

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellant,

v

GEORGE W. HAYDEN, JESSICA HAYDEN,
and ALICIA HAMMOND,

Defendants,

and

COMERICA BANK SUCCESSOR TRUSTEE for
the KULA HAYDEN IRREVOCABLE TRUST,

Defendant-Appellee.

UNPUBLISHED

May 13, 2008

No. 277138

Jackson Circuit Court

LC No. 06-002982-CZ

Before: Wilder, P.J., and O’Connell and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s order granting defendant Comerica Bank’s motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff filed this action seeking reimbursement from the Kula Hayden Irrevocable Trust (“Trust”) for defendant George Hayden’s (“Hayden”) costs of care while in a state correctional facility pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401, *et seq.* Defendant moved for summary disposition on the grounds that the trust was both discretionary and included a spendthrift trust, making it inaccessible by the State to satisfy the support obligation. The trial court found that the Trust language gave the trustee “sole and absolute discretion,” thereby creating a discretionary trust and leaving plaintiff unable to reach the assets. We affirm.

We review *de novo* decisions on motions for summary disposition made under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Under MCL 800.403(2), the attorney general must seek reimbursement if a prisoner has “sufficient assets” to cover not less than ten percent of the cost of care and has the discretion to seek reimbursement if the amount will be less than ten percent. *State Treasurer v Cuellar*, 190 Mich App 464, 467; 476 NW2d 644 (1991). Assets are defined under the statute to include “property, tangible or intangible, real or personal, belonging to or due a prisoner or former prisoner including income or payment to such prisoner from . . . any other source whatsoever.” MCL 800.401a(a). Hayden

is a beneficiary of the Trust created by his mother. The parties agree that if Hayden is the beneficiary of a discretionary trust, plaintiff is not entitled to reimbursement for the costs of his care. See *Miller v Dep't of Health*, 432 Mich 426, 427; 442 NW2d 617 (1989). This is because “a discretionary trust cannot be reached by creditors because the beneficiary has no ascertainable interest in the assets.” *In re Hertsberg Intervivos Trust*, 457 Mich 430, 433; 578 NW2d 289 (1998), citing *Miller, supra* at 431.¹ Accordingly, the only question is whether the trial court properly determined that the Trust at issue was a discretionary trust. Plaintiff contends that the Trust is not discretionary and that Hayden’s interest is ascertainable, making it an asset as defined by SCFRA. We disagree.

When construing a trust, the court’s objective is to effectuate the settlor’s intent by looking 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 re Butterfield Estate*, 418 Mich 241, 259-260; 341 NW2d 453 (1983). Where the trust language is unambiguous, the settlor’s intent must be gathered from the four corners of the trust document. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985); *In re Woodworth Trust*, 196 Mich App 326, 327; 492 NW2d 818 (1992).

Our Supreme Court has recognized three types of trusts:

Firstly, a trust vesting in the beneficiary the right to receive some ascertainable portion of the income or principal. Secondly, a trust providing that the trustee shall pay so much of the income or principal as is necessary for the education or support of the beneficiary, called a support trust. Thirdly, a trust providing that the trustee may pay to the beneficiary so much of the income or principal as he in his discretion determines, called a discretionary trust. [*Miller, supra* at 429.]

The Trust makes specific reference to Hayden’s incarceration. The provisions of the Trust currently in effect are contained under the heading “During the Incarceration of Settlor’s Son” in section 6(d)(1) and provide that “[t]he Trustee *may, in its sole and absolute discretion*, distribute income and/or principal to or for the benefit of the Settlor’s son . . .” (emphasis added). This language creates a discretionary trust. *Id.* at 429. Moreover, section 6(d)(1)(c) provides “the Trustee shall not distribute income and/or principal for care or services which, in the absence of this trust, would be paid by any State . . . correctional facility.” The language clearly evidences an intent by the settlor to make the funds unreachable by plaintiff.

Certain language in the Trust upon which plaintiff relies is contained in section 6(d)(2) captioned, “Upon the Release From Incarceration of the Settlor’s Son.” Because Hayden is still incarcerated, these provisions are inapplicable. The possibility exists that Hayden could pass away prior to the expiration of his incarceration, such that the provisions never come into effect. The trial court even noted that if Hayden were to petition the trial court for access to the funds, it would be required to deny the request based on the plain language of the Trust. Because Hayden

¹ Only where the beneficiary is also the settlor of the trust is this rule inapplicable. *Id.* at 433-434. Because Hayden’s mother was the settlor of the Trust, this exception does not apply.

had no enforceable interest in the trust, there were no assets for plaintiff to reach. *Id.* at 430-431. Additionally, the Trust language in the post-incarceration section again provides that “[t]he Trustee *may, in its sole and absolute discretion*, distribute, preferable directly to providers, such portions of the income at any time and from time to time for the benefit of the Settlor’s son . . .” (emphasis added). Even the language that “[t]he Trustee *shall* distribute to the Settlor’s son . . . an amount each week which in the Trustee’s judgment constitutes a modest income to supplement the Settlor’s son’s other income” reflects a requirement that the trustee exercise discretion. Should Hayden receive a substantial income from another source, the trustee could determine under the Trust language that \$0 is the weekly amount that constituted a modest income. See *In re Sykes Estate*, 131 Mich App 49, 55-56; 345 NW2d 642 (1983). Accordingly, we conclude that the trial court properly found the Trust to be discretionary and properly granted summary disposition on that basis.²

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O’Connell
/s/ William C. Whitbeck

² Contrary to plaintiff’s assertion, *Converson v Kellogg*, 136 Mich App 504; 357 NW2d 705 (1984), is inapplicable to the case at bar, as the holding relies on law related specifically to trust claims involving alimony and child support, neither of which is at issue here. *Id.* at 513.