

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re GEORGE W. SCHEER Inter-vivos Trust.

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ROBERT A. SCHEER,

Appellant,

v

BARBARA A. KRANTZ and DAWN KRANTZ,

Appellees.

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UNPUBLISHED

July 18, 2013

No. 311094

Clare Probate Court

LC No. 07-015026-TV

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

PER CURIAM.

This matter is before the Court on the probate court's order directing the final distribution of trust assets. Appellant and appellees presented differing proposals regarding how the remaining assets were to be distributed. The probate court accepted appellees' proposal, which was actually the plan developed by the Successor Trustee. We affirm.

George Scheer and his wife, Pauline (who predeceased George), held significant assets in individual inter-vivos trusts, principally real estate and a large number of shares in the Isabella Bank and Trust (IBT). Ultimately, following their deaths, the assets were to be distributed to their two children, appellant and appellee Barbara Krantz, and four grandchildren (including appellee Dawn Krantz). The two children were to each receive 25% of the trust assets and each of the four grandchildren were to receive 12.5% of the assets.

Not long after George Scheer's death a dispute arose among the beneficiaries. This was resolved by a settlement agreement by which a major portion of the assets, including most of the real estate and some of the bank stock, was distributed to the beneficiaries in varying amounts and not in strict proportion to each beneficiary's pro-rata share of the trust. The remaining assets, primarily shares of the bank stock, were held back pending final clearance by the IRS. Once that clearance was obtained, however, another dispute arose regarding the manner in which the remaining assets were to be distributed. At this point, there remained slightly less than 14,000 shares of the bank stock and almost \$200,000 in cash.

It is undisputed that, in the interim distribution, appellant received less than his pro-rata share and that the grandchildren received more than their shares.<sup>1</sup> What is disputed is how to distribute the remaining assets to achieve an appropriate distribution consistent with the terms of the trust. Appellant presented a plan by which he would receive a cash payment of \$116,500 in cash to equalize his shortfall in receipts in the interim distributions. The remaining assets would then be distributed proportionately to equalize the final distribution consistent with the terms of the trust. Appellees, on the other hand, proposed to distribute the assets in the manner proposed by the Successor Trustee, which proposed that the cash and bank stock be distributed in proportion to the percentage amount of the remaining assets each beneficiary was entitled to in order to meet the terms of the trust. For example, appellant was entitled to 43% of the remaining assets to achieve an overall distribution of 25% of the assets to which he was entitled under the terms of the trust. The Successor Trustee's proposal would distribute 43% of the cash and 43% of the stock to appellant.

Appellant's objection to the Successor Trustee's proposal is based on (1) that it would give him a disproportionately greater share of the bank stock and (2) that the Successor Trustee used the values of the stock as of the time of the grantor's death to determine the distribution, while the value of the stock has significantly declined since that time.<sup>2</sup> While appellant presents two issues on appeal, they essentially argue the same thing: it is inequitable to require him to take a disproportionate share of the stock which has a market value significantly less than the valuation used to determine the distribution. Appellant cites only to general principles of law, such as the trustee's fiduciary duty and the restriction under MCL 700.7503(3) that preferences not be given to one charge over another of the same class.

If the controlling principle here was that of equity, we might agree with appellant. But what controls are the settlement agreement and the trust document. The settlement agreement provided that the assets held back from the interim distribution were to be distributed according to the terms of the trust. And the trust gives the Trustee the power to make distribution in cash or in kind and to determine the value of the property distributed in kind.

We review the language of the trust de novo. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005). That interpretation is governed by the principle that the intent of the grantor is to be carried out as closely as possible. *Id.* at 527. And if the language is unambiguous, we are to carry out the intention that is given in the document's plain language. *Id.* And this dispute can be resolved by looking to the clear and unambiguous directives of the trust document. Among the powers given to the trustee is the power to "make distributions in

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<sup>1</sup> In fact, one of the grandchildren, David Krantz, received more than his full share from the interim distributions. Apparently, the beneficiaries agreed that, while David would receive nothing in the final distribution, he would not be required to refund his overpayment.

<sup>2</sup> The Successor Trustee values the stock at \$40.00 per share, while the stock had dropped at one point to approximately \$17.00 per share, and had only recovered to approximately \$25.00 per share at the time of the final distribution.

cash or in kind, at valuations to be determined by TRUSTEE, whose decisions as to values shall be conclusive.” Art XII(Q).

By adopting the Successor Trustee’s proposal, the trial court was merely giving effect to this power. While the Successor Trustee could have chosen a different method of making the final distribution, including adopting appellant’s proposal, the method the Successor Trustee did choose was within the trustee’s authority. Therefore, the trial court did not err in adopting it.

Affirmed. Appellees may tax costs.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Pat M. Donofrio