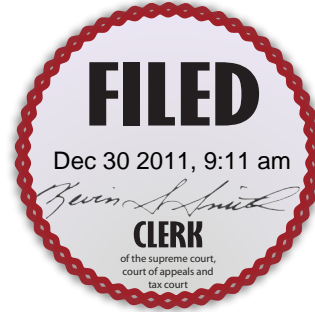


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MARK VAN EATON and CYNTHIA)
VAN EATON VALLIMONT,)
)
Appellants-Intervenors,)
)
vs.)
)
THE RALPH DAVID VAN EATON)
REVOCABLE TRUST,)
)
Appellee-Petitioner.)

No. 19A01-1108-TR-352

APPEAL FROM THE DUBOIS CIRCUIT COURT
The Honorable William E. Weikert, Judge
Cause No. 19C01-1105-TR-00061

December 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Mark Van Eaton and Cynthia Van Eaton Vallimont appeal the Dubois Circuit Court's denial of their motion to correct improper venue. We affirm.

ISSUE

Mark and Cynthia raise one issue for our review, which we restate as: whether the trial court erred by denying their motion to correct improper venue.

FACTS AND PROCEDURAL HISTORY

In 2006, Ralph David Van Eaton ("David") and his wife, Gloria Van Eaton, organized Seventy-Six, LLC ("the LLC"). The primary asset of the LLC is a large retail building on fourteen acres of land in Knox County. The real estate is subject to a mortgage of about \$800,000 held by German American Bancorp ("GAB"), an Indiana financial institution. David was the manager of the LLC. Its current members are David and Gloria's four children, who include Mark and Cynthia.

In 2008, David executed a trust agreement restating an existing trust titled the Ralph David Van Eaton Revocable Trust. Mark and Cynthia are among the beneficiaries of the Trust. Assets of the Trust include two unsecured promissory notes through which the Trust loaned a total of \$225,000 to the LLC.

The trust agreement provides that German American Financial Advisors & Trust Company ("GAFA") is to serve as trustee upon David's death, resignation, or incapacity. GAFA is an Indiana financial institution whose principal place of business is in Dubois County. GAB is the parent company of GAFA, and GAB and GAFA are corporate affiliates under the common control of an Indiana bank holding company.

At some point, David became incapacitated, and GAFA became trustee of the Trust. GAB notified GAFA that the LLC had defaulted on its mortgage and that GAB intended to pursue foreclosure proceedings.

In May 2011, GAFA filed a verified petition for instructions in Dubois Circuit Court. Among other things, the petition stated that GAFA was a corporate affiliate of GAB and sought instruction “as to whether the Mortgage Loan and any reasonable collection effort by [GAFA] with respect to either of the Notes presents a conflict of interest.” Appellants’ App. p. 13. GAFA further requested authorization under Indiana Code section 30-4-3-5 (2006) to pursue reasonable collection efforts against the LLC with regard to the promissory notes if the court found a conflict of interest.¹ The petition noted that Dubois County is the principal place of administration of the Trust and that it is the usual place where GAFA keeps records pertaining to administration of the Trust.

A third party offered to purchase the LLC’s real estate, but the LLC was without a manager. In June 2011, GAFA requested the appointment of a receiver over the LLC to evaluate the offer and, if accepted, to hold the proceeds pending further order of the court as to their proper distribution.

Mark and Cynthia then filed a motion to intervene, which the Dubois Circuit Court granted. Mark and Cynthia also filed a motion to correct improper venue, a motion for removal of trustee, and a motion opposing the appointment of a receiver. In their motion to correct improper venue, Mark and Cynthia contended, “There is no valid connection

¹ Indiana Code section 30-4-3-5 provides the process for a trustee to act even though a conflict of interest exists.

between the trust, the real estate, or any of the parties to this litigation and Dubois County.” Appellants’ App. p. 72. The motion sought transfer to “the county where it should have been filed,” *id.*, but did not specify any particular county.

Gafa opposed the motion to correct improper venue, noting that Dubois County is a preferred venue pursuant to Indiana Trial Rule 75(A)(8) and Indiana Code section 30-4-6-3(b) (2006). Mark and Cynthia replied that the language of the trust agreement indicates that the Trust is to be docketed in Knox County. The Dubois Circuit Court denied the motion to correct improper venue. Mark and Cynthia now institute this appeal from that order. *See* Ind. Appellate Rule 14(A)(8) (providing that an order transferring or refusing to transfer a case under Trial Rule 75 is an interlocutory order from which an appeal may be taken as a matter of right).

DISCUSSION AND DECISION

Mark and Cynthia contend that the trial court erred by denying their motion to correct improper venue. Indiana Trial Rule 75 governs venue requirements. *Am. Family Ins. Co. v. Ford Motor Co.*, 857 N.E.2d 971, 973 (Ind. 2006). Trial Rule 75(A) contains ten subsections, each setting forth criteria establishing “preferred” venue. *Id.* at 973-74. A case or complaint may be filed in any Indiana county, but if the complaint is not filed in a preferred venue, the trial court is required to transfer the case to a preferred venue upon the proper request from a party.² *Id.* at 974. The rule does not create a priority

² We note that a party requesting transfer to a preferred venue must request transfer to a specific county. *See* Ind. Trial Rule 75(A) (“[T]he court . . . shall order the case transferred to *a county or court selected by the party first properly filing such motion or pleading* if the court determines that the county or court where the action was filed does not meet preferred venue requirements or is not authorized to decide the case and that *the court or county selected* has preferred venue and is authorized to decide the case.”)

among the subsections establishing preferred venue. *Id.* If the complaint is filed in a county of preferred venue, the trial court has no authority to transfer the case based solely on preferred venue in one or more other counties. *Id.*

Factual findings linked to a trial court's ruling on a motion under Indiana Trial Rule 75(A) are reviewed under a clearly erroneous standard and rulings of law are reviewed de novo. *Id.* at 973. If factual determinations are based on a paper record, they are also reviewed de novo. *Id.*

The controlling provision here is Trial Rule 75(A)(8), which states that preferred venue lies in “the county where a claim in the plaintiff’s complaint may be commenced under any statute recognizing or creating a special or general remedy or proceeding.” Subsection (8) recognizes the existence of statutes that specify venue by retaining such statutory venue as an alternative preferred venue. *In re Trust Created Under Agreement Dated Sept. 19, 1983, By Johnson*, 469 N.E.2d 768, 772 (Ind. Ct. App. 1984), *trans. denied*; *see also MacLeod v. Guardianship of Hunter*, 671 N.E.2d 177, 179 (Ind. Ct. App. 1996) (“Subsection (8) adopts special venue statutes into the regulatory scheme of T.R. 75.”), *trans. denied*.

Gafa filed a petition for instructions pursuant to Indiana’s Trust Code, which provides, “If there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court.” Ind. Code § 30-4-3-18(a) (West 2009). Further, Indiana Code section 30-4-6-3(b) provides, “Unless

(emphases added)). Mark and Cynthia’s motion to correct improper venue contested venue in Dubois County but did not request transfer to a specific county.

the terms of the trust provide otherwise, venue in a proceeding brought by a party other than the attorney general for matters arising under [the Trust Code] shall be exclusively in the county in which the principal place of administration of the trust is located.” Because the venue for GAFA’s petition for instructions is controlled by Section 30-4-6-3(b), the venue provided by Section 30-4-6-3(b) is a preferred venue under Trial Rule 75(A)(8).

GAFA’s verified petition for instructions specifically stated that Dubois County is the principal place of administration of the Trust and that it is the usual place where GAFA keeps records pertaining to administration of the Trust. *See* Ind. Code § 30-4-6-3(b) (providing that the principal place of administration of a trust is “that usual place at which the records pertaining to the trust are kept”). We therefore conclude that Dubois County is a preferred venue pursuant to Trial Rule 75(A)(8). *See In re Trust Created Under Agreement*, 469 N.E.2d at 771-72 (where trustee kept trust records in Hamilton County and filed a petition for instructions in Hamilton County, trial court erred by transferring case to another preferred venue).

Mark and Cynthia do not contest that Dubois County is the principal place of administration of the Trust but instead rely on the opening exclusion in Section 30-4-6-3(b): “*Unless the terms of the trust provide otherwise*, venue in a proceeding brought by a party other than the attorney general for matters arising under [the Trust Code] shall be exclusively in the county in which the principal place of administration of the trust is located.” (Emphasis added). Mark and Cynthia argue that Section 8.1 of the trust agreement indicates that the Trust is to be docketed in Knox County.

Section 8.1 of the trust agreement states:

Upon the death, resignation or incapacity of the Grantor as initial trustee, German American Trust Company shall serve as Successor Trustee. If German American Trust Company resigns or is removed, the Knox Circuit Court shall replace it with a corporate fiduciary which shall be a national or state banking association or trust company with discretionary trust assets under management exceeding one hundred million dollars. Such banking association or trust company shall be either domiciled in or maintain a substantial physical presence in the State of Indiana.

Appellants' App. p. 29. Where a trust is capable of clear and unambiguous construction, a court must give effect to the trust's clear meaning without resort to extrinsic evidence. *Univ. of S. Ind. Found. v. Baker*, 843 N.E.2d 528, 532 (Ind. 2006). The plain language of Section 8.1 provides that if GAFA resigns or is removed, the Knox Circuit Court is to appoint a successor trustee. Knox County is the required venue only for purposes of appointing a successor trustee if GAFA resigns or is removed. There is no such situation here.

Mark and Cynthia nonetheless invite us to conclude that because Knox Circuit Court is to appoint a successor trustee if GAFA resigns or is removed, any matter arising under the Trust must be docketed in Knox County. They also point out that if Dubois Circuit Court grants their motion to remove GAFA as the trustee, Knox Circuit Court would have to appoint the successor trustee. They state, "It is very difficult to imagine that the grantor intended that the administration of this trust be conducted by having to file proceedings in two different counties." Appellants' Br. p. 4. Section 8.1 is clear and unambiguous. We therefore decline to speculate as to David's intent and add to the terms of the trust agreement. *See Malachowski v. Bank One, Indianapolis*, 590 N.E.2d 559,

565-66 (Ind. 1992) (“This Court is not at liberty to rewrite the trust agreement any more than it is at liberty to rewrite contracts.” (quotation omitted)).

CONCLUSION

For the reasons stated above, we affirm the order of the trial court.

Affirmed.

MAY, J., and MATHIAS, J., concur.