

STATE OF MICHIGAN
COURT OF APPEALS

In re KING FAMILY AGREEMENT OF TRUST.

DONNA KING,

Petitioner-Appellee,

v

LOIS KING,

Respondent-Appellant,

and

MARGARET KING

Respondent.

UNPUBLISHED

March 4, 2004

No. 244105

Wayne Probate Court

LC No. 2001-634429-TI

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Respondent-appellant Lois King filed this *pro se* claim of appeal from the probate court's September 5, 2002 order removing Lois King and Margaret King as successor co-trustees of the King Family Trust Agreement, appointing a special trustee, and ordering Lois King and Margaret King to produce an accounting. We affirm.

Respondents were successor co-trustees of the King Family Trust. In an attempt to determine the beneficiaries' distributive shares, petitioner-appellee Donna King requested that respondents provide an accounting. On May 2, 2002, respondents filed an amended accounting for the periods of November 19, 1998—November 18, 1999 and November 19, 1999—October 23, 2000. Petitioner objected to this accounting and claimed that it failed to account for the entire period. Specifically, petitioner argued that respondents acted as trustees during their parent's lifetime and that the accounting did not have any supporting material. Petitioner also noted that respondents had not made themselves available for depositions. The probate court suspended respondents as successor co-trustees and appointed a special fiduciary. After reviewing the matter, the special fiduciary filed a petition to surcharge respondents \$100,000. Respondents objected to this petition, but an evidentiary hearing has yet to be conducted.

It is difficult to decipher the exact issues being appealed in respondent Lois King's *pro se* brief. Insofar as she claims the probate court improperly appointed a special fiduciary and further challenges the accuracy of the special fiduciary's accounting, we find no error.

We initially question whether this Court has jurisdiction over respondent Lois King's claim concerning the validity of the special fiduciary's findings. This Court has jurisdiction to entertain appeals from parties that are aggrieved by a final order or judgment.¹ A final order or judgment is defined by MCR 7.202(7)(a)(i) as "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties" There is nothing in the instant record showing that the probate court ever conducted a hearing or issued an order concerning the special fiduciary's petition.

To the extent the probate court's order replacing respondents as co-trustees with a special fiduciary could arguably be considered a final order, respondent Lois King has nevertheless failed to establish any error. We review a probate court's factual findings for clear error.² But a probate court's appointment or removal of a fiduciary is reviewed for an abuse of discretion.³ An abuse of discretion will be found only when the result "is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion."⁴

The probate court is authorized under MCL 700.1302 to appoint or remove trustees and to settle accountings. Here, the probate court stated that it was appointing a special fiduciary because: "there has been a failure to cooperate with discovery and a failure to provide an accounting as previously ordered by this court. I would like . . . [an] accounting going back to when [respondents] first started acting in a fiduciary capacity." While respondents went back to November 1998 in their accounting, the probate court noted that "[i]f [they] were writing checks earlier than that, then [they] were exercising [their] fiduciary duties." In this regard, petitioner claimed to have bank statements showing that respondents were acting in their fiduciary capacities before November 1998. On this record, we find that the probate court acted within its discretion in appointing the special fiduciary and removing respondents as successor co-trustees.

¹ MCR 7.203(A); MCR 7.202(7)(a)(i).

² *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

³ *Comerica Bank v Adrian*, 179 Mich App 712, 729; 446 NW2d 553 (1989).

⁴ *In re Weber Estate*, 257 Mich App 558, 560; 669 NW2d 288 (2003).

Further, respondent Lois King has failed to cite any authority in support of her claim that petitioner should be denied her share of the trust given her alleged opposition to the validity of the trust.⁵

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood

⁵ See *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995).