STATE OF MICHIGAN

COURT OF APPEALS

In re HOWARD J. STODDARD TRUST.

STANFORD C. STODDARD, Trustee,

Petitioner-Appellant,

v

GRAND BANK, Trustee, VIRGINIA PEERY, and CHARLES STODDARD,

Respondents-Appellees.

UNPUBLISHED
February 25, 1997

No. 186093
Kent Probate Court
LC No. 94-158617-WT

STANFORD C. STODDARD, Trustee,

Petitioner-Appellant,

v

GRAND BANK, Trustee, VIRGINIA PEERY, and CHARLES STODDARD,

Respondents-Appellees,

and

STANFORD D. STODDARD, ELIZABETH TAGGART, and SIMEON STODDARD,

Appellees.

No. 192711
Kent Probate Court
LC No. 94-158617-WT

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* Circuit judge, sitting on the Court of Appeals by assignment.

Before: Sawyer, P.J., and Neff and A.L. Garbrecht,* JJ.

PER CURIAM.

In Docket No. 186093, petitioner appeals as of right from the probate court order granting summary disposition to respondents, granting miscellaneous relief to respondents regarding the trust, and dismissing petitioner's complaint which sought, among other things, to remove Grand Bank as corporate trustee. In Docket No. 192711, petitioner appeals as of right from the same court's subsequent order regarding trust management. We affirm.

Petitioner and respondents Virginia Peery and Charles Stoddard are the surviving children of Howard J. Stoddard, the settlor of the subject trust, and are income beneficiaries of the trust. When the trust was established in 1971, petitioner was appointed individual trustee and Michigan Bank, N.A., was named corporate trustee. When the latter eventually became Michigan National Bank, problems developed and the children secured its resignation pursuant to an indemnification agreement in favor of Grand Bank as successor corporate trustee. In 1994, petitioner's request that Grand Bank resign in favor of a bank of his choice precipitated the present action, resulting in the probate court's decision that the trust agreement required the continuous existence of a corporate trustee and that the indemnification agreement validly vested Grand Bank as successor corporate trustee. The court later approved Grand Bank's proposal for investment of trust funds.

Petitioner first challenges the probate court's determination that it had subject-matter jurisdiction over this dispute and that venue was proper. Reviewing this question de novo, *Dlaikan v Roodbeen*, 206 Mich App 591, 592-593; 522 NW2d 719 (1994), we hold that the probate court had subject-matter jurisdiction over this case pursuant to MCL 700.805(1); MSA 27.5805(1). Furthermore, we concur with the probate court's ruling that Grand Bank is the legitimate successor corporate trustee of the trust. Therefore, Grand Bank had full authority to register the trust in Kent County and, having done so, venue was proper there. MCL 700.806; MSA 27.5806.

Petitioner next contends that the grant of summary disposition was improper because genuine issues of material fact allegedly existed. MCR 2.116(C)(10). We disagree. In granting summary disposition to respondents, the probate court correctly concluded as a matter of law that the trust agreement required a corporate trustee to be acting during the life of the trust and that the indemnification agreement had validly installed Grand Bank as successor corporate trustee. This is consistent with case law holding that one "must look to the trust instrument to determine . . . the settlor's intent regarding the purpose of the trust's creation and its operation." *In re Butterfield Estate*, 418 Mich 241, 259; 341 NW2d 453 (1983). Where, as here, the language of the documents is clear, its construction "is a question of law for the court." *G & A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). Petitioner's contention that prejudicial error resulted from alleged factual errors in the court's decision is unconvincing because any such errors did not impact the court's legal analysis. Furthermore, petitioner's factual affidavit did not create a genuine issue of material fact precluding summary disposition. The probate court properly granted summary disposition in favor of respondents.

Bertrand v Alan Ford, Inc, 449 Mich 606, 617-618; 537 NW2d 185 (1995); *Borman v State Farm*, 198 Mich App 675, 678; 499 NW2d 419 (1993).

Petitioner next argues that the trust agreement does not require that there always be a corporate trustee acting and contends that Grand Bank never validly became the successor corporate trustee because court approval, and not the consent of the beneficiaries, is the only method of effectuating that change where, as here, the trust agreement does not specifically provide for a successor corporate trustee. We disagree.

In ruling that the settlor intended the trust to always have a corporate trustee, the probate court relied in part on the trust agreement's provision empowering the corporate trustee, "in its sole judgment and discretion," to invade the trust corpus for the benefit of a beneficiary. The court noted that if petitioner was "appointed as sole trustee he would have then by his reasoning the right to invade [principal] on behalf of income beneficiaries, and as this matter . . . indicates, the relationship between [him] and his siblings is anything but cordial." We concur. The folly of disregarding this provision by acceding to petitioner's contention that no corporate trustee exists and that he possesses the powers originally reserved to the corporate trustee is apparent from the facts of this case.

We also reject petitioner's contention that Grand Bank is not the corporate trustee. He, along with the individual respondents, signed the January 12, 1988, indemnification agreement providing, in pertinent part, that "the Beneficiaries have requested that the Trustee [i.e., Michigan National Bank] resign as Corporate Trustee of [the trust] in favor of The Grand Bank, Grand Rapids, Michigan as Successor Corporate Trustee thereof . . . ." Since that date, Grand Bank has been functioning as corporate trustee, including filing tax returns as co-trustee. Moreover, petitioner and his counsel addressed the bank as corporate trustee earlier in this dispute. The probate court correctly held that petitioner's willing participation in the indemnification agreement and his recognition of Grand Bank as successor corporate trustee for more than six years estop him from now asserting that the bank was never a trustee. See *Holzbaugh v Detroit Bank & Trust Co*, 371 Mich 432, 435-437; 124 NW2d 267 (1963); *Weiland v Hogan*, 177 Mich 626, 631-632; 143 NW 599 (1913); *Campau v McMath*, 185 Mich App 724, 730-731; 463 NW2d 186 (1990).

Petitioner next challenges the probate court's approval of Grand Bank's plan for investment of trust funds. We find no error. At the hearing on Grand Bank's petition for instructions regarding this matter, petitioner declined to present any investment proposal of his own, resisted the bank's proposed introduction of evidence regarding its plan and insisted on proceeding on the basis of oral argument alone. Under these unique facts, and in view of the need for immediate investment, the court acted properly. *Detroit Trust Co v Blakely*, 359 Mich 621, 629; 103 NW2d 413 (1960); see also *In re Bilivskoy Estate*, 147 Mich App 110, 111-112; 382 NW2d 729 (1985). Furthermore, the record does not support petitioner's contention that the approved plan is contrary to good fiscal management.

Petitioner next argues that the probate court erred by ruling that "the Trustees may, if they both agree, pay or reimburse expenses out of Trust incurred by the Trustees, either jointly or separately, except that the Trustees shall not pay any expenses or legal fees relating to the dispute which was resolved by this Court's May 10, 1995 Orders, which are now on appeal." His assertion that expenses

may be paid only out of trust income is not supported by the trust agreement's language, case law or statute. *Donovan v National Bank of Detroit*, 384 Mich 595, 604; 185 NW2d 354 (1971); MCL 555.52; MSA 26.79(2). There was no error.

Because of our resolution of the preceding questions, it is unnecessary for us to reach petitioner's remaining issues.

Affirmed. Respondents-appellees being the prevailing parties, they may tax costs pursuant to MCR 7.219.

/s/ David H. Sawyer
/s/ Janet T. Neff
/s/ Allen L. Garbrecht