IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DEBORAH COPELAND, Plaintiff, v. MARSHA KRAMARCK, as guardian of Kyle F. Kessler, and KYLE F. KESSLER, Defendants, and Wilmington Trust Company, Trustee, and Sandra Williams-Poplos, as guardian for Matthew Luke Williams and Jacob Dean Williams.	)	C.A. No. 294-N Consolidated

MEMORANDUM OPINION AND ORDER

Submitted: July 27, 2006
Decided: August 23, 2006

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LAMB, Vice Chancellor.

In July 1993, a revocable trust was created naming the settlor as the sole beneficiary. Despite the trust's legal structure, the settlor initially used the trust only for the benefit of an unrelated minor. Several years later, after the settlor paid nearly $100,000 of the child's educational expenses from trust assets, she amended the trust to restrict similar payments in the future. Later, she revoked the trust.

This case involves claims that the trust was created in return for services, and that the trust was effectively a gift structured as a trust for the legal benefit of the unrelated minor only for tax purposes.

In response, the settlor claims that the minor had no legal or equitable interest in the trust corpus. On that basis, the settlor now moves for summary judgment. The minor concurrently moves for sanctions, citing certain inconsistencies in the record.

Having reviewed the record, and finding no evidence whatsoever supporting the various theories under which the minor and his mother seek relief, the court will grant summary judgment to the settlor. The motion for sanctions, being without merit, will be denied.

I.

A. The Parties

The plaintiff is Deborah L. Copeland ("Deborah"), the settlor of the trust. Wilmington Trust Company, the trustee, Sandra Williams-Poplos, as guardian for

Matthew Luke Williams and Jacob Dean Williams, Deborah's grandchildren, are also parties in this consolidated action.

The defendants are Kyle F. Kessler ("Kyle") and Marsha Kramarck ("Marsha"), Kyle's mother, who was custodial parent and guardian for Kyle until he reached his 18th birthday, October 18, 2003. Marsha was married to Kyle's father, Frederick S. Kessler ("Fred"), from 1972 to 1990.

B. Background

Beginning in 1985 until his complete disability in the mid-1990s, Fred, a Delaware lawyer, was employed as general counsel for Associates International, Inc. ("AI") and the Crafts Reporting Company, Inc., both owned by Lammot Copeland. Deborah, Lammot's wife, worked at both companies for over 20 years. During the course of his employment with AI and with Crafts, Fred developed a close relationship with both of the Copelands. He performed many professional and personal services for them, and, on one occasion, Deborah wrote Fred a highly complimentary letter expressing her gratitude for his help in resolving an unspecified personal crisis involving Lammot.[1]

Sometime in 1992 or 1993, consistent with the close relationship between Fred and the Copelands, Deborah decided to reward Fred's service by helping to pay for Kyle's education. The record shows that in order to implement this desire,

[1] Sanctions Mot. Ex. D.

Deborah spoke to officials at the Wilmington Trust, who produced various forecasts of what paying Kyle's educational expenses for the indefinite future would cost.[2] They then produced a draft trust document, which if executed would have established an *irrevocable* trust on Kyle's behalf.[3] The agreement would have required the trust to pay for school supplies, transportation, tutors, tuition, summer camp, and extracurricular activities until Kyle reached the age of 27, at which time the trust corpus would be distributed evenly between Kyle and his half-brother, Jeffrey Arthur Kessler, an adult son from Fred's previous marriage.[4] Under the agreement, Fred would have been both distribution adviser and investment adviser, holding mandatory powers to control the discretionary distribution of income, and having oversight of many of the powers granted to the trustee by the agreement.[5] Fred participated in the drafting of the initial version of the trust, providing comments as well as proposing language for insertion.[6]

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[2] Sanctions Mot. Ex. J.

[3] Kessler Compl. Ex. L; Reiver Aff. ¶ 6; Copeland Aff. ¶¶ 9-10. There is at least one document showing that Deborah was somewhat involved with this first, unexecuted, draft. Sanctions Mot. Ex. K.

[4] Kessler Compl. Ex. L.

[5] Section 1, Article D of the Trust Agreement provides that "Trustee shall exercise any discretionary power to distribute income and/or principal pursuant to [the relevant parts of the agreement] only at the direction of the distribution adviser." Kessler Compl. Ex. L § 1(D). As to the investment adviser, the agreement mandates that "Trustee shall exercise [specific powers granted to it in Section 7 of the agreement, including the power to sell land, invest in property, and execute securities transactions] only with the written consent of the adviser of such trust," with certain enumerated exceptions. *Id.* § 8.

[6] Sanctions Mot. Ex. K.

Before executing the trust, however, Deborah spoke to her personal attorney, Joanna Reiver, Esquire. Reiver suggested redrafting the trust.[7] At a meeting which included officers from the Wilmington Trust, Reiver, Deborah, and Fred, Deborah concluded that the trust should be *revocable*.[8] Both Deborah and Reiver testified that in addition to having significant tax benefits, a revocable trust was chosen to ensure that Deborah maintained control over her money.[9] The trust, as enacted, expressly provided that all distributions of income and principal would be made to Deborah and that, during her life, she would receive all of the net income of the trust and as much principal as she requested. It also expressly provided that Deborah could "modify, alter, or terminate this agreement, in whole or in part" at any time during her lifetime.[10] If she became incapacitated, the trust was to remain revocable, and Deborah was to receive any income or principal that the trustee deemed to be in her best interests. While Deborah was alive, in other words, the trust agreement very clearly gives her discretion over the corpus.[11]

Should Deborah have died, under the terms of the trust Kyle would become a beneficiary, and the trustee would be directed to use the trust's income for Kyle's education until he reached the age of 27, at which time the remaining principal was

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[7] Reiver Aff. ¶ 6.
[8] Reiver Aff. ¶ 7; Copeland Aff. ¶ 10.
[9] Reiver Aff. ¶ 7.
[10] Mot. Summ. J. Ex. D.
[11] *Id.*

to be distributed to Kyle and to Jeffrey Kessler. Also in that circumstance, as in the draft irrevocable trust, Fred would become both the trust's "distribution adviser" and "investment advisor," tasked with exercising any discretionary power to distribute income and/or principal pursuant to the agreement.[12]

At some point, one of the Copelands told Fred of the proposed trust. As a result, Kyle began attending Wilmington Friends School, a private K-12 institution. Deborah directed[13] that the trust pay his tuition.[14] In the same way, she also paid for various enrichment programs during the school year and in the summer. In sum, the trust paid in excess of $97,000 towards Kyle's education from 1993 to 2002.

On multiple occasions during that period, Deborah exercised her right to amend the revocable trust. Inter alia, she reduced from 27 to 23 the age at which the educational distributions would end under the residuary clause,[15] reduced the entitlement Kyle would be due to the current in-state tuition cost for the University

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[12] *Id.*

[13] The evidence shows that Deborah controlled distributions from the trust. Milligan Dep. Mot. Summ. J. Ex. K 20-21.

[14] Marsha and Kyle make much of the apparent fact that Deborah began paying for Kyle's education before the trust document was finalized. Kramarck Answering Br. 5 n.3; Reiver Aff. ¶ 4. In their view, this suggests somehow that "the Trust was mere gift-wrapping for the payments and not the formal expression of the parties' intent." Kramarck Answering Br. 27 n.19. But the more reasonable inference, clearly, is that Deborah gifted money to Kyle before the trust was established, and then established a trust which would allow her to continue to make large, periodic gifts, insulated from tax consequences.

[15] Mot. Summ. J. Ex. E.

of Delaware,[16] and amended the trust to add two other young children as contingent future beneficiaries in the event of her death.[17]

This case arises because the defendants, and specifically Marsha, understood Deborah's 1993 gift, and her continuing payments over the next decade, as a guarantee that the Copelands would pay for Kyle's education until adulthood at whatever institution he chose to attend. Therefore, when the time came for Kyle to attend university, he chose the expensive, privately run, Boston College, and committed to that school by the end of April 2003. In June, however, the defendants were informed that the trust would only pay an amount equal to in-state University of Delaware tuition.[18] Marsha attempted, in vain, to convince the Copelands to return to their previous position of paying all of Kyle's education expenses.[19] Following further enquiries, the trust was revoked entirely on July 18, 2003.[20]

II.

This case consolidates two separate actions, one brought by each of the two chief parties in this case. The first, Deborah's declaratory judgment action, was filed on March 5, 2004. Three days later, on March 8, 2004, Kyle and Marsha

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[16] Mot. Summ. J. Ex. F.
[17] Mot. Summ. J. Ex. G.
[18] Kramarck Dep. Kramarck Answering Br. Ex. B 14-15.
[19] Kramarck Dep. Kramarck Answering Br. Ex. B 16-17.
[20] Kramarck Dep. Kramarck Answering Br. Ex. B 19.

filed their own complaint. On October 25, 2005, Deborah filed a motion to dismiss, or, in the alternative, a motion for summary judgment, and Wilmington Trust filed a motion to dismiss. The court issued an opinion on February 10, 2006,[21] in which Deborah's motion to dismiss was converted to a motion for summary judgment, and that motion was continued so that Kyle and Marsha could conduct discovery into the factual circumstances underlying their case. The court noted that this was particularly important because Fred, as explained below, was incapacitated, and could not provide evidence personally.[22]

After discovery, Deborah filed a renewed motion for summary judgment on May 17, 2006. In response, Kyle and Marsha filed a motion for sanctions and other relief based on what they purport to be misleading statements in Deborah's deposition testimony.[23]

III.

Summary judgment is appropriate where there are no material facts in dispute.[24] Given the generous discovery permitted in this case, and the fact that the one witness whose credibility could matter, Fred Kessler, is indefinitely and unavoidably unavailable, counsel for the defendants conceded at oral argument that

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[21] *Kessler v. Copeland*, 2005 WL 396358 (Del. Ch. Feb. 10, 2005).
[22] *Id.* at *2.
[23] Wilmington Trust has not moved for summary judgment.
[24] *Haas v. Indian River Volunteer Fire Co.*, 2000 WL 1336730 (Del. Ch. Aug. 14, 2000), *aff'd*, 768 A.2d 469 (Del. 2001).

nothing material was likely to be produced at trial, and that summary judgment would be appropriate. The court's own review of the record supports that position.

IV.

The complaint filed by Kyle and Marsha alleges eight separate counts against Deborah ranging from a claim that the trust represented a completed gift, to a claim that Deborah violated her fiduciary duties as a trustee in amending the trust document. Rather than discuss each claim in turn, however, the court notes that almost all of these claims are based on one fundamental allegation:[25] that, at some point, despite the clear, unambiguous, nature of the revocable trust, Deborah unequivocally promised Fred that she would pay for Kyle's education until he was 27 years old.[26] All the other issues the parties ably raise in their briefs are

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[25] Count I of Kyle and Marsha's amended complaint alleges that Deborah gifted the amount of the trust corpus to Fred. Of course, a key element of that claim is the donor must have intended to make a gift. In order to prove an oral contract as alleged in Count II, Kyle and Marsha must show evidence of an agreement. Count III, unjust enrichment, requires Kyle and Marsha to show that Deborah has misappropriated money set aside for Kyle's education. Count IV, promissory estoppel, requires proof that a promise was made. Count VI, resulting trust, requires, in this context, proof of donative intent. The constructive trust claim in Count VII requires some evidence of fraudulent conduct, which again is based on a finding that the Copelands promised to pay for Kyle's education. Finally, Count VIII, breach of fiduciary duty, requires Kyle and Marsha to show that Deborah breached a fiduciary duty by dissipating trust funds meant for Kyle.

[26] Only Count V, equitable estoppel, is based on grounds that do not require proof of some agreement, promise, or like commitment. *See supra* note 23. The gravamen of Count V is that in April 2003, Marsha was assured by a representative of J.P. Morgan, which was then in charge of the trust, that the trust would pay for Boston College. Kramarck Dep. Kramarck Answering Br. Ex. B 14-15. Alternatively, Kyle and Marsha claim that the Copelands should be equitably estopped because Marsha communicated her understanding of the trust to the Copelands' agents "long before" Kyle's college search, and was never challenged. Specifically, Marsha points to a letter she wrote to Bertram Halberstadt, Fred's attorney, in October 1997, in which she described the trust as "origin[ating] in a more than six figure bonus." Kramarck Answering Br. Ex. F.

subsidiary to that fundamental allegation.

Neither of those communications can possibly form the basis of a claim for equitable estoppel, which requires clear and convincing evidence that "(1) the persons asserting estoppel lacked knowledge or the means of discovering the truth of the facts in question, (2) they [reasonably] relied on the conduct of the party against whom estoppel is being asserted and (3) they suffered a prejudicial change in position in reliance on the conduct." DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 11.1 (2005). Marsha evidently had the ability to discover the truth of the information, as she herself demonstrated after hearing in June that her request for Boston College tuition had been denied, when she called Lammot Copeland to discuss Kyle's entitlement. An equivalent call in April would have vitiated the need for any equitable claim. Kramarck Dep. Kramarck Answering Br. Ex. B 16-18.

Second, even if the J.P. Morgan employee was Deborah's agent as a legal matter, Marsha's alleged reliance on that vague assurance was not reasonable. Marsha knew that something in the trust had changed, because it no longer paid for books and for extracurricular activities. The J.P. Morgan employee would not give her any clear answer on how much money was still available, or exactly what Kyle's entitlement under the trust was. Kramarck Dep. Kramarck Answering Br. Ex. B 14. Given the concededly enormous costs of a private college education, no reasonable person would have relied, in the context of palpably diminishing support from the trust over the past several years, on such a thin assurance. The same is true of Marsha's supposed reliance on the Copelands' silence in the face of the Halberstadt letter. Not only is the court unconvinced that Marsha's reliance on silence is reasonable as a general matter, especially when it is based on a letter to *Fred's* lawyer, but the letter itself does not mean what Marsha claims. Indeed, reading the Halberstadt letter in context, the implication is clear that by 1997, Marsha believed Fred to have misrepresented the nature of the trust to her in 1993. The letter describes the six figure bonus claim as a promise that had not panned out. Marsha could not have reasonably believed that the Copelands' failure to have sent an explanatory letter in that context meant that Fred's initial assurances, which had proven to be hollow, were reliable after all.

Finally, as to the J.P. Morgan statement, the plaintiffs have also failed to show detrimental reliance. The evidence shows that Kyle never applied to the University of Delaware, or to any college that was materially less expensive than Boston College. Mot. Summ. J. Ex. A; Kyle Kessler Dep. Kramarck Answering Br. Ex. B 16. When the J.P. Morgan representative allegedly assured Marsha of Kyle's tuition payments in April, therefore, Kyle and Marsha had essentially already decided that Kyle would attend an expensive private college. Nothing in the record suggests that Kyle was prepared to forego college for a year, or to attend a community college, or to undertake any other alternative, if he had only known tuition was not covered. And, when the Copelands refused to pay for Boston College, Kyle attended anyway and has remained there for his entire academic career to date, albeit with the unremarkable burden of paying the full ticket price discounted by financial aid for his education. None of the evidence, thus, suggests that Kyle's college decisions turned in any way on some second-hand assurance from J.P. Morgan.

Kyle and Marsha have produced various pieces of evidence that they say support their position. The clearest way for the court to decide this case, therefore, is to evaluate each piece of evidence to see whether it can, under any standard, prove that Deborah made any cognizable legal or equitable commitment to pay for Kyle's education, whether by gift, oral contract, or equitable estoppel. For the reasons described below, the court's review of that evidence demonstrates convincingly that no such evidence exists anywhere in the record.

The fundamental piece of evidence presented by Kyle and Marsha in contradiction of the written trust agreement is that, in 1993, Fred believed the trust, and thus Deborah's promise to pay for Kyle's education, to have been permanent and irrevocable. This claim, as counsel for Kyle and Marsha acknowledged at oral argument, is complicated by the fact that Fred is unavailable to testify personally. Since 1995, Fred has been afflicted with a highly disabling, degenerative disease. Instead of the personal testimony he might have been able to offer of Deborah's intentions when she told him about the trust, all that Kyle and Marsha have been able to present contemporaneous with the trust's creation is Marsha's second-hand recollection of what Fred told her about Deborah's intentions. This testimony, of course, is the very definition of hearsay.[27] Even taking Marsha's testimony at face

[27] Kyle and Marsha believe that Marsha's recollections of Fred's belief are admissible because of Marsha's handwritten notes of a conversation with Fred. D.R.E 803(1). This argument is most obviously flawed because the notes in question, Sanctions Mot. Ex. AA, are from 1996, some

value, however, nothing in the recollected conversation either establishes or suggests that Deborah meant to do anything other than establish a revocable trust which could be withdrawn at any moment:

> In the fall of 1992, Fred asked to meet me for lunch . . . and said he had negotiated a substantial bonus and that he intended to put that money in trust for Kyle's education. He told me that the terms were that Kyle's education through graduate school at whatever institution he chose to attend would be paid by the trust; that the residue would be divided equally at that time between an older son by a first marriage, Jeffrey Kessler, and Kyle.[28]

The first sentence of that inadmissible testimony is inconsistent with the record. No other evidence even remotely suggests that anyone meant to give Fred the trust corpus, which *he* would then put into trust.[29] The rest of the quoted testimony is

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four years after the conversation when Fred supposedly told Marsha about the alleged gift. Those notes, indeed, refer to a quite different conversation, in the midst of Fred's terrible illness, when Marsha was beginning to be concerned that the trust was not structured in the way she thought. The 1992 conversation is no more admissible under D.R.E. 803(5) (an exception allowing a witness to refresh her memory as to an event by referring to a written record). Nor is the Supreme Court's decision in *Demby v. State*, 695 A.2d 1152 (Del. 1997), where the court admitted a videotape of a third party personally admitting to a crime under the residual exception to the hearsay rule, at all relevant here. To the extent Marsha's notes make the 1996 conversation between Fred and Marsha admissible, the court finds that testimony, collected during a period of illness, and three years after the formation of the trust, wholly unpersuasive, and contradicted by the rest of the evidence in the record.

[28] Kramarck Dep. Kramarck Answering Br. Ex. B 10:4-16.

[29] Kyle and Marsha rely on several pieces of evidence as support for this proposition. First, they cite to a document in which Deborah asked Wilmington Trust to evaluate the outright transfer of $300,000 to Fred. Sanctions Mot. Ex. G. While it is true that the Wilmington Trust appears to have evaluated such an option, it is listed among various other options (the chief of which, unremarkably, is a trust), and the gift option was expressly rejected. Kyle and Marsha also rely on a 1994 document in Wilmington Trust's files which says, in pertinent part, "please establish a tickler to remind you to contact Deborah Copeland . . . each year since she would like to transfer a sum of funds to her account number 31666-0, which she considers a gift to Kyle for his educational purposes." Sanctions Mot. Ex. X. This sentence, to the very limited extent it is probative of Deborah's state of mind in 1994, only supports the Copelands' argument that

perfectly consistent with the trust document as it was enacted. Deborah did indeed intend to look after Kyle's educational expenses in 1993. She supported that intention by paying almost $100,000 of expenses over the next decade. It happens, however, that her intentions changed, and the residuary clause of the trust was revised in accordance with these new wishes. At the same time, Deborah used her dominion over the trust to put those new intentions into immediate effect. None of that is inconsistent with Fred's understandable delight at having secured a considerable "bonus."

The only corroborating documents support this interpretation of the evidence, or at least fail entirely to support Marsha's position. In 1996, Deborah drafted a stern letter to Marsha and Kyle, chastising Kyle for what she perceived as the unfit way he behaved at a Christmas party. In that letter, which was never mailed, but on which Kyle and Marsha themselves rely as evidence of Deborah's supposed animosity towards Kyle,[30] Deborah expressly threatened Kyle with

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Deborah considered each transfer of funds a gift. The same document goes on to note uncertainty as to the amount of future transfers, which certainly does not suggest some immutable obligation to fund Kyle's education. Finally, Kyle and Marsha rely on a Wilmington Trust cost projection for the trust that seems to indicate that the estimate was based on calculations that Fred would contribute personal funds to the trust, thus showing that Fred believed the money to be his. Kramarck Answering Br. Ex. A. Whatever the relevance of this document, it considerably predates the trust, and the underlying math was not incorporated into the final trust in any discernible way. Nor does the evidence show that Fred ever added money to the trust in accordance with those preliminary plans.

[30] Kramarck Answering Br. 10.

revocation of the trust.[31] At about the same time, Marsha wrote a letter expressing her concern that the trust would not pay for Kyle's education in the future,[32] and thus, perhaps, that Fred had misrepresented the trust's nature in order to lower his child support responsibilities.

Nor was Marsha's behavior prior to this case consistent with her now stated belief that all the money in the trust was earmarked for Kyle's education. In 1996, for example, the trust refused to reimburse Marsha for Kyle's book expenses.[33] As Marsha testified, she made no protest at that time, as one would have expected should she have believed that the trust corpus was a gift:

> Q: What was your reaction when you received this letter from Mary Milligan saying that the trust paid for tuition only?
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> A: Frankly, . . . I don't think I attended to it at all. I see it now and I see what your point would be with respect to that but, again, the trust was paying for Kyle's tuition at that point. I was grateful for that.[34]

Relatedly, Marsha also testified that she incurred thousands of dollars of miscellaneous expenses every year in connection with Kyle's tenure at Wilmington Friends School. Yet, she asked for none of this money to be reimbursed, and failed

[31] Sanctions Mot. Ex. FF.
[32] Kramarck Answering Br. Ex. F.
[33] Sanctions Mot. Ex. EE.
[34] Kramarck Dep. Kramarck Answering Br. Ex. B 204:19-23.

to raise the issue with anyone.[35] Rather, she accepted the reduced provision, apparently grateful for the fact that tuition was still being covered:

> I'm saying that once it was clear to me that [the trust administrators] weren't paying for books or whatever, just tuition, then I didn't any longer submit the trips that Kyle went on, prom expenses, whatever it was . . . .[36]

This is in stark contrast to how the trust was initially administered. As the evidence clearly shows, in 1993 the trust was still paying for non-tuition enrichment type experiences.[37] The court cannot say why Marsha chose to silently accept this sudden shift in the trust's provision.[38] But nothing in her behavior at that point, or in her testimony, suggests that Marsha believed Kyle had a legal right to the entire trust.

The contention that the title of the trust document, "Educational Trust for the Benefit of Kyle Frederick Kessler," mitigates in favor of Kyle and Marsha is similarly infirm. That a revocable trust which is conceded by all parties to have been meant to pay Kyle's educational expenses would be titled accordingly is entirely unremarkable.

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[35] Marsha testified that part of the reason she failed to pursue these funds was that she thought Fred was responsible for the trust, and he was falling into ill health. She failed to realize that the Copelands were in fact the relevant party. Kramarck Dep. Kramarck Answering Br. Ex. B. 189.
[36] Kramarck Dep. Kramarck Answering Br. Ex. B. 188.
[37] Kramarck Answering Br. Ex. R.
[38] Marsha testified that, in part at least, she was attempting to preserve the trust corpus for the future. Kramarck Dep. Kramarck Answering Br. Ex. B. 190-91.

Relatedly, Kyle and Marsha rely on Fred's testimony at an unrecorded Family Court hearing, where Marsha testified that Fred told the judge that his child support obligations should be reduced because Kyle's educational expenses were being paid by the trust. Again, this testimony is plainly hearsay. There is no record of the hearing. Moreover, the only documentary evidence that exists, the judge's child support order, contradicts Marsha's understanding of Fred's representation in court, and only strengthens the Copelands' position. As the judge observed in his written order, Kyle's educational expenses were "*presently* being paid out of a trust fund established by Mr. Kessler's employer."[39] In the event that situation changed, the judge included a formula to take into account Fred's new responsibilities. That suggests the judge believed Kyle's entitlement to the trust fund to be mutable.

Further, Kyle and Marsha claim that the evidence shows the trust was, in effect, a ruse, administered in accordance not with its own language, but subject to the language in the irrevocable draft instead. Specifically, Kyle and Marsha claim that copies of trust documents were stored in Fred's estate planning file, and that Fred was involved with selecting stocks held in the trust's portfolio. This, in their view, shows that Fred was effectively acting as "investment advisor," a position

[39] Sanctions Mot. Ex. Z.

which was consistent only with the unsigned irrevocable trust agreement and with the residual clause of the revocable trust.

Moreover, Kyle and Marsha point to various communications from officers at the Wilmington Trust in which they were told, inter alia, that the trust would provide only for Delaware in-state university tuition, and that the trust would provide only for tuition and not books. These limitations were only expressly present in the residuary clause, and yet were represented as governing during Deborah's lifetime. This is significant, say Kyle and Marsha, because it shows that the draft irrevocable trust, which was largely integrated into the enacted revocable trust as its residuary clause, was actually the controlling instrument.

The court's review of the documents relied on for this proposition, however, shows no such incompatibility between the terms of the trust and the reality of its execution. Certainly, at times, officers of the Wilmington Trust inaccurately conveyed the formal content of the general provisions of the trust to Kyle and Marsha. But the only reasonable inference to be drawn from that fact, given the state of the record, is that the original residuary clause, and the later amendments, reflected Deborah's intentions as to the general clause at that time as well. Therefore, in the beginning Deborah meant to fund all of Kyle's education, which she could do by gift with the trust proceeds over which she had discretion during her own life, and wrote a residuary clause that would accomplish that same goal

should she have died. When she no longer wished to be as generous, she modified her own behavior, and revised the residual clause accordingly. Obviously, she had no need to revise the general provisions of the trust to reflect her new position: she had complete discretion to distribute the funds of the trust as she desired.

Nor is it at all relevant that Fred appears to have been involved with some decisions concerning the trust. Contrary to the claims of Kyle and Marsha, the evidence does not show that Fred had taken on either the formal role of distribution advisor or investment advisor in contradiction of the written form of the enacted revocable trust. Had he done so, the trustee would not have had the authority to act without his approval. Yet, Kyle and Marsha do not even allege this to be the case. Rather, Fred's marginally proven, informal involvement in picking stock for the trust shows only that Deborah kept Fred involved with administering a trust meant for his son, as she surely had a right to do. That Deborah involved Fred, with whom she always remained close, is too slender a reed to support the argument that the court should essentially set aside the clear, unambiguous language of a duly enacted revocable trust.

Finally, the court notes that Kyle and Marsha rely heavily on supposedly false statements made by Deborah during her testimony, mostly concerning the nature of Fred's assistance to Lammot, and on the question of whether bonuses were ever paid to Copeland employees. While there are undoubtedly

inconsistencies between Deborah's depositions and her later explanatory affidavit, it is now entirely conceded that Fred performed extraordinary services for Lammot Copeland, and that bonuses were paid to AI and Crafts employees. These facts are immaterial to whether Deborah ever promised to pay for Kyle's educational expenses in the way alleged. To the extent that the court is made wary of those aspects of Deborah's testimony by these largely tangential discrepancies, the court relies on facts drawn from undisputed portions of the record.[40]

V.

In sum, the court finds that Kyle and Marsha have presented no evidence to support their claims, under any of the relevant standards of proof. Indeed, the court finds that the evidence, which both sides agree would not become any more probative at trial, entirely supports precisely the opposite interpretation: that Deborah decided to pay for Kyle's education out of deep gratitude for Fred's faithful service, that she enacted a revocable trust to accomplish that goal with as few tax consequences as possible after being advised by her attorney not to enact an irrevocable trust, that she always intended to maintain control over the corpus of the trust while she was still alive, and that she later decided to change her mind and withdrew her support of Kyle. Nothing in the record, moreover, suggests that any

[40] For this reason, the court denies in full the Motion for Sanctions.

of this was tinged with any actionable inequity. For those reasons, summary judgment is GRANTED in favor of Deborah and the Motion for Sanctions is DENIED. IT IS SO ORDERED.