

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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September 10, 2026

In the Court of Appeals of Georgia

A26A1482. IN RE: ESTATE OF SUSIE BELL KELLEY.

MARKLE, Judge.

In this appeal, Carol Horne, the daughter of Susie Bell Kelley and the executor of Susie's estate, challenges the probate court's order determining whether the alleged grandchildren were proper heirs under the will, and whether the will's in terrorem clause should have been enforced against the family members who objected to Horne's appointment as executor.¹ For the reasons that follow, we reverse in part, vacate in part, and remand the case for further proceedings concerning whether any of the grandchildren qualifies as a beneficiary.

"The construction of a will is a question of law, which we review de novo."

¹ Decisions of the Clayton County Probate Court are directly appealable. OCGA §§ 15-9-120(2); 15-9-123(a).

Buchanan v. Hannon, 366 Ga. App. 769, 771 (883 SE2d 439) (2023) (quotation marks omitted).

So viewed, the record shows that Susie died in March 2021. Her children, Carol, Cathy, Theresa, and Walter, survived her; three other children — Larry, Jerry, and Elbert — predeceased her.² There were numerous grandchildren, including Larry’s children (Genneane Kelley-Gennis, LeNeice Gennis, Larry Kelley, Jr., and Ellis Stone); Jerry’s children (Camika Brown, Christina Wright, Janaul Kelley Reid, and Gloria Bloaker); and Elbert’s child (Chantel Hinton).

In 2003, Susie executed a will naming Carol as the executor. In Paragraph 2, Susie identified one child who had predeceased her (Larry Kelley), and six living children, explaining that “[a]ll reference in this Will to ‘my children’ and/or ‘my sons and daughters’ are to them.” Per the terms of Paragraph 4,

[e]xcept as otherwise provided for in this my Will, I have intentionally and with full knowledge failed to provide herein for any of my heirs and omitted to provide for my heirs who may be alive at the date of my death, ... and I specifically disinherit any person claiming to be my heir who is not provided for in this Will.

² Walter and Cathy died while the case was pending.

If any beneficiary under this Will in any manner, directly or indirectly, contests or attacks this Will or any of its [sic] provisions, any gift or other provision I have made for or to that person under this Will is revoked and shall be disposed of in the manner provided herein as if that contesting beneficiary had predeceased me without issue.

In Paragraph 7, Susie instructed,

[i]n the event that my husband does not survive me, it is my desire that any interest I may have in any property whether real, personal or mixed ... be and become the property of my children who shall survive me to share and share alike....

Should either of my children predecease me then, I give, bequeath and devise to my children's surviving child or children receive my deceased child's representative share of any interest I may have in any property ... to share and share alike.

In 2018, Susie apparently drafted a hand-written "codicil" in which she wrote that she did not want Carol "to have any say over me and anything I own." In that

document, Susie indicated that Carol was to receive nothing, and Cathy was to receive only \$25.

After Susie's death, Theresa submitted a petition to probate the will and handwritten condicil in solemn form.³ Carol filed objections, challenging the validity of the document, and arguing that submitting it violated the in terrorem clause in the original will. Carol then submitted the original will to probate in solemn form, and she petitioned the court to determine which of the grandchildren were heirs. And one of the grandchildren also submitted a petition on behalf of the grandchildren to probate the will in solemn form, asserting that Carol should not be appointed as the executor because she would not adhere to Susie's wishes as expressed in the will. Theresa later submitted an amended petition to prevent Carol from being named the executor of Susie's estate.⁴

³ "The sole question in a proceeding to probate a will in solemn form is whether the paper propounded is, or is not, the last will and testament of the deceased." *Wilbur v. Floyd*, 353 Ga. App. 864, 867(1) (839 SE2d 675) (2020). "The probate of a will in solemn form, until reversed or set aside, is conclusive upon all the parties notified." *In re Estate of Brice*, 288 Ga. App. 449, 452(1) (654 SE2d 420) (2007) (quotation marks omitted).

⁴ The probate court appointed a temporary administrator pending the outcome of the dispute. Carol moved to set aside that order, and, in response, several of the grandchildren objected to the motion, contesting Carol's ability to serve as executor.

Carol moved for summary judgment, seeking to establish that the original will was the only valid document. The probate court granted the motion, finding the original will valid, and the hand-written codicil was not. The probate court noted that there remained a dispute over the heirs and whether Carol could be appointed as the executor.

At a subsequent hearing, the probate court heard testimony from Carol, Theresa, and other family members about the relationship among the siblings and Carol's relationship with Susie. Carol argued that the unambiguous terms of the will designated that only the surviving children were heirs. She further argued that the probate court should enforce the in terrorem clause, which would bar those contesting the will from inheriting. In a post-hearing brief, Carol explained that, to the extent there was a latent ambiguity between the provision identifying the heirs, the clear intent of the will was that only the surviving children would be beneficiaries. And she reiterated that the challenges to her appointment as executor triggered the in terrorem clause. Those who objected to Carol's appointment include: Theresa, Walter, Genneane, LaNeice, Camika, Chantel, Christina, Gloria, and Ellis. The record does

not contain any objection directly filed by Larry Kelley, Jr., or Janaul, but the petition to probate the will Genneane filed indicates it is on behalf of the grandchildren.

The probate court concluded that the parties' pleadings in challenging Carol's qualifications to be the executor did not trigger the in terrorem clause, and the language in the will indicated Susie's intent to include the deceased children's children as heirs. The court appointed Carol as executor, and ordered her to post bond. It further ordered two of the alleged grandchildren — Larry Kelley, Jr. and Ellis — to complete DNA testing to establish themselves as heirs, but the probate court found the other named grandchildren qualified as heirs.⁵ Carol now appeals, arguing that the probate court erred by (1) including the grandchildren as heirs, because the plain language of the will shows Susie's clear intent that only the surviving children were beneficiaries; and (2) failing to enforce the in terrorem clause, which was triggered when the other family members challenged Carol's appointment as executor.⁶

⁵ It is unclear from the trial court's order how the trial court determined which grandchildren qualified as heirs and why it singled out these two grandchildren to provide proof of their relationship.

⁶ No response brief has been filed.

1. We begin with enforcement of the in terrorem clause because that issue would be dispositive of most of the claims.

Under Georgia law, a testator may include a provision in her will that operates as a “no-contest clause,” which is designed to disinherit any beneficiary who challenges the terms of the will. *Slosberg v. Giller*, 314 Ga. 89, 89 (876 SE2d 228) (2022). See also *Barry v. Barry*, 357 Ga. App. 479, 485 (851 SE2d 119) (2020). In 2021, our legislature clarified that certain challenges, including those to the interpretation of the will, or a petition for accounting or removal of a personal representative, were permissible actions that would not trigger an in terrorem clause. See OCGA § 53-4-68(c) (actions seeking to interpret or enforce a will, obtain an accounting, enter into a settlement agreement, or for “removal, or for other relief against a personal representative” do not violate in terrorem clauses). “Because in terrorem clauses result in forfeitures, they must be strictly construed.” *Preuss v. Stokes–Preuss*, 275 Ga. 437, 438 (569 SE2d 857) (2002). Notably, none of the parties here challenges the validity of the will generally, or the existence of the in terrorem clause.

The clause at issue here provided that “[i]f any beneficiary under this Will in any manner, directly or indirectly, contests or attacks this Will or any of its [sic]

provisions,” they would be disinherited. In considering whether the family members’ dispute triggered this clause, we are not constrained by the nomenclature the parties used in their filings; instead, we look to the actual intent. *Barry*, 357 Ga. App. at 486. See also *In re Estate of Johnson*, 352 Ga. App. 164, 167 (834 SE2d 283) (2019) (where plaintiffs claimed they were seeking an interpretation of the will, but their intent was to contest a provision of the will, the in terrorem clause applied).

Here, Theresa, Walter, and many of the grandchildren sought to keep the probate court from appointing Carol as executor, in direct contravention of one of the terms of the will. Although the statute clearly allows parties to seek interpretation of the terms of the will or to seek *removal* of, or other relief against, a representative, that is not what the parties here attempted to do. OCGA § 53-4-68(c). Instead, they sought to stop Carol’s appointment as executor. As such, their action triggered the in terrorem clause. *In re Estate of Johnson*, 352 Ga. App. at 168 (action that sought to “void ... involvement by [representative] in the father’s estate” was barred by in terrorem clause); OCGA § 53-4-68(c).

We cannot view the statutorily permissible bases under OCGA § 53-4-68(c) to encompass challenges to the appointment of an executor, even though it allows the

corresponding action seeking removal of a representative. First, the plain language of the statute refers only to removal or other relied against a representative. When faced with questions of statutory interpretation,

we apply the fundamental rules of statutory construction that require us to construe the statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage. We must also seek to effectuate the intent of the Georgia legislature. In this regard, in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole.

In re Estate of Gladstone, 303 Ga. 547, 549 (814 SE2d 1) (2018) (citation modified). We are bound by this plain language unless it would lead to an absurd result, which is not the case here. *Ga-Pac. Consumer Products v. Ratner*, 345 Ga. App. 434, 438(1) (812 SE2d 120) (2018) (“If the words of a statute, however, are plain and capable of having but one meaning, and do not produce any absurd, impractical, or contradictory results, then this Court is bound to follow the meaning of those words.” An in terrorem clause would not bar a beneficiary from filing an action to require a representative to comply with fiduciary duties because such clauses cannot immunize a breach of the fiduciary duty. *Snook v. Sessoms*, 256 Ga. 482, 482 (350 SE2d 237) (1986); *Callaway v. Willard*,

321 Ga. App. 349, 358(3)(a) (739 SE2d 533) (2013). Cf. *Greenway v. Hamilton*, 280 Ga. 652, 653-54(1) (631 SE2d 689) (2006) (where beneficiary took funds before he was appointed as representative, he breached the fiduciary duty by failing to return the funds after his appointment). Thus, a party can seek to remove a representative for breach of fiduciary duty without violating the in terrorem clause, but the same cannot be said of challenging the appointment of a representative as was done here. The “remedy for any perceived failures in this scheme is with the legislature not the courts.” *Cox v. Athens Regional Med. Ctr.*, 279 Ga. App. 586, 591(1)(b) (631 SE2d 792) (2006).

Additionally, we are bound to strictly construe in terrorem clauses. *Preuss*, 275 Ga. at 438. And the challenges to Carol’s appointment directly contest a provision of the will, and thus violate the in terrorem clause. The trial court erred by concluding otherwise. Accordingly, we must vacate the trial court’s order and remand for the trial court to determine which beneficiaries are barred from inheriting because their challenges to Carol’s appointment triggered the in terrorem clause.

2. Having determined that the in terrorem clause bars those who challenged Carol's appointment from inheriting under the will, the only remaining issue is whether there are any beneficiaries other than Carol remaining.

Carol argues that Susie's clear intent was to name only the surviving children as the beneficiaries, as evidenced by the language of the various provisions of the will. In this regard, Carol points to Paragraph 2, which shows that, at the time Susie executed the will, there was only one deceased child and six living children. After identifying the living children, Susie wrote, "[a]ll reference in this Will to 'my children' ... are to them." Then, in Paragraph 7, Susie wrote, that all of her property would become "the property of my children who shall survive me" and "[s]hould *either* of my children predecease me," then their share would go to their children. (Emphasis added).

The probate court concluded that Susie's clear intent was to devise a portion of her estate to the children of her deceased children. But, the probate court's conclusion does not give proper construction to the will in its entirety. See *Buchanan*, 366 Ga. App. at 771.

It is well settled that our role in interpreting a will is to determine the testator's intent. *Buchanan*, 366 Ga. App. at 771. In doing so, we look first to the "four corners" of the will, and consider the document as a whole, giving meaning to every part. *Id.* Where terms are plain and unambiguous, they control our interpretation. *Id.* And, where the intent is clear, "the court may transpose sentences or clauses, change conjunctions, and supply or delete words in cases in which a sentence or clause as it stands is unintelligible or inoperative in context." OCGA § 53-4-55. But, if the will contains an ambiguity, we apply the rules of construction and may consider parol evidence to determine the testator's intent.⁷ *Buchanan*, 366 Ga. App. at 771.

Reading the will in its entirety, we conclude that we cannot clearly ascertain Susie's intent from the four corners of the document. The various provisions of Susie's will are contradictory and ambiguous. For example, in some places, Susie bequeaths her property to her surviving children, but elsewhere refers only to distributions to "her children." In Paragraph 2, Susie writes she has one deceased

⁷ "Ambiguity is defined as duplicity, indistinctness, an uncertainty of meaning or expression used in a written instrument, and it also signifies doubtful or uncertain nature; wanting clearness or definiteness; difficult to comprehend or distinguish; of doubtful purport; open to various interpretations." *Buchanan*, 366 Ga. App. at 771 (citation modified).

child and six living children and “all reference in this Will to my children ... are to them,” but it is unclear whether “them” applies to all of her children or just the ones who survive her. In Paragraph 7, Susie directs that, if *either* of her children predeceases her, that child’s surviving child or children would be entitled to the share of the estate, suggesting that there are circumstances in which the grandchildren could inherit. The use of the term “either” is nonsensical here because, at the time Susie drafted the will, only one of her children had predeceased her.⁸ Thus, the language in the will is ambiguous as to Susie’s intent. Compare *Trust Co. Bank v. Heyward*, 240 Ga. 557, 565(4) (242 SE2d 257) (1978).

Faced with an ambiguity, the court may consider parol evidence to determine the testator’s intent.⁹ See OCGA § 53-4-56 (“In construing a will, the court may hear

⁸ “Either” is defined as “the one and the other of two” and “the one or the other of two.” Merriam-Webster.com/dictionary/either (last visited 8/13/26). Carol contends that the term “either” was merely a scrivener’s error, and the term “either” should be replaced with “all” to give meaning to Susie’s intent. *Benedict v. Snead*, 271 Ga. 585, 586 (519 SE2d 905) (1999) (courts do not interpret wills in such a way that a scrivener’s error defeats the testator’s clear intent). But a review of the document as a whole does not support that interpretation, as it would be equally plausible to replace the “either” with the term “any.”

⁹ Carol elicited testimony at the hearing that, when Susie submitted her husband’s will to probate, she wrote in her petition that her deceased children did not have any children. But that evidence does not establish anything about Susie’s intent

parol evidence of the circumstances surrounding the testator at the time of execution to explain all ambiguities, whether latent or patent.”); *DeMott v. DeMott*, 353 Ga. App. 190, 192-93 (836 SE2d 612) (2019) (physical precedent only). The trial court here did not take this step.

Accordingly, on remand, the trial court should consider parol evidence to ascertain Susie’s intent and clarify which of the grandchildren, if any, are entitled to inherit consistent with that intent and the in terrorem clause. See *DeMott*, 353 Ga. App. at 193.

Judgment reversed in part; vacated in part, and case remanded. Barnes, P. J., and Hodges, J., concur.

at the time she executed her will. OCGA § 53-4-56; *Luke v. Luke*, 356 Ga. App. 271, 272(2) (846 SE2d 216) (2020).