

STATE OF MICHIGAN
COURT OF APPEALS

LAMONTE DURBROW III TRUST,
Petitioner-Appellant,

UNPUBLISHED
November 21, 2013

v

TOWNSHIP OF LEELANAU,
Respondent-Appellee.

No. 312818
Tax Tribunal
LC No. 00-432003

Before: METER, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's order affirming respondent's decision to uncapp the taxable value of real property pursuant to MCL 211.27a. We affirm.

I. FACTUAL BACKGROUND

The settlor, Lamonte Durbrow, died on April 11, 2003. Upon his death, the property at issue was transferred to a Family Trust (the Trust).¹ When respondent received notice that the settlor had died, it uncapped the taxable value of the property retroactive to 2004. Petitioner appealed this decision, contending that the settlor's wife was the sole present beneficiary of the Trust and, thus, there had not been a transfer of ownership and the uncapping was therefore unfounded.

The Tax Tribunal concluded that based on the language of the Trust, the settlor's spouse was not the sole present beneficiary. Thus, the Tax Tribunal held that when the property was transferred into the Trust, there had been a transfer of ownership, which justified uncapping the property's taxable value. Petitioner now appeals.

¹ Previously, the property had been subject to a trust with the settlor and his wife as the beneficiaries.

II. TAXABLE VALUE

A. Standard of Review

This Court has limited review of Tax Tribunal decisions. *Kmart Michigan Prop Servs, LLC v Dep't of Treasury*, 283 Mich App 647, 650; 770 NW2d 915 (2009). “Where the facts are not disputed and there is no allegation of fraud, our review is limited to whether the tribunal made an error of law or adopted a wrong principle.” *Id.* We review issues of statutory interpretation de novo. *Id.*

B. Analysis

Petitioner argues that there was no transfer of ownership because the settlor intended that his surviving spouse is the sole present beneficiary of the Trust. We disagree.²

The taxable value of real property can be reassessed, or “uncapped,” upon the sale or transfer of the property if it constitutes a “transfer of ownership.” *Klooster v City of Charlevoix*, 488 Mich 289, 299; 795 NW2d 578 (2011) (“A transfer of ownership thus uncaps the property.”); *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 696; 714 NW2d 392 (2006); MCL 211.27a. A transfer of ownership is defined as “the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest.” MCL 211.27a(6). A transfer of ownership includes, but is not limited to:

(c) A conveyance to a trust after December 31, 1994, except if the settlor or the settlor’s spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor’s spouse, or both.

(e) A change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary. [MCL 211.27a(6).]

² On appeal, petitioner perfunctorily states that because the settlor was domiciled in Ohio when the Trust became irrevocable, the construction and interpretation of the Trust is governed by Ohio law. Petitioner did not support or expand on this argument, and “[i]t is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (quotation marks and citation omitted). Further, petitioner relies on MCL 211.27a(6), which the Tax Tribunal found controlling. See also MCL 700.7107.

However, a transfer of ownership does not include “[a] conveyance to a trust if the settlor or the settlor’s spouse, or both, conveys the property to the trust and the sole present beneficiary of the trust is the settlor or the settlor’s spouse, or both.” MCL 211.27a(7)(f).

Here, it is undisputed that the property was transferred into the Trust when the settlor died. “In resolving a dispute concerning the meaning of a trust, a court’s sole objective is to ascertain and give effect to the intent of the settlor.” *In re Kostin*, 278 Mich App 47, 53; 748 NW2d 583 (2008). The intent of the settlor should be “carried out as nearly as possible.” *Id.* We also discern the intent from the trust document itself, and construe the document so that each word has meaning. *Id.*

In the instant case, the Trust’s beneficiaries include the settlor’s spouse, the settlor’s children, and the issue of the settlor’s children. The Trust provides that the trustee can pay “any part or all of the net income of the Family Trust to or for the benefit of any one or more of a group composed of Grantor’s spouse, Grantor’s children and the issue of any child of Grantor, in such proportions and amounts and at such times as shall be determined, in the Trustee’s discretion.” Thus, this language indicates that there are multiple present beneficiaries of the Trust, not simply the settlor’s spouse. MCL 211.27a(6)(c).

However, the Trust contains the following limiting language:

(1)(a) . . . The Trustee may also pay out so much of the principal of the Family Trust to or for the benefit of any one or more of a group composed of Grantor’s spouse, Grantor’s children and the issue of any child, in such proportions and amounts and at such times as shall be deemed advisable, in the Trustee’s discretion, to provide for their respective health, support and maintenance; and additionally, in the case of the issue of any child, to continue education (including college, graduate and professional school). Notwithstanding the foregoing and except for compelling reasons satisfactory to the Trustee, no principal payments shall be made from the Family Trust to or for the benefit of Grantor’s spouse until the entire principal of the Marital Trust shall have been completely distributed.

(1)(b) . . . In connection with any distribution which the Trustee may make to or for the benefit of Grantor’s spouse, children and the issue of children pursuant to the preceding Subsection, it is Grantor’s primary intention that Grantor’s spouse be adequately and comfortably maintained for spouse’s lifetime. Grantor intends that the assets of the Family Trust be applied substantially for the benefit of Grantor’s spouse, subject only to the occurrence of emergencies affecting Grantor’s children or the issue of any child or a situation where the income of Grantor’s spouse from other sources is adequate enough to justify distributions for the benefit of said children and issue.

The Trust also provides that in making distributions to the settlor’s children or their issue, the trustee shall first consult with grantor’s spouse, if living, and give ample consideration to her judgment. However, the Trust decrees that “the decision to make any distribution hereunder shall be solely within the Trustee’s discretion.”

Based on this language, petitioner argues that the settlor's spouse is the sole present beneficiary of the Trust because the other beneficiaries only had a contingent interest. This interpretation ignores important language in the Trust. The Trust specifically grants the trustee authority to make distributions to the settlor's children or their issue. As the Tax Tribunal found, the trustee's assurance that he will not make distributions to the settlor's children or their issue is contrary to the language of the Trust, which clearly provides for such distributions.

Moreover, the Trust gives the trustee broad discretion to make these distributions. While the Trust certainly contemplates distributions to the settlor's spouse, the language does not require that all of the assets be used for her benefit. If the trustee decides that there was an emergency or that the settlor's spouse had adequate income, he was free to make a distribution to the settlor's children and their issue during the lifetime of the Trust. In other words, the trustee could perceive that these circumstances existed at any time, and make distributions to the settlor's children or their issue accordingly.

The Trust does not categorize the settlor's children or their issue as contingent beneficiaries. Moreover, while distributions to the settlor's children and their issue are constrained to certain circumstances, that does not render the spouse the sole present beneficiary. In fact, even the settlor's spouse would not be a present beneficiary under this interpretation, as the Trust imposes limitations on some distributions to her.³ Because the settlor's children and their issue could receive distributions at any time, they are present beneficiaries, and the settlor's spouse is not the sole present beneficiary under the Trust.

Therefore, when the property was transferred into the Trust and the trustee was endowed with broad discretion to make distributions to the settlor's children or their issue, there was a transfer of ownership consistent with MCL 211.27a(6). We agree with the Tax Tribunal that this transfer of ownership justified the uncapping of the property value.

III. CONCLUSION

Because the settlor's spouse is not the sole present beneficiary of the Trust, the Tax Tribunal correctly held that there was a transfer of ownership and the uncapping of the taxable value of the property was therefore warranted. We affirm.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Michael J. Riordan

³ The Trust states: "Notwithstanding the foregoing and except for compelling reasons satisfactory to the Trustee, no principal payments shall be made from the Family Trust to or for the benefit of Grantor's spouse until the entire principle of the Marital Trust shall have been completely distributed."