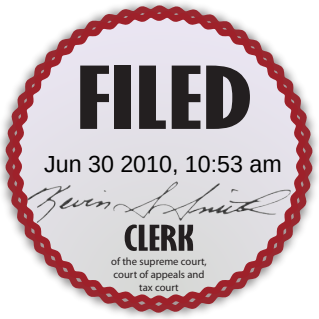

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COURT OF APPEALS OF INDIANA

JON MARC KAETZEL and BEVERLY K. KAETZEL, Appellants-Defendants, vs. THE CARL KAETZEL TRUST, THE ROBERTA KAETZEL TRUST, CARL KAETZEL, ROBERTA KAETZEL TIMOTHY KAETZEL, and JILL KAETZEL, Appellees-Plaintiffs.	)))))))))))))	No. 74A01-1001-PL-30

APPEAL FROM THE SPENCER CIRCUIT COURT
The Honorable David Kelley, Special Judge
Cause No. 74C01-0609-PL-425

June 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Here, a mother and father created a trust that held real estate, hoping to keep the land in the family. They named one of their adult children as trustee. The trust included an option for that adult child to purchase the trust property. He did so. Years later, the mother and father sought to have the transaction declared void as a breach of trust. We find that because the terms of the trust specifically authorized this transaction, no breach of trust was committed.

Appellants-defendants Jon Marc Kaetzel (Jon) and Beverly K. Kaetzel (Beverly) appeal the judgment entered by the trial court in favor of appellees-plaintiffs The Carl Kaetzel Trust, The Roberta Kaetzel Trust (collectively, the Trusts), Carl Kaetzel (Carl), Roberta Kaetzel (Roberta), Timothy Kaetzel (Timothy), and Jill Kaetzel (Jill) (collectively, the Appellees) on the Appellees' complaint for breach of trust. Jon and Beverly argue that the trial court erred by finding that Jon had committed breach of trust because, among other things, Jon was not the trustee of the Trusts at the time the relevant actions were taken. Finding that Jon did not commit breach of trust, we reverse and remand with instructions.

Additionally, the Appellees cross-appeal, arguing that the trial court erred by failing to rule on the count of their complaint seeking damages for a damaged tractor and that the trial court erred by failing to award prejudgment interest on the judgment entered on one of the counts of their complaint. Finding that the trial court should have ruled on all remaining claims, if any, and that prejudgment interest was warranted, we affirm in part, reverse in part, and remand with instructions.

FACTS

Carl and Roberta have been married for sixty-one years and have three adult children: Jon, Timothy, and Jill. On December 10, 1977, Carl and Roberta executed the Trusts.[1] The Trusts stated that Carl, Roberta, and Jon were the "Trustees" of the Trusts but further stated that "[u]pon the death of either of the Trustees, . . . Jon M. Kaetzel shall become a Trustee." Ex. A. In 1982, 1987, and 1997, Carl and Roberta executed amendments to the Trusts, and Jon signed the 1982 and 1987 amendments as Trustee. The 1987 amendment provided that Carl, Roberta, and Jon were the Trustees and that

> [s]hould there at any time be a disagreement among the Trustees in connection with this Trust, the decisions of Carl[2] [] shall prevail. Upon the death of Carl [], the Trustees shall be Roberta [] and Jon [] and the decisions of Roberta [] shall prevail . . . .

Ex. C. In no other respect did the amendments affect the identity of the Trustees. Carl reserved the sole right to amend, modify, or revoke the Trusts in whole or in part, without the consent or approval "of the other Co-Trustees[.]" Id.

Among other things, Carl and Roberta owned several tracts of land described as the Home Place (120 acres), Schmitt Farm (40 acres), Heilman Farm (80 acres), and Byers Farm (40 acres) (collectively, the Property). The 1987 Amendment to the Trusts included an option for Timothy to purchase the Home Place and the Heilman Farm for

[1] Although Carl and Roberta executed separate documents, the two trusts are essentially identical.

[2] This excerpt is taken from the amendment to Carl's Trust; the amendment to Roberta's Trust is identical except that it provides that her decision would prevail in the event of a disagreement.

$150,000[3] while Carl and Roberta were still alive. If Timothy left the farm operation before exercising the option to purchase, then the option to purchase belonged to Jon. The amendment further stated that upon the deaths of Carl and Roberta, if Timothy was no longer leasing the Byers Farm, Jon had an option to purchase that land for $15,000.

From the creation of the Trusts until 2004, Carl and Roberta maintained complete control over all of their personal and real properties. Neither Carl nor Roberta believed that Jon had any duties, obligations, or responsibilities to act as a trustee until the death or incapacitation of either Carl or Roberta.

In late 2003, Jon told Carl that Jon and Beverly were going to receive $150,000 in an unrelated condemnation action and that they hoped to use this money to purchase additional land. By that time, Timothy had left the farm operation, so Carl offered Jon the chance to purchase the Property[4] for $150,000 if Carl and Roberta could remain living in their home and if Tim could remain living in his home. Jon and Beverly accepted the offer. Jon had an attorney prepare a warranty deed (the Deed), pursuant to which each of the Trusts conveyed its undivided one-half interest in the Property to Jon and Beverly, subject to a life estate for Timothy in his home and the immediate property (a total of .17 acres) and a life estate for Carl and Roberta in their home and its appurtenances.

On February 20, 2004, Jon delivered a draft of the Deed to Carl and Roberta for their review. The following day, Jon called his parents and inquired as to whether the

[3] That amount was reduced to $100,000 if the option was exercised after the coal was removed from the land.

[4] The parties dispute whether Carl intended to sell all of the Property or merely certain a portion thereof.

Deed was acceptable; Carl replied that it was fine. Later that day, Jon, Beverly, Carl, and Roberta executed the Deed. Jon wrote a check for $86,000 to Carl and Roberta, who accepted the payment and deposited into their account; he tendered the balance of $64,000 on April 1, 2005, as required by the Deed.

On February 22, 2004, Carl informed Ricky Taylor, who rented a house on the Heilman Farm, that Taylor should begin making payments to Jon because Jon was the new owner. At the end of February, Carl canceled the insurance on Taylor's home effective March 1, 2004. During the summer of 2004, Roberta informed her sister that Jon and Beverly now owned all of the lakes on the Property and that Roberta's sister would have to seek Jon and Beverly's permission to go fishing in those lakes.

Since the date of the sale, Jon has exercised dominion, control, and possession over all of the Property. Carl and Roberta have continued to live in their home; Timothy has continued to live in his residence as well. Carl and Roberta have continued to enjoy the use of the property as in the past, including gardening and fishing.[5] Carl testified that he has been able to maintain both of his gardens throughout Jon's ownership of the property and Roberta testified that everything she and Carl had before Jon purchased the land, including chickens, guineas, cats, etc., remains on the property today. At some point, however, Carl and Roberta decided that they did not like the way in which Jon treated the family after he took possession of the Property.

[5] In fact, Carl and Roberta testified that Carl had gone fishing in one of the lakes the week before the trial.

On September 18, 2006, the Appellees filed a complaint against Jon and Beverly. Among other things, the complaint raised a claim for breach of trust.[6] The bench trial took place on July 8, 2009, at which time Jon and Beverly requested that the trial court enter findings of fact and conclusions of law. On December 1, 2009, the trial court entered a judgment in favor of the Appellees on their breach of trust claim, finding that by purchasing the Property, Jon committed breach of trust and declaring the Deed to be void.

Jon and Beverly now appeal, and the Appellees cross-appeal the trial court's failure to award attorney fees on the breach of trust claim, failure to enter a judgment on the Appellees' claim based on a damaged tractor, and failure to award prejudgment interest on the Appellees' claim for sums owed by Jon pursuant to a loan from Carl.

DISCUSSION AND DECISION

I. Standard of Review

When, as here, the trial court has entered an order containing findings of fact and conclusions of law, we apply a two-step review. First, we consider whether the evidence supports the findings, and second, whether the findings support the judgment. Hardy v. Hardy, 910 N.E.2d 851, 855 (Ind. Ct. App. 2009). We will neither reweigh the evidence nor assess witness credibility, considering only the evidence most favorable to the judgment. Id. We will set aside the trial court's findings and conclusions only if they are

[6] The complaint is not included in the record on appeal, and we are unable to discern what other claims may have been raised therein.

clearly erroneous, that is, if the record contains no facts or inferences supporting them. Id. We apply a de novo standard of review to conclusions of law. Id.

II. Breach of Trust

A trust is "a fiduciary relationship between a person who, as trustee, holds title to property and another person for whom, as beneficiary, the title is held." Ind. Code § 30-4-1-1(a). A breach of trust is "a violation by the trustee of any duty that is owed to the settlor or beneficiary." Ind. Code § 30-4-1-2(4).

In construing trust documents, the primary objective is to ascertain and effectuate the intent of the grantor. Goodwine v. Goodwine, 819 N.E.2d 824, 829 (Ind. Ct. App. 2004). Indeed, Indiana Code section 30-4-1-3 explicitly states that the rules of law

> shall be interpreted and applied to the terms of the trust so as to implement the intent of the settlor and the purposes of the trust. If the rules of law and the terms of the trust conflict, the terms of the trust shall control unless the rules of law clearly prohibit or restrict the article which the terms of the trust purport to authorize.

Thus, if the settlor's intent is clear from the plain language of the instrument and is not against public policy, we must give effect to that intent. Goodwine, 819 N.E.2d at 829.

To determine the settlor's intent, we look first to the language used within the four corners of the instrument. Id. Where an instrument is ambiguous, "all relevant extrinsic evidence may properly be considered in resolving the ambiguity." Univ. of S. Ind. Found. v. Baker, 843 N.E.2d 528, 535 (Ind. 2006). Language is ambiguous only if reasonable people could come to different conclusions as to its meaning. Id. at 532.

Jon and Beverly first argue that the trial court erred by concluding that Jon was a trustee at the time he executed the Deed. We cannot agree. Although the original version of the Trusts may have been ambiguous, the 1987 Amendment resolved any ambiguities in the instruments. Specifically, the 1987 Amendment named Carl, Roberta, and Jon as Trustees and went on to state that

> [s]hould there at any time be a disagreement among the Trustees in connection with this Trust, the decisions of Carl[7] [] shall prevail. Upon the death of Carl [], the Trustees shall be Roberta [] and Jon [] and the decisions of Roberta [] shall prevail . . . .

Ex. C. It is evident, based on this language, that Carl and Roberta intended that Jon be a co-trustee while they were still living. Additionally, we note that Jon signed a number of documents as Trustee, including the 1987 Amendment, which restated all terms of the Trusts. See Ind. Code § 30-4-2-2(b) (providing that the appearance of a named trustee's signature on a writing which is evidence of the trust "will be conclusive that the named person accepted the trust"). Under these circumstances, we cannot say that the trial court erred by finding that Jon was a Trustee at the time the parties entered into the real estate transaction at issue herein.

That conclusion, however, does not end our analysis. Indiana Code section 30-4-3-7(a)(2) states that "[u]nless the terms of the trust provide otherwise . . . , the trustee has a duty . . . not to purchase or participate in the purchase of trust property from the trust for the trustee's own . . . account . . . ." (Emphasis added). Thus, although as a general

[7] This excerpt is taken from the amendment to Carl's Trust; the amendment to Roberta's Trust is identical except that it provides that her decision would prevail in the event of a disagreement.

rule a trustee may not purchase trust property, if the terms of the trust provide otherwise, then such an act may be permissible. See also I.C. § 30-4-1-3 (providing that where the terms of the trust and the rule of law conflict, the trust controls so long as not against public policy).

Here, the terms of the Trusts and, specifically, the Amendments thereto, explicitly contemplate the purchase of trust property by Jon. The 1987 Amendment to the Trusts included an option for Timothy to purchase the Home Place and the Heilman Farm for $150,000[8] while Carl and Roberta were still alive. If Timothy left the farm operation before exercising the option to purchase, then the option to purchase belonged to Jon.[9] The amendment further stated that upon the deaths of Carl and Roberta, if Timothy was no longer leasing the Byers Farm, Jon had an option to purchase that land for $15,000. It is undisputed that the primary intent of Carl and Roberta in executing the Trusts was to ensure that the Property remained in the Kaetzel family. To that end, they named Jon as a Trustee and provided him with an option to purchase the Property while they were still living. Under these circumstances, therefore, it is evident that the terms of the Trusts specifically authorized the action at issue herein, namely, the purchase of the Property by a Trustee. Therefore, we find that the trial court erred as a matter of law by finding that Indiana Code section 30-4-3-7(a)(2) prohibited the purchase and rendered the Deed void.

[8] That amount was reduced to $100,000 if the option was exercised after the coal was removed from the land.

[9] By 2003, when Carl suggested that Jon purchase the Property, Timothy had left the farm operation.

As for the purchase itself, we note that a bona fide purchaser is one who purchases property in good faith, for valuable consideration, and without notice of outstanding rights of others. Weathersby v. JPMorgan Chase Bank, N.A., 906 N.E.2d 904, 909 (Ind. Ct. App. 2009). As for Jon's good faith, the Appellees argue that they did not intend to sell the entirety of the Property to Jon; instead, they merely intended to sell certain parcels to him. Furthermore, the Appellees contend that the actual quantity of land contained in the life estates was far less than they believed there to be.

Both of these alleged miscommunications would have been avoided if Carl and Roberta had examined the Deed—or, even better, hired an attorney to review it—before executing it. Jon provided them with a draft of the Deed a full day before they executed it. He telephoned them the next day to see whether they approved of the Deed and Carl replied that it was fine. That Carl and Roberta did not, in fact, read the document or hire an attorney to do so is of no moment, inasmuch as parties engaged in the sale and purchase of property are obligated to protect their interests by reading the attendant documents before signing. Roberts v. Agricredit Acceptance Corp., 764 N.E.2d 776, 779 (Ind. Ct. App. 2002) (observing that Indiana law does not protect individuals who "fail[] to exercise [their] own common sense and judgment" by failing to read documents before they sign them). Carl and Roberta had ample opportunity to review the Deed—indeed, Jon encouraged them to do so—but they chose not to do so. Under these circumstances, they are not entitled to relief based upon an argument that the terms of the transaction

were not what they intended them to be, and we do not find that this evidence establishes that Jon acted in bad faith.

As for consideration, Jon paid $150,000 for the Property, which is comparable to the purchase prices contained in the Deed. Thus, we find that he purchased the Property for valuable consideration. Finally, it is undisputed that he had no notice of outstanding rights of others to the Property. Therefore, Jon was a bona fide purchaser and the transaction was valid.

In sum, we have found that although Jon was a Trustee at the time the parties engaged in the real estate transaction, the terms of the Trusts explicitly contemplated and approved of such a transaction. Jon was a bona fide purchaser and there is no other reason to invalidate the sale and purchase of the Property. Therefore, we find that the Deed is not void and that there was no breach of trust, and remand with instructions to enter judgment in favor of Jon and Beverly on the breach of trust claim.[10]

III. Cross-Appeal

The Appellees cross-appeal, arguing that the trial court erred by failing to rule on Count IV of their complaint, which sought damages for a tractor loaned to Jon by Carl that was allegedly returned in damaged condition. Appellees' Br. p. 24. The complaint is not included in the record on appeal, however, so we cannot verify that such a claim

[10] Given this conclusion, the Appellees are not entitled to attorney fees pursuant to Indiana Code section 30-4-3-22(e).

exists. To the extent that it does, the trial court should rule on it. We remand, therefore, with instructions to rule on all remaining claims, if any.

Finally, the Appellees argue that the trial court erred by refusing to award prejudgment interest on Count V of their claim. The Appellees explain that Count V alleged that Carl had loaned Jon $34,000, of which Jon conceded there was a balance remaining of $26,000. The trial court granted judgment for Carl in the amount of $26,000 but did not award prejudgment interest on that amount.

If, as here, a sum due is readily ascertainable by computation, then an award of prejudgment interest is required and not a matter of discretion. Hayes v. Chapman, 894 N.E.2d 1047, 1054-55 (Ind. Ct. App. 2008), trans. denied. Therefore, prejudgment interest should have been awarded on the $26,000 award.

The loan was informal and there was no due date for the remaining balance. Furthermore, there is no evidence in the record that Carl made any demand for payment before filing the instant complaint. Therefore, we find that prejudgment interest on the sum of $26,000 is warranted and remand with instructions to calculate the amount owed, starting the calculation on September 18, 2006, the date on which the complaint was filed.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to (1) enter judgment in favor of Jon and Beverly on the breach of trust claim; (2) enter findings and conclusions on all remaining claims, if any; and

(3) calculate the amount of prejudgment interest owed by Jon on Count V of the complaint, beginning the calculation on September 18, 2006.

DARDEN, J., and CRONE, J., concur.