STATE OF MICHIGAN

COURT OF APPEALS

In re JOHN W. and LEONA M. WETZEL REVOCABLE LIVING TRUST.

ALAN CLEVENGER, as Successor Trustee of the Revocable Living Trust of JOHN W. WETZEL and LEONA M. WETZEL,

Plaintiff/Counter-Defendant-Appellee,

v

MELISSA MCCRORY, as Successor Personal Representative of the Estate of LEONA M. WETZEL, Deceased, and as Successor Trustee of the LEONA M. WETZEL Revocable Living Trust, ANDREW D. MCCRORY, and DEBORAH HUFFMAN,

Defendants/Counter-Plaintiffs-Appellants,

and

ROBIN CLEVENGER, as Personal Representative of the Estate of WILLIAM CLEVENGER, Deceased,

Defendant.

UNPUBLISHED
March 13, 2008

No. 270809
Jackson Probate Court
LC No. 04-006358-CZ

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Defendants/counter-plaintiffs ("defendants"), Melissa McCrory, Andrew D. McCrory, and Deborah Huffman, appeal as of right the probate court's order granting summary disposition in favor of plaintiff/counter-defendant ("Alan"), Alan Clevenger. Defendants also challenge the opinion finding that the John W. Wetzel and Leona M. Wetzel Revocable Living Trust ("joint

trust") owned real property located on Robinson Road in Jackson ("the Robinson Road property"), the order quieting title to the Robinson Road property, the opinion determining that the Leona M. Wetzel Revocable Living Trust ("sole trust") did not revoke or amend the joint trust, and the order finding that the joint trust owned the joint stock account at A.G. Edwards ("the joint stock account"). Because the trusts contain no ambiguities, and the disputed property was never transferred out of the joint trust and the joint trust was neither revoked, nor amended, we affirm.

I. Basic Facts and Proceedings

In 2000, Leona M. Wetzel and John W. Wetzel (collectively "the Wetzels"), a married couple, executed wills and the joint trust. The joint trust named Melissa and Alan, Leona's children and John's stepchildren, as successor co-trustees and equal beneficiaries. After executing the joint trust, the Wetzels changed the name on the joint stock account to the joint trust's name and executed four deeds conveying their joint ownership of the Robinson Road property to the joint trust. The deeds were witnessed and notarized, but they were never recorded, and the original deeds were lost.

John predeceased Leona, and after his death Leona learned that Alan had received the proceeds of John's IRA, amounting to $300,000, and $50,000 from a bank account. Alan would not share these proceeds with Leona, and Leona met with her attorney, Paul Joseph, to create a new estate plan that disinherited Alan. Leona executed the sole trust and a pour-over will, that was designed to automatically fund the sole trust on Leona's death. Melissa was the sole beneficiary and sole successor trustee of the sole trust, and she was named the personal representative of Leona's estate. Deeds were drafted transferring ownership of the Robinson Road property to the sole trust, but Leona never signed the deeds. Leona also failed to formally change or transfer the title on the joint stock account to the sole trust. Leona died, and Alan filed a complaint seeking to quiet title to the Robinson Road property. Defendants filed a counterclaim seeking a declaratory judgment that the joint trust was terminated and invalid, the Robinson Road property and the joint stock account were not assets of the joint trust, and Alan had no ownership interest in any of the assets of the joint trust.

Alan moved for summary disposition arguing that title to the Robinson Road property had been transferred to the joint trust because the deeds were delivered and there was no question that the Wetzels intended to convey the property to the joint trust. Defendants moved for partial summary disposition seeking a quiet title judgment regarding the Robinson Road property. Defendants argued that, because the four 2000 deeds were never recorded, Leona was the record owner of the Robinson Road property when she died. The probate court found that there was no issue of material fact regarding the evidence of the Wetzels' intent or that the deeds were delivered from the Wetzels in their individual capacities to them in their capacities as co-trustees of the joint trust. The probate court granted summary disposition to Alan and determined that the joint trust, not Leona, owned the Robinson Road property at the time of her death. The probate court later entered an order quieting title and providing that the joint trust owned the Robinson Road property in fee simple.

Melissa moved for summary disposition on defendants' counterclaim arguing that the statutory presumptions of MCL 700.2507 applied and Leona had revoked the joint trust when she executed the sole trust. The probate court found that the sole trust did not expressly revoke,

or even mention, the joint trust. The probate court concluded that there was no evidence of a revocatory act and the two trusts were not inconsistent because they did not involve the same property and there was no evidence of revocatory intent. The probate court found that the two trusts were not ambiguous and denied Melissa's motion for summary disposition.

Melissa moved for partial summary disposition seeking a declaratory judgment that the joint stock account was an asset of the sole trust and arguing that the mere identification of the joint stock account on the sole trust's asset schedule was sufficient to transfer ownership to the sole trust. Alan responded, also requesting summary disposition, arguing that Leona's signing of the declaration of intent did not automatically change ownership of the joint stock account. The probate court granted summary disposition to Alan because the joint stock account was titled in the name of the joint trust and Leona failed to take any action to transfer the account to the sole trust. Therefore, the probate court found that the joint stock account was owned by the joint trust.

II. Analysis

Defendants argue that the probate court erred in granting summary disposition because there is ample evidence that Leona intended to disinherit Alan and the probate court's decisions frustrate that intent. This Court reviews de novo a probate court's decision on a motion for summary disposition. *In re Estate of Capuzzi*, 470 Mich 399, 402; 684 NW2d 677 (2004). When reviewing a decision on a motion for summary disposition pursuant to MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and other evidence in the light most favorable to the party opposing the motion. *Zsigo v Hurley Medical Ctr*, 475 Mich 215, 220; 716 NW2d 220 (2006). Summary disposition is appropriately granted if, except for the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*.

A. Settlor's Intent

Generally, the probate court's objective is to effectuate the settlor's intent when construing a trust. *In re Nowels Estate*, 128 Mich App 174, 177; 339 NW2d 861 (1983). However, "[t]he law is well established that one must look to the trust instrument to determine the powers and duties of the trustees and the settlor's intent regarding the purpose of the trust's creation and its operation." *In the Matter of Estate of Butterfield*, 418 Mich 241, 259-260; 341 NW2d 453 (1983). If the language of a trust is unambiguous, courts must glean the settlor's intent from the four corners of the trust document. *In the Matter of Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). Defendants have identified no ambiguities, patent or latent, that would permit this Court to consider the evidence of Leona's intent. As will be discussed, *infra*, the sole trust is not inconsistent with the joint trust, and they do not dispose of the same property. Therefore, defendants' argument that there is a latent ambiguity fails.

B. The Robinson Road Property

Defendants contend that the Robinson Road property was never properly transferred into the joint trust, but rather was owned by Leona after John died and therefore, by operation of her pour-over will, was part of the sole trust when Leona died. Alan asserts that the four 2000 deeds effectively transferred the property into the joint trust where it remains. "[T]he test of

conveyance is whether it can be said that delivery of the deed was such as to convey a present interest in the land." *Wandel v Wandel*, 336 Mich 126, 131; 57 NW2d 468 (1953); also see *Hynes v Halstead*, 282 Mich 627, 637; 276 NW 578 (1937). Delivery is required to show that the grantor intended to convey the property described in the deed. *Energetics, Ltd v Whitmill*, 442 Mich 38, 53; 497 NW2d 497 (1993). A deed becomes effective when delivery occurs, not when the deed is executed or recorded. *Ligon v Detroit*, 276 Mich App 120, 128; 739 NW2d 900 (2007). Contrary to defendants' arguments, recording is not necessary for a deed to be valid or effective. *Sinclair v Slawson*, 44 Mich 123, 126; 6 NW 207 (1880); *Ligon*, *supra* at 128. As the party relying on the four 2000 deeds, Alan had the burden of establishing delivery. *Ligon*, *supra* at 130.

When the Wetzels created the joint trust, they executed four quitclaim deeds conveying their joint ownership of the property to the joint trust. On the same day, they also completed a declaration of intent and a schedule of real estate, both of which indicated that the property had been transferred. Further, Leona testified at her deposition, given in an ancillary matter two months prior to her death, that she believed they had successfully transferred the property into the joint trust, and Marcus Maurer, a notary who witnessed the signing of these deeds, indicated that the Wetzels intended to transfer the property to the joint trust. Delivery in the instant case is a bit unusual because the grantors were transferring the deeds from themselves as individuals to the grantees, who were themselves in their capacity as the trustees of the joint trust. Although the original deeds have not been located, there is sufficient evidence of intent to convey the property to the joint trust, and delivery was accomplished.

Defendants contend that delivery did not occur because the Wetzels did not place the deeds beyond their power to recall. See *Wandel*, *supra* at 131; *Hynes*, *supra* at 637-637 (holding that, where the grantor had given the deed to an escrow agent to deliver to the grantee after the grantor's death, there was no delivery). Defendants' argument is misplaced on two grounds. First, the joint trust owned the Robinson Road property after the deeds were executed, and although the Wetzels were the trustees, they could not revoke the deeds in their individual capacities. To hold otherwise would require a settlor to have a different trustee to fund any living revocable trust with real property. Second, there was ample evidence that the Wetzels intended to deliver the deeds to the joint trust and vest title in the joint trust. Therefore, defendants' argument is not persuasive.

We are similarly unconvinced that the absence of the original deeds affects this decision. Pursuant to MRE 1003, the duplicates were properly admitted into evidence because there were no issues raised regarding their authenticity and, under the circumstances of this case, it would not be unfair to admit the duplicates.

Although deeds were drafted transferring the Robinson Road property to the sole trust, it is undisputed that Leona never signed them. Therefore, delivery did not occur and the property remained in the joint trust at Leona's death. See *Wandel*, *supra* at 131; *Ligon*, *supra* at 128. The probate court properly concluded that delivery to the joint trust had occurred and the Robinson Road property was titled in the joint trust.

C. Revocation of the Joint Trust

Defendants next contend that the sole trust revoked the joint trust. Defendants rely on MCL 700.2507, which creates a rebuttable presumption of revocation regarding a will as follows:

> (1) A will or a part of a will is revoked by either of the following acts:
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> (a) Execution of a subsequent will that revokes the previous will or a part of the will expressly or by inconsistency.
>
> (b) Performance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or a part of the will or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this subdivision, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or a part of the will. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touches any of the words on the will.
>
> (2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.
>
> (3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked, and only the subsequent will is operative on the testator's death.
>
> (4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will, and each will is fully operative on the testator's death to the extent they are not inconsistent.

Assuming that MCL 700.2507 applies to trusts, none of the circumstances apply to the instant case. Leona never performed any of the revocatory acts listed in MCL 700.2507(1)(b), and neither her pour-over will nor the sole trust expressly revokes or even mentions the joint trust.

Section 1.08(3) of the joint trust provides that the trustors retain the power to revoke as follows:

> To revoke this trust, *by giving the trustee written notice of such revocation*, in which event the trustee shall promptly transfer and deliver the property constituting the trust estate to us or our designee, together with an accounting therefore; provided, however, that following the death of one of us,

> the survivor shall have no power to revoke the terms of the trust declaration with respect to the trust share of the first of us to die. [Emphasis added.]

Leona failed to comply with the requirement that revocation must be in writing. While a trustee may voluntarily waive a trust's written notice requirement, there is no evidence that Leona did so. *Sabin-Scheiber v Sabin*, 128 Mich App 427, 433-434; 340 NW2d 114 (1983). Rather, the two trusts were not inconsistent such that a waiver could be inferred or the presumption of revocation contained in MCL 700.2507(1)(a) or (2) is invoked. The trustors of the joint trust were John and Leona, and the sole trustor of the sole trust was Leona. The initial trustees of the joint trust were John and Leona, and the sole initial trustee of the sole trust was Leona. The successor trustees of the joint trust were Alan and Melissa, where the sole successor trustee of the sole trust was Melissa. The beneficiaries of the joint trust were Alan and Melissa, and the sole beneficiary of the sole trustee was Melissa. The joint trust specifically identified the Robinson Road property as a real estate property transferred into the trust, but the sole trust did not. The Wetzels executed deeds transferring the Robinson Road property to the joint trust, but Leona never signed the deeds conveying the property to the sole trust. The joint stock account was identified by account number as an investment saving that had been transferred into the joint trust, and a date of transfer was provided. The joint stock account was identified on the asset sheet for investment savings transferred into the sole trust, but it contained the notation, "Leona Act – In old trust yet[,]" and no date was listed for transfer. Therefore, the two trusts were not inconsistent.[1]

Further, the sole trust did not make a complete disposition of Leona's estate because the Robinson Road property and the joint stock account, which will be discussed *infra*, were not owned by Leona in her individual capacity, were not transferred into the sole trust while Leona was alive, and did not pass through her pour-over will into the sole trust. The probate court properly concluded that MCL 700.2507 did not create a presumption of revocation and the sole trust did not revoke the joint trust.

D. The Joint Stock Account

Defendants contend that Leona transferred ownership of the joint stock account to the sole trust when she listed it as an asset on the asset sheet for investment savings transferred into the sole trust. However, this account was not in her name in her individual capacity. Rather, it was titled in her name, as the trustee for the joint trust. Further, the asset sheet contained the notation, "Leona Act – In old trust yet[,]" and no date was listed for transfer. We agree with the probate court that, at best, this evidences the intent to transfer the account into the name of the sole trust, but it does not demonstrate that a transfer actually occurred.

Defendants maintain that the joint stock account became an asset of the sole trust regardless of who holds the title. Defendants' argument would permit a settlor to place property

[1] The merger clause of the joint trust, ¶ 5.03(t) is similarly not implicated because it requires that, for two trusts to merge, they must be "for the benefit of the same beneficiary or beneficiaries and upon substantially the same terms and conditions[.]"

belonging to anyone else into his trust merely by declaring it a trust asset. The sole trust contains two provisions whose plain language must be considered. First, defendants rely on the comprehensive transfer document of the sole trust, which provides that Leona, as the sole trustee of the sole trust, was holding and would hold properties, including accounts and real estate, solely for the trust and all property was thereby transferred to the sole trust. This document also provides that all such property was transferred even if "'record' ownership or title, in some instances, may, presently or in the future, be registered *in the individual name* in which event such record of ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed." (Emphasis added.) However, this provision does not apply because the joint stock account was not registered or titled in Leona's individual name. Second, the sole trust defines the trust estate as "all property, transferred or *conveyed to* and received by the Trustee, held pursuant to the terms of this instrument." (Emphasis added.) The joint stock account was never conveyed to Leona, the sole trustee, in her individual capacity. Therefore, the plain language of the trust contradicts defendants' argument.

Further, Louis F. Sheerbaum, the financial consultant who serviced the joint stock account, explained that that the trustee must take affirmative action to change the title on the joint stock account, and it is undisputed that Leona never contacted A.G. Edwards to have the account transferred or otherwise retitled. Even if the joint stock account is not considered a traditional transfer-on-death or payable-on-death account and the uniform transfer-on-death security registration provisions do not apply, A.G. Edwards still maintains the authority to establish its own policies and procedures regarding the transfer of ownership of the accounts held at its firm. The joint stock account was registered in the name of the joint trust, not in Leona's name as an individual, and it remained in the joint trust when Leona died. Therefore, the probate court did not err in granting summary disposition in Alan's favor.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Pat M. Donofrio