Circuit Court for Washington County
Case No. C-21-CV-18-000072

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0326

September Term, 2020

IN RE: JAMES YOST TESTAMENTARY TRUST

Fader, C.J.,
Kehoe,
Sharer, Frederick, J.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: May 13, 2021

Kimberly A. Morgan and Allen Frederick Yost appeal from a judgment of the Circuit Court for Washington County, the Honorable Andrew F. Wilkinson presiding, that granted the petition of James Allen Yost to remove them as trustees of the James Frederick Yost Testamentary Trust.

The sole issue presented by appellants for our consideration is "whether the trial court erred as a matter of law in interpreting Decedent's Last Will and Testament to require trustees to create income or capital receipts and to contain 'an inescapable conflict of interest for the trustees' that 'the law of Maryland cannot support.'" Because we fully agree with Judge Wilkinson's well-considered and thorough analysis of the unusual issues presented by this case, we will affirm the judgment.

Background

Because some of the parties share the same last name, we will refer to them by their first names. We mean no disrespect. We will refer to the decedent, James Frederick Yost, as Mr. Yost.

The parties are three of the four surviving children of Mr. Yost, who died in 2015. Mr. Yost executed a will in 2001 and a codicil in 2012. In his 2001 will, Mr. Yost effectively disinherited one child,[1] and designated Kimberly, Allen, and James as co-trustees and beneficiaries of the testamentary trust that is the subject of this appeal. The corpus of the trust was four parcels of land, totalling approximately 185 acres, located near the town of

[1] He left her a bequest of $100 and, to drive the point home, stated that his failure to make any additional provisions for her was intentional.

Clear Spring in Washington County. In the 2012 codicil, Mr. Yost removed James as a trustee, but did not change his status as a beneficiary.

In pertinent part, Mr. Yost's will provided that:

> 1. After payment of expenses of the trust, the trustees were to distribute any net income derived from the trust to the beneficiaries in equal shares annually.
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> 2. If any part of the land were sold, the trustees were to create a reserve account with the proceeds of sale to pay future trust expenses and distribute the remaining proceeds to the beneficiaries or the living descendants *per stirpes* of any deceased beneficiary.
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> 3. The trust was to terminate upon the first to occur of the sale of all real estate, or the death of the last surviving trustee named in the will. Upon termination, the remaining proceeds to the beneficiaries or the living descendants per stirpes of any deceased beneficiary.
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> 4. During the duration of the Trust, a beneficiary could not transfer his or her interest in the trust except that a beneficiary could sell his or her interest in the Trust to one or more of the other trust beneficiaries for the sum of $50,000.

The parties' contentions center around § 4.01(d) of Mr. Yost's will, which states:

> If the income and principal receipts from the Trust corpus are not sufficient to pay the taxes, ordinary repairs and other expenses relating to the management and administration of the trust corpus, then expenses in excess of income and principal receipts shall be charged to and paid by the Trust Beneficiaries. If any Trust Beneficiary (a "Delinquent Trust Beneficiary") fails to make payment to the Trustees within six (6) months after written demand from the Trustees or any one of them, then any of the remaining Trust Beneficiaries may purchase the interest of the Delinquent Trust Beneficiary for the amount equal to the delinquent charges owed by the Delinquent Trust Beneficiary. . . . After said purchase, the interest of the Delinquent Trust Beneficiary shall terminate.

The real property which made up the corpus of the trust was inventoried for estate purposes with a value of approximately $1,000,000. The trial court found that, between the time of the establishment of the trust in 2016 and the time that the case came to trial, which was in February 2020, Kimberly and Allen had "managed the trust at a loss of approximately $60,000, with said losses being paid by the beneficiaries in equal shares." The court further found that "[o]ther than some timbering activity, the trust has made no income and has created no capital receipts."

The scenario contemplated by § 4.01(d) came to pass. In their capacities as trustees, Kimberly and Allen made four demands upon James for payment of trust expenses, and he has paid a total of $20,750.21 to them as his pro rata share of the trust's expenses. Eventually, James filed a petition with the circuit court to remove them as trustees.

The court summarized the parties' claims as follows:

> [James] raises multiple claims as to mismanagement of the trust, violation of trustee duties, and matters of accounting. [James]'s overriding claim is that by failing to create income or capital receipts from the land, the trustees have violated their duty to not cause harm to all beneficiaries' interests. Due to the trustees' mismanagement, [James] argues, the trust has operated at a loss of approximately $60,000.00 since mid-2016. With such losses, and the trustees' indication that they do not intend to manage the land in a manner to protect his interests, [James] requests that the trustees be removed, and a new trustee be substituted.
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> * * *
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> [Kimberly and Allen] counter by arguing that they have managed the trust according to the terms of the Will. In short, [Kimberly and Allen] believe there is no obligation for the trustees to create income or capital receipts and that the buy-out provision [contained in § 4.01(d) of the Will] reinforces such position. Throughout their trusteeship, [Kimberly and Allen] appropriately

> hired counsel to give them advice and have sought approval for many, if not all, major expenses associated with the land. As such, [Kimberly and Allen] believe they have managed the trust in accordance with its terms and that the financial "loss" associated with their management is not a breach of duty because such loss is contemplated by the Will itself.

After a two-day trial on James's petition, the court issued a written opinion and order rejecting Kimberly and Allen's arguments, granting the petition to remove them as trustees, and appointing a substitute trustee. The court noted that there was "no doubt [that] Mr. Yost loved his land and wanted it to be preserved for the benefit of his children for their use and enjoyment during their lifetimes." However, the court concluded that Kimberly and Allen's position that they were not required under any circumstances to sell any of the land for the duration of the trust was untenable. The court noted that the trust provided that, if the trustees sold portions of the trust assets, the proceeds were to be used to establish a reserve to meet ongoing operating expenses before any distribution could be made to the beneficiaries. The court continued:

> As trustees, [Kimberly and Allen] owe a duty to all beneficiaries to act in a manner that will preserve their beneficial interests. Md. Code, Estates & Trusts, § 14.5-802(a).[2] They must act within fairness and diligence. Through their testimony and their actions since July 2016, [Kimberly and Allen] have made clear that they do not intend to manage the trust in a manner that will create income to cover ongoing expenses. They have made clear that they do not intend to sell any land to create capital receipts and to create a reserve account. At trial, [Kimberly] testified she hopes Petitioner will fail to pay his allotted share so that she and [Allen] can buy Petitioner's 1/3 interest for a minimal amount. [Allen] testified that he will not, as trustee,

[2] Est. & Trusts § 14.5-802(a) states:

> A trustee shall administer the trust solely in the interests of the beneficiaries.

> ever sell any portion of the land, not even an acre, to create funds to pay ongoing expenses. [T]heir testimony highlights a core problem with the trust. If the Will is read to have no requirement for the trustees to create income or capital receipts, then Section 4.01(d) incentivizes the trustees to maximize annual expenses as a pretext to force out the non-trustee beneficiary—it creates an internal conflict of interest for the trustees. To interpret the Will and Codicil in this manner would mean the testator intended to create the conflict of interest that incentivizes the trustees to violate their fiduciary duties to the beneficiaries. In this Court's opinion, the testator could not have intended, and did not intend, to create such a conflict of interest.
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> * * *
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> [Kimberly's and Allen]'s management of the trust since 2016 and their stated intentions for the future are inapposite to their fiduciary duties and the proper interpretation of the Will. . . . The trustees owe a paramount duty to all beneficiaries to preserve the trust estate and to promote the beneficiaries' best interests as beneficiaries. The trustees could have met this obligation if they created income or capital receipts to cover expenses. Since 2016, they have not. By their testimony, they have no intention to do so in the future.

For these reasons, the court concluded that Kimberly and Allen should be removed as trustees.

Analysis

A.

Kimberly and Allen contend that the circuit court erred in determining that the will created a conflict of interest and in interpreting the will as requiring them, as trustees, to create income or capital receipts. They argue that the will reflected Mr. Yost's intention to keep the land intact "for the use and enjoyment of his family" and to keep it "maintained as he [had] maintained it." According to Kimberly and Allen, the circuit court's reading of the will "ignore[d] or fail[ed] to give full effect to [its] unique and important provisions."

(Appellant's Brief at 5) They maintain that the circuit court placed "too much importance" on terms included in the will "merely to account for possible changing future circumstances," and that it read "those terms as mandatory when the trust explicitly provide[d] for discretionary action by the Trustees." (Appellants' Brief at 5)

Kimberly and Allen also maintain that Mr. Yost "intended for the beneficiaries to pay the carrying costs of the trust out of their own pockets and to do so on a regular basis[,]" "accepted any conflict of interest created," and trusted them, as trustees, "to administer the trust according to its terms in spite of any such conflict." (Appellants' Brief at 7, 10) They assert that Mr. Yost "expressed his intent to preserve the Property for the use and enjoyment of his family through the specific provisions in his trust and those are sufficient to override any contrary default provisions provided by law[.]" According to them, the circuit court's decision improperly altered the terms of the trust established by Mr. Yost's will.[3] These contentions are not persuasive.

[3] Kimberly and Allen also argue that the circuit court erred by not permitting them to introduce extrinsic evidence to demonstrate Mr. Yost's "passionate attachment to the [trust property]." However, the parol evidence rule bars admission of such evidence to show the testator's intent. *See Garner v. Garner*, 167 Md. 423, 428 (1934); *Sewell v. Slingluff*, 57 Md. 537, 548–49 (1882).

B.

Although there are certain situations in which removal of a trustee is mandated,[4] as a general rule the decision whether to grant or deny a beneficiary's request to remove a trustee is a matter for the trial court's discretion. *Schmidt v. Chambers*, 265 Md. 9, 34 (1972); *Holmes v. Sharretts*, 228 Md. 358, 371 (1962). In cases that turn on a judge's exercise of discretion, appellate courts review the trial court's factual findings for clear error and its legal analysis under the de novo standard. *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010). Absent clear error or faulty legal reasoning, the trial court's decision "should be disturbed only if there has been a clear abuse of discretion." *Id.* Appellate courts will find an abuse of discretion when:

[4] Est. & Trusts § 15-112 provides in pertinent part:

> (a)(1) A court shall remove a fiduciary who has:
> (i) Willfully misrepresented material facts leading to the appointment of the fiduciary or to other action by the court in reference to the fiduciary estate;
> (ii) Willfully disregarded an order of court;
> (iii) Shown to be incapable, with or without fault to properly perform the duties of the office of fiduciary; or
> (iv) Breached the fiduciary duty of good faith or loyalty in the management of property of the fiduciary estate.
> (2) A court may remove a fiduciary who has:
>
> * * *
>
> (iii) Failed to perform any fiduciary duty, or to competently administer the fiduciary estate.
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> * * *

For the purposes of title 15 of the Estates and Trusts Article, § 15-112, the term "fiduciary" includes trustees. *See* Est. & Trusts § 15-103(3)(12) (defining "fiduciary" to include "a trustee acting under a . . . will[.]").

> The decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

North v. North, 102 Md. App. 1, 14 (1994).

C.

The Court of Appeals has recently explained that:

> The paramount concern of the court in interpreting a trust, as with interpreting a will, is to ascertain and effectuate the settlor's expressed intent. This expressed intention must be gathered from the language of the entire trust, particularly from the clause in dispute, read in the light of the surrounding circumstances at the time the trust was created.
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> Ordinarily, a settlor's intent is discerned from within the four corners of the trust agreement, and language is given its plain and ordinary meaning. Where possible, and in accord with the objects and purposes of the trust, all of the language in a trust agreement should be given effect.

In the Matter of the Albert G. Aaron Living Trust, 457 Md. 699, 712–13 (2018).

Kimberly and Allen's appellate contentions boil down to two propositions:

The first is that Mr. Yost did not intend that any portion of the trust property should ever be sold before the termination of the trust. As the trial court noted, this argument is not persuasive because it ignores the plain language of § 4 of the will that instructs the trustees to set aside proceeds from the sale of property to provide funds for payment of future expenses.

The second is that the terms of the trust permitted Kimberly and Allen to administer the trust in a manner to maximize the on-going financial burden on James with the

expectation that eventually he will be forced to sell his interest in the trust to either or both of them at a fraction of its value. The trial court refused to construe the trust in such a manner and rightfully so. The interpretation of the will proposed by Kimberly and Allen is impermissible as a matter of public policy. Est. & Trusts § 14.5-105 states

> The terms of a trust prevail over a provision of this title, except:
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> * * *
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> (2) The duty of a trustee to act reasonably under the circumstances and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
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> (3) The requirement that a trust and the terms of the trust be for the benefit of the beneficiaries of the trust and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
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> * * *
>
> (14) The power of the court to take an action and exercise jurisdiction as may be necessary in the interests of justice[.]

For this reason, a "violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust[.]" Est. & Trusts § 14.5-901. Moreover, where a trust has two or more beneficiaries, "the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the respective interests of the beneficiaries." Est. & Trusts § 14.5-803.

These statutory provisions reflect established Maryland law. The Court of Appeals has explained:

> A trustee owes to the beneficiaries of a trust duties of administration, prudence and loyalty. The trustee's duty of loyalty—as the duty is known in this state—is well-established in the common law. Broadly put, the duty prohibits a trustee from using the property of a beneficiary for the trustee's

> own purposes. A trustee is otherwise prohibited from placing himself in any position where his self-interest will or may conflict with his duties as trustee, and using the advantage of his position to gain any benefit for himself at the expense of the beneficiary. A trustee also must refrain from using the advantages of the fiduciary relationship for the benefit of a non-beneficiary third party.

Hastings v. PNC Bank, N.A., 429 Md. 5, 25 (2012) (Citations and internal quotation marks omitted); *accord Brown v. McLanahan*, 148 F.2d 703, 706 (4th Cir. 1945) ("[A] trustee may not exercise powers granted in a way that is detrimental to the cestuis que trustent; nor may one who is trustee for different classes favor one class at the expense of another. Such an exercise of power is in derogation of the trust and may not be upheld, even though the thing done be within the scope of powers granted to the trustees in general terms.").

Finally, we find unpersuasive Kimberly and Allen's argument that "[u]nder the [c]ourt's opinion, any trust in which a trustee has discretion and the trustee is also a beneficiary will fail." As we have already noted, a trustee owes a fiduciary duty to *all* beneficiaries and is prohibited from using the advantage of the position of trustee to gain any benefit for him or herself at the expense of a beneficiary. To the extent that a trustee can meet those and other fiduciary duties, he or she may serve as a trustee while also being a beneficiary. In the instant case, however, Kimberly and Allen failed to distinguish between their duties as trustees and their status as beneficiaries with interests that were hostile to those of James.

D.

In conclusion, our review of the record before us convinces us that the circuit court did not err in removing Kimberly and Allen as Trustees. The court appointed a Maryland lawyer, Scott Alan Morrison, Esquire, as successor trustee. Kimberly and Allen do not assert that the circuit court abused its discretion in its choice of a successor trustee.

THE JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANTS.