Recent Cases of Interest to Fiduciaries

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Matter of Phyllis V. McDill Revocable Tr., 506 P.3d 753 (Wyo. 2022)

The Wyoming Supreme Court upheld the application of a trust's no-contest clause when a beneficiary challenged the terms of the trust in a different jurisdiction.

Fact

Phyllis McDill created the Phyllis V. McDill revocable trust (the trust and trust agreement) on April 22, 2009. At the time of the trust agreement's execution, she had three adult children: Thomas, Michael and Teresa. She named herself as initial trustee, with Michael and Teresa as successor co-trustees. After the initial execution, Phyllis made several amendments to the trust agreement, including to direct that certain real property be sold at her death, to distribute the sum of $100,000 to each of her children and to include a no-contest provision. The final version of the trust agreement provided for the previously mentioned bequest to each child and divided the balance of the trust's assets among Phyllis' grandchildren who survived her.

The no-contest provision disinherited any individual (and the descendants of such individual) who directly or indirectly contested the trust or any beneficial interests created thereunder. Notably, the provision required a trustee to provide notice of his or her intent to enforce the no-contest provision and give the individual 30 days to withdraw or dismiss the contest to avoid being disinherited.

Phyllis died on Dec. 31, 2017, and Michael became the sole successor trustee. Michael provided notice to each beneficiary, including Thomas, that, pursuant to Wyoming law, they each had 120 days to contest the validity of the trust and trust agreement. This notice was delivered to Thomas via the U.S. Postal Service on Feb. 2, 2018, meaning Thomas had until June 4, 2018, to contest the trust's validity.

Thomas subsequently filed a petition in the District Court of the 459th Judicial District of Travis County, Texas, against Michael and his attorneys. Thomas alleged, among other claims, that Michael had unduly influenced Phyllis to execute the trust agreement's amendments. Thomas also sought to quiet title to certain real property owned by the trust with him as the owner. In response, Michael notified Thomas that he intended to enforce the trust's no-contest provision and reminded Thomas of his ability to withdraw the suit in Texas to avoid running afoul of the provision. Thomas did not dismiss or withdraw his suit. Instead, the Texas court dismissed the suit for lack of personal jurisdiction.

At the same time, Michael sought instruction from the Laramie County District Court as to the proper administration of the trust. Specifically, Michael sought confirmation that Thomas' actions violated the no-contest provision, that Thomas had received notice of Michael's intent to enforce the provision and that, as a result, Thomas was now disinherited. Furthermore, Michael sought clarification on the disposition of the Trust's assets, given the impact of the no-contest clause.

Thomas responded to Michael's petition for instruction, alleging that Michael breached his fiduciary duties, that the trust agreement's amendments were the result of undue influence and that the application of the no-contest provision was contingent on the outcome of Thomas' Texas suit. Michael filed a motion for summary judgment, claiming, among other items, that Thomas had forfeited his status as a beneficiary of the trust and therefore, did not have standing to allege the various breaches of fiduciary duties. Thomas sought an extension

to respond to Michael's motion but, even with that extension, failed to timely respond. Accordingly, the Laramie County District Court granted Michael's motion, finding that Thomas lacked standing to bring breach-of-trust claims and that any challenge to the validity of the trust agreement was time-barred. Thomas appealed.

Law

Wyoming recognizes no-contest clauses in trust agreements and looks to the intent of the settlor in enforcing them. Gowdy v. Cook, 455 P.3d 1201, 1210 (Wyo. 2020). That intent is inferred by examining "the plain language contained in the four corners of the [trust]. Where there is no ambiguity and the language is clear and susceptible of only one construction, then the plain provisions of the trust instrument must be given effect." In re Est. of George, 265 P.3d 222, 235 (Wyo. 2011).

The duties found in Wyoming's Uniform Trust Code are owed to the beneficiaries and qualified beneficiaries of a trust. Specifically, Section 4-10-802(a) of the code provides that "a trustee shall administer the trust solely in the interests of the beneficiaries as their interests are defined under the terms of the trust." Section 4-10-813(a) similarly provides that "a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests." The code also states: "[a] violation by a fiduciary of a duty the fiduciary owes to a beneficiary is a breach of trust." Wyo. Stat. Ann. § 4-10-1001(a). Therefore, only qualified beneficiaries and beneficiaries have standing to assert a breach-of-trust claim against a trustee.

Section 4-10-604 of Wyoming's Uniform Trust Code provides that "a person may commence a judicial proceeding to contest the validity of a trust that is revocable during the settlor's life or an amendment thereto within the earlier of: (i) Two (2) years after the settlor's death; or (ii) One hundred twenty (120) days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address and of the time allowed for commencing a proceeding." The statute further provides a presumption that notice to the last known address of an individual constitutes receipt by that individual.

Holding

The Wyoming Supreme Court agreed with the district court that Michael presented sufficient facts in his motion for summary judgment. In particular, the Wyoming Supreme Court noted that Michael provided the trust agreement and its amendments, Thomas' petition to the Texas court, Michael's notice of his intent to enforce the no-contest provision and the tracking information for Michael's prior notice. Michael also submitted the Texas court's dismissal of Thomas' petition as prima facie evidence that Thomas violated the no-contest provision. Because Thomas did not establish a dispute of those material facts, the Wyoming Supreme Court agreed that the lower court properly granted Michael's motion.

The Wyoming Supreme Court also agreed with the lower court's application of the no-contest clause.

Thomas argued that, for the no-contest clause to be implicated, the "contest" must have been "unsuccessful" based on the merits. He claimed that because his Texas suit was determined on procedural and jurisdictional grounds, his Texas action did not fall within the scope of the

provision. The Wyoming Supreme Court disagreed, saying that the clause included Thomas' action because it clearly contested and sought to impair the terms of the trust agreement. And, because Thomas' actions fell within the scope of the no-contest clause, the Wyoming Supreme Court affirmed the district court's decision that Thomas lacked standing to bring various claims against Michael for a breach of trust. Because he was excluded as a beneficiary and a qualified beneficiary under the no-contest clause, Thomas was no longer a party with standing to challenge the actions of the trustee or enforce a breach of trust.

Finally, the Wyoming Supreme Court agreed with the district court that Thomas could not challenge the validity of Phyllis' subsequent amendments to the trust agreement. The Wyoming Supreme Court noted the requirements of Section 4-10-604 of Wyoming's Trust Code regarding the time period to challenge a revocable trust after notice, and the corresponding presumption that delivery to the last known address of that beneficiary constitutes receipt by that individual. Because Michael provided evidence of that delivery, and because Thomas failed to provide evidence to overcome that presumption, the Wyoming Supreme Court determined that any challenge Thomas made was barred by the statutory period provided in Section 4-10-604 of Wyoming's Trust Code.

Jemison v. Jemison, No. 21-1805, 2022 WL 2383611 (3d Cir. 2022)

The 3rd Circuit upheld the U.S. District Court for the District of New Jersey's application of the business judgment rule to insulate certain members of a company's board of directors for challenges to decisions made relating to director's compensation and commissions and to sales made by the company.

Facts

Siblings William, Michael, Steven and Susan Jemison were the beneficiaries of the Jemison trust. The trust's primary asset was the majority of the voting shares of JJKL, Inc. f/k/a Heyco, Inc. (Heyco). Heyco had two wholly owned subsidiaries, Heyco Products, Inc. (Products) and Heyco Metals, Inc. (Metals). William and Michael served on the board of Heyco alongside two other nonfamily members. Each of the siblings also were co-trustees of the trust.

During William's and Michael's time on the board, Heyco made loans to William and Michael in the amount of $500,000. The loans were to be repaid in annual $50,000 installments, but, at Heyco's annual board meetings from 2012-2015, the loans were incrementally forgiven as a form of director compensation.

Heyco also sold both of its subsidiaries during the brothers' time on the board. In relation to the sale of Products, William and Michael, as members of Heyco's senior management, received board-approved commissions. William, Michael and Susan each voted in favor of the sale on behalf of the trust, and the sales price exceeded the valuations provided by an investment banking firm ahead of the sale. Steven did not vote in favor of the sale.

When selling Metals, Heyco struggled to find an outside buyer. After negotiations with three potential buyers fell through, Michael made an offer to purchase the subsidiary through a company owned by Michael and his family. The board (minus Michael) approved of the sale, and William, Michael and Susan, on behalf of the trust, each agreed to the sale. Again, Steven did not agree with the sale.

Following the sale of Metals, Steven sued his two brothers, claiming they violated their fiduciary duties as trustees and corporate directors, and they were unjustly enriched at Steven's expense. The U.S. District Court for the District of New Jersey granted William and Michael's motion for summary judgment on each of Steven's claims. Steven appealed.

Facts

Siblings William, Michael, Steven and Susan Jemison were the beneficiaries of the Jemison trust. The trust's primary asset was the majority of the voting shares of JJKL, Inc. f/k/a Heyco, Inc. (Heyco).

Law

The New Jersey Business Corporation Act (NJBCA) requires corporate directors to "discharge their duties in good faith and with that degree of diligence care and skill which ordinarily prudent people would exercise under similar circumstances." N.J. Stat. Ann. § 14A:6-14(1). At the same time, New Jersey follows the business judgment rule, which protects a corporate director from liability and from being second-guessed in decision-making, except in instances of fraud, self-dealing or unconscionable conduct. Maul v. Kirkman, 637 A.2d 928, 937 (N.J. Super. Ct. App. Div. 1994). The individual challenging a corporate decision bears the burden of proving that corporate director's self-dealing. In re PSE&G S'holder Litig., 801 A.2d 295, 306 (N.J. 2002). If they are able to prove bad faith or improper action, the corporate director is responsible for proving the transaction was fair to the corporation. Id. To determine whether the business judgment rule applies, courts ask "(1) whether the actions were authorized by statute or by charter, and if so, (2) whether the action is fraudulent, self-dealing or unconscionable." Seidman v. Clifton Sav. Bank, S.L.A., 14 A.3d 36, 52 (N.J. 2011).

Directors of a company are provided with broad authority to set reasonable compensation for its directors and officers, and to lend money to its officers. See N.J. Stat. Ann. § 14A:6-8(3); N.J. Stat. Ann. § 14A:6-11.

A trustee is obligated to administer a trust with undivided loyalty to, and solely in the best interest of, the beneficiaries. Where the trustee engages in a transaction with trust property and a corporation in which they have an interest, there is a presumed conflict of interest. The trustee may only rebut this presumption by proving "(1) the transaction was authorized by the terms of the trust; (2) the transaction was approved by the court; (3) the beneficiary did not commence a judicial proceeding within the time allowed by [N.J. Stat. Ann.] 3B:31-74; (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with [N.J. Stat. Ann.] 3B:31-78; or (5) the transaction involves a contract entered into or a claim acquired by the trustee before the person became a trustee." See N.J. Stat. Ann. § 3B:31-55.

Holding

The 3rd Circuit disagreed with Steven's claims that Michael and William breached their duty of loyalty and care as corporate directors by (1) issuing and forgiving the $500,000 loans to themselves and (2) authorizing their own commission in the sale of Products.

With regard to the potential breach of their duty of loyalty, the court pointed to the express language in the NJBCA, which authorizes a company's board to set director compensation

and issue loans. It specifically states that approving a director's own compensation is not a conflict of interest. Because these decisions were clearly authorized by statute, under the business judgment rule Steven had the burden of proving there was some form of self-dealing. He did not meet this burden. The court also noted that each transaction was approved by Heyco's two disinterested directors, "thereby cleansing any potential conflict of interest."

In examining the potential breach of their duty of care, the court noted that the inquiry focuses on the procedures employed by a board in making a determination, instead of the actual decisions made. The duty of care requires that the director obtain all necessary information in making a decision and act with the same care a prudent person might under similar circumstances. Because Steven failed to point to any facts suggesting the board was not fully informed in making its decisions, the 3rd Circuit found that the lower court properly applied the business judgment rule and that Michael and William did not breach their duty of care.

Finally, the 3rd Circuit disagreed with Steven's claims that Michael and William breached their duties of loyalty and care as a result of the sale of Metals to Michael's family company.

Because Michael recused himself from the vote approving the sale, and because the other, disinterested board members approved the sale, William and Michael did not breach their duty of loyalty in facilitating the transaction.

In evaluating whether this sale constituted a breach of care, the court applied Delaware's more heightened standard of scrutiny, which Delaware courts apply in instances where substantially all of a company's assets are being sold. This scrutiny requires that the court look to the adequacy of the director's decision-making process and to the reasonableness of the director's actions in making decisions. As with the business judgment rule, this test does not require that the court question the corporate decision-making, so long as it is reasonable. Here, the court agreed that even the heightened standard was met.

The 3rd Circuit noted that the parties engaged valuation experts to opine on the total value of the company and that the parties had negotiated a sales price, with Heyco's board rejecting Michael's initial offer. Ultimately, Metals sold for $2.65 million over Michael's company's original offer and at a price consistent with the independent valuations. Because of this, the 3rd Circuit determined that the board was adequately informed and acted reasonably in making the decision. The 3rd Circuit disagreed with Steven's argument that the sales price was not fair and reasonable (and therefore unable to be determined on summary judgment). According to the court, the brothers had established the process of marketing the company to potential buyers before selling the company to Michael. Beyond that, because independent board members approved of the sale, William and Michael had no burden to demonstrate the transaction was fair and reasonable.

However, the 3rd Circuit reversed the lower court's determination regarding Steven's claims that Michael and William breached their fiduciary duties as trustees of the trust in the sale of Metals. As a preliminary matter, the 3rd Circuit determined that the lower court improperly applied corporate law, as opposed to laws relating to the administration of trusts, in determining if the brothers breached these fiduciary duties as co-trustees.

In the trust administration context, the court looked to New Jersey's Uniform Trust Code and its default rules for transactions with a presumed conflict of interest. Specifically, the court pointed to the statute that provides the presumption of a conflict in transactions between trust property and a corporation or other enterprise in which the trustee has an interest. Michael and William attempted to rebut this presumption by pointing to language in the trust agreement providing the trustee with broad discretionary authority to vote to exercise or sell and rights to consent to a sale by a corporation. However, the court found this language insufficient because it did not specifically address a trustee's ability to vote the shares of Heyco. Michael and William also argued that, structurally, the trustees of the trust are not prohibited from serving as directors and the trust agreement did not require that all siblings vote on behalf of the trust unanimously. However, the court found that this language was insufficient to overcome the existing presumption. Therefore, because Michael and William had not rebutted the existing presumption of a conflict of interest, the court "reluctantly" reversed and remanded the lower court's grant of summary judgment.

In re Trust of Harrison, 272 A.3d 45 (Pa. Super. Ct. 2022)

The Superior Court of Pennsylvania affirmed the lower court's ruling that the trustee acted outside his discretion because he failed to show that ADHD and marijuana use caused the beneficiary to be unable to manage his affairs.

Facts

On April 29, 1995, Sol E. and Sydria Harrison created an irrevocable trust for their grandson Michael E. Harrison, as the sole beneficiary, and the grandson's father, Theodore Harrison, as sole trustee. The trust is governed by Florida law.

The trust agreement provided that any time after Michael reached age 30, he "shall have the right to withdraw up to one-third of the principal."

The trust agreement further provided that a trustee could retain property distributable to a beneficiary "at any time when such beneficiary shall in the opinion of our Trustee be unable by reason of illness or other condition to properly manage his or her affairs."

In 2017, when Michael was 30 years old, he requested a distribution of one-third of the trust principal. However, the trustee refused to distribute the trust principal, alleging that Michael was under a disability. The trustee claimed that Michael suffered from attention deficit hyperactivity disorder (ADHD) and frequently used marijuana, and implied that he was in the business of dealing marijuana, according to the Superior Court of Pennsylvania's opinion.

On June 17, 2019, Michael filed a petition with the Bucks County Court of Common Pleas, Orphans' Court, requesting: (1) an accounting of the trust; (2) distribution of one-third of the trust's principal; and (3) removal of the trustee.

On Jan. 26, 2021, the Orphans' Court held an evidentiary hearing, where the trustee alleged that Michael's ADHD and marijuana use prevented Michael from properly managing his affairs. The trustee further alleged that Michael was perpetually unemployed.

Michael testified that he was not under a disability because he managed his affairs, lived independent of his parents and was employed. He alleged that the trustee, his father, could

not evaluate his ability to manage his affairs because he and his father had been estranged since 2017.

On March 4, 2021, the Orphans' Court entered an order directing the trustee to provide an accounting of the trust and distribute one-third of the trust principal to Michael. The Orphans' Court determined that the trustee acted "outside" his discretion under the terms of the trust because the evidence was insufficient to establish that Michael suffered from a disability rendering him incapable of managing his own affairs.

The Orphans' Court further found that the evidence presented at the hearing failed to demonstrate how Michael's childhood ADHD and later marijuana use presently rendered Michael unable to manage his affairs. The Orphans' Court stated that the trustee merely offered anecdotal testimony regarding Michael's lifestyle and impulsivity but did not present any expert testimony, recent diagnosis of Michael's ADHD or testimony as to the effect marijuana use had on him.

The Orphans' Court was unable to conclude that Michael was currently disabled through the trustee's testimony because of Michael and the trustee's estrangement since 2017.

Furthermore, the Orphans' Court considered that if the grantor "wished the trustee to have unbridled discretion with respect to the one-third distribution provision, the disability clause would not have been placed in the trust agreement as there would have been no need for it." The trustee appealed.

Law

Florida statute § 736.0814(1) provides in part: "A court shall not determine that a trustee abused its discretion merely because the court would have exercised discretion in a different manner or would not have exercised the discretion."

However, "while the grant of absolute discretion to a fiduciary is very broad, 'a trustee is always subject to accountability to remaindermen where discretion is improperly, arbitrarily or capriciously exercised.' " *Rachins v. Minassian*, 251 So.3d 919, 924 (Fla. Dist. Ct. App. 2018).

"[E]ven though a grant of 'absolute discretion' to a fiduciary is very broad, it does not relieve a trustee from the exercise of good faith or from being judicious in his administration of the trust, which administration is always subject to review by the court in appropriate instances." *Mesler v. Holly*, 318 So.2d 530, 533 (Fla. Dist. Ct. App. 1975).

Holding

The Superior Court of Pennsylvania affirmed the Orphans' Court's order requiring the trustee to provide an accounting and directing the trustee to distribute one-third of the trust principal.

On appeal, the trustee insisted the Orphans' Court violated Florida law by supplanting his discretion, as trustee, with the court's own discretion. The trustee argued that ample evidence supported his conclusion that Michael's ADHD, together with continuous marijuana use, rendered Michael "disabled" and unable to manage his own affairs as set forth in the trust's disability clause.

The Superior Court of Pennsylvania rejected the trustee's argument, finding that the trustee largely presented the same arguments addressed by the Orphans' Court. The Superior Court of Pennsylvania found that the Orphans' Court was within its purview when making credibility determinations regarding the testimony and did not err in its application of Florida law when determining that trustee acted outside the bounds of his discretion under the trust terms.

Lizer v. Romano, No. B306558, 2022 WL 1681653, at *1 (Cal. Ct. App. 2022)

The Court of Appeals of California reverses order unlawfully modifying the terms of an irrevocable trust.

Facts

On Dec. 14, 1995, Dean Martin created the Dean Martin family trust, naming Laura Lizer and Mont Verner as initial co-trustees. Soon thereafter, on Dec. 25, 1995, Martin died, at which point the trust became irrevocable.

The terms of the trust provided that upon Martin's death the co-trustees were to divide the trust estate into separate shares for each of the named beneficiaries and to hold each share "in a separate trust." However, the co-trustees did not divide the trust estate into separate shares and continued to hold the trust estate in a single trust.

The terms of the trust provided that a successor trustee shall not "have any duty to audit or investigate the accounts or administration o[f] any [prior] Trustee, or, unless requested in writing to do so by a person having a present or future beneficiary interest under any trust, have any duty to take action or to obtain redress for breach of trust."

Verner died in June 2003, at which time Lizer became the sole trustee. She served in that capacity until Dec. 31, 2010, when she appointed Joel McCabe Smith as co-trustee.

Between early 2011 and December 2018 the beneficiaries and the co-trustees had multiple legal disputes over the administration of the trust, including a petition filed by the beneficiaries with the Superior Court of Los Angeles County alleging Lizer breached her fiduciary duties by maintaining inaccurate and misleading books and records.

On Dec. 4, 2018, the co-trustees met with several beneficiaries in an attempt to reach a settlement. At that meeting, the parties verbally agreed, among other things, to the appointment of a corporate trustee to serve alongside the co-trustees. In the subsequent months the co-trustees selected a corporate trustee; however, before accepting the trusteeship the corporate trustee required a court order releasing the corporate trustee from any duty to remedy any breach of trust by the co-trustees.

On Sept. 13, 2019, some, but not all, of the beneficiaries entered into a settlement agreement with the co-trustees. The terms of the settlement agreement provided that: (1) "[N]o separate trusts [or sub-trusts] shall be drafted or required to be created"; (2) the corporate trustee "shall have no obligation or duty to investigate or seek any relief of any kind concerning … any acts or omissions by either or both of the Current Co-Trustees"; and (3) the settlement agreement is conditioned upon court approval.

The co-trustees subsequently filed a petition with the Superior Court of Los Angeles County seeking approval of the settlement. However, one of the beneficiaries, Gina Martin Romano, objected to the petition, arguing that the terms of the settlement agreement improperly modified the trust.

On March 26, 2020, following an evidentiary hearing, the Superior Court of Los Angeles County entered an order approving the settlement agreement. The order provided in part that: (1) "[N]o separate trusts shall be drafted or required to be created for the Shares, but each Share will be separately accounted for in a manner to be determined"; and (2) the corporate trustee "shall have no obligation or duty to investigate or seek any relief of any kind concerning, and no liability for, any acts or omissions by either or both of the Current Co-Trustees prior to the first date that this Order becomes final ..., whether known, unknown or subsequently discovered." Romano appealed claiming the order unlawfully modified the trust.

Law

The California Probate Code provides that upon petition by the beneficiaries the probate court can modify an irrevocable trust if "all beneficiaries of [the] irrevocable trust consent," unless "the continuance of the trust is necessary to carry out a material purpose of the trust, [then] the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust." Cal. Prob. Code § 15403.

The code further provides that the probate court can modify an irrevocable trust upon petition by a trustee or beneficiary, "if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust." Cal. Prob. Code § 15409.

"[T]he court should not permit a deviation [from a trust's terms] simply because the beneficiaries request it where the main purpose of the trust is not threatened and no emergency exists or is threatened." *Stanton v. Wells Fargo Bank & Union Trust Co.*, (1957) 150 Cal.App.2d 763, 770.

"The courts power to permit a deviation exists so that the settlor's main trust purpose will not fail, and to take care of grave emergencies." Id. at 776.

Holding

Romano argued, and the co-trustees did not dispute, that the requirements for a trust modification were not met when the Superior Court of Los Angeles County entered the order because not all of the beneficiaries consented to the modification, and the co-trustees did not show that modification was necessary to accomplish the trust's purpose.

The co-trustees alleged that the order did not modify the trust; instead the order merely exercised the rights of the trial court to relieve the corporate trustee of obligations under the trust.

Romano argued that the order unlawfully modified the trust in two ways. First, the terms of the trust require a successor trustee to redress a breach of trust by a prior trustee upon written request by a beneficiary. Romano argued that the order modified this term by

releasing the corporate trustee from liability for any act or omission by the co-trustees, which made it harder for the beneficiaries to enforce the terms of the trust.

The Court of Appeals of California agreed with Romano that the release of the corporate trustee was a modification of the trust. The Court of Appeals stated that a corporate trustee's conditions for serving as co-trustee has "no bearing on whether the trial court could lawfully order the modification." Romano's standing objection precluded the Superior Court of Los Angeles County from modifying the trust, and the co-trustees did not provide any evidence showing that the release was necessary to accomplish the trust's purpose.

Second, Romano argued that the order modified the trust by eliminating the requirement that the separate shares be held in separate trusts for the benefit of each named beneficiary. The Court of Appeals found that "permitting only some of the beneficiaries to modify the terms of an irrevocable trust by, in effect, creating different trust terms for the non-consenting beneficiary would violate the settlor's intent to create an irrevocable trust and nullify the legislative judgment that an irrevocable trust may be modified with the consent of all beneficiaries."

The Court of Appeals ultimately reversed the Superior Court of Los Angeles County's order in its entirety because the terms of the settlement agreement were conditioned upon approval of all of its terms.

Little v. Davis, 974 N.W.2d 70 (Iowa 2022)

The Supreme Court of Iowa concludes that a statute permitting termination or modification of an irrevocable trust with the consent of the settlor and all beneficiaries requires the consent of all settlors of a trust, not only the surviving settlor.

Facts

In 2016, husband and wife, Donald K. and Collen Davis, created a trust. The trust agreement could be amended while Donald and Collen were both living and competent. The trust agreement provided that "[u]pon the death of the first Co-Trustor to die . . . the then surviving Co-Trustor . . . shall not have the power to amend, revoke and/or terminate the [trust]." Upon the death of the surviving spouse, the trust estate was to be distributed equally to Donald's four children: Keith Davis, Jeffrey Davis, Donald J. Davis and Katina Little. The primary asset of the trust was Donald's farmland, which he acquired before marrying Collen but was held jointly by them.

Collen died in 2017, leaving Donald as the surviving settlor and surviving trustee. After Collen's death, Donald decided to amend the dispositive terms of the trust. Donald, with the assistance of his attorney, prepared a consent document that gave Donald the power to alter, amend or revoke the trust. Donald and his four children signed the consent document.

In 2018, Donald executed an amendment that altered the disposition of the trust estate. The amendment provided, that upon Donald's death, Donald's farmland was to pass to his sons, Donald J. and Keith. Under the amendment, Little was to receive $25,000 and Jeffrey was to receive $50,000. The amendment also changed the successor trustees to Donald J. and Keith, instead of all four children.

Donald died in 2019. After Donald's death, Little received notice that Donald J. and Keith became trustees of the trust. Little filed suit against Donald J. and Keith as trustees. In her petition, Little contended the amendment to the trust agreement was void.

The trustees argued the amendment was valid because Iowa Code Section 663A.2202(1) provides that an irrevocable trust can be modified with the consent of the settlor and all of the beneficiaries. Little asserted several reasons why the amendment was not valid. First, Little argued that the trust agreement, by its own terms, could not be amended, revoked or terminated after Collen's death. Second, Little argued that the amendment was void without court approval because Collen could not and did not consent to the amendment. Third, she argued that the amendment was invalid because the consent document did not identify the dispositive terms to be modified. Finally, she argued that she did not knowingly and voluntarily consent to the amendment.

The district court granted Little's motion for summary judgment and denied the trustees' motion for summary judgment. The district court held the amendment to the trust agreement was "void for lack of authority." In reaching that conclusion, the district court relied on Iowa Code Section 633A.1105, which states, "The terms of a trust shall always control and take precedence over any section of [the] trust code to the contrary." In the district court's view, Iowa Code Section 633A.1105 compelled the conclusion that the provision of the trust agreement stating that the surviving settlor could not amend, revoke or terminate the trust was controlling and disallowed modification of the trust under any circumstances. The district court did not address the other arguments raised by the parties.

The trustees appealed.

Law

At common law, an irrevocable trust was not permanently unchangeable. The "traditional rule" was that "an irrevocable trust may be modified or terminated on consent of all the beneficiaries." Restatement (Second) of Trusts § 338(1) (Am. L. Inst. 1959).

Every trust agreement in Iowa executed after July 1, 2000, is presumed revocable and can be revoked or modified by the settlor "[u]nless the terms of the trust expressly provide that the trust is irrevocable." Iowa Code § 633A.3102(1).

The court's chief focus when interpreting a trust agreement is to effectuate the intent of the settlor or settlors. In re Tr. of Killian, 459 N.W.2d 497, 499 (Iowa 1990).

Holdings

The Supreme Court of Iowa affirmed the district court's ruling.

On appeal, the Supreme Court first determined whether the district court properly relied on Iowa Code Section 633A.1105 in issuing judgment for Little. Even though the trust document expressly prohibited the surviving settlor from amending, revoking or terminating the trust, the Supreme Court of Iowa noted this language merely made the trust irrevocable. Iowa's common law allows an irrevocable trust to be modified or terminated if the settlor and all the beneficiaries consent. Similarly, Iowa law allows an irrevocable trust to be modified by either obtaining the consent of the settlor and all the beneficiaries or by court order. Iowa Code §

633A.2202 - 633A.2203. Under the district court's interpretation, these provisions would be meaningless.

Although the district court erred in its interpretation and application of the Iowa common law and Uniform Trust Code, the Supreme Court of Iowa affirmed the district court's grant of summary judgment on alternate grounds.

Under Iowa Code Section 633A.2202(1), an irrevocable trust may be modified or terminated without court approval only "upon the consent of the settlor and all of the beneficiaries." The trustees argue that the statute's use of the singular term "settlor" shows that only the consent of the surviving settlor is required to modify the trust without court approval. The Supreme Court of Iowa disagreed citing Iowa Code Section 4.1(17), which states, "Unless otherwise specifically provided by law the singular includes the plural, and the plural includes the singular." Therefore, any modification to the trust required Collen's consent.

For these reasons, the Supreme Court of Iowa affirmed the grant of summary judgment and held that the amendment to the irrevocable trust was invalid.

Brock v. Brock, 2022 WL 3223171 (Tenn. Ct. App. 2022), appeal denied (Dec. 19, 2022)

The Tennessee Court of Appeals held that trust terms limiting the trustees' duty to provide information only to current income beneficiaries overrides the Tennessee Trust Code provisions requiring disclosure of information to any qualified beneficiary.

Facts

J. Don Brock died in 2015. Pursuant to his last will and testament, a marital trust was created for his surviving spouse, Sammye M. Brock. Under the terms of the will, Sammye is the sole income and principal beneficiary of the marital trust during her lifetime. The will further provides that following Sammye's death, the remaining marital trust assets are to be distributed to four beneficiaries, including Don's son, Benjamin Brock. Benjamin, as a reminder beneficiary, is a "qualified beneficiary" under Tennessee law.

The will provided as follows with respect to reports:

> 13.4 Reports. The fiduciary shall not be required to make any inventory or appraisal of the assets of my estate or any trust or to file reports, inventories or settlements with any court. However, the fiduciary shall upon written request at reasonable intervals renter to each then current income beneficiary of my estate or the trust estate, or to the natural or legal guardian of the beneficiary, full statements of all receipts and disbursements and a schedule of all assets and liabilities of the trust or my estate.

In 2019, Benjamin requested an accounting of the marital trust financials from the trustees of the marital trust. The trustees denied the request on grounds that as a remainder beneficiary, Benjamin was not entitled to receive an accounting under the terms of the will or the Tennessee Trust Code.

The trustees filed a complaint for declaratory judgment asking the trial court to instruct the parties whether Benjamin was entitled to the information he requested. Benjamin filed a counterclaim asking that the trustees be required to provide the information he requested and alleging breach of trust by the trustees. Benjamin argued that the will did not expressly override the statutory reporting requirement that reports be made to all qualified beneficiaries upon request.

The trial court found that the will's language was intended to override the trustees' statutory obligation of reporting to qualified beneficiaries and, as a remainder beneficiary and not a current income beneficiary of the marital trust, Benjamin was not entitled to financial information regarding the trust. The trial court granted the trustees' motion for judgment on the pleadings and denied Benjamin's motion for judgment on the pleadings.

Benjamin appealed.

Law

Under Tennessee law, trust instruments are interpreted similarly to contracts, deeds or wills. Marks v. Southern Trust Co., 310 S.W.2d 435, 437-437 (Tenn. 1958). The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern. Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc., 78 S.W.3d 885, 889-90 (Tenn. 2002). When contract language is clear and unambiguous, the literal meaning of the language controls. Id. A contract is ambiguous only when its meaning is uncertain and may fairly be understood in more than one way. Id.

Section 35-15-813 of the Tennessee Code provides in relevant part:

> (a)(1) A trustee shall keep the beneficiaries of the trust who are current mandatory or permissible distributees of trust income or principal, or both, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. . . .
>
> (a)(2) Unless unreasonable under the circumstances, a trustee shall respond in a reasonable amount of time to a qualified beneficiary's request for information related to the administration of the trust. Additionally, a qualified beneficiary shall reimburse the trustee for any reasonable expenses incurred in responding to requests for information.
>
> . . .
>
> (e) Subsections (a) and (b) shall not apply to the extent that the terms of the trust provide otherwise or the settlor of the trust, or a trust protector or trust advisor under part 12 that holds the power to so direct, directs otherwise in a writing delivered to the trustee.

Holding

The Tennessee Court of Appeals affirmed the trial court's holding. The appeals court found that paragraph 13.4 of the will is unambiguous and clearly intended to limit the reporting obligation of the trustees only to requests by the current income beneficiaries. The court rejected Benjamin's argument that Section 35-15-813(e) of the Tennessee Code requires that

the statutory reporting requirements must be explicitly overridden by language in the trust instrument. Rather, Section 35-15-813(e) of the Tennessee Code necessitates only that a written trust instrument “provide otherwise” in order to modify the statutory reporting requirements applicable to the trust.

Fox v. Fox, 283 N.C. App. 336, 873 S.E.2d 653 (N.C. Ct. App. 2022)

A claim challenging the validity of a revocable trust must be brought within three years of the settlor’s death.

Facts

In late 2012 or early 2013, P.G. Fox Jr. engaged a law firm to prepare estate planning documents, including the P.G. Fox Jr. revocable trust. P.G.’s daughter and son-in-law, Sarah Wesley Fox and Craig B. Wheaton, are both lawyers and were employed by that law firm at the time P.G. executed the revocable trust.

In 2014, P.G. died, survived by his third wife, Ann Herring Fox, who is not Sarah’s mother. The trust terms provide that following P.G.’s death, the remaining trust assets are to be retained in further trust for the benefit of Ann, Sarah and Sarah’s descendants.

Ann lives in a home she owns jointly with the trust as tenants in common. Ann owns an 11% interest in the home and the trust owns the remaining 89% interest. Under the terms of the trust, the cost of maintaining the home is to be borne by the trust and Ann in proportion to the parties’ respective interests.

Following P.G.’s death, Sarah, Craig and Russell Lee Stephenson Jr. (Ann’s former husband), became successor co-trustees in accordance with the trust terms. In 2015, Russell Jr. resigned as a trustee, apparently on the understanding that: (1) his appointment as a successor trustee was a mistake; (2) P.G. intended to name Russell Jr.’s son, Russell Lee Stephenson III, as a successor trustee, not Russell Jr.; and (3) upon his resignation, Russell III would be appointed as a trustee by P.G.’s surviving issue, as authorized by the trust terms.

After P.G.’s death, Craig, as trustee, began making distributions from the trust to Sarah and their children for their health, maintenance and support, as purportedly authorized by the terms of the trust. However, no distributions were made to Ann for her health, maintenance or support, despite trust terms authorizing such distributions. Instead, Craig and Sarah, as trustees, attributed distributions to Ann for continuing to live in the home.

The terms of the trust require the trustees to provide an accounting of the trust at least annually upon the request of a beneficiary. In 2016, Ann requested an accounting of the trust for the first time.

In 2017 and 2019, Sarah and Craig, as trustees, refused to reimburse Ann for expenses she claimed were incurred to maintain the home because they believed the expenses were not incurred to maintain the home or were inadequately documented.

In 2019, Ann filed a petition to remove Sarah and Craig as trustees of the trust. In 2020, while the petition to remove Sarah and Craig as trustees was still pending, Ann filed this suit alleging claims against Sarah and Craig, individually and as trustees.

In 2021, the trial court granted Sarah and Craig's motion to dismiss Ann's complaint on all counts. Ann appealed the dismissal of certain claims against Sarah and Craig, including the breach-of-fiduciary duty claim.

Law

The statute of limitations for a claim contesting the validity of a revocable trust is three years after the settlor's death or, at the trustee's election, 120 days after the settlor's death if the trustee gives proper notice. N.C. Gen. Sta. § 36C-6-604(a).

For a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties. Howe v. Links Club Condominium Assoc., Inc. 823 S.E.2d 439, 453 (N.C. App. 2018). Under North Carolina law, the finding of a familial relationship alone does not create a fiduciary relationship. Holloway v. Holloway, 726 S.E.2d 198, 204-05 (N.C. App. 2012).

A trustee of a trust has a fiduciary obligation to the beneficiary of the trust. Melvin v, Home Fed. Sav. & Loan Ass'n, 482 S.E.3d 6, 8 (N.C. App. 1997). A violation of a trustee of a duty the trustee owes under a trust is a breach of trust. N.C. Gen. Stat. § 36C-10-1001(a).

Holding

The North Carolina Court of Appeals affirmed the trial court's dismissal of the claims for breach of fiduciary duty against Sarah and Craig, individually, but reversed the trial court's dismissal of such claims against Sarah and Craig, as trustees.

The court found that Ann's claim for breach of fiduciary duty against Sarah and Craig, individually, challenging the validity of the trust was time-barred because the suit was not filed until 2020, more than six years after P.G.'s death in 2014.

The court also rejected Ann's argument that a fiduciary relationship existed between her and Sarah and Craig where Ann "reposed special confidence and trust in them" because of their close familial ties and their status as co-trustees and attorneys. The court found that such statements were conclusory assertions not supported by allegations regarding any special circumstance giving rise to a fiduciary relationship.

However, the court found that determining whether Sarah and Craig, as trustees, are liable for a breach of trust for making unauthorized distributions to Sarah and her descendants while withholding distributions for health, maintenance and support from Ann and for failing to reimburse Ann for the trust's share of cost to maintain the home required a developed factual record outside the pleadings. As the trial court only considered the pleadings in dismissing Ann's claims for breach of fiduciary duty against Sarah and Craig, as trustees, the court reversed the trial court's dismissal and remanded the case for further proceedings on such claims, among others.

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