

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JON A. BARTL TRUST.

JUDY GRIESHABER, Beneficiary of the Jon A. Bartl
Trust,

UNPUBLISHED
February 13, 1998

Petitioner-Appellant,

v

No. 199612
Oakland Probate Court
LC No. 96-251441-TI

ANDREA BARTL and KALMAN G. GOREN,
Co-Trustees of the Jon A. Bartl Trust,

Respondents-Appellees.

Before: Holbrook, Jr., P.J., and Young and J.M. Batzer*, JJ.

PER CURIAM.

Petitioner appeals as of right from the probate court order denying her petition for, among other things, an accounting of assets and payment of a bequest with accrued interest. We affirm.

Jon A. Bartl created a revocable living trust, which provided that, upon his death, petitioner was to receive \$100,000. Bartl named his daughter, Andrea Bartl, as Family Trustee and named Kalman G. Goren as Independent Trustee (hereinafter respondents). After Bartl's death, respondents withheld payment of the \$100,000 bequest to petitioner until after they received the federal estate closing letter from the Internal Revenue Service. Petitioner filed a petition claiming that she was entitled to receive interest on the \$100,000 from the time of Bartl's death until she received the money. The probate court denied petitioner's petition for interest on the basis that Bartl did not intend for the payment of interest. In determining the intent of a settlor, appellate review is limited to whether the probate court's determination was clearly erroneous. See *In Re Ferguson Estate*, 186 Mich App 409, 418; 465 NW2d 357 (1990), rev'd and remanded on other grounds 439 Mich 963 (1992).

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

Petitioner argues that the probate court erroneously denied her request for interest on the \$100,000 bequest because respondents had a duty to invest the money during the period it was held pending final resolution of the estate taxes. Petitioner relies on MCL 555.201(1); MSA 26.85(1), which provides in pertinent part:

Trust funds or property received by any person or corporation acting in a trust or fiduciary capacity and available for investment shall be invested at the time and in the manner specified in and by the agreement, instrument, or order creating or defining the trust or other holding. In the absence of investment specifications or limitations in the agreement, instrument, or order, trust property or funds shall within a reasonable time be invested . . .

Respondents argue that the funds were not “available for investment,” pursuant to MCL 555.201(1); MSA 26.85(1), because the trust instrument specifically allowed the independent trustee to hold the funds in trust until after receipt of the estate tax closing letter.

The law is well settled that one must look to the trust instrument to determine the powers and duties of the trustees, and 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). The first amendment to the trust instrument states in relevant part:

Any part or all of any distribution otherwise required hereunder may be withheld by the Independent TRUSTEE of the trust involved to whatever extent and for whatever period of time such Independent TRUSTEE, in the exercise of reasonable judgment (and in the absence of satisfactory indemnification), deem necessary pending resolution of any potential liabilities, conflicting claims, tax deficiencies, etc. which might affect such distribution.

The language of the trust instrument plainly authorized respondent Goren, as the independent trustee, in the exercise of reasonable judgment, to withhold distribution under the trust pending resolution of tax issues. Respondents promptly paid the bequest to petitioner once the closing letter was received. Moreover, we find no clear error in the probate court’s express finding of no evidence of “anything other than reasonable exercise of judgment” by the independent trustee. Accordingly, we conclude that the probate court correctly determined that respondents were not bound to invest petitioner’s bequest pursuant to MCL 555.201(1); MSA 26.85(1).

Petitioner also argues that she was entitled to interest pursuant to MCL 555.55(b)(2); MSA 26.79(5)(b)(2), which provides:

Unless the will otherwise provides, income from the assets of a decedent’s estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under this act and distributed as follows:

* * *

(2) To all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses on management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at time of distribution on the basis of inventory value.

We disagree with petitioner that the above statute applies in this matter. The statutory provision specifically excepts from payment of accrued interest “legatees of pecuniary bequests not in trust.” The trust document indicates that petitioner’s bequest is a pecuniary bequest “free of all trusts whatsoever.” Therefore, she is not entitled to interest pursuant to the terms of the statute.¹

Petitioner alternatively argues that she was entitled to interest on her bequest because it was made “free of all trusts,” and therefore the money should not have been held in trust pending resolution of the tax issues. We construe the language “free of all trusts” as an expression of the settlor’s intent that petitioner receive her bequest in one lump sum at the time of distribution. Petitioner did in fact receive her bequest in a single cash payment. Thus, we find that the settlor’s intent, as expressed in the trust instrument, was not violated by the independent trustee’s decision to withhold the funds.

Finally, petitioner argues that she was entitled to an accounting of the trust assets. However, because petitioner properly received her \$100,000, and is not entitled to interest, there is no basis upon which to grant an accounting.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Robert P. Young, Jr.

/s/ James M. Batzer

¹ Petitioner also relies on MCL 700.813; MSA 27.5813, which provides:

Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

However, as discussed, above, we have found no clear error in the probate court’s finding that respondents were reasonably prudent in dealing with the trust given that the trust instrument authorized the independent trustee to hold the trust funds until resolution of potential tax disputes.