STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of the HARRIET C. SIBLEY TRUST.

J. WHITNEY SIBLEY, III,

Appellant,

v

CITIZENS BANK WEALTH MANAGEMENT, N.A,

Appellee.

UNPUBLISHED
November 9, 2010

No. 293601
Genesee Probate Court
LC No. 09-002469-TT

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

PER CURIAM.

J. Whitney Sibley, III (Whitney), as the beneficiary of the Harriet C. Sibley Trust, challenges the probate court's denial of his request for the removal of the current trustee, Citizens Bank Wealth Management, N.A. (Citizens Bank). We affirm.

Questions of statutory interpretation are reviewed de novo.[1] We review the findings of fact by a probate court for clear error,[2] and the decision to remove a trustee for an abuse of discretion.[3]

Harriet C. Sibley executed her last will and testament on June 29, 1962, which included two testamentary trusts, one of which is the subject of this action - the Harriet C. Sibley Trust. Citizens Bank was the named as the trustee. The Trust became irrevocable on Harriet's death in 1975. Harriet's husband James Sibley was the initial trust beneficiary. James was entitled to

[1] *Tousey v Brennan*, 275 Mich App 535, 538; 739 NW2d 128 (2007).

[2] MCR 2.613(C); *Gumma v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999).

[3] *In re Duane v Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007).

regular installments of the net income of the trust until his death in 2000. Following the death of James Sibley, Whitney became the trust beneficiary and was to receive net income from the Trust in regular installments. Based on the discretion of the trustee, and in accordance with the terms contained in Harriet's will:

> If the payments . . . are not . . . sufficient to properly educate, support and maintain and care for my son, Whit[ney], then I direct the trustee to use such part of the principal of [the] Trust . . . as may be required to do so.

Any Trust principal remaining after Whitney's death is to be distributed in equal shares to his children, resulting in the termination of the Trust. Since 1970, Whitney has resided in the state of Colorado, as do his children.

In 2009, Whitney sought the voluntary resignation of Citizens Bank as the trustee to procure the appointment of an alternative trustee in Colorado. Citizens Bank refused and Whitney filed litigation on April 14, 2009, seeking removal of the trustee and the appointment of a successor. In support of his petition, Whitney alleged that his geographic distance from the trustee was not in his best interest and interfered in the development of a personal relationship with the trustee. Whitney further asserted that the trustee failed to adequately exercise its discretion to use principal from the Trust for his support and maintenance and that the only basis for Citizen Bank's refusal to relinquish its status as trustee was the loss of fees associated with the management of the Trust. The probate court denied Whitney's request to remove Citizens Bank as trustee based on its inability to find "the place of administration is inappropriate at this time." While considering Whitney's preferences as the beneficiary, the probate court found no wrong doing on the part of the trustee or that any inconvenience due to geographic distance necessitated the removal. The trial court also denied Whitney's motion for reconsideration on July 24, 2009.[4]

When this matter was before the probate court, the relevant statutory provision provided:

> A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter an order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, and appointment of a trustee in another state. A trust provision relating to the place of administration, to changes in the place of administration, or to change of trustee controls unless compliance would be contrary to efficient administration or the purposes of the trust. The view of an adult beneficiary shall be given

[4] Whitney filed his claim of appeal on August 14, 2009.

> weight in determining the suitability of the trustee and the place of administration.[5]

After the probate court rendered its decision and Whitney appealed to this Court, our Legislature enacted the Michigan trust code.[6] The Michigan trust code currently provides for the removal of a trustee as follows:

> (1) The settlor, a cotrustee, or a qualified trust beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
>
> (2) The court may remove a trustee if 1 or more of the following occur:
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> (a) The trustee commits a serious breach of trust.
>
> (b) Lack of cooperation among cotrustees substantially impairs the administration of the trust.
>
> (c) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the purposes of the trust.
>
> (d) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of the trust beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
>
> (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, to the extent it is not inconsistent with a material purpose of the trust, the court may order any appropriate relief under section 7901(2) that is necessary to protect the trust property or the interests of the trust beneficiaries.

The new statutory provisions are applied to trusts, defined as including, "but . . . not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created."[7] In accordance with the Michigan trust code:

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[5] MCL 700.7305, amended 2009 PA 46, effective April 1, 2010. The current version of MCL 700.7305 pertains to guardian ad litems.

[6] MCL 700.7101, *et seq.*; 2009 PA 46, effective April 1, 2010.

[7] MCL 700.7102 citing MCL 700.1107(n).

(1) Except as otherwise provided in article VII, all of the following apply on the effective date of the amendatory act that added this section:

(a) The amendments and additions to article VII enacted by the amendatory act that added this section apply to all trusts created before, on, or after that effective date.

(b) The amendments and additions to article VII enacted by the amendatory act that added this section apply to all judicial proceedings concerning trusts commenced on or after that effective date.

(c) The amendments and additions to article VII enacted by the amendatory act that added this section apply to judicial proceedings concerning trusts commenced before that effective date unless the court finds that application of a particular provision of the amendments and additions would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the amendments and additions does not apply and the superseded provisions apply.

(d) Any rule of construction or presumption provided in the amendments and additions to article VII enacted by the amendatory act that added this section applies to trust instruments executed before that effective date unless there is a clear indication of a contrary intent in the terms of the trust.[8]

A "proceeding" is statutorily defined to include "an application and a petition, and may be an action at law or a suit in equity."[9] A "petition" refers to "a written request to the court for an order after notice."[10] In turn, the word "court" is defined to mean "the probate court or, when applicable, the family division of circuit court."[11] In accordance with the statutory directive[12] and because proceedings in the probate court and the appeal to this Court were commenced before the effective date of the amendments of April 1, 2010, in considering this issue we will apply the former statutory language[13] as addressed in the lower court's ruling.

In regard to this case, the relevant statutory language pertaining to a request to remove a trustee is as follows:

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[8] MCL 700.8206.

[9] MCL 700.1106(r). An "application" refers to "a written request to the probate register for an order of informal probate or informal appointment. . . ." MCL 700.1103(b).

[10] MCL 700.1106(p).

[11] MCL 700.1103(j).

[12] MCL 700.8206(1)(b).

[13] MCL 700.7305.

> A trustee is under a continuing duty to administer the trust *at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter an order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, and appointment of a trustee in another state.* A trust provision relating to the place of administration, to changes in the place of administration, or to change of trustee controls unless compliance would be contrary to efficient administration or the purposes of the trust. *The view of an adult beneficiary shall be given weight in determining the suitability of the trustee and the place of administration*.[14]

Notably, Whitney has not asserted any mismanagement or breach of fiduciary duty by Citizens Bank in administration of the Trust. He has not indicated any difficulty or delay in having contact with Citizens Bank or a lack of responsiveness to his contacts or inquiries as the basis for his request for removal of the current trustee.[15] In effect, Whitney only asserts that the geographic location of the trustee is inconvenient and preclusive to a more personal relationship, but not that it has impacted the efficient administration of the Trust.

At issue is the statutory language that permits the continuation of the administration of a trust "at a place appropriate to the purposes of the trust" as, in this instance, there is no assertion that Citizens Bank has failed to provide "sound" and "efficient management."[16] Use of the word "and" indicates that both conditions are required for a trustee to retain his or her status and that the failure of either condition, such as when "the principal place of administration becomes inappropriate," gives a court the discretion, but not a mandate, to remove a trustee.[17] The basis for a place of administration to be deemed inappropriate is not restrictive as it encompasses "any reason." For something to be deemed "inappropriate" it must be regarded as "not proper or suitable."[18] In making a determination regarding the "suitability" of the "trustee and the place of administration," a court is directed to give "weight" to the views of an "adult beneficiary." Historically, case law has also recognized that the identification or naming of a specific trustee

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[14] MCL 700.7305 (emphasis added).

[15] Although Whitney has implied a dispute with the trustee regarding the failure to release Trust principal on his behalf, Citizens Bank contends that it is guided by the wording of the Trust and that Whitney has failed to provide documentation to support his need to invade the Trust principal.

[16] *Id.*

[17] *Id.*

[18] *Random House Webster's College Dictionary* (1997).

by a testator comprises a strong basis for not removing a trustee for a trivial concern unrelated to a demonstration of actual fault or neglect by the trustee.[19]

When the trust was initially effectuated and while the primary beneficiary, James Sibley, resided in Michigan there was no suggestion that the place of administration was "inappropriate." Notably, even though Whitney became the beneficiary in 2000 and had been residing in Colorado since 1970, he did not indicate any concerns regarding the propriety of the location of the trust or its management until 2009. Whitney's own assertions do not indicate that the location of the Trust's administration is "inappropriate," merely not consistent with his personal preference. Whitney has not alleged that the current arrangement has resulted in any actual inconvenience such as delays in his receipt of payments of net income or problems in contacting Citizens Bank and their responsiveness.[20] Rather, he merely indicates a personal preference to relocate the trust administration to within a closer geographic distance in order to potentially develop a more personal relationship with a successor trustee.[21]

The decision whether to remove Citizens Bank as the current trustee was within the discretion of the trial court. "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes."[22] This comprises a high standard of review. Because the allegations of Whitney demonstrated a mere preference and not that the location for administration of the Trust was "inappropriate" we cannot find that the probate court's decision to deny removal of the current trustee was an abuse of discretion.

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Talbot

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[19] *Reed v Newberry*, 292 Mich 476, 483; 290 NW 874 (1940).

[20] In support of his position, Whitney cites to an unpublished opinion of this Court – *In re Wege Trust*, unpublished opinion per curiam of the Court of Appeals, issued June 17, 2008 (Docket Nos. 271244, 274217, 274256, 274850, and 281244). First we note that unpublished opinions do not have precedential value. MCR 7.215(C)(1). Second, the cited case is factually distinguishable as the beneficiary in *Wege* sought removal of the trustee based on both geographic location or convenience and concerns pertaining to management of the trust and the propriety of the investments being made.

[21] We note that any preference indicated by Whitney's children as residuary beneficiaries is irrelevant given their inchoate interest and the fact that, should they become beneficiaries the assets will be disbursed and the Trust will terminate eliminating the necessity of any transfer of responsibility to an alternative or successor trustee.

[22] *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).