

STATE OF MICHIGAN
COURT OF APPEALS

In re LEON A. SWEET LIFE INSURANCE
TRUST.

ALAN A. MAY, Trustee,

Petitioner-Appellee,

UNPUBLISHED
March 20, 2001

v

No. 218173
Wayne Probate Court
LC No. 98-591539-TI

CAROL KOEPPLIN,

Respondent-Appellant,

and

FRANK SWEET, DAVID SWEET, DANIEL
SWEET, and MOLLY SWEET,

Respondents-Appellees,

and

EUVON SWEET,

Appellee.

Before: Murphy, P.J., and Hood and Talbot, JJ.

PER CURIAM.

Respondent Carol Koepplin appeals as of right from the probate court's order granting petition for instructions. We affirm.

Leon A. Sweet created and modified a trust in 1970 and 1973, respectively. The trust provided that after his death, Sweet's wife Euvon would receive the income from the trust throughout her lifetime. The trust also authorized the trustee, who is the petitioner in this case, to invade the principal of the trust (1) for the surviving wife's benefit if it was necessary to support

and maintain her at her accustomed level of living, (2) for the benefit of their children and grandchildren in the event of emergency, and (3) for the benefit of their grandchildren for payment of university or college education expenses as required and requested.

After three grandchildren requested reimbursement and future payments for educational expenses, the trustee brought a petition for instructions. The probate court determined that petitioner had discretion to make the decisions regarding the payment of college costs as raised in his petition. The probate court also found that petitioner had not abused his discretion in arriving at his proposed distribution of the trust corpus.

Initially, petitioner and the grandchildren respondents argue that respondent does not have standing to raise this appeal. We disagree.

Respondent was a party at the probate court proceedings, and as an interested person in this trust, her rights are affected by this decision. During Euvon Sweet's lifetime, respondent may receive distributions from the trust principal in the event of emergency. Following the death of Euvon Sweet, respondent will also receive portions of the trust principal. Respondent's interest in the trust and her participation in the proceedings at the probate court meet the statutory requirements for standing to appeal to this Court as a matter of right. MCL 600.861; MSA 27A.861.

On appeal respondent argues that the language of the trust grants Euvon Sweet a spousal veto power, and that petitioner must abide by her wishes before making any disbursement of the trust corpus. We disagree.

The specific trust language in question is as follows:

[T]he corporate Trustee after first consulting with Grantor's wife, EUVON M. SWEET, and insofar as possible following her wishes and recommendations thereon, is specifically authorized to pay to or use and expend for the benefit of any child or grandchild of Grantor so much of the corpus of this Residuary Trust as *in its sole and uncontrolled discretion* may be deemed necessary to assist such child or grandchild during any emergency such as illness, accident or extraordinary financial distress befalling him or her personally or any of their children. Further, Grantor authorizes the corporate Trustee *in its discretion*, and after consultation with Grantor's wife EUVON M. SWEET, to use and expend such funds from this trust as requested and required for college or university educations for each of Grantor's grandchildren. [Emphasis added.]

The intent of the settlor or testator is of paramount importance when reviewing wills and trusts. *In re Sykes Estate*, 131 Mich App 49, 53-54; 345 NW2d 642 (1983). The settlor's intent regarding the purpose and operation of the trust, as well as the powers and duties of the trustee, are determined by the instrument itself. *In re Butterfield Estate*, 418 Mich 241, 259; 341 NW2d 453 (1983). When there is no ambiguity in the document's language, the court's role is merely to interpret and enforce the language employed. *In re Norwood Estate*, 178 Mich App 345, 347; 443 NW2d 798 (1989). "As to those matters which the settlor has left to the discretion of the

trustee, the courts will not interfere with the trustee's exercise of his discretion unless the trustee has abused his discretion." *Sykes, supra* at 54.

Respondent argues that the two sentences quoted from the trust are to be read together and she contends that the words consultation and discretion in the second sentence are defined and explained in the first sentence. According to respondent's argument, petitioner must abide by Euvon Sweet's wishes insofar as possible before disbursing a portion of the trust corpus, whether for emergency or educational situations. The trust language, however, unambiguously allows petitioner to use discretion whenever disbursing funds from the corpus. The first sentence, which contains stronger language regarding following Euvon Sweet's wishes insofar as possible, also provides stronger language of discretion, saying that any expenditure is at the sole and uncontrolled discretion of the trustee. Therefore, even when "discretion" and "consultation" as used in the second sentence are considered in terms of the language in the first sentence, the trustee is allowed to use his discretion.

Respondent also argues that an ambiguity is created by the trust because it could be interpreted either to allow discretionary distributions of the principal without regard for Euvon Sweet's wishes or to require petitioner to follow Euvon Sweet's wishes insofar as possible. We find that this trust language does not create ambiguity.

According to the dictionary, to consult means "to seek guidance or information from." *Random House Webster's College Dictionary*, p 284 (1998). Seeking guidance does not necessarily require following the advice given. The trust further clarifies that petitioner does not have to follow Euvon Sweet's advice when it specifically allows petitioner to exercise his discretion. The terms consult and discretion are not mutually exclusive, and they can both be given their full meaning without creating ambiguity.

We hold that the probate court correctly determined that petitioner was allowed to exercise his discretion to invade the trust corpus. Similarly, we hold that the probate court correctly determined that the proposed distribution of the trust corpus was not an abuse of discretion in light of the trustee's reliance on the trust language, his understanding of the impact the distribution would have on Euvon Sweet and his acknowledgment that his discretion should not be exercised in a manner that would totally impair Euvon Sweet's rights.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Michael J. Talbot