

STATE OF MICHIGAN
COURT OF APPEALS

In re John A. Barkman Irrevocable Trust.

FREDDIE LEE GUARDI DORIER and ALICE
MARIE GUARDI DORIER, Guardians,

UNPUBLISHED
June 16, 2000

Petitioners-Appellants,

v

No. 216706
Berrien Circuit Court
Family Division
LC No. 98-000546-TI

OLD KENT BANK, Trustee,

Appellee,

and

KIM BARKMAN, a/k/a KIM BOWKER, MITZI F.
ZIEGLER, MICHAEL BARKMAN, SUSIE
BARKMAN, CONNIE BARKMAN, FRANK
BARKMAN, BETH ANN BARKMAN, ARCHIE
BARKMAN, STEVE BARKMAN, BRIAN
BARKMAN, and JAMES BARKMAN, JR.,

Appellees.

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Petitioners appeal as of right from the trial court's order denying their petition to construe the John A. Barkman Irrevocable Trust (hereinafter the Trust) and establish distribution. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

John Barkman (the grantor) created the Trust for the benefit of his daughter, Kim Weed, a mentally impaired person. Article I of the Trust stated that the Trust was to serve as a source of supplemental funds which, in the sole discretion of the trustee, might be “made available to assist [Kim] . . . in developing her maxim potential and in achieving and maintaining the highest possible degree of normalcy and happiness and the highest possible quality of life.” However, the Trust specifically stated that the grantor intended that Trust assets “not be made available to provide support for” Kim. A 1994 amendment rewrote Article II of the Trust.¹ The amended Article II provided that the grantor desired the trustee to exercise its discretionary powers in such a way as to provide for the best interests of Kim. The trustee’s discretion was deemed conclusive both as to the distribution of principal or income, and as to the person to whom or for whom such distribution was made. The amended Article II also provided that the same would be “subject to judicial review,” and restated that the grantor intended “that the trust income and principal will not be made available to provide primary support for . . . [Kim.] The Trustee may make trust distributions to or on behalf of [Kim] in such a way that her life will be enriched and made more enjoyable”

After the Trust was amended, Kim married Bryan Bowker, himself a developmentally disabled person. They became the parents of a daughter, Jessica. Thereafter petitioners, guardians of Kim and Jessica, filed a petition seeking to have the court construe the Trust and order the trustee to distribute funds on a regular basis for the support of Jessica. The court denied the requested relief, finding that Jessica was not an interested party in or an intended beneficiary of the Trust. In addition, the court concluded that the amendment’s language that the discretion of the trustee was subject to judicial review was inconsistent with the language providing that the discretion of the trustee was conclusive.

The Trust is a discretionary trust in that it provides that the trustee may pay to Kim so much of the principal or income as it deems appropriate. *Miller v Dep’t of Mental Health*, 432 Mich 426, 429; 442 NW2d 617 (1989). A trustee’s actions are reviewed for an abuse of discretion. *In re Green Charitable Trust*, 172 Mich App 298, 313; 431 NW2d 492 (1988). We review a decision of the family division of circuit court for clear error. *Id.* at 311.

Petitioners argue that the trial court erred in denying the requested relief on the ground that an inconsistency existed between the Trust’s amended and original language. We disagree. If an instrument is unambiguous, the intent is to be gleaned from the four corners of the instrument itself. *In re Woodworth Trust*, 196 Mich App 326, 327; 492 NW2d 818 (1992). Jessica is not a named beneficiary of the Trust, and the language of the Trust does not indicate that the grantor intended to give any child born to Kim a beneficial interest in the Trust. Therefore, we believe that the trial court correctly concluded that Jessica is not a beneficiary of the Trust. Restatement Second, Trusts, § 126, p 269. Further, while the Trust empowers the trustee to exercise its discretionary powers in a way that would serve Kim’s best interests, the clear language of the Trust provides that trust assets are not to be used for Kim’s support.

¹ Article I was amended to change Kim’s name from Weed to Barkman. No other substantive change was made to the language of Article I.

Accordingly, we see no abuse of discretion on the part of the trustee, *Green, supra* at 313, nor any error on the part of the trial court, *id.* at 311.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra