

No. 1-19-0554

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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VICTOR B. SULLINS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 17 CH 14584
	)	
TIMOTHY W. O’KEEFE,	)	Honorable
	)	David B. Atkins,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court of Cook County is affirmed. The trial court did not exceed its jurisdiction by finding that each party owned an undivided 50% interest in an art collection when it ruled on plaintiff’s complaint for a declaratory judgment that an agreement to sell pieces of the collection was properly terminated; the fact of ownership of the collection formed the factual basis for the trial court’s finding that the agreement was terminated; and, the trial court had an adequate factual basis for its holding that the defendant held an undivided 50% ownership interest in the entire collection.

¶ 2 Plaintiff, Victor B. Sullins, filed a complaint for declaratory judgment against defendant, Timothy W. O’Keefe, seeking a declaration (1) confirming defendant’s obligations under an agreement between plaintiff’s father (deceased), plaintiff, and defendant to sell plaintiff’s father’s art, (2) that defendant breached that agreement, (3) that the breach negates the benefit of

the agreement to plaintiff such that plaintiff is justified in terminating the agreement, and (4) “such other or further relief as this Court deems appropriate including an award of [plaintiff’s] costs in bringing this action.” Following a hearing at which only plaintiff appeared, the circuit court of Cook County entered a judgment declaring that defendant had a 50% interest in the remainder of the art collection and that neither plaintiff nor defendant had any rights, obligations, or liabilities to the other under the agreement. Plaintiff filed a motion to modify the trial court’s order as to the former finding which the trial court denied.

¶ 3 For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Plaintiff’s father, Maurice W. Sullins, deceased, was an artist. In 1986, plaintiff’s father, plaintiff, and defendant signed a contract titled “Artist/Agent Agreement.” Under the agreement defendant was Maurice Sullins’ (the Artist) exclusive agent to “pursue, solicit, promote, market and negotiate the sales for all of the painting and artwork created by the Artist.” The agreement stated that defendant agreed to pay for all expenses for enumerated items related to that undertaking including but not limited to expenses for “photography of the Artist’s paintings (film, prints, slides etc.);” “promotional materials, including the Agent’s name, address and telephone;” to “[g]enerate publicity for the Artist and his work;” and for shipping to exhibits or buyers. In exchange defendant would receive “Fifty Percent (50%) commission from all the sales of all the paintings and artwork created by the Artist.” The agreement stated that the parties agreed the commission was fair and reasonable “when considering all of the time and money [defendant] proposes to invest, as outlined” in the agreement. The agreement stated that defendant “does not acquire any rights to the Artist’s work and will return them promptly on demand. Such as any paintings that maybe out on display at a Gallery.”

¶ 6 In 1987, Maurice Sullins executed his last will and testament. The will provided, in pertinent part, as follows:

“I give to [defendant] one-half interest in all paintings and artwork created by me, and; I request that our agreement signed and dated October 16, 1986, remain in full force and effect.”

¶ 7 In 1991, Maurice Sullins created the Maurice Wesley Sullins Trust (trust) naming plaintiff as trustee. The trust document transferred Maurice Sullins’ personal property, including specifically his “collection of paintings which includes approximately 1,200 paintings,” to the trustee to be held in trust as stated in the trust document. The trust document directs the trustee to make certain payments upon Maurice Sullins’ death and further states, in relevant part, as follows:

“Upon my death, the trustee shall \*\*\* distribute any other assets of the trust as follows:

1. One half (1/2) of the paintings owned by the Trust, equal to one half (1/2) of the value, to [plaintiff.]

2. One half (1/2) of the paintings owned by the Trust, equal to one half (1/2) of the value, to [defendant.] It being my intention that unless the paintings have been sold prior to my death, that one half (1/2) of the paintings are an irrevocable gift to [defendant,] and should not be transferred from the Trust to avoid distribution to [defendant] at my death.”

¶ 8 Maurice Sullins died in 1995.

¶ 9 Plaintiff filed his complaint for declaratory judgment in 2017. Plaintiff attached the agreement to his complaint as an exhibit. Plaintiff’s complaint alleged that despite repeated

demands defendant “failed and refused to carry out his obligations under the 1986 Agreement” and that there had been no sales since 1996. Plaintiff also alleged defendant refused to take any further action under the agreement unless plaintiff paid a portion of the expenses for a website which defendant set up in 2001 to market the paintings. The complaint stated that plaintiff claimed the agreement required defendant to pay all of the expenses related to the website and that by defendant’s “refusal to fulfill his obligations under the 1986 Agreement, [defendant] has materially breached that agreement such that [plaintiff] can now cancel the 1986 Agreement.”

The complaint prayed for an order:

“a) declaring that [defendant] is, and since October 1986 has been, obligated to actively show, promote, and market Maurice’s paintings at his own expense, including any expenses related to [the website;]

b) finding that [defendant] has materially breached the 1986 Agreement by failing and refusing to actively show, promote and market Maurice’s paintings;

c) declaring that the breach by [defendant] of the 1986 Agreement negates the benefit of that Agreement to [plaintiff,] thereby justifying [plaintiff] to terminate that agreement; and

d) granting [plaintiff] such other or further relief as this Court deems appropriate including an award of [plaintiff’s] costs in bringing this action.”

¶ 10 Defendant, acting *pro se*, filed an answer to plaintiff’s complaint. In his answer defendant wrote prosaically about how he became Maurice Sullins’ agent to sell his art and the steps he took and progress he made in promoting and selling the art. Defendant’s answer also stated that five months after the parties signed the agreement Maurice Sullins “made [defendant] a beneficiary, to be owner of (50%) half interest in his collection.” According to defendant’s

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answer (defendant did not appear at trial or present any evidence) sales did not go well and plaintiff suggested using the internet to promote the art. Defendant's answer alleged that plaintiff gave defendant a handwritten promise to share the expenses related to the internet equally but plaintiff later refused to honor that promise. Defendant alleged he created two websites to try to sell the art to no avail and, after four years, he stopped the website venture. Defendant further alleged that the website venture was a "special agreement" between himself and plaintiff and that but for plaintiff's promise he would not have started the websites. Defendant alleged plaintiff still owes defendant for half of the cost of the website ventures and that when "[plaintiff] refused to pay, [defendant] put his promotional efforts on hold until [plaintiff] pays [defendant.]" Defendant's answer also complained about correspondence between plaintiff and defendant regarding having a new agent represent the collection which defendant alleged resulted in a threatening letter from plaintiff's attorney to defendant. That section of defendant's answer concluded:

“[Plaintiff] promised [defendant] decades ago that if he were to ever sell any of the paintings, [plaintiff] would pay [defendant] (half) 50% payment from any sales, just as [defendant] would pay (half) 50% from any sales he made, just as he's always done. However nowhere in the Agreement does it state or give [plaintiff] any permission to negotiate for the sales of any paintings and/or the entire collection of paintings. But it appears [plaintiff] is attempting to try and sell some paintings as per his \*\*\* letter [regarding the potential new agent.]”

¶ 11 Defendant attached the will and the trust to his answer as exhibits.

¶ 12 On March 12, 2018, the trial court set the matter for trial on plaintiff's complaint for declaratory judgment and, pursuant to the court's standing order, required the parties to disclose all witnesses and exhibits to be produced at trial.

¶ 13 On April 12, 2018, defendant, still appearing *pro se*, sent the court a letter informing the court defendant was unable to travel to Chicago for the trial. The letter asked the court to "study all my important documentation." The letter also stated: "As pursuant to Your Honor's supplemental standing order, paragraph 2.2, I am also enclosing the documents \*\*\* that must be introduced into evidence at the \*\*\* trial." Defendant attached both the will and the trust to his April 12, 2018 letter.

¶ 14 On April 13, 2018, plaintiff filed his pretrial submission including the exhibits plaintiff intended to introduce at trial. Plaintiff's trial exhibits included the agreement, a lease agreement for a storage facility where the art was kept, and several letters between plaintiff and defendant.

¶ 15 Plaintiff appeared at trial and presented testimony and evidence. The agreement, along with plaintiff's other trial exhibits, were admitted into evidence at trial. Defendant did not appear at trial. The trial court entered a written order. The court's written order notes that defendant "waived his right to appear at trial and was accordingly unable to enter any of his exhibits into evidence or provide any testimony or argument that the court can consider. As such, this ruling is founded upon Plaintiff's Exhibits 1-8, Defendant's Exhibit 8 entered as Plaintiff's Exhibit 9, and [plaintiff's] trial testimony." In the court's discussion of its ruling, the court found that the "trial record evidences numerous documents intending or demonstrating modifications of the Agreement." The court found that the most important modification as it pertains to the rights and obligations at issue was defendant's "acquisition of a one-half interest in the remainder of the collection." The court found that "[w]hile no document was entered into

evidence demonstrating the gift [of a one-half interest in the remainder of the collection, plaintiff] testified that [defendant] acquired a 50% interest upon Maurice's death in 1995." The court found that "[a]s joint owners of the Maurice Sullins collection, [plaintiff] and [defendant] are each entitled to 50% of the proceeds, less expenses from any sale." The court further found that before defendant could fully perform under the agreement Maurice Sullins "bequeathed a property interest that subsumed the core of [defendant's] promise." The court wrote: "Considering only the evidence presented at trial, the court finds that Maurice gifted the consideration to [defendant,] discharging [defendant's] duty to perform and the Agreement with it."

¶ 16 The trial court's judgment reads as follows:

1. The court finds and declares that the 1986 Artist/Agent Agreement is a perpetual contract that is unilaterally terminable or modifiable at will by the signatories or inheritors thereto.
2. The court finds and declares that Maurice Sullins, upon his death in 1995, gifted a 50% property interest to Timothy W. O'Keefe. The gift subsumed in its entirety the consideration promised to O'Keefe under the 1986 Artist/Agent Agreement, rendering any performance on his part fruitless. It further discharged O'Keefe's duty to perform under the Agreement and the Agreement itself.
3. The court finds and declares that neither Victor B. Sullins nor Timothy W. O'Keefe have any rights, obligations, or liabilities to the other under the 1986 Artist/Agent Agreement, as it was discharged by the gift of Maurice Sullins'

promise to pay a 50% commission in the form of a 50% ownership interest in 1995.

4. The court finds and declares that the only remaining legal relationship between the parties is their respective 50% interests in the remainder of the Maurice Sullins collection. As co-owners, they are, respectively, entitled to 50% of the proceeds of any sale, less expenses.”

¶ 17 Plaintiff filed a motion to modify the trial court’s ruling. Plaintiff’s motion argued that the trial court’s finding that defendant is a joint owner of the “Maurice Sullins collection” is incorrect, as the testimony at trial was that defendant owns half of the physical paintings rather than one-half of the collection as a whole. Plaintiff attached a report of the proceedings at the trial to his motion to modify the judgment. Plaintiff testified at the trial. After plaintiff’s direct examination on questioning by his attorney, the trial court asked plaintiff: “With regard to the 1,200 paintings, do you own half of those, that number of paintings, and Mr. O’Keefe owns the other half?” Plaintiff responded, “Yes.” During plaintiff’s counsel’s closing argument, the following exchange occurred:

“THE COURT: Counsel, I do have one question here. Mr. Sullins indicated that he owns half the paintings and O’Keefe owns the other half.

MR. SCHRIVER [Plaintiff’s attorney]: Yes, sir.

THE COURT: What relief are you seeking in that regard?

MR. SCHRIVER: I’m not asking for any relief in that regard. \*\*\*

There’s nothing that is before you today addressing the ownership issue.

\* \* \*

THE COURT: [A]t this point is it determined or definitive as to what half O'Keefe owns and what half your client owns?

MR. SCHRIVER: Under the trust, my client, as trustee, has the obligation and the right to divide the paintings in half based upon an estimate of value, so physically dividing in half. \*\*\* It would not be a difficult task to divvy them up 50/50, and that's what we intend to do.

THE COURT: Tell me again the exact relief that you're seeking today.

MR. SCHRIVER: A declaratory judgment that because of nonperformance by Mr. O'Keefe, the Defendant, that the agent agreement \*\*\* is terminated and in no further force and effect.

That judgment will not impact ownership of the paintings. That's a matter for a different day.

THE COURT: That's the only relief sought at this point?

MR. SCHRIVER: Yes, sir."

¶ 18 Plaintiff's motion to modify the judgment read, in pertinent part, as follows:

"While the Maurice Sullins Trust was not placed in evidence, as no relief based on the trust was requested, [plaintiff's] testimony was clear and was consistent with the trust and with counsel's representations to the Court. [Plaintiff] owns 600 paintings and [defendant] owns 600 paintings.

There is a significant difference between each of [plaintiff] and [defendant] owning half of the 1,200 paintings and each of them owning 50% of each painting."

Plaintiff specifically sought modification of the trial court’s judgment that “the only remaining legal relationship between the parties is their respective 50% interests in the remainder of the Maurice Sullins collection. As co-owners, they are, respectively, entitled to 50% of the proceeds of any sale, less expenses.” Plaintiff asked the court to either delete that portion of the judgment or to modify it to specify that each party owns one-half of the 1,200 paintings in the Maurice Sullins collection.

¶ 19 Following briefing by the parties, the trial court denied plaintiff’s motion to modify the judgment. The court’s order denying the motion to modify stated, in part, that the court’s “finding on the matter presupposes a process that allows for equitable distribution of the value of any paintings sold.” The court additionally wrote that “the parties (as joint owners of the collection) remain free to agree to divide the paintings between them, or to submit such division to an independent art appraiser. Such an outcome would also (in the court’s view) be a fair and equitable resolution of this case, and the court’s Trial Ruling does not hinder any such agreement.”

¶ 20 This appeal followed.

¶ 21 ANALYSIS

¶ 22 “[T]he proper standard of review to be applied to declaratory judgments depends on the nature of the proceedings in the trial court.” *Pekin Insurance Co. v. Hallmark Homes, L.L.C.*, 392 Ill. App. 3d 589, 593 (2009).

“[W]hether appellate review of trial courts’ decisions is deferential is a function of the division of labor between trial courts and courts of review. Courts of review accord deference to those trial court decisions that are within the special competence of

the trial courts [such as the admissibility of evidence, credibility determinations, and the weighing of conflicting evidence], and only to those decisions. When we are reviewing a type of decision that the trial court was better qualified to make, we must proceed with due recognition of the trial court's superior vantage point. Otherwise, we must exercise our prerogative to decide the issue without deference to the trial court. [Citation.]

Thus, to the extent it is not based on factual determinations that are the trial court's province, the trial court's decision in a declaratory judgment action is subject to *de novo* review. [Citations.]" (Internal quotation marks omitted.) *Id.*

This court has also held that "our usual reluctance to reverse the judgment of a trial judge who sits as the trier of fact need not be stringently adhered to where, because the facts upon which the court made its determination were essentially stipulated, there were virtually no decisions to be made by the court as to the credibility of witnesses." *Southern Illinois University Foundation v. Booker*, 98 Ill. App. 3d 1062, 1076 (1981). In this case, the trial court, following a bench trial, based its judgment on undisputed evidence consisting of plaintiff's testimony and trial exhibits. Accordingly, we will apply a *de novo* standard of review.

¶ 23 On appeal plaintiff argues the trial court "exceeded its jurisdiction in declaring that [defendant] and [plaintiff] each own a 50% interest in each painting, and, therefore, going forward they are each entitled to 50% of the net sales price on any paintings sold." Plaintiff argues the pleadings serve to "circumscribe the relief the court is empowered to order" (*Ligon ex rel. Williams v. Williams*, 264 Ill. App. 3d 701, 707 (1994)) and in this case (1) the pleadings did not present the court with a justiciable matter as to ownership of the paintings, and (2) plaintiff

never requested any such relief. Plaintiff further argues the evidence does not support the trial court's ruling because "the only testimony in answer to the Court's own inquiry [about ownership of the paintings] was contrary to what the Court ultimately found." Plaintiff points out that defendant's answer did not admit or deny the allegations in the complaint. Plaintiff states the agreement, "which was the only document before the Court for a determination of [the parties'] rights and obligations [thereunder,] forms no basis for the relief the Circuit Court entered." Plaintiff acknowledges the trust document attached to defendant's answer and, despite arguing that the trust document was not admitted into evidence, asserts that the trust stipulates that plaintiff, as trustee, is to distribute one-half of the paintings to himself and one-half of the paintings to defendant as an irrevocable gift.

¶ 24 In *Ligon*, 264 Ill. App. 3d at 702, the plaintiff filed a complaint asking the court to find a parent-child relationship between her youngest daughter and the defendant. The plaintiff failed to appear at the hearing on the complaint. The State's Attorney and the defendant did appear, and the defendant admitted paternity and informed the trial court the minor was living with him. *Id.* at 703. The court entered an order finding that a parent-child relationship existed and it ordered custody to the defendant. *Id.* The plaintiff filed a pleading titled "Petition to Return Custody" (later agreed to be brought pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 1992))). At the argument on that petition the plaintiff argued the issue of custody was not properly before the court at the prior hearing. *Id.* at 704. The court denied the plaintiff's petition to return custody. *Id.* at 706.

¶ 25 The plaintiff in *Ligon* argued on appeal that the trial court's order awarding custody of the minor to the defendant was void because "the parentage petition was not directed at custody." *Id.* The *Ligon* court summarized the pertinent rules as follows:

“Circuit courts have ‘original jurisdiction of all justiciable matters’ with only limited exceptions. [Citation.] A justiciable question is one which involves the adverse legal interests of the parties. [Citation.] The court’s authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition. [Citation.] These pleadings function to frame the issues for the trial court and to circumscribe the relief the court is empowered to order; a party cannot be granted relief in the absence of corresponding pleadings. [Citations.] Thus, the circuit court’s jurisdiction, while plenary, is not boundless, and where no justiciable issue is presented to the court through proper pleadings, the court cannot adjudicate an issue *sua sponte*. Orders entered in the absence of a justiciable question properly presented to the court by the parties are void since they result from court action exceeding its jurisdiction. [Citation.]” *Id.* at 707.

¶ 26 The *Ligon* court held that the trial court “acted without authority in rendering an order affecting custody because custody was not a justiciable matter before him.” *Id.* at 708. Rather, “the only justiciable questions raised by the parentage petition were the establishment of a parent/child relationship [and the defendant’s] obligation to support the child.” *Id.* The court held that the “trial court thus had no authority to decide the issue of custody. [Citation.]” *Id.* at 708-09. See also *Zygmuntowicz v. Pepper Construction Co.*, 306 Ill. App. 3d 182, 184 (1999) (“A party cannot be afforded relief, despite the admission of evidence supporting such relief, absent a corresponding pleading, such as a cross-complaint.”). However, “a prayer for general relief is an appeal to the court to evaluate the allegations and proof and grant such relief as the equities of the case require.” *Goodwine State Bank v. Mullins*, 253 Ill. App. 3d 980, 988 (1993).

Nonetheless, “relief may be granted under a general prayer for relief only when it is consistent with the facts alleged and proved, provided it does not take the defendant by surprise.” *Id.*

¶ 27 We reject plaintiff’s argument the trial court *lacked jurisdiction* to include in its order a finding that defendant owned 50% of the entire collection. We agree defendant did not seek affirmative relief in the form of a counterclaim seeking an order as to ownership of the collection. Defendant would not have sought such relief as his pleadings all indicate defendant’s belief he was already owner of a 50% interest in the collection. Regardless, defendant pled the matter of ownership of the collection in his answer. Defendant asserted the fact of his ownership (or perceived ownership) as a defense to plaintiff’s claim the agreement is null and void.

Defendant’s answer to plaintiff’s complaint stated:

“[Plaintiff] promised [defendant] decades ago that if he were to ever sell any of the paintings, [plaintiff] would pay [defendant] (half) 50% payment from any sales, just as [defendant] would pay (half) 50% from any sales he made, just as he’s always done.”

¶ 28 Defendant’s answer accused plaintiff of “trying to deceptively manipulate the facts of our partnership in an attempt to cheat me out of my fifty percent (50%) ownership.” Later, defendant wrote that after Maurice Sullins died he “showed his long time appreciation to his close friend \*\*\* by not only granting and making [defendant] half interest owner in the collection, but also elevating [defendant] to a much more equal and closer partnership with [plaintiff.]” Defendant’s answer alleged plaintiff knew the difficulties in attempting to sell the collection, defendant did not breach the agreement to market the collection just because no one wanted to buy, and that plaintiff separately agreed to share the cost to market the collection on the internet. Finally, defendant’s answer claimed plaintiff may have brought the instant lawsuit

in collusion with a potential new art agent and plaintiff may have breached the agreement by “attempting to try and sell some paintings.”

¶ 29 Defendant clearly asserted these matters to argue that plaintiff is not entitled to any relief under the prayer in his complaint or for “such other or further relief as this Court deems appropriate including an award of [plaintiff’s] costs in bringing this action.” Regardless of the potential efficacy of such a defense to plaintiff’s claim, it is a matter properly brought before the trial court in the pleadings and raises a justiciable matter.

“Whether the circuit court has subject matter jurisdiction is a question of law that is reviewed *de novo*. [Citation.] Subject matter jurisdiction ‘refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs.’ [Citation.] The circuit court’s subject matter jurisdiction is conferred by the Illinois Constitution, with the exception of the court’s power to review administrative action, which is conferred by statute. [Citation.]

Pursuant to article VI, section 9 of the Illinois Constitution, the circuit court’s jurisdiction extends to all ‘justiciable matters.’ [Citation.] The circuit court has subject matter jurisdiction to consider any matter brought before it, so long as the matter is justiciable and does not fall within the original and exclusive jurisdiction of the Illinois Supreme Court. [Citation.] ‘[A] “justiciable matter” is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.’ [Citation.] ‘The only consideration is whether [the claim] falls within the general class of cases that the court has the

inherent power to hear and determine. If it does, then subject matter jurisdiction is present.’ [Citation.] Once a court obtains subject matter jurisdiction over a matter, the court does not lose jurisdiction, nor is its judgment rendered void, because of an error or impropriety in its determination of the facts or application of the law. [Citation.]” *Cushing v. Willis*, 2018 IL App (5th) 170444, ¶¶ 12-13.

¶ 30 The question of ownership was definite, touched upon the legal relationship of plaintiff and defendant who had adverse legal interests, and falls within the general class of cases the trial court has the inherent power to hear and determine. Therefore, we hold that jurisdiction was present. See *id.* ¶ 14.

¶ 31 We also hold the trial court did not grant defendant unpled and un-requested affirmative relief. The trial court’s pronouncement with regard to defendant’s 50% ownership in the collection was not an affirmative grant of relief in favor of defendant but a statement of the factual basis for the trial court’s ruling. The trial court’s order states:

“2. The court finds and declares that Maurice Sullins, upon his death in 1995, gifted a 50% property interest to Timothy W. O’Keefe. The gift subsumed in its entirety the consideration promised to O’Keefe under the 1986 Artist/Agent Agreement, rendering any performance on his part fruitless. *It further discharged O’Keefe’s duty to perform under the Agreement and the Agreement itself.*

3. The court finds and declares that neither Victor B. Sullins nor Timothy W. O’Keefe have any rights, obligations, or liabilities to the other under the 1986 Artist/Agent Agreement, *as it was discharged by the gift of Maurice Sullins’ promise to pay a 50% commission in the form of a 50% ownership interest in 1995.*” (Emphases added.)

The court's written order establishes that the court expressly and exclusively relied on the fact Maurice Sullins gave defendant a 50% interest in the remainder of the collection for its judgment declaring the parties no longer had any rights or obligations under the agreement. Accordingly, we must turn to plaintiff's second argument: that the evidence does not support the trial court's finding.

¶ 32 Plaintiff argues the only evidence admitted at the trial is contrary to the trial court's finding that defendant has a 50% interest in the collection as a whole rather than ownership of half the physical paintings (which paintings, according to plaintiff, is to be determined by plaintiff). Plaintiff argues "that in 1991 Maurice transferred the entire art collection to his son Victor with the directive that upon Maurice's death Victor distribute one-half of the painting [sic] to O'Keefe and one-half of the painting [sic] to himself." Despite making that argument plaintiff goes on to point out that the trust was not admitted into evidence though it was attached to defendant's answer and is part of the record. The trial court's order stated that "no document was entered into evidence demonstrating the gift," but plaintiff testified that defendant "acquired a 50% interest upon Maurice's death." The court next stated that plaintiff and defendant were "joint owners of the Maurice Sullins collection."

¶ 33 We find the trial court could rely on and construe the trust document to determine the facts that formed the basis of its judgment. Defendant attached a copy of the trust document to his answer and attempted to assert a defense based thereon. "If a \*\*\* defense is founded upon a written instrument, a copy thereof \*\*\* must be attached to the pleading as an exhibit \*\*\*. \*\*\* [T]he exhibit constitutes a part of the pleading for all purposes." 735 ILCS 5/2-606 (West 2016). In *William Aupperle & Sons, Inc. v. American National Bank & Trust Co. of Chicago*, 28 Ill. App. 3d 573 (1975), the defendants filed an answer to a complaint to foreclose a mechanics lien

and attached as an exhibit to their answer lien waivers as an affirmative defense. *William Aupperle & Sons, Inc.*, 28 Ill. App. 3d at 575. On appeal, the plaintiff argued the lien waivers were not an issue because the defendants failed to introduce evidence in support of their defense. *Id.* at 576. The court disagreed noting the “lien waivers were attached to [the] defendants’ pleadings as an exhibit, and [the] plaintiff did not deny their execution or delivery.” *Id.* The court concluded that “[u]nder \*\*\* the Civil Practice Act ([citation]), a written instrument attached to a pleading as an exhibit constitutes part of the pleading for all purposes and need not be introduced in evidence.” *William Aupperle & Sons, Inc.*, 28 Ill. App. 3d at 576. See also *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 33 (“Although there is a dearth of recent authority restating this, we note that common law pleadings are admissible in evidence.”). Moreover, plaintiff, through counsel, relied on the trust in answering the court’s question regarding ownership of the paintings. “It is clear under Illinois law that this statement of fact by defendants’ attorney, made in his capacity as their attorney at a judicial hearing, may be used as an admission of fact by them.” *Murphy v. Rochford*, 55 Ill. App. 3d 695, 700 (1977). Plaintiff admitted the existence of the trust and we will not simply ignore it where it is a part of the record, plaintiff has not denied its validity, and counsel has interjected its provisions into the proceedings.

¶ 34 The pertinent language in the trust reads as follows:

“Upon my death, the trustee shall make the payments provided in Article VI, and shall pay the remaining principal and any accrued or undistributed income and shall distribute any other assets of the trust as follows:

1. One half (1/2) of the paintings owned by the Trust, equal to one half (1/2) of the value, to my son Victor Sullins.

2. One half (1/2) of the paintings owned by the Trust, equal to one half (1/2) of the value, to Timothy O'Keefe. It being my intention that unless the paintings have been sold prior to my death, that one half (1/2) of the paintings are an irrevocable gift to Timothy O'Keefe, and should not be transferred from the Trust to avoid distribution to Timothy O'Keefe at my death.”

¶ 35 Where, as in this case, “trusts are not ambiguous, their interpretation is a question of law for the court to decide.” *Mucci v. Stobbs*, 281 Ill. App. 3d 22, 29 (1996).

“When a court construes a trust instrument, its first purpose is to discover the settlor’s intent from the trust as a whole and to give effect to that intent if not contrary to public policy. [Citation.] When construing a trust, the court should apply the same rules that apply to the construction of wills ([citation]) and contracts ([citation]). All of the provisions of the trust must be considered, and the court should give the words used their plain and ordinary meaning. None of the provisions should be rendered meaningless or in conflict with any other provision, and all of the provisions should be harmonized with each other if at all possible. [Citations.]” *Id.* at 29.

¶ 36 We find the plain and unambiguous language of the trust supports the trial court’s determination. The trust stated defendant is to receive half the paintings “equal to one half (1/2) the value.” The trial court’s order merely gives meaning to the language in the trust ensuring defendant is to receive half the value of all of the paintings. A contrary finding by the trial court could have had the effect of defeating the intent of the settlor as expressed in the plain and unambiguous language in the trust or of rendering that language in the trust meaningless by permitting the trustee to distribute half the physical paintings to defendant where the value of the

paintings defendant received did not represent half the value of all the paintings as directed by the language of the trust.

¶ 37 Plaintiff argues the trust calls for a physical distribution of the paintings. The trial court clarified that its order allows for an *equitable* distribution of the physical paintings either by the parties as joint owners or by submitting the division to an independent appraiser.

¶ 38 We also reject plaintiff's argument the only testimony at trial was contrary to the trial court's finding. Plaintiff testified defendant owns half the paintings. Plaintiff did not testify how it was to be determined which paintings defendant would receive. The trial court's holding directs that determination must be made based on the total value of the collection which is consistent with the plain language of the trust. Additionally, on appeal plaintiff points to the colloquy between plaintiff's counsel and the trial court. Counsel's statement to the trial court, which is not evidence, is nonetheless essentially consistent with the trial court's finding. Plaintiff's counsel stated that under the trust, the trustee "has the obligation and the right to divide the paintings in half *based upon an estimate of value.*" The trial court's order merely directs such division so as to give effect to the intent of the settlor.

¶ 39 Defendant raised ownership of the paintings as part of his defense to plaintiff's complaint in his answer and defendant attached the trust document to his pleading. The trial court had jurisdiction to determine ownership as part of its ruling on the continued validity of the agreement. The trial court determined the fact of ownership as a question of law based on the clear and unambiguous language of the trust. We hold the trial court's determination was a proper construction of the trust based on its plain and unambiguous language. Based on the fact Maurice Sullins gifted defendant with the consideration under the agreement the trial court determined Maurice discharged defendant's duty to perform and the agreement. Plaintiff has not

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challenged the holding that Maurice's gift discharged defendant's duty to perform and the agreement itself. The trial court's written order properly reflects its determinations of the facts and law.

¶ 40

#### CONCLUSION

¶ 41 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 42 Affirmed.