

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RICHARD T. SAHLIN Trust.

ERIC SAHLIN, BRUCE SAHLIN, GLENN
SAHLIN, and BRIDGETT VAN ARNEM,

UNPUBLISHED
December 26, 2000

Appellants,

v

STEPHEN GREENHALGH and NBD BANK, Co-
Trustees, CHRISTINE EASTERBROOK
SAHLIN, and AMY E. PETERMAN, Guardian
Ad Litem for RYAN RICHARD SAHLIN, a
Minor,

No. 214327
Oakland County Probate Court
LC No. 96-252518-TI

Appellees.

Before: Smolenski, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Appellants appeal as of right from a probate court opinion and order ruling that, under the circumstances of this case, the decedent's inter vivos trust did not require him to provide notice to the successor trustees of his removal of trust principal. We affirm.

The decedent Richard Sahlin died, without a surviving spouse, on July 26, 1996. In 1990, he created both a will and a trust with specific devises. Sahlin's will directed that certain personal property be equally divided between his children, but excepted "any jewelry or automobiles" owned by him at the time of his death. Sahlin's trust provided, among other things, that his jewelry and automobiles were to be sold after his death and the proceeds added to his estate.

Sahlin's daughter, appellee Christine Easterbrook Sahlin, alleged that on December 15, 1994, Sahlin gave her a signed, handwritten note bequeathing to her all of the jewelry then kept in a numbered safe deposit box at NBD Bank. Sahlin allegedly gave this note to Christine in December 1994, but did not physically transfer possession of the jewelry to her until February 3, 1995, when he moved the jewelry from his safety deposit box to one in Christine's name alone. Christine testified that her father intended the jewelry to be a gift and did not ask that she hold it

for him. After Sahlin died, Christine removed the jewelry and the note from the safe deposit box in her name and gave it to a friend to store under the friend's name.¹

Appellants, Sahlin's four other adult children, subsequently wrote a letter to the attorney for the trustees demanding that the estate recover the full appraised value of the jewelry they claimed was wrongfully appropriated by Christine. Sahlin's trustees, appellees NBD and Greenhalgh, filed a request for instructions with the probate court seeking a determination about the legitimacy of the jewelry transfer. It was the trustees' position that Sahlin's gift of his jewelry to Christine was either a valid inter vivos transfer or the note written by Sahlin was a holographic codicil to his will giving the jewelry to his daughter. The trustees sought instruction on whether they should file a conversion action against Christine, but noted that they did not believe there was a basis for such a suit because the jewelry was rightfully in Christine's possession.

In response, appellants argued that the second article of Sahlin's trust prohibited Sahlin from making gifts of trust property or withdrawals from the trust principal without first notifying the successor trustees. Appellants argued that Sahlin's failure to provide such notice in accordance with the express language in the trust invalidated the transfer of jewelry to Christine.

The probate court ruled that the language in Sahlin's trust permitted him to make gifts or otherwise dispose of trust assets during his lifetime without first providing written notice to the successor trustees. The probate court reasoned that the term "successor" is defined as one who succeeds or follows and takes the place that another has left, and that a "successor trustee" is defined as one who succeeds or follows an earlier trustee and who generally has all the power of the earlier trustee. The probate court noted that the third article of Sahlin's trust provided that the successor trustees shall administer the trust *if physical or mental incapacity caused Sahlin to be unable to administer his income or exercise his rights*, and the thirteenth article provided that NBD and Greenhalgh were designated as successor trustees *when Sahlin's death, physical incapacity or resignation as original trustee prevented him from acting as his own trustee*. The probate court held that because Sahlin was not adjudicated mentally or physically incapacitated and did not resign as original trustee prior to his death, his power and authority to make gifts of, remove, and dispose of trust property during his lifetime was unrestricted and NBD and Greenhalgh only became successor trustees at the time of Sahlin's death. Accordingly, Sahlin was not required to comply with the notice provision in the second article before making the gift of jewelry to Christine.

On appeal, appellants argue that the probate court erred in ruling that Sahlin's transfer of jewelry to Christine was valid in the absence of notice to the successor trustees. We disagree. Appeals of probate matters are not tried de novo. MCL 600.866(1); MSA 27A.866(1). Rather, the probate court's findings of fact are reviewed for clear error. *In re Webb H Coe Marital and Residuary Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999). Findings are clearly

¹ Christine explained that she wanted to get the jewelry out of her safe deposit box because she feared that her brothers would get court orders to harass her.

erroneous when this Court is left with a definite and firm conviction that a mistake has been made. *In re Harold S Ansell Family Trust*, 224 Mich App 745, 749; 569 NW2d 914 (1997).

In resolving a dispute concerning the meaning of a trust, a court's sole objective is to ascertain and give effect to the intent of the settlor. *In re Nowels Estate*, 128 Mich App 174, 177; 339 NW2d 861 (1983); *In re Kurtz Estate*, 113 Mich App 769, 772; 318 NW2d 590 (1982). The intent of the settlor is to be carried out as nearly as possible. *Matter of Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). This intent is gauged from the trust document itself unless an ambiguity is present. *Id.* If an ambiguity exists, the court must look outside the document in order to carry out the settlor's intent and may consider the circumstances surrounding the creation of the document and the general rules of construction. *In re Butterfield Estate*, 405 Mich 702, 711; 275 NW2d 262 (1979). The powers and duties of the trustees and the settlor's intent regarding the purpose of the trust's creation and its operation are determined by looking to the trust instrument. *Matter of Estate of Butterfield*, 418 Mich 241, 259; 341 NW2d 453 (1983). This Court must attempt to construe the instrument so that each word has meaning. *Detroit Bank & Trust Co v Grout*, 95 Mich App 253, 268; 289 NW2d 898 (1980).

The relevant portions of Sahlin's trust provided as follows:

Second

A. The Grantor shall have the power at any time during said Grantor's lifetime, by an instrument in writing delivered to the successor trustees, to modify, alter, amend or revoke this Agreement, in whole or in part, and to change the beneficiaries there, and to withdraw any part or all of the principal of this trust estate; provided, however, that the duties and responsibilities of the Successor Trustees hereunder shall not be substantially increased without such Successor Trustees' consent. The grantor also reserves the right to free all or any policies of insurance from the terms of this trust at any time during Grantor's lifetime; provided, however, that the completion of any change of beneficiary on any particular policy shall, without more, have the effect of revoking this Agreement in respect of said policy and shall thereby release the Successor Trustees from all responsibility in connection therewith.

B. Notwithstanding the fact that this Agreement of trust is drawn in a form making it revocable by the Grantor, it is agreed that to be availed of, and as a condition precedent to revocation, the Grantor shall give to the Successor Trustees, in writing, signed by the Grantor and properly acknowledged and witnessed, at least a thirty (30) day notice of revocation, which, however, shall not become effective as a revocation of this Agreement of Trust or the trusts herein created unless the Grantor shall survive the expiration time stated in said notice; likewise the power of withdrawal of any part or all of the trust property may be exercised only after at least thirty (30) days notice and under like conditions.

Third

A. Provided there are assets in the trust other than beneficiary designations under insurance contracts, pension and profit sharing plans and similar agreement, the Trustee shall, after paying the necessary expenses of the management and the preservation of the trust property, pay the entire net income of the trust in reasonable installments to or for the benefit of the Grantor during said Grantor's entire lifetime, together with such amounts of the trust principal as the Grantor may withdraw from time to time.

B. If, due to physical or mental incapacity, the Grantor is, in the opinion of the Successor Trustees, unable to administer such income or to exercise the Grantor's right to withdraw principal, the Successor Trustees shall proceed to administer said trust and shall, from time to time, distribute to or expend for the benefit of the Grantor and those dependent upon the Grantor the income and sufficient principal, which, together with funds known to the Successor Trustees to be available from other sources for such purposes, will, in the sole discretion of the Successor Trustees and consistent with the value of the trust, maintain Grantor and those dependent on the Grantor as nearly as possible in the mode of living to which the Grantor and Grantor's dependents were accustomed prior to the Grantor becoming incapacitated.

Seventh

The Trustees are hereby vested with full and complete title to all of the property and estate embraced within the trusts hereof, both as to principal and income therefrom, subject only to the execution of the trusts hereof; and further, neither the principal nor the income of the trust estate shall be liable for the debts of any beneficiary hereof, nor shall the same be subject to seizure by any creditor of any bankruptcy under any writ or proceeding at law or in equity, and no beneficiary hereunder shall have any power to sell, assign, transfer, encumber or in any other manner anticipate or dispose of his or her interests in the trust estate or the income produced thereby.

Thirteenth

Upon Grantor's death, physical incapacity or resignation as original trustee, NATIONAL BANK OF DETROIT, a national banking association of Detroit, Michigan, (corporate Successor Trustee) and STEPHEN I. GREENHALGH (individual Successor Trustee), are hereby designated as Successor Trustees hereunder.

When read alone, the second article of the trust document seems to create a notice provision requiring Sahlin to inform the successor trustees of any dispersal from the trust at any time. However, when the document is read in its entirety, it is clear under the plain and

unambiguous language in the thirteenth article, that there were no successor trustees until Sahlin died, became incapacitated, or resigned as trustee. Because Sahlin had not died, become incapacitated, or resigned as trustee at the time he transferred the jewelry to Christine, pursuant to the article thirteen of his trust, there were no “successor trustees” when the gift was made and, thus, no notice requirement.

Further, even upon assuming their duties as successor trustees, the language in the second article of the trust is clear that the successor trustees were only entitled to written notice if the grantor revoked the entire trust or did something similar to revoking the entire trust (e.g., withdrawing a substantial amount of the trust assets). The language in ¶ B of the second article refers specifically to the revocability of the trust by the grantor and states that “the power of withdrawal of any part or all of the trust property may be exercised only after at least thirty days’ notice and *under like conditions*.” [Emphasis added.] This language, and particularly the words “under like conditions,” indicates that Sahlin only intended for written notice to be given to the successor trustees in the event he wanted to revoke the entire trust or withdraw a substantial amount of the trust assets, effectively rendering the trust valueless. Here, Sahlin did not revoke the entire trust document, nor did he withdraw a substantial amount of the trust assets when he transferred the jewelry to Christine. Indeed, the trust remained funded with substantial assets at the time of his death. Thus, pursuant to the plain and unambiguous language in the trust document, Sahlin was not required to provide notice to the successor trustees of the gift to Christine. Accordingly, the probate court’s ruling was not erroneous.

Appellants additionally argue that the term “successor trustees” was used in the trust merely as shorthand for the names NBD and Greenhalgh and, therefore, they had a right to notice even without Sahlin’s death, resignation or incapacity. However, words in attorney-drafted testamentary or trust documents should be given their accustomed technical meaning according to common legal usage. *Matter of Dodge Testamentary Trust*, 121 Mich App 527, 543; 330 NW2d 72 (1982). In this instance, the trust specifically referred to “successor trustees” and provided that they would become empowered only upon Sahlin’s death, resignation or incapacity. The words in the trust are clear and appellants offer no legitimate explanation for why Sahlin did not write out the names NBD and Greenhalgh (as opposed to “successor trustees”) when referring to them in the trust. Accordingly, we reject appellants’ proposed interpretation of this language in the trust.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter