

STATE OF MICHIGAN
COURT OF APPEALS

In re PHILLIP B. BEGLEY TORCH LAKE TRUST.

HUNTINGTON NATIONAL BANK, Trustee for the PHILLIP B. BEGLEY TORCH LAKE TRUST, ANN K. BEGLEY, TOM BEGLEY, ROBERT P. BEGLEY, and LAURA A. BEGLEY

UNPUBLISHED
August 14, 2014

Appellees,

v

ADAM BEGLEY, MARTIN BEGLEY, and ANDREW BEGLEY,

No. 320345
Grand Traverse Probate Court
LC No. 10-030944-TV

Appellants.

Before: SAAD, P.J., and OWENS and K.F. KELLY, JJ.

PER CURIAM.

Appellants appeal as of right the trial court's order granting appellee Huntington National Bank's motion for reconsideration and holding that appellee Huntington National Bank (HNB), as trustee of the Phillip B. Begley Torch Lake Trust (Torch Lake Trust), did not need the consent of the children of the settlor of the trust to dispose of real estate assets held in the trust. We reverse.

I. BACKGROUND

On October 1, 1993, the settlor executed the Torch Lake Trust, which was amended and restated in its entirety on July 26, 2006. Appellee HNB was appointed successor trustee in 2010, shortly before the settlor's death. The Torch Lake Trust's assets included the Torch Lake Cottages and securities. The cottages generated rental revenue, but from 2011 to 2013, the annual cost of maintaining the cottages exceeded this revenue.

On September 15, 2013, appellee HNB received an unsolicited offer to purchase the Torch Lake Cottages for \$1.4 million cash, which was above its appraised value. Appellee HNB notified the beneficiaries, who disagreed on a course of action. Three beneficiaries supported the

possible sale, two beneficiaries did not want trustee to sell the Torch Lake Cottages to anyone, and one beneficiary was noncommittal. Moreover, some of the beneficiaries believed that pursuant to the Torch Lake Trust, appellee HNB was required to obtain consent from the settlor's children before it could sell the Torch Lake Cottages. Appellee HNB, on the other hand, believed that it was not required to obtain consent because none of the children had directed the sale. Therefore, appellee HNB filed a petition for instructions on October 17, 2013, requesting the trial court enter an order allowing the disposition of the trust assets, including the Torch Lake Cottages, without the consent of the settlor's children.

On November 19, 2013, the trial court took testimony on the matter from appellee HNB's trust officer and from all of the settlor's children. The trust officer explained that in addition to the Torch Lake Trust, there were two other trusts peripherally involved: the Ann Begley Trust and the Phillip Begley Trust. Certain Arizona property was an asset of the Ann Begley Trust, and the Phillip Begley Trust held securities. The trust officer explained that, for tax assessment purposes, the Arizona property had an established value of about \$250,000. He also testified about two lots of property on Old Mission Peninsula, which was referred to as the Eimen Road property. He explained that he planned to sell the Eimen Road property, but it was difficult because it had access problems. He added that the assessed value of the Eimen Road property was approximately \$440,000 per lot. Additionally, there was testimony that Ann Begley required in-home care, which was costing about \$178,000 per year. The trust officer testified that if the Torch Lake Cottages were sold, the money from the sale would be invested in a fashion to generate income for Ann Begley's future care.

The trial court, expressly declining to rule on the interpretation issue before it, denied the petition. The court believed that appellee HNB should list the Arizona property for sale, take steps to sell the Eimen Road property, and look at any securities that would be available to pay for Ann Begley's care. The court believed the other properties should be explored for sale before selling the Torch Lake Cottages. Subsequently, appellee HNB filed a motion for reconsideration, contending that the trial court committed palpable error when it declined to answer the purely legal question before it on the basis of the emotional, but irrelevant factual development at the hearing. The trial court granted the motion because the court had "not specifically provide[d] the Trustee with instructions regarding Article IV, Section 4.7(b) of the Trust, as requested by the Trustee." The court held:

Upon review of said section, the Court finds the language in 4.7(b) applies only in specific situations where the Settlor's children direct the Trustee to sell one or both of the Torch Lake Cottages. In this case, Trustee did not receive such direction but rather an offer to purchase was submitted to the Trustee.

The Court further finds that pursuant to Article VII of the Trust titled Administrative Powers, the Trustee would have the right to sell real estate with or without the consent of the beneficiaries.

The court set aside its earlier order denying appellee HNB's petition for instructions and ordered that trustee had the authority to sell the real estate in the Torch Lake Trust without the consent of the settlor's children.

II. INTERPRETATION OF TRUST AGREEMENT

Appellants first argue that the trial court erred in interpreting the Torch Lake Trust. We review the interpretation of a trust document de novo. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005). General rules of will interpretation also apply to the interpretation of trust documents. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). Our primary concern in interpreting a trust is to determine and give effect to the settlor's intent. *In re Kostin*, 278 Mich App 47, 53; 748 NW2d 583 (2008). Unless the trust language is ambiguous, the settlor's intent must be determined by the trust's plain language alone. *Id.* Further, this Court "must attempt to construe the instrument so that each word has meaning," *id.*, and "may not construe a clear and unambiguous [estate document] in such a way as to rewrite it," *In re Allen Estate*, 150 Mich App 413, 417; 388 NW2d 705 (1986).

At issue is the interpretation of a provision contained in section 4.7(b) of article IV of the Torch Lake Trust, which addresses the sale of the cottages,¹ and provides:

(b) **Sale of Cottages.** Settlor's children may direct Trustee to sell one or both Cottages if they decide that the Cottages no longer serve the purposes envisioned by Settlor. Settlor's children must approve the sale of the Cottages unanimously or unanimously less one vote. Trustee shall decide the terms of any sale in Trustee's sole discretion. Trustee may, in its discretion, reinvest the proceeds in another cottage to be held and administered under the terms of this Trust, or invest the proceeds from the sale as Trustee deems advisable. It is Settlor's intent that if a Cottage is sold, that the purchasers shall be one or more of his descendants who desire to acquire that Cottage for their use and enjoyment.^[2]

We conclude that the trial court erred by determining that this provision only applies to those sales that are at the direction of the settlor's children. Again, our primary concern in interpreting a trust is to determine and give effect to the settlor's intent. *Kostin*, 278 Mich App at 53. In

¹ We agree with appellants' contention that section 4.7(b) controls. Although article VII provides that the trustee has the administrative power to sell any asset in the trust, the provision specifically states that it is subject to the rest of the agreement. See, e.g., *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 719; 706 NW2d 426 (2005) (stating that "specific [contract] provisions normally override general ones"), and *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 367 n 22; 817 NW2d 504 (2012) ("The settled rule regarding statutory construction is that a specific statutory provision controls over a related but more general statutory provision.").

² An identical provision is contained in section 5.3 of article V. However, section 4.8 provides that article V applies only "[u]pon the death of Settlor's wife (or upon Settlor's death if Settlor's wife fails to survive Settlor)." Accordingly, although the provision requiring the sale of the cottages is identical, we only look to the provision in article IV as dispositive because the event triggering the application of the provision in article V has yet to occur. Thus, because article V does not apply, appellants reliance on its provisions is misplaced.

reading the trust in its entirety, it is clear that it was the settlor's intent to keep the cottages in the family.

Article IV address the distribution of the trust assets if the settlor's wife survives him. Under section 4.7(a), "Use of Cottages," the trust directs the trustee to "maintain and administer the trust assets for the benefit of Settlor's wife and all of Settlor's descendants who shall from time to time wish to use the cottages." Because the settlor knew the difficulties associated with joint use of real estate, he specifically requested that his wife, children, and other descendants "allow Trustee to make the decisions with respect to the use and maintenance of the Cottages and to invest, reinvest and otherwise deal with the other assets of the Torch Lake Trust as Trustee shall, in Trustee's absolute discretion, deem advisable." Thus, the settlor gave the trustee authority to use other assets in the Torch Lake Trust to maintain the cottages. He did not, however, give him the authority to sell the cottages in this section.

The settlor further authorized the trustee to use principal from the Torch Lake Trust to pay for the maintenance expenses if the income from the trust was not sufficient. However, "it is Settlor's hope and expectation that those of his wife and descendants who spend time at the Cottages will contribute voluntarily to their maintenance so that the Trust can be administered in such a way that its assets not be consumed for many years to come." Thus, even if the trust income was insufficient to pay for the maintenance of the cottages, it is clear that the settlor still did not want the cottages sold. Rather, it was his intent that the principal of the trust be used or that his wife and descendants voluntarily contribute.

Section 4.7(b) of the trust then goes on to discuss the "Sale of Cottages." By the plain language of its title, this section clearly addresses the "sale of cottages" generally, and not just the "sale of the cottages at the direction of the settlor's children." This section allows the settlor's children to direct the trustee "to sell one or both Cottages if they decide that the Cottages no longer serve the purposes envisioned by Settlor." Given that article V states that the cottages are "held for the benefit of Settlor's descendants" and that the settlor wanted the trustee to "maintain and administer the trust assets for the benefit of Settlor's wife and all of Settlor's descendants who shall from time to time wish to use the cottages," it is clear that the settlor envisioned the cottages to be used for enjoyment of his descendants. Thus, if the settlor's children determine that his purposes are not being served—i.e., his descendants are no longer wishing to use the cottages—then they may direct the trustee to sell the cottages.

The next sentence of section 4.7(b) states, "Settlor's children must approve the sale of the Cottages unanimously or unanimously less one vote." If it were the intent for this clause to apply only to situations where the children directed the sale, as the trial court held, the settlor could have provided so. However, given that it is a condition under the general heading of "Sale of Cottages," it is clear that settlor's children must approve the sale of the cottages under all circumstances. This is further supported by the fact that the settlor wanted to keep the cottages in the family given that he added the following sentence at the end of section 4.7(b): "It is Settlor's intent that if a Cottage is sold, that the purchasers shall be one or more of his descendants who desire to acquire that Cottage for their use and enjoyment." Further, article V, which addresses the distribution of the trust assets once settlor's wife dies, states that the trustee is to continue to maintain and administer the trust assets for the benefit of all settlor's descendants who wish to use the cottages. Article V further provides that the trust will terminate

upon the sale of the cottages or upon the death of all of the settlor's children. But again, article V, section 5.3 contains an identical provision to section 4.7(b), and thus once the settlor's wife dies the cottages cannot be sold unless the children approve. Accordingly, it clear that the settlor wanted to keep the cottages in the family, at least until his children died or until the children determined that the cottages no longer served the settlor's desired purpose.

Therefore, we hold that the trial court erred by concluding that the trustee could entertain an unsolicited offer to purchase the cottages without the children's consent. Because of resolution of this issue is dispositive, we need not address appellants' remaining issues.

Reversed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly