

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* INA J. CRAVEN Revocable Trust.

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RICHARD Z. CRAVEN, Trustee of the INA J.  
CRAVEN REVOCABLE TRUST,

UNPUBLISHED  
December 19, 2017

Appellee,

v

SHERRY I. CRAVEN,

No. 334879  
Wayne Probate Court  
LC No. 2015-811063-TV

Appellant.

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Before: METER, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

In this trust contest between half-siblings, petitioner-appellant, Sherry I. Craven (petitioner), appeals as of right the probate court's order denying her petition to remove respondent-appellee, Richard Z. Craven (respondent), from his role as successor trustee of the trust of their mother, Ina J. Craven. We affirm.

Petitioner first argues that the probate court erred by refusing to order respondent to provide a more complete accounting of the trust.

The gist of petitioner's argument is that the accounting statements provided by respondent were inadequate and needed to contain more details.<sup>1</sup> But MCL 700.7814, the statute on which petitioner relies, does not mandate that trust reports be produced in a particular form. Respondent provided an accounting showing the starting balance of the trust and the various payouts. Petitioner contends that, under MCR 5.113(A)(1)(c), respondent should have used

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<sup>1</sup> Although the accounting reports are not included in the lower-court record, and generally parties may not expand the record on appeal, see *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002), petitioner attaches the reports to her appellate brief and respondent does not dispute their authenticity. In addition, the reports were referred to in the lower court. Accordingly, we will consider them.

SCAO form 583 in making his accounting. This court rule, however, states only that a report must “be *substantially* in the form approved by the State Court Administrator, if a form has been approved for the use.” (Emphasis added.) The accounting provided, showing the starting balance and disbursements, was substantially compliant with this form. Respondent clearly and unequivocally indicated that the sole asset<sup>2</sup> of the trust was a parcel of real property and provided a list of where the proceeds were directed. The probate court did not err in declining to order that further documents be produced.

Petitioner also argues that the probate court erred by denying her petition to remove respondent as successor trustee for various acts of malfeasance. She insinuates that certain monies should have been included in the trust accounting, but she provides no evidence that the grantor transferred these assets to the trust in accordance with the “Trust Property” paragraph of the trust. Respondent’s counsel repeatedly noted at the June 21, 2016, hearing that petitioner was mistakenly referring to and seeking information about assets *outside of the trust*, whose sole asset was the parcel of real estate. The trial court was actively engaged in resolving the issues surrounding the trust—it even ordered the appointment of a forensic accountant—and it properly exercised its discretion<sup>3</sup> in denying petitioner’s request to remove respondent as trustee, given the lack of evidence of malfeasance.

Next, petitioner argues that the probate court abused its discretion by ordering that the fees for respondent’s attorney and other fees be paid from the remaining trust assets, which, at the time of the ruling, represented only petitioner’s share of the trust. Petitioner waived this claim of error by expressly acquiescing to the payment of costs and attorney fees out of her share of the trust. “A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court.” *Living Alternatives for Developmentally Disabled, Inc v Dep’t of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994). Petitioner made an express representation regarding attorney fees to the probate court at the June 21, 2016, hearing, after respondent’s attorney argued that petitioner’s petitions and requests were misguided because it was not “fair for the trust to continue to incur expenses[.]” Petitioner stated:

Your Honor, the only money that exists supposedly with the trustee is money that’s supposedly my share of the trust. So any money that’s being spent or spent on attorneys or court fees or anything that might be charged to me would be coming out of my share of the trust.

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<sup>2</sup> Petitioner states that respondent’s counsel admitted that there were “other assets,” but counsel’s statement was that there were other assets “not in the trust.”

<sup>3</sup> A probate court’s dispositional rulings are reviewed for an abuse of discretion. *In re Bibi Guardianship*, 315 Mich App 323, 328; 890 NW2d 387 (2016). An abuse of discretion occurs when the court chooses an outcome outside the range of principled and reasonable outcomes. *Id.* at 329.

I'm only asking to be shown what existed. I've only ever asked to be shown what existed and what transpired to allow him to come up with that amount of money left in the trust, and all of the other money has been spent, according to him.

By making this statement, petitioner represented to the probate court that the continuing costs at issue would be paid out of her share of the trust estate. Thus, petitioner waived this claim of error. See *Elahham v Al-Jabban*, 319 Mich App 112, 117-118; 899 NW2d 768 (2017).

Given our resolution of this case, we need not address petitioner's argument that the case should be remanded to a different judge.

Affirmed.

/s/ Patrick M. Meter  
/s/ David H. Sawyer  
/s/ Douglas B. Shapiro