's Motion to Dismiss Complaint at p.11. The Court's findings in said Order reflect its belief that the Plaintiff was attempting to argue that the 2006 handwritten note is somehow controlling in regarding to the property to be distributed by the 2016 Restated and Amended Trust, which it clearly is not. No matter what semantics the Plaintiff chooses to use in describing how the 2006 handwritten note should be found controlling with regard to the issues raised in her Complaint, the Court's finding that the 2016 Restated and Amended Trust is controlling is clear.

Based upon the foregoing, the Court hereby DENIES the Plaintiff's Motion to Alter or Amend 11/24/2021 "Order Granting Defendant's Motion to Dismiss Complaint" pursuant to Rule 59(e) of the West Virginia Rules of Civil Procedure.

The Clerk is directed to transmit an attested copy of this Order to all counsel of record.

/s/ Michael Lorensen
Circuit Court Judge
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtsww.gov/e-file/ for more details.