

STATE OF MICHIGAN
COURT OF APPEALS

In Re PINE HILL TRUST.

DARRIN THIBERT,

Petitioner-Appellee,

v

BRADFORD METCALF,

Respondent-Appellant.

UNPUBLISHED

December 10, 2002

No. 232381

Livingston Probate Court

LC No. 98-003187

Before: Neff, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Respondent appeals as of right in this action involving court supervision of a trust and disposition of the trust property by order of the Livingston Probate Court. We affirm.

This action involves a so-called common-law “contract trust,”¹ established by respondent and his allegedly common-law wife, petitioner’s mother, now deceased. The trust property consisted solely of a parcel of real property in Calhoun County. Following the death of his mother and the incarceration of respondent, petitioner sought court supervision of the trust, which the Livingston Probate Court granted. The court denied respondent’s motion to dismiss the proceedings.

¹ According to respondent, in establishing the trust, he and petitioner’s mother believed “that a common law trust had no business in a statute law court.” This belief was apparently premised on a view that, as a trust under “the common-law right of contract,” the Contract Clause of the United States Constitution, Art I, § 10 (“No State shall ... pass any ... Law impairing the Obligation of Contracts”) would protect their property from “vexatious litigators” by prohibiting interference with their trust through a court of law.

Respondent challenges the actions of the Livingston Probate Court, arguing that the dismissal of a prior proceeding in the Calhoun Probate Court is dispositive with regard to the courts' lack of "power" to oversee the trust. Respondent argues that the Livingston Probate Court proceedings should have been dismissed on the basis of a lack of jurisdiction and res judicata because an earlier petition for supervision filed in the Calhoun Probate Court was dismissed. Further, respondent contends that the Livingston Probate Court proceedings denied him due process of law, that the court was biased against him, and that the court ignored "intentional fraud and deceit upon the court." We disagree.

We find respondent's claims without merit. With regard to respondent's claims of lack of jurisdiction and res judicata, respondent has failed to show that the Livingston Probate Court lacked jurisdiction and that the prior action was decided on the merits, thus barring the subsequent action on the basis of res judicata. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Although petitioner filed an earlier action in the Calhoun Probate Court, seeking a copy of the trust and court supervision, the trust document produced in the Calhoun action showed the trust situs to be Livingston County. The Livingston Probate Court found that Calhoun Probate Court did not take jurisdiction and dismissed the petition because the situs for the trust, as stated on the face sheet of the trust document, is Livingston County, and jurisdiction is properly with Livingston Probate Court. This finding is not clearly erroneous. MCL 700.1302(b), 700.7101, 700.7201, 700.7202;² *In re Americana Foundation*, 145 Mich App 735, 736-737, 741; 378 NW2d 586 (1985).

Respondent's claims of a denial of due process, judicial bias, and fraud upon the court similarly fail. In keeping with due process requirements, respondent participated in the hearing on his motion to dismiss the Livingston County action and had the opportunity to be heard with regard to his claims. *Traxler v Ford Motor Co*, 227 Mich App 276, 288; 576 NW2d 398 (1998). Contrary to respondent's assertion, there is no indication that the court ignored the affidavits of trustee Fred Hamm and respondent, and moreover, we do not conclude that the facts averred were dispositive of the issues presented. The record does not support respondent's contention that the court's decision was the result of personal bias against him. Likewise, we find no record support for respondent's claims that the court ignored intentional fraud and deceit committed by petitioner in referring to respondent's "common law" marriage or in allegedly downplaying "the role and involvement of [respondent] in the development of this trust."

Affirmed.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

² At the time this action was filed, the venue was governed by the Revised Probate Code, MCL 700.805(1) and 700.806. The Revised Probate Code has since been replaced by the Estates and Protected Individuals Code, MCL 700.1101 *et seq.* 1998 PA 386.