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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PROBATE PART
MONMOUTH COUNTY
DOCKET NO. MON-P-459-19

IN THE MATTER OF THE
ESTATE

OF

QUY DINH VUONG a/k/a
PETER QUY DINH VUONG,

Deceased.

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IN THE MATTER OF THE
ESTATE

OF

NGHIA THI LE,

Deceased.

DOCKET NO. MON-P-458-19

OPINION

Decided June 17, 2025.

Giordano, Halleran & Ciesla (Paul E. Minnefor, Esq., appearing), attorneys for plaintiff Chinh Minh Vuong.

Scarinci Hollenbeck (Joel N. Kreizman, Esq., appearing), attorneys for defendant Thu M. Ngo.

FISHER, P.J.A.D. (t/a, retired on recall).

Quy Dinh Vuong (Peter) and his wife, Nghia Thi Le, and most of their six children made their way to this country in 1975 shortly before the fall of Saigon that April. They passed on prior opportunities for some to leave because no one would go unless all could go. Only when arrangements were made to get everyone out did the entire family finally depart their homeland; most eventually settled in Red Bank. So, it's tragic that the two disputants – the decedents' oldest child, defendant Thu M. Ngo, and her third younger brother, plaintiff Chinh Minh Vuong – once very close, are now so much at odds. Indeed, it is not only tragic but ironic that, while motivated by family unity, loose language in Peter's Will – the meaning of which has been so forcefully debated throughout this litigation and during the recent three-day bench trial – has been the chief cause for this sad rift in a once-close family.

I

On May 2, 1984, Peter and Nghia executed Wills (J-1 and J-2) drafted by a now-deceased Red Bank attorney. They never made newer Wills by the time Peter died on May 20, 2011 (J-3). Nghia died eight months later, on January 15, 2012. Some – indeed, most – of the facts relevant to the meaning of their Wills

and Thu's management of the estates aren't disputed to the point the court agrees with the statement in Thu's written summation: "For a heavily litigated matter, there are, surprisingly, few significant disputes of fact." Thu Br. at 1.[1]

Peter's Will (J-1), like Nghia's (J-2), named Thu executrix. Peter directed in his Will's third article that, after the payment of all debts, "the rest, residue and remainder" of his property should pass to Chinh. That seems clear enough, as Chinh argues at great length, see, e.g., Chinh Br. at 43, but one must read on. The provision's very next sentence states that Peter "kn[e]w" Chinh "will carry out my instructions for the care of [Chinh's] mother, brothers and sisters."[2] It is here that the rub lies. Chinh argues this sentence "constitutes mere ethereal musings," ibid., while Thu argues this sentence reveals the testators' probable intent to place the residuary estate into a trust.

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[1] Chinh's exhibits and the joint exhibits are numbered; Thu's are lettered. The joint exhibits start with the prefix J, Chinh's start with the prefix P, and Thu's start with the prefix Thu. Their summations are referred to as Chinh Br. and Thu Br.

[2] Nghia's Will states in a similar sentence that "I know that my son will carry out my instructions for the care of his brothers and sisters." Even though Nghia's Will refers to her instructions, the court is completely satisfied that what she really meant was that she knew Chinh would carry out Peter's instructions because – in keeping with what the evidence reveals is the Vietnamese tradition of the female's subservience to the male – her intention was that Chinh would fulfill Peter's desires.

Chinh's and Thu's competing claims in these consolidated probate actions pivot on what Peter probably meant in devising his residuary estate to Chinh with the additional statement that he knew Chinh would carry out his instructions. In other words, this case questions whether Peter intended to simply give all his property to Chinh and disinherit his wife of many decades, as well as his five other children, or whether he intended to have Chinh hold his property in trust for the benefit of the entire family or for some other reason that may be suggested by some of the extrinsic evidence offered at trial.

II

That critical question wasn't immediately asked of each other or the court for many years following their parents' deaths. As noted above, Peter and Nghia died in 2011 and 2012, respectively, yet Thu only conveyed to Chinh part – albeit a large part, approximately two-thirds – of Peter's residuary estate, holding back the lesser remainder, but without any posing claim that Chinh had the duty to create a trust that she now claims was suggested by the "instruction" language of Peter's Will. Indeed, that pivotal question arose only after Chinh commenced these actions seeking accountings from Thu regarding her handling of both estates in July 2019, in response to which Thu filed her counterclaims seeking a determination that Chinh hold the property passing through both Wills in trust.

In earlier proceedings, another judge granted a partial summary judgment in Chinh's favor, essentially concluding that the carry-out-my-instructions language in Peter's Will imposed only a moral obligation. For that reason, the judge denied, on September 27, 2023, Thu's motion to file an amended counterclaim and ordered her to provide an accounting; the judge also then held that Thu had considerable discretion about the timing of the distribution of all or part of the remaining residuary estate. In addition, the judge denied Chinh's motion for summary judgment on his claims of fraud, conversion, unjust enrichment, and breach of fiduciary duties.

After the judge retired, both parties sought reconsideration of the September 27, 2023 order. Chinh argued the order didn't go far enough; he claimed that, as a matter of law, Thu's "actions constitute fraud, conversion, unjust enrichment, and breach of fiduciary duties," and that the court should remove her as executrix and assess damages against her. Thu, on the other hand, argued the prior judge erred by failing to recognize the Will's carry-out-my-instructions language, alone and as illuminated by other communications and events, all of which she claims reveals Peter's probable intent to create a trust; she argued as well that the prior judge erred by barring the filing of her amended counterclaim that more clearly expressed this claim.

This court granted reconsideration and held, as explained in an August 28, 2024 written opinion, that, contrary to the prior judge's determination, the true or probable intent underlying the carry-out-my-instructions language in Peter's Will required illumination through the submission of extrinsic evidence or evidence of Peter's communications and expressions of what he intended to do.

In fulfillment of that need, the court presided over a non-jury trial on April 14, 15, and 16, 2025. Chinh provided his own testimony as well as that of an expert to support his challenges to Thu's accounting, which was provided pursuant to the September 27, 2023 order. Thu testified, as did her husband, Fred Ngo, a certified public accountant who prepared the accounting in question. The court also received the videotaped de bene esse depositions of the parties' youngest sibling, Ngoc,[3] as well as Chinh's son William, and Stephen Oppenheim, Esq., who provided to Peter a rough draft of a new Will that was never executed because Peter died the day the draft was mailed to him, and who provided advice to Thu during her administration of the estates. The court received as well, able counsel's written summations on June 4, 2025, and their responses to the other's summation on June 11, 2025.

[3] None of the other three siblings testified.

III

To repeat what was expressed in this court's earlier decision on the reconsideration motions, the construction of wills is governed by the doctrine of probable intent. In re Estate of Branigan, 129 N.J. 324, 331 (1992). To ascertain that intent, courts are required to consider more than a Will's isolated sentences or phrases. Engle v. Siegel, 74 N.J. 287, 291 (1977). "[P]rimary emphasis" must be given to the testator's "dominant plan and purpose as they appear from the entirety of [the] Will when read and considered in light of the surrounding facts and circumstances," Fidelity Union Trust Co. v. Robert, 36 N.J. 561, 564-65 (1962), while ascribing to the testator "those impulses . . . common to human nature," id. at 565 (quoting Greene v. Schmurak, 39 N.J. Super. 392, 400 (App. Div. 1956)). A testator's probable intent may, in fact, be divined by "inserting omitted words, by altering the collocation of sentences, or even by reading [the] Will directly contrary to its primary signification." Bottomley v. Bottomley, 134 N.J. Eq. 279, 291 (Ch. 1944) (quoted with approval in Branigan, 129 N.J. at 331-32); see also In re Estate of Tateo, 338 N.J. Super. 121, 127 (App. Div. 2001) (observing that, since Robert, 36 N.J. 561, "a clearly ascertained probable intent can be effectuated . . . even if it means the deletion from, substitution of or insertion in the verbiage used in the will").

In short, as Judge Kilkenny explained, the so-called "plain meaning" doctrine "is not a controlling principle in New Jersey in the construction of wills." Darpino v. D'Arpino, 73 N.J. Super. 262, 270 (App. Div. 1962). Instead, courts must "effectuat[e] the testator's probable intent to accomplish what . . . would have [been] done had [the testator] envisioned the present inquiry," and, may, in undertaking that task, look beyond "the words and phrases in the [W]ill" and consider extrinsic evidence about the surrounding circumstances, including "the testator's own expressions of . . . intent" outside the Will, to give life to the testator's probable intent rather than simply fall back on a "literal reading of the instrument." In re Estate of Payne, 186 N.J. 324, 335 (2006); see also In re Trust Created by Agreement Dated Dec. 20, 1961, 194 N.J. 276, 282 (2008); Darpino, 73 N.J. Super. at 270. Governing principles enacted by our Legislature are not inconsistent. See N.J.S.A. 3B:3-33.1(a) (declaring that "[t]he intention of a testator as expressed in his [or her] will controls the legal effect of his [or her] dispositions, and the rules of construction expressed in [N.J.S.A. 3B:3-34 through N.J.S.A. 3B:3-48] shall apply unless the probable intention of the testator, as indicated by the will and relevant circumstances, is contrary").

It is thus clear, as recognized by then Judge (later Justice) Haneman in Tourigian v. Tourigian, 29 N.J. Super. 94, 99 (Ch. Div. 1953), that a Will may be construed to create a testamentary trust even if the word "trust" does not

appear within its four corners so long as the evidence reveals that to be the testator's probable intent. See also Scarborough v. Scarborough, 134 N.J. Eq. 201, 206 (Ch. 1943) (recognizing that "a testamentary trust may be found by implication where the intention of the testator to set up a trust is manifest, or testator's obvious purpose cannot be executed except through such an instrumentality, or the executors are given duties to be discharged beyond their ordinary functions as executors").

IV

As suggested earlier in this opinion, ascertaining Peter's and Nghia's probable intentions requires some appreciation of Vietnamese culture (or, more accurately, Peter's understanding of Vietnamese culture). To paraphrase the parties' undisputed testimony about that, the elder male in the family is in charge; women are subservient. Thu acknowledged this and explained in her testimony that a Vietnamese woman is raised with an understanding that she must be obedient to her father, to her husband, and to her son, in that order. For that reason, no one has argued that the court should seek out Nghia's intentions when she also left her property to Chinh because she expressed her knowledge that she "knew" Chinh would follow Peter's instructions. Her intentions were Peter's. Chinh similarly testified – and credibly in this regard – that his father's

word was final and that he would never question his father's decision about subjects like the disposition of the residuary estate.

Chinh testified, for example, how on January 1, 2011, when hospitalized, Peter sent others out of the room and dictated instructions to Chinh. Thu's role was to go home and cook for the family while Chinh heard his father's thoughts and wishes about how to proceed. When Chinh returned to his father's home after the hospital visit, he turned over his handwritten notes (Thu-C) to Thu, who created a typed version (Thu-D).

Peter's view of the subservience of women – whether enlightened or not, or whether consistent with Vietnamese customs or not or, for that matter, whether it is even fair to generalize about Vietnamese customs any more than anyone else's customs[4] – is something about which all the witnesses agreed.[5] With that, Peter's probable intentions come into even sharper focus. The court is completely convinced that Peter intended, by way of article third of his Will,

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[4] In other words, the court makes no finding about how to define Vietnamese culture in this context since no one provided any expert testimony on that subject; instead, and more importantly, the court's findings are guided by how Peter viewed the teachings and mores of his culture and religion and how those views might shed light on his probable intentions.

[5] There is also no dispute that Peter went to law school in Vietnam. The significance of this fact, however, escapes the court. There is no evidence about the extent to which Peter was knowledgeable about Vietnamese law in the area of trusts and estates, let alone American law on that or any other legal subject.

that the residuary estate he was leaving to Chinh was not for Chinh to do as he pleased but for the benefit of his existing family and those yet to come. The reason he directed this distribution to Chinh was because he came to view Chinh, even though he wasn't the oldest, as the next male leader of the family and the person best equipped to appreciate his intentions and instructions and to carry them out. At the same time, he equally trusted Thu, whose role in the family as the oldest child led to her nickname "Ma Thu," to assist in this regard by naming her executrix and imbuing her with broad powers that will be discussed later.[6] Little did Peter know that this arrangement would cause the friction that has led to this bitter struggle.[7]

The court's finding about Peter's probable intentions is further supported by other evidence and circumstances. Soon after Peter's death, Chinh went to

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[6] By naming Thu as executrix it would seem Peter also intended to do something other than give Chinh his entire residuary estate with no strings attached. Why appoint someone other than Chinh as executor if he intended that everything go to Chinh?

[7] Chinh argues that Peter did not intend to create a trust because he did not identify the res of the trust. See Chinh Br. at 43. In support he cites Cahill v. Monahan, 58 N.J. Super. 54, 66 (App. Div. 1959), where the court held that "[a] trust requires a specific res, and where there is no specific res, there can be no trust." That legal principle is certainly accurate, but the court rejects its application here. The Will was unartful to be sure. But Peter clearly identified the res as the residuary estate because, after directing that Chinh receive the residuary estate, he stated his knowledge that Chinh would follow his instructions. Read together, Peter clearly intended that whatever Chinh received would be held in trust. The res was identified.

Peter's safe deposit box, looked in, and found within it a box that contained the Will and – he claimed – a note to him that all inside was his (Chinh's). As was this family's custom – that Thu was the family factotum – Chinh turned over the box with the Will, jewelry, and other things of value to Thu not as if it were hers but only in the sense that it was for her to care for pending further instruction.

In keeping with this dynamic, as well as the advice of counsel, Thu probated Peter's Will, and later Nghia's Will, and was appointed executrix of both. Thu, in large part, later transferred a large percentage of Peter's probate assets to Chinh, as well as what would appear to be the only probate asset in Nghia's estate: Peter and Nghia's marital home on Chestnut Street in Red Bank[8] (J-10). But she didn't transfer everything, and years went on without any disturbance in this status quo.

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[8] To explain, Peter's and Nghia's Wills were not reciprocal. While, in her Will, Nghia left everything to Peter if she should predecease him, Peter left nothing to Nghia if she were to predecease him. Again, this may be explained by Peter's belief in the superiority or dominance of males, as all the witnesses agree. Since Peter died first, his property passed via the provision (i.e., all to Chinh who Peter knew would follow his instructions) that lies at the heart of this case. Nghia presumably never sought her elective share, N.J.S.A. 3B:8-1, notwithstanding Peter's ostensible disinheriting of her. But the Chestnut Street property was jointly owned by Peter and Nghia with a right of survivorship, so that home became, by operation of law, Nghia's property when Peter died, and that home was the only apparent probate asset in her estate. Again, since her Will gave all her property to Chinh with the proviso that she knew Chinh would follow her instructions (although she clearly meant Peter's instructions), the disposition of the Chestnut Street property turns on the same determination that governs the disposition of Peter's estate.

It was only later in May 2019, when Thu utilized estate funds to repair a bathroom[9] in the Chestnut Street home, about which Chinh was apparently disturbed – perhaps because this served to benefit his younger brother for whom Chinh had low regard and who was living there,[10] or perhaps because it had been done without his knowledge, or both – Chinh felt compelled to seek the court's intervention and obtain a turnover of the remaining assets to him.[11] This prompted Thu to respond and to assert, apparently for the first time, that Chinh's claim to outright ownership of Peter's residuary estate and the property that passed pursuant to Nghia's Will, was mistaken and that there were limitations on the use of all that property.

So, despite the length of time that elapsed from the dates of their parents' deaths in 2011 and 2012, until the commencement of litigation in 2019 – long but explicable through an understanding of the closeness of the family at the time and the dysfunctional impact caused by Peter's unartful Will[12] – the court

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[9] Photographs in evidence (Thu-R) reveal the bathroom's severe state of disrepair. The need for the repairs has not been questioned.

[10] The Chestnut home was then, and is now, inhabited by one of the parties' siblings, who is unemployed and has ailments the scope of which the witnesses did not entirely agree and as to which the court makes no findings.

[11] He had in May 2018 informally requested accountings (P-21) but took no immediate action when nothing was provided.

[12] Because both parties tolerated the status quo, the court finds that no procedural or equitable obstacle should stand in the way of the consideration of all claims

was called on to alter the impasse that constitutes the status quo and determine what Peter probably meant to accomplish by way of his 1986 Will. In pursuing his probable intent, the court has both the Will itself, as well as Peter's 2000 written instructions, which were found with his Will in the safe deposit box referred to above, the way he viewed family relations as also explained above, and his later discussions with Stephen Oppenheim, Esq., who Peter retained late in his life for the purpose of preparing a new Will that would include a trust for the perpetuation of the Vuong family. All this reveals Peter's original and probable intention to create a trust.

To explain further, the court again notes that the critical sentence that has generated all this litigation was not a suggestion or a recommendation. It was long ago established by and understood in our jurisprudence that even less forceful wording than Peter's would be sufficient to support a finding of Peter's desire to create a trust. See, e.g., Ferguson v. Rippel, 23 N.J. Super. 132, 140

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on their merit. Chinh's argument based on Rule 4:85-1 that Thu's counterclaim is time-barred, see Chinh Br. at 78-79, is misplaced, since that rule is limited to the few types of actions described in the rule itself that aren't applicable here. See, e.g., In re Estate of Thomas, 431 N.J. Super. 22, 26, 28 (App. Div. 2013). Timeliness here is controlled by the doctrine of laches; in light of all the circumstances outlined in this opinion, while the delay of both sides in resolving their disputes is unusually long, no one has been disproportionately prejudiced as a result of that delay. The only jurisprudentially sound step for this court to take is to resolve the parties' disputes rather than leave their disagreement permanently unresolved.

(App. Div. 1952); Deacon v. Cobson, 83 N.J. Eq. 122, 124 (Ch. 1914), and cases cited therein. Here, Peter stated in his Will that he "knew" Chinh would follow his instructions; that has the sufficient imperativeness that makes the decision far easier than a statement that a testator "hoped" someone would heed a suggestion.

Moreover, to accept Chinh's position would require this court to assume Peter intended to disinherit his wife of more than 60 years as well as his other five children. There is nothing in the record that could possibly lead this court to that conclusion. Clearly, the testimony of all family members who appeared revealed that Peter intended that his wife and his children would all reap the benefit of what he had left behind. The very language of Peter's Will – that he knew Chinh would do what's best for his mother and siblings – as well as everything the extrinsic evidence revealed – there being absolutely no evidence that Peter wanted to benefit Chinh alone – confirms the natural human tendency of providing for one's family that should not be ignored in ascertaining Peter's probable intent. See Robert, 36 N.J. at 565 (recognizing that, "[s]o far as the situation fairly permits, courts will ascribe to the testator, 'those impulses which are common to human nature, and will construe the will so as to effectuate those impulses'").

If all the court had was the Will's language, and the natural tendencies of testators to provide for the immediate family being left behind – a particularly strong interest that motivated Peter – the court would still reach the conclusion urged by Thu about the limitations imposed on Chinh's claim to outright ownership. But there is even more proof to demonstrate this was Peter's probable intent.

For example, Peter provided written instructions about how Chinh was to go about fulfilling the obligation imposed. The court finds that Peter was conveying his intentions about the Will through the Chi-Thi[13] document. The two documents were kept together in a safe deposit box. It seems odd, if the Chi Thi document merely contained Peter's musings or hopes for the future as Chinh

[13] The parties have engaged in the most interesting semantical dispute about the import of the 2000 instructions. In evidence are both the Vietnamese version (Thu-A) and Peter's own English translation (Thu-B). Thu argues that "Chi-Thi" must be interpreted as "command to implement," while Chinh argues that it should be interpreted as a less-compelling "instruction" and in support simply argues that was the English word Peter used when translating his Vietnamese version into English, see Chinh Br. at 54. Thu, however, counters with the testimony of her husband, Fred Ngo, who asserted, in substance, that Peter would not, or did not likely, distinguish between "command" and "instruction." A dispute like this might be relevant if the dispute was between "instruction" and "suggestion," because the latter might have passed for something lacking an imperative connotation. But, whether in English or in Vietnamese, the court concludes there is an irrelevant difference in this context between a "command" and an "instruction."

argues, that these instructions would have been kept together with the Will in a safe place.

In the Chi Thi document, Peter expressed an intent to create a "family trust fund" for the purpose of encouraging ancestral worship, good education, marriage, and progeny, as well as "building unity among family members at large" (Thu-B). The court is satisfied – particularly because of where these instructions were kept – that Peter intended, in that way, to make known to Chinh how he was to utilize the residuary estate. This is further suggested by Peter's communications with a Wells Fargo broker in 2011, shortly before his death, about the formation of a trust (Thu-E). And this was revealed again when Peter met with Stephen Oppenheim, Esq., to prepare a new Will that would clarify his desire to turn the Chestnut Street property into a lasting shrine and meeting place for Vuong family members (Thu-I). Those discussions got to the point where attorney Oppenheim drafted and sent a Will for Peter to consider; sadly, this draft was forwarded to Peter on May 20, 2011, the day Peter died, and no further action could be taken. But all this extrinsic evidence provides insight into Peter's state of mind and what he probably intended in his 1986 Will and guides this court's finding that the residuary estate was to go not to Chinh alone but to Chinh in trust for the purposes broadly suggested in the Chi Thi document (Thu-A and B).

Chinh's position that he alone is the beneficiary of all his parents' probate assets with no strings attached focuses almost exclusively on an August 11, 2011 letter written by attorney Oppenheim to Thu about the meaning of the provision in question; he wrote:

> [Peter] intended to impose a moral obligation on [Chinh] to carry out those instructions, not an enforceable legal obligation, perhaps because [Peter] wanted [Chinh] to exercise his judgment about the use of the estate for [Nghia] and the others instead of creating enforceable rights.
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> [(P-9) (emphasis added).]

To be sure, this opinion comes from a well-respected maven in the field, and his opinion that the Will imposed only a moral obligation is not easily discarded.[14] But the conclusion reached here is supported by what the attorney went on to observe when he said that the Will's language suggested Peter "wanted" Chinh "to exercise his judgment about the use of the estate" for the family. So this opinion – if accepted at face value – lends support to Thu's position that the residuary estate was for the benefit of the family, not Chinh alone.

In either event, for the court it has been clearly and convincingly established for all these reasons that Peter intended that his residuary estate –

[14] This statement that the Will imposed only a "moral obligation" provided the nearly exclusive evidence on which the prior judge relied in granting a partial summary judgment that has since been vacated.

and likewise, albeit derivatively, Nghia intended that her estate – be used for the benefit of the family and the other purposes loosely suggested by the 2000 instructions.[15] This is, in fact, further buttressed by the draft 2011 Will (Thu-I) that Peter was never able to further pursue. What Peter may have been trying to do during his last days – even if it never reached a final stage of the Will's execution – reveals his intention to have the assets passing through the Will to go into a trust to be used for family-related purposes.

For all these reasons, the court concludes that the Will provision that has generated this conflict must be understood as causing the transfer of the probate assets in the two decedents' estates to go to Chinh but to be held in trust by him and utilized for the purposes generally described in the 2000 Chi Thi instructions.

V

Having reached the conclusion that Peter's probable intention was that Chinh would hold the residuary estate in trust and that Nghia's probable intention, derivative of Peter's, was that the Chestnut Street home would also be

[15] To be clear, this holding is not the same as probating the Chi Thi document, as Chinh seems to argue. See Chinh Br. at 83. The court is only saying that this extrinsic evidence provides illumination for the trust's purposes without necessarily precisely dictating how those purposes are to be carried out. To the extent Thu seeks the probating of the Chi Thi document, see Thu at 18-19, that claim is dismissed.

held in trust, the court must next determine whether Chinh should be the steward of this trust. That poses a difficult question because, without a doubt, Peter intended via his 1986 Will that Chinh be the trustee.

But Chinh's utter unwillingness to recognize that he was to hold the property in trust – that it was not his personal property alone – to the point of generating hostility among himself and the trust's beneficiaries, has convinced the court that he should be disqualified from taking on that role. The record is replete with Chinh's statements that the property was his alone, and his intentions with regard to his family members were not even worthy of discussion. He proved to be the very picture of intractability.[16]

To be sure, the power to deprive a trustee of that office should be sparingly exercised, and it is understood that "mere friction or hostility between a

[16] Chinh's son, William, testified in a way favorable to Thu; he spoke about how he turned over to Thu property of Peter's that came into his hands. His testimony was preserved in a videotaped de bene esse deposition during which, when asked if he was Chinh's son, a voice off camera could be heard saying something like "no more." In her summation, Thu referred to this, see Thu Br. at 10 n.3, prompting the court to inquire by letter about whether that was what was actually said, whether the speaker was Chinh, and, if so, whether the statement was either relevant or evidential. Counsel for the parties provided their responses to this inquiry on June 16, 2025; there seems no dispute that the speaker was Chinh and "no more" was what he said. But the court is satisfied that, even if relevant, the statement isn't evidential since Chinh was not then under oath or in the process of testifying. See N.J.R.E. 603. The statement was inadmissible, and the court has not considered it for any marginal relevance it might have had if Chinh had made the statement from the witness stand.

beneficiary and a trustee is not necessarily a sufficient ground for removal." Wolosoff v. CSI Liquidating Trust, 205 N.J. Super. 349, 360 (App. Div. 1985). But the court is satisfied, particularly considering the extraordinary level of distrust that exists that the only sensible thing to do is disqualify Chinh from holding that position. Otherwise, the trust will likely be plagued by further litigation, which would likely do little but drain the trust of any remaining assets. As then Judge (later Justice) Pashman recognized in Clark v. Judge, 84 N.J. Super. 35, 62 (Ch. Div. 1964), aff'd, 44 N.J. 550 (1965), a trustee may be removed "to protect the trust against possible future jeopardy . . . [from] acts which [may] diminish[] or endanger[] the trust." No impartial viewer or listener of the parties' testimony would doubt that Chinh's imperiousness and his inability to consider that his parents imposed limitations on his use of the property, eliminate him as an appropriate trustee of the trust that Peter and Nghia intended to create.

In that situation, once again the court must consider what Peter and Nghia probably intended if there was a reason Chinh could not properly perform the obligation they imposed on him. The answer to that seems obvious. They both made Thu the executrix of their estates; she is the oldest sibling, and all her siblings had – at least until these suits were filed – placed great trust in her. The court's only hesitancy in this regard is, once again, the emphasis in this family,

and their view of what their culture requires, that a male should run things. Nevertheless, their probable intentions clearly would favor a family member over a non-family member, and no other male sibling would appear to be as suitable as Thu, whose husband Frank Ngo, is also available to her to help her with any accounting issues.[17] As a result, the court's judgment will appoint Thu as the trustee of the trust to be created for the purposes generally outlined in Peter's 2000 instructions.

VI

With that, the court turns to Chinh's exceptions to Thu's accounting. As noted above, Thu was required by the September 27, 2023 order, to account for her handling of the estates. She provided an accounting to which Chinh filed exceptions, focusing on: (a) $265,762 that came to the estate when Peter's Hudson County Savings Bank stock was redeemed, as a result of that institution's sale, that Thu placed in a bank account in her own name; (b) Thu's short-term borrowing of $75,000 from the estate to repair her and Frank's fire-damaged commercial building in Sea Bright when their insurer was slow to provide benefits thereby delaying needed repairs; (c) a 2008 Hyundai Sonata

[17] While raised in Vietnam, in 1971 Frank received an accounting degree from Xavier University in Ohio and returned thereafter to Vietnam where he worked for Exxon (or its predecessor) until, through his brother's intercession, he and Thu and their extended families were able to leave Vietnam shortly before April 1975.

owned by Peter on the date of his death; (d) the escheating to the State of New Jersey of 3,000 shares of Investors Bank stock; and (e) dividends that were cashed, apparently by Peter and Nghia's youngest child. The court heard testimony about those exceptions and provides the following findings; indeed, what occurred in these five instances appears to be undisputed.

A

There is no dispute that when the Hudson City stock was redeemed because that entity was sold, the $265,762 received by Thu was placed in a savings account under her own name. There those funds remained, gathering a low percentage of interest, until transferred to an account in the estate's name in December 2021. Chinh's first objection concerns the fact that the account was in Thu's name, and not in an account held by her as executrix or otherwise in the name of the estate. That is certainly true, but the court finds no harm in the labeling of the account. It's not the label that matters but what was done with the funds that counts. See Applestein v. United Board & Carton Corp., 60 N.J. Super. 333, 348-49 (Ch. Div.), aff'd o.b., 33 N.J. 72 (1960). This was not, as Chinh argues forcefully in his written summation, a "theft." The funds were placed in one bank account and then another where they have safely remained awaiting this court's disposition of the dispute about the Will's meaning. There

is no persuasive evidence to suggest that Thu regarded these funds as her own or that they were anything other than estate funds.

This raises other issues. First, Chinh argues that the funds weren't properly invested, since they only accrued a small amount of interest since the stock was redeemed. That may be true, but it has not been shown that her handling of the funds was inconsistent with the powers granted her by Peter's Will. As executrix, Thu was given, via the fifth article of Peter's Will, broad powers "[t]o make such investments and reinvestments of principal and any accumulated income as [she], in her sole discretion, may consider proper, including but not limited to holding cash balances and tangible personal property, and investments in common trust funds, it being my intention to give my Executrix broadest powers of investment." Chinh hasn't persuasively shown that conservatively parking the fund in an account generating a low interest rate was inconsistent with Peter's intention that she possess the "broadest" of investment powers. Clearly, Peter wanted to preserve the property he left behind, so it is understandable that Thu acted conservatively.

She also did not violate any obligation to turn the fund over to Chinh. Again, the Will imposed nothing about the timing of distributions, as the prior judge in this matter also recognized. Moreover, as has now been determined, any withholding of the turnover of assets to Chinh has proven fortuitous because

it seems abundantly clear from everything adduced at trial that Chinh viewed all estate property as his alone, and the court has now held that the Chestnut home that passed through Nghia's estate, and Peter's residuary estate were to be held by Chinh in trust.

B

There is also no dispute about the $75,000 that Thu borrowed. As noted, she repaid the loan with interest. Although it is arguably contrary to the role of an executrix to make a loan of estate funds to herself, it is also fair to observe that Peter's intentions were that his estate would be used for the benefit of all family members and, if one of his children were in need – and it appears from the testimony that Thu and her husband were in a bad situation with respect to their Sea Bright property – that this short-term loan would have been an appropriate step to take and what Peter would likely have desired. In any event, if wrongful, the court finds no harm occurred, since the $75,000 was repaid, and with interest.

C

The exception about the 2008 Hyundai is also without merit. The facts are simple and undisputed. Peter owned this vehicle at the time of his death. With his death, Chinh himself suggested that Thu transfer it from the estate to her own name as a way of saving on auto insurance. Again, while in her name, the

vehicle has been treated as estate property and Thu, who owns her own vehicle, uses the Hyundai for estate purposes, particularly when caring for her youngest brother, who has disabilities, and lives in the Chestnut Street home.

D

The argument about the Investors Bank stock is insubstantial as well. Chinh was provided with a tax waiver and instructed by the estate's attorney to transfer the stock to himself (Thu-P). But he didn't so act, and the property escheated. Once regained – because of Thu seeing a notice about it in the Asbury Park Press – Chinh nevertheless asserted then, and now, that all blame lies with Thu. The court rejects this exception to Thu's accounting.

E

Chinh also excepts from the failure to account for dividend checks that went missing. An investigation revealed that checks were sent to the Chestnut Street home and there apparently negotiated by Thu and Chinh's disabled brother. The court finds no negligence or dereliction of duties on Thu's part as to these items.

The court finds nothing of substance in any other exception and approves Thu's accounting in all respects.

VII

There remain a few more issues.

First, in light of the court's findings and conclusions, an instrument must be created identifying the intended trust's purposes as well as other provisions normally included in such a document. It should be prepared as soon as practicable. Thu shall either utilize present counsel or retain other counsel for the purpose of creating such an instrument as the means of guiding her handling of the trust property. If the consent of all intended beneficiaries cannot be obtained, Thu may seek, in a separate action, the court's approval of a proposed trust instrument.

Second, as noted earlier, much of the estates' assets, which the court has now held should have been held in trust, were turned over to Chinh. The Chestnut Street property was deeded to him (J-10), and much of the other liquid assets were also turned over to him. Today's judgment obligates Chinh to (a) transfer the Chestnut Street property to Thu, who will hold it in trust, (b) transfer all other property that he received in prior distributions, and (c) provide an accounting of what was turned over to him from the time of his receipt until now.

Third, Thu has asserted that Peter made gifts causa mortis of gold and silver taels[18] and Krugerrands.[19] The court finds insufficient evidence to show the presence of all the elements of such a disposition of property. To be sustained, a gift causa mortis "(1) must be made in view of the donor's impending death, (2) the donor must die of the disorder or peril then contemplated, (3) the donor must be competent, (4) the donor must have the intent to make the gift, (5) the donee must accept the gift, and (6) the delivery of the property must be actual, unequivocal, and complete during the lifetime of the donor, divesting him or her of the possession, dominion, and control thereof. See Foster v. Reiss, 18 N.J. 41, 45-46 (1955); Weiss v. Fenwick, 111 N.J. Eq. 385, 387-88 (E. & A. 1932); In re Estate of Link, 328 N.J. Super. 600, 606 (Ch. Div. 1999). It may be that Peter verbally instructed Chinh about this particular personal property, but the conveyance wasn't completed during Peter's life. In addition, these instructions were given while Peter was in the hospital five months prior to his death. He soon returned home after giving those instructions and while he may have been very ill, there is nothing in the evidence to suggest

[18] In Vietnam and other Asian countries, the word tael apparently refers to the weight of either a gold or silver coin or ingot.

[19] A South African gold bullion coin; its moniker is a mash-up of the name of a former South African president (Paul Kruger), and the country's currency (rand).

that his death was impending. And no delivery was then made. In the final analysis, gifts causa mortis are not favored because they "inva[de] . . . the province of the statute of wills," Foster, 18 N.J. at 46, and because they otherwise permit "property without limit of value to be transferred by mere delivery, and the proof thereof to be made when death has closed the lips of the claimed donor," Buecker v. Carr, 60 N.J. Eq. 300, 305 (Ch. 1900). The court is satisfied that no enforceable gift causa mortis was made and that the property instead passed through Peter's Will and, thus, into the trust he intended to create.

* * *

An appropriate judgment has been entered.