

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Charles C. Kropf, Executor of the
Estate of Eugene G. Kropf, Deceased

Court of Appeals No. E-09-068

Trial Court No. 2007 1 423 B

Appellee

v.

Charles C. Kropf, et al.

Appellees

[Vermilion Local Schools

DECISION AND JUDGMENT

Appellant]

Decided: August 13, 2010

* * * * *

James J. Smith, for appellee Charles C. Kropf, Executor.

Brian E. Hurley, Robert J. Gehring and Gregory S. French,
for appellee Charles C. Kropf, Individually.

Henry W. Kishman, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This appeal concerns distribution of assets held by Eugene G. Kropf ("E. Kropf") at the time of his death in a Profit Sharing Plan/Money Purchase Pension Plan and an Individual Retirement Account at T. Rowe Price. Vermilion Local Schools, appellant, appeals a November 10, 2009 judgment of the Erie County Court of Common Pleas, Probate Division, that determined rights to the assets. The trial court ruled that

April 2009 settlement agreements between the parties did not control distribution of the assets. The court determined that the assets were subject to distribution in accordance with beneficiary designation forms previously executed by E. Kropf on each account.

{¶ 2} Appellees in this appeal have included Charles C. Kropf, both in his individual capacity and in his capacity as executor to the estate of Eugene G. Kropf. Charles C. Kropf died on June 17, 2010. He was the only child of E. Kropf. Until his death, Charles C. Kropf served as the executor of his father's estate. The estate of E. Kropf has filed a suggestion of death with respect to Charles C. Kropf in these proceedings and also has filed a motion to appoint a successor administrator for the estate of E. Kropf with the Erie County Probate Court.

{¶ 3} Vermilion Local Schools asserts two assignments of error on appeal:

{¶ 4} "ASSIGNMENTS OF ERROR

{¶ 5} "I. The Trial Court erred in failing to find that the T. Rowe Price Accounts were properly funded to the Eugene G. Kropf Revocable Living Trust dated August 1, 2007.

{¶ 6} "II. The Trial Court erred to the prejudice of Defendant-Appellant Vermilion Local Schools in failing to find that the T. Rowe Price accounts were subject to an equal division between Defendant Vermilion Local Schools and Charles C. Kropf pursuant to the parties' April, 2009 agreements."

{¶ 7} The parties are agreed as to pertinent facts. On March 21, 1991, E. Kropf executed both his Last Will and Testament and the Eugene G. Kropf Trust dated

March 21, 1991 ("the March 21, 1991 Trust"). In May 2005, E. Kropf established two accounts with T. Rowe Price, a Profit Sharing Plan/Money Purchase Pension Plan ("the Plan") and an Individual Retirement Account ("the IRA"). E. Kropf also executed T. Rowe Price beneficiary designation forms with respect to each account.

{¶ 8} On August 1, 2007, E. Kropf executed the Eugene G. Kropf Revocable Living Trust dated August 1, 2007 ("the August 1, 2007 Trust"). On August 25, 2007, E. Kropf revoked the March 21, 1991 Trust. E. Kropf died on October 30, 2007.

{¶ 9} Subsequently, Charles C. Kropf, as executor of the estate of E. Kropf, filed two complaints for declaratory judgment with respect to administration of the estate. The first declaratory judgment complaint concerned the revocation of the March 21, 1991 Trust. The trial court approved and filed a stipulated judgment on July 23, 2008, declaring that the March 21, 1991 Trust was revoked on August 25, 2007.

{¶ 10} On June 5, 2008, Charles C. Kropf filed this action in declaratory judgment complaint, seeking a court declaration as to whether the August 1, 2007 Trust is valid and, if valid, declaring what assets are property of the trust. Beneficiaries of the August 1, 2007 Trust were named defendants. Vermilion Local Schools was not named as a defendant but filed a motion to intervene.

{¶ 11} The Estate of E. Kropf and Charles C. Kropf, individually, have disputed that the August 1, 2007 Trust is a valid trust. Vermilion Local Schools has claimed that the August 1, 2007 Trust allocates to another trust, the Eugene and Ann Kropf Irrevocable Trust, funds for the benefit of the Vermilion, Ohio Scholarship Fund. It also

has asserted that further contingent distributions are allocated to the Scholarship Fund as beneficiary if other portions of the trust estate are not distributed to beneficiaries as provided in the Trust.

{¶ 12} Before the trial court reached issues relating to the validity of the August 1, 2007 Trust or what assets are held by the trust if valid, the parties reported a global settlement of disputes.

Settlement Agreements

{¶ 13} On May 11, 2009, the E. Kropf estate, Vermilion Local Schools, and beneficiaries of the August 1, 2007 trust, including Charles C. Kropf individually, all jointly requested the trial court to grant Vermilion Local Schools' amended motion to intervene. They also represented to the court that they had entered into a settlement agreement and submitted a stipulated judgment entry for court approval pursuant to the settlement. Charles C. Kropf, individually, and Vermilion Local Schools also entered into a separate additional settlement agreement.

{¶ 14} In its November 10, 2009 judgment, the trial court recognized the April 2009 settlement between all parties was a global settlement agreement involving all disputes among all parties:

{¶ 15} "The Settlement Agreement is a global settlement of all claims that were brought in this litigation. Specifically, the Settlement Agreement provides that, '[i]n order to avoid the risk, length, inconvenience and expense of litigation, the Parties to this Agreement desire a full settlement of all claims that were or could have been made in'

this litigation. As such, the Settlement Agreement resolves not only the dispute between Charles C. Kropf and the Vermilion Local Schools, but also all possible disputes among and between all parties to this litigation."

{¶ 16} The trial court approved and filed the stipulated judgment on May 11, 2009. The Global Settlement provided for distribution of assets of the E. Kropf estate and the August 1, 2007 Trust, first, through payments of \$2,527,969 to specified individuals or entities and transfer of listed real property and contents and followed by payments to the Vermilion Local Schools and to Charles C. Kropf, individually. With respect to payments to Vermilion Local Schools and Charles C. Kropf, individually, the judgment approving the settlement provided that after disbursement of the \$2,527,969 and real property to others, "that the Vermilion Schools and Charles C. Kropf will share equally in the remaining assets of Eugene G. Kropf, *whether they are held in probate or in trust.*" (Emphasis added.)

{¶ 17} The private additional settlement agreement between Vermilion Local Schools and Charles C. Kropf, individually, also provided for distribution of assets of Eugene G. Kropf whether held in probate or in trust:

{¶ 18} "This Agreement is entered into between Charles C. Kropf ("Kropf") and the Vermilion Local Schools ("the Vermilion Schools"). The following are the terms of the Agreement:

{¶ 19} "1. *Kropf and the Vermilion Schools both claim to be entitled to the assets of Eugene G. Kropf held in probate or in trust (hereinafter referred to as 'the Assets')*

after distributions have been made to the individuals and entities who have made claims under the document titled the Eugene G. Kropf Revocable Living Trust dated August 1, 2007 ('the Revocable Trust') (hereinafter referred to as 'the remaining Assets').

{¶ 20} "2. Kropf and the Vermilion Schools have resolved their dispute about their respective rights to the remaining Assets by agreeing that Kropf and the Vermilion Schools will share equally in the remaining Assets. Specifically, Kropf and the Vermilion Schools have agree that, after the distributions have been made under the Revocable Trust, Kropf and the Vermilion Schools shall each end up with 50% of the remaining Assets. * * *" (Emphasis added.)

{¶ 21} Vermilion Local Schools has agreed that it was not until July 2009 (after the April 2009 settlement agreements), that Charles C. Kropf first learned the provisions of the T. Rowe Price beneficiary designation forms.¹

T. Rowe Price Beneficiary Designation Forms

{¶ 22} The record includes the beneficiary designation forms executed by E. Kropf with respect to the T. Rowe Price accounts. The IRA Beneficiary Change Request was executed by E. Kropf on May 12, 2005, and identifies the primary beneficiary as "Eugene Kropf Trust" with a "date of trust" of "3-21-91." With respect to the profit sharing

¹In its appellate brief, Vermilion Local Schools has stated that the parties have agreed to the facts in this appeal. It identified July 2009 as the date Charles C. Kropf discovered the T. Rowe Price beneficiary designation forms in a timeline included in its appellate brief. At the hearing on the motions seeking distribution of the T. Rowe Price accounts, counsel for Vermilion Local Schools also advised the court that Vermilion Local Schools did not claim any deception by Charles C. Kropf due to the late disclosure that he had been designated beneficiary to the T. Rowe Price accounts.

plan/money purchase pension plan, the beneficiary designation form was also executed on May 12, 2005. It identifies "Eugene Kropf Trust" with a "date of trust" of "3-21-1991," as primary beneficiary. Both forms list Charles C. Kropf, son, as secondary beneficiary.

{¶ 23} On August 31, 2009, Charles C. Kropf, in his individual capacity, filed a motion seeking the court "to enforce settlement agreement and for declaration that he owns all of the funds in the deceased's T. Rowe Price Money Purchase Pension Plan." On September 24, 2009, Vermilion Local Schools filed a motion including a motion "to find that T. Rowe Price accounts are assets subject to distribution pursuant to the parties' agreements" and also sought to "restrain T. Rowe Price from transferring funds held in the accounts." It is from the trial court's judgment of November 10, 2009, ruling on these motions that Vermilion Local Schools appeals.

Additional Agreement as to Claims and Defenses

{¶ 24} In late July 2009, the E. Kropf estate held over \$1.3 million of residual estate assets and was prepared to distribute equal \$650,000 shares to Vermilion Local Schools and Charles C. Kropf, individually, pursuant to the terms of the April 2009 settlement agreements. The estate requested Vermilion Local Schools "affirm the validity and enforceability" of the April 2009 settlement agreements and agree that it would "not take any action to attempt to rescind all or part" of the agreements before making the distribution. These assurances were requested at a point in time when Vermilion Local Schools knew that both Charles C. Kropf and the E. Kropf estate

contended that the T. Rowe Price accounts were not subject to distribution under settlement agreements. Assurances were made. The \$1.3 million was distributed equally to Vermilion Local Schools and Charles C. Kropf.

{¶ 25} In its judgment, the trial court found:

{¶ 26} "When the \$1,300,000 was distributed, the Vermilion Local Schools knew that Charles C. Kropf is the beneficiary of the T. Rowe Price Plan and IRA and that Charles C. Kropf maintained that he is entitled to all funds in those accounts. Further, the Estate and Charles C. Kropf agreed to the distribution of the \$1,300,000 only after Vermilion Local Schools affirmed the validity and enforceability of the Settlement Agreement and agree that it 'would not take any action to rescind all or part' of the Settlement Agreement or 'challenge all or part of its validity.'"

{¶ 27} Vermilion Local Schools does not dispute agreeing that it would take no action to rescind the settlement agreements either in whole or part. It also does not dispute that it has received \$650,000 under the settlement agreements after making requested assurances that it would not seek recession of the settlement agreements.

{¶ 28} In their motions, Charles C. Kropf and Vermilion Local Schools sought a determination of their respective rights under their settlement agreements to the T. Rowe Price account assets.

{¶ 29} The trial court conducted a hearing on the motions on October 28, 2009. At the hearing, counsel for Vermilion Local Schools indicated that the schools had entered the April 2009 settlement agreements under the impression that the March 21, 1991 Trust

was the beneficiary of the T. Rowe Price accounts. It did not learn that Charles C. Kropf was named secondary beneficiary until July 2009. Nevertheless, Vermilion Local Schools informed the court that it did not claim that the late disclosure of Charles C. Kropf's status as secondary beneficiary was caused by deception. In fact, counsel for Vermilion Local Schools made it clear that the schools and Charles C. Kropf, both individually and as executor of the estate of E. Kropf, were in agreement that the settlement agreements be enforced:

{¶ 30} "We have not asked that any portion of these agreements be voided. We are not asking that they be modified. We are asking the Court to enforce the agreements. In that respect, we are in accord with Charles Kropf individually as well as in his capacity as executor of the Estate."

{¶ 31} The trial court also found that Vermilion Local Schools accepted payment of \$650,000 under the settlement agreements based upon assurances that "it 'would not take any action to rescind all or part' of the settlement agreement or 'challenge all or part of its validity.'" Trial court judgment of November 10, 2009, quoting agreed assurances by Vermilion Local Schools.

{¶ 32} Accordingly, the trial court identified the issue presented as whether the T. Rowe Price assets were assets held in probate or in trust so as to constitute assets subject to distribution under the April 2009 settlement agreements:

{¶ 33} "The issue presented to this Court at the hearing by the Motion to Enforce and the Motion to Find was whether the funds in the T. Rowe Price Plan and IRA are part

of the 'assets of Eugene C. Kropf held in probate or in trust' to be divided between Charles C. Kropf and the Vermilion Local Schools in accordance with the terms of the Settlement Agreement."

{¶ 34} The trial court found that the T. Rowe Price assets were not assets of the E. Kropf estate or trust and therefore were not subject to distribution under the settlement agreements. It concluded that the primary beneficiary on each account was the March 21, 1991 Trust, but that the trust was revoked prior to E. Kropf's death. The court awarded the assets to Charles C. Kropf, individually as Charles C. Kropf was named the secondary beneficiary on both accounts under beneficiary designation forms.

{¶ 35} "[A] settlement agreement is a contract designed to terminate a claim by preventing or ending litigation[.]' *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.* (1996), 74 Ohio St.3d 501, 502." *Bankers Trust Co. v. Wright*, 6th Dist. No. F-09-009, 2010-Ohio-1697, ¶ 14. Here, the parties not only do not dispute that the April 2009 settlement agreements are valid, they also both seek their enforcement.

{¶ 36} "The construction of a written contract is a matter of law that we review de novo. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm* (1995), 73 Ohio St.3d 107, 108, 652 N.E.2d 684. Our primary role is to ascertain and give effect to the intent of the parties. *Hamilton Ins. Serv., Inc. v. Nationwide Ins. Cos.* (1999), 86 Ohio St.3d 270, 273, 714 N.E.2d 898. We presume that the intent of the parties to a contract is within the language used in the written instrument. *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio

St.3d 130, 31 OBR 289, 509 N.E.2d 411, paragraph one of the syllabus. If we are able to determine the intent of the parties from the plain language of the agreement, then there is no need to interpret the contract. *Aultman Hosp. Assn. v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51, 544 N.E.2d 920." *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, ¶ 9.

{¶ 37} Where the meaning of the terms of the settlement agreement is disputed, the trial court must conduct an evidentiary hearing prior to entering judgment enforcing the settlement. *Rulli v. Fan Co.* (1997), 79 Ohio St.3d 374, syllabus.

{¶ 38} Under Assignment of Error No. I, Vermilion Local Schools argues that the trial court erred in failing to find that the August 1, 2007 Trust was the primary beneficiary to the T. Rowe Price Accounts. The Vermilion Local Schools argues that the designation of death beneficiaries under a pension plan or an IRA is a matter of intent. It claims that it was clearly E. Kropf's intent, as shown by the terms of the August 1, 2007 Trust, that the trust succeed the March 21, 1991 Trust as primary beneficiary to the T. Rowe Price accounts.

{¶ 39} In the introduction to the 2007 Trust, E. Kropf indicated that property listed in Schedule A was property "which I intend to become a part of this trust." Schedule A includes a listing to the two T. Rowe Price accounts with a notation "Trust as Beneficiary." Vermilion Local Schools argues that this intent is further demonstrated by the fact that E. Kropf did not revoke the March 21, 1991 Trust until after creation of the August 1, 2007 Trust.

{¶ 40} In response, Charles C. Kropf argues that the clear and unambiguous terms of the beneficiary designation forms provided by E. Kropf in May 2005 to T. Rowe Price identified the March 21, 1991 Trust as primary beneficiary and Charles C. Kropf, son, as the secondary beneficiary to the accounts. The identification of the March 21, 1991 Trust was specific. Each form designated the "Eugene Kropf Trust" as primary beneficiary and identified a date of trust of March 21, 1991. Both forms identified Charles C. Kropf, son, as the secondary beneficiary.

{¶ 41} Vermilion Local Schools admits that after creation of the accounts in 2005, E. Kropf did not submit any designation of beneficiary forms to T. Rowe Price to change beneficiaries. Vermilion Local Schools has not contended that E. Kropf communicated or attempted to communicate to T. Rowe Price or to those who cared for such matters in any other manner a desire to change beneficiaries to the accounts.

{¶ 42} Charles C. Kropf argues that there is no basis in law to support the claims of Vermilion Local Schools that an uncommunicated intent to change beneficiaries to the Plan and the IRA is sufficient to change the beneficiaries to the accounts.

{¶ 43} In our view, the T. Rowe Price beneficiary designation forms were clear and unambiguous in identifying the March 21, 1991 Trust as primary beneficiary on both accounts and Charles C. Kropf, son, as the secondary beneficiary. The two T. Rowe Price accounts are investment accounts. The Uniform Transfer-On-Death Registration Act, R.C. 1709.04, provides for "designation of a beneficiary to take ownership of the security at the time of the death of the owner." R.C. 1709.07 provides that ownership of

securities registered in beneficiary form shall pass to the designated beneficiary upon death of the owner.

{¶ 44} R.C. 1709.10 (A) provides:

{¶ 45} "(A) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive and implement requests for registration in that form, including requests for cancellation of previously registered transfer-on-death beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for * * * designating primary and contingent beneficiaries * * *."

{¶ 46} The creation of the two investment accounts at T. Rowe Price, the Plan and the IRA, constituted contracts with T. Rowe Price allowing for disposition of the accounts upon death of E. Kropf to designated beneficiaries. In Ohio, there is a common law right to enter into such contracts. See *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 363 (Douglas, J., concurring). The issue here is whether the beneficiary designations originally made by E. Kropf at the time of the creation of the accounts were effectively changed by E. Kropf.

{¶ 47} R.C. 1709.10(A) authorized T. Rowe Price to establish "terms and conditions under which it will receive and implement * * * requests for cancellation of previously registered transfer-on-death beneficiary designations and requests for reregistration to effect a change of beneficiary." The evidence in this case demonstrates that E. Kropf clearly and unambiguously identified the March 21, 1991 Trust as primary

beneficiary and Charles C. Kropf, son, as the secondary beneficiary when he created the accounts at T. Rowe Price. Vermilion Local Schools, however, has presented no evidence to establish that E. Kropf cancelled his beneficiary designations in accordance with procedures established by T. Rowe Price for such changes (under authority recognized in R.C. 1709.10) and in accordance with its contract with E. Kropf. Accordingly, the trial court's determination that ownership of the T. Rowe Price assets passed to Charles C. Kropf as secondary beneficiary of the accounts is supported by competent and credible evidence in the record. We find Assignment of Error No. I is not well-taken.

{¶ 48} Under Assignment of Error No. II, Vermilion Local Schools argues that the November 10, 2009 judgment does not comply with the settlement agreements between the parties. It argues that under the settlement agreements, the assets in the T. Rowe Price accounts are to be divided equally between it and Charles C. Kropf. In its judgment, the trial court awarded the accounts solely to Charles C. Kropf.

{¶ 49} The trial court concluded that the settlement agreements were limited in scope in that they applied only to those assets of Eugene G. Kropf "held in probate or in trust." The court ruled that the T. Rowe Price accounts were not such assets:

{¶ 50} "When the Settlement Agreement was executed, the funds in the T. Rowe Price Plan and IRA were not part of 'the assets of Eugene G. Kropf held in probate or in trust' and, as such, are not included in the assets to be distributed under the Settlement Agreement."

{¶ 51} Vermilion Local Schools argues that at the time the parties executed their settlement agreements the T. Rowe Price accounts were included within the Estate and "were contemplated to be included within the parties' Agreements." It argues further that the assets were identified in the Ohio and Federal Estate Tax Returns as assets of the estate and trust. Vermilion Local Schools also restated its arguments made under Assignment of Error No. I as to the intent of E. Kropf to change the primary beneficiary to the August 1, 2007 Trust.

{¶ 52} Central to the trial court's ruling on the motions to enforce the settlements between the parties is its finding that Charles C. Kropf first learned that he was the beneficiary to the T. Rowe Price accounts in July 2009 and that prior to that time all parties mistakenly believed that the T. Rowe Price assets were assets of Eugene G. Kropf held in probate or in trust. The trial court detailed an agreement between the parties, made in late July 2009, on how that mistake should be treated.

{¶ 53} At the time the parties learned that Charles C. Kropf was beneficiary to the T. Rowe Accounts, the estate had already partially distributed probate assets under the April 2009 settlement agreements. In late July 2009, the estate held \$1,300,000 of residual assets that it was prepared to distribute equally to Vermilion Local Schools and to Charles C. Kropf, individually under the terms of the April 2009 settlement agreements. Before proceeding with the distribution of those funds the parties made assurances and agreements with respect to treatment of the settlement agreements before distribution of the \$1.3 million was made.

{¶ 54} The trial court found:

{¶ 55} "When the \$1,300,000 was distributed, the Vermilion Local Schools knew that Charles C. Kropf is the beneficiary of the T. Rowe Price Plan and IRA and that Charles C. Kropf maintained that he is entitled to all funds in those accounts. Further, the Estate and Charles C. Kropf agreed to the distribution of the \$1,300,000 only after the Vermilion Local Schools affirmed the validity and enforceability of the Settlement Agreement and agreed that it 'would not take any action to rescind all or part' of the Settlement Agreement or to 'challenge all or part of its validity.'"

{¶ 56} Charles C. Kropf argues that any attempt to rescind or modify obligations under the settlement agreements due to mistake as to whether assets were "probate or estate" assets when the April 2009 agreements were reached is barred under the July 2009 agreement. We agree. With respect to errors in the Ohio and Federal Estate Tax forms, Vermilion Local Schools knew of the mistake when it agreed to reaffirm the April 2009 settlement agreements.

{¶ 57} We find no error in the trial court's determination that under the April 2009 settlements the T. Rowe Price accounts were not "assets of Eugene G. Kropf held in probate or in trust" and therefore were not to be divided between Charles C. Kropf and Vermilion Local Schools under the settlements reached between the parties. The determination is supported by competent credible evidence in the record. The assets passed to Charles C. Kropf as the secondary beneficiary to the T. Rowe Price accounts, as the primary beneficiary, the March 21, 1991 Trust, had been revoked prior to E. Kropf's

death. The transfer or ownership of the T. Rowe Price accounts created no asset to the probate estate or August 1, 2007 Trust. We find appellant's Assignment of Error No. II is not well-taken.

{¶ 58} On consideration whereof, the court finds that substantial justice was done the party complaining and appellant was not denied a fair hearing. The judgment of the Erie County Court of Common Pleas, Probate Division, is affirmed. Appellant is ordered to pay costs pursuant to App.R. 24.

JUDGMENT AFFIRMED.

Kropf, Exr. v. Kropf
C.A. No. E-09-068

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.