

STATE OF MICHIGAN
COURT OF APPEALS

DONALD MYERS and ROBERT HUNT,
TRUSTEES of the ELVIS AND MARILYN R.
HUNT TRUST,

UNPUBLISHED
July 14, 2009

Petitioners-Appellants,

v

No. 285158
Oceana Probate Court
LC No. 07-000032-TV

DANNY M. SNOWDIN,

Respondent,

and

STARLETTA SNOWDIN,

Respondent-Appellee.

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Petitioners Donald Myers and Robert Hunt,¹ acting as co-successor trustees of the Elvis and Marilyn R. Hunt Trust, appeal as of right from an order finding no cause of action and granting judgment in favor of respondents Danny and Starletta Snowdin.² We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On February 18, 1998, Elvis (a/k/a Buck) and Marilyn Hunt established the Elvis and Marilyn R. Hunt Trust. The trust agreement named Buck and Marilyn as trustees and provided that, while both were living and acting as trustees, either or both of them had all the powers set forth in the trust agreement and could act alone. During Buck's and Marilyn's lifetimes, or the lifetime of the survivor of them, the trustee was required to pay all the net income to them for their benefit or as otherwise directed by both of them or either of them, and was also required to pay any part of trust principal as directed by both of them or either of them. If they, or the survivor of them, became incapable of managing their own affairs, the trustee was required to

¹ Robert Hunt is deceased and is no longer a party to this appeal.

² Danny Snowdin is deceased and is not a party to this appeal.

pay the net income and principal to support the incapacitated grantor. Upon the deaths of the survivor of Buck and Marilyn, the remaining trust property was to be divided into five equal shares and distributed among Buck's four children from a prior marriage (Robert Hunt, Nancy Myers, Donna Hollowell, and Barbara Martin) and Marilyn's surviving son from a prior marriage (Danny Snowdin). Another provision guarded against the dispossession of any named beneficiary by a surviving grantor by stating that, upon the death of Buck or Marilyn (whoever died first), the trust would become "irrevocable regarding the distribution of property and trust assets and the named beneficiaries thereof."

Buck became incompetent before 2004 and, in May 2004, was placed in a long-term care facility. It was undisputed that, after Buck became incompetent but before he died, Marilyn removed trust assets and converted them into assets that were either held jointly by her and her son, Danny Snowdin, or were made payable to Danny upon her death. Buck died on December 29, 2004, and Marilyn died on April 30, 2006. Since all of her assets were held jointly with Danny and/or Danny's wife, Starletta Snowdin, those assets passed directly to Danny and/or Starletta upon Marilyn's death. After Marilyn's death, petitioners filed a petition to recover trust property. Danny and Starletta Snowdin, who were the named respondents in that petition, filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Following a motion hearing, the trial court granted that motion and entered a judgment in favor of respondents, finding no cause of action.³ On appeal, the issue was whether Marilyn, in her role as a trustee, breached her duties to Buck's children in their role as trust beneficiaries.⁴

A motion brought under MCR 2.116(C)(8) evaluates whether the opposing party failed to state a claim on which relief could be granted, while a motion under MCR 2.116(C)(10) tests the factual sufficiency of the claim and may be granted if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Coblentz v City of Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006). Whether a trustee has breached his duties is determined by the facts of each case. *In re Green Charitable Trust*, 172 Mich App 298, 312; 431 NW2d 492 (1988). A trustee's duties to beneficiaries are determined by the trust agreement and the intent of the settlor. *In re Butterfield Estate*, 418 Mich 241, 259-260; 341 NW2d 453 (1983). Relevant statutes and caselaw also define what duties the trustee owes. *In re Green Charitable Trust*, *supra* at 312.

An evaluation of the trust agreement and the grantors' intent in this case shows that there were many provisions in the trust that authorized a trustee to act alone. In addition to the introductory paragraph, which stated that, while both Buck and Marilyn were living and acting as trustees, either of them had all the powers and authority of trustees and there was no requirement that they act jointly, paragraph 1.2 specifically stated that additions or withdrawals to the trust property could be made by either of them, and paragraph 2.1 allowed either of them to otherwise

³ This judgment also granted a money judgment in favor of respondents for costs in the amount of \$160 and ordered petitioners to terminate and withdraw any previously filed notice of lis pendens filed in connection on any real property in which respondents held an interest.

⁴ Buck's children had a vested interest in the remainder. *In re Childress Trust*, 194 Mich App 319, 323; 486 NW2d 141 (1992).

direct the payment of net income or any part of trust principal. Such provisions demonstrated that, at the time the trust was created, Buck and Marilyn highly valued the ability of either of them to act alone in their role as a trustee. Therefore, the trust agreement was unambiguous regarding Buck's and Marilyn's intent that they, as trustees, had the power to act alone when using trust property.⁵

Next, it is clear that a grantor may create a trust in which the trustee has the right to remove property from the trust corpus to the point where the trust corpus is exhausted. *Goodrich v City Nat'l Bank & Trust Co of Battle Creek*, 270 Mich 222, 228-229; 258 NW 253 (1935) (a grantor has the right to create a trust where he reserves for himself the right to use the trust property, even if the exercise of that reserved power results in there being no portion of the trust property left for the beneficiaries to receive). Therefore, it was unambiguous that Marilyn's powers as a trustee allowed her to act on her own when using trust property, even should the exercise of that property deplete the trust corpus.

Petitioners correctly argue that Marilyn, in her role as a trustee, had a duty to administer the trust for the benefit of the beneficiaries, and to act in a reasonable and prudent manner concerning the trust assets. MCL 700.7301⁶ provides that a trustee has the general duty "to administer a trust expeditiously for the benefit of the beneficiaries," and MCL 700.7401 provides in part that a trustee is empowered to perform in a reasonable manner every act incident "to accomplish the desired result of administering the trust legally and in the trust beneficiaries' best interest." Similarly, MCL 700.7302 requires a trustee to "act as would a prudent person in dealing with the property of another." However, the fact that a trustee is required to administer the trust for the beneficiaries' best interest does not mean the beneficiaries have equal rights to the trust income and principal under the terms of the trust. Here, Marilyn had the right to remove trust assets under the express terms of the trust.

The trust agreement was unambiguous in providing Marilyn with the authority to act alone in transferring the trust assets before, at, and after the time that Buck became incompetent

⁵ An evaluation of the trust agreement also shows that Buck and Marilyn intended that, upon the death of the first of them, the trust was to become "irrevocable regarding the distribution of property and trust assets and the named beneficiaries thereof," provided, however, that the surviving grantor had the continued right to use the trust estate in accordance with paragraph 2.1. The express intent underlying this provision was "to preclude the dispossession of any named beneficiary by a surviving grantor, but to allow the surviving grantor the right and ability to continue to maintain the lifestyle enjoyed prior to the death of the first grantor to the extent the assets of the trust estate allow for same." By its clear wording, this provision did not take effect until the death of either Buck or Marilyn, who apparently intended to prevent only the dispossession of any named beneficiary that might occur after his or her death, not before. Therefore, this provision was not in effect when Marilyn transferred the trust assets around the time that Buck became incompetent but before he died, and is not dispositive in this case.

⁶ The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, which took effect April 1, 2000, governs this case, even though the trust was created in 1998, because EPIC was in effect at the time of Buck's and Marilyn's deaths and at the commencement of this litigation. MCL 700.8101(2)(a) and (b).

but before he died. Therefore, the trial court did not err in granting summary disposition to respondents.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher