

COA Opinion: Surviving spouse did not breach agreement to execute mutual wills where agreement did not expressly restrict disposition of assets

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Carlton and his wife Viola had a son and a daughter. The daughter is the deceased mother of Carlton and Viola's two granddaughters, Melady and Melinda. Carlton and Viola executed identical wills, a revocable trust agreement, and an agreement to execute mutual wills, all of which reflected an estate plan to establish a trust for the benefit of Melady for life, with the remainder to the issue of Carlton and Viola. Viola died first. Subsequently, Carlton transferred title from assets that had been jointly owned by Carlton and Viola to be titled jointly in his and Melady's name or to name Melady as beneficiary. Carlton and Viola's son and other granddaughter brought this action requesting that the probate court impose a constructive trust on certain assets in Melady and her husband's control, alleging that Carlton transferred the assets in violation of the agreement to execute mutual wills. After a hearing, the probate court found that the agreement to execute mutual wills was valid and binding, that nothing in the agreement restricted what the surviving party could do with the the joint assets, and that Carlton's transfer of assets did not constitute a breach of the agreement. The probate court granted summary disposition in favor of Melady and her husband, and in a *per curiam* opinion, *In re Estate of Carlton J Leix*, No. 291406, the Court of Appeals affirmed. The Court of Appeals held that there was no implied limitation in an agreement to execute mutual wills that limits the surviving spouse's ability to transfer assets as he or she pleases.