

STATE OF MICHIGAN
COURT OF APPEALS

In re GENEVIEVE A. LEBLANC LIVING TRUST

GILBERT CYMBALIST, Personal Representative
of the Estate of THOMAS MANNING
LEBLANC, Deceased,

Plaintiff-Appellee,

v

RICHARD J. LEBLANC, individually, and in his
capacity as Trustee of the Genevieve A. LeBlanc
Living Trust,

Defendant-Appellant,

and

MARCIE WARTELLA, PAUL BRIAN LIGOCKI,
MARY ELLEN LIGOCKI HARPER, ANN
MARIE LIGOCKI, JOAN BLACKWELL
LIGOCKI, and KATHLEEN ANN LIGOCKI,

Appellees.

UNPUBLISHED
May 29, 2003

No. 239955
Chippewa County Probate Court
LC No. 01-024655-WT

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Defendant, trustee of the Genevieve A. LeBlanc living trust, appeals as of right a judgment in favor of plaintiff Estate of Thomas Manning LeBlanc. We affirm.

On appeal, defendant argues that Articles XII and XV of the disputed trust in this case authorized him to withhold conveyance of the house at issue to Thomas LeBlanc. Consequently, because the house was still part of Genevieve LeBlanc's trust when Thomas died, defendant was entitled to the house according to Genevieve's clearly stated intent. We disagree.

We review findings of the probate court sitting without a jury for clear error. *In re Norwood Estate*, 178 Mich App 345, 347; 443 NW2d 798 (1989). The court must look to the

trust instrument to determine the trustee's powers and the settlor's intent regarding the trust's purpose. *In re Butterfield Estate*, 418 Mich 241, 259; 341 NW2d 453 (1983). A settlor's intent should be ascertained at the time the trust was created. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). At the time the disputed second amendment to the trust was executed, Thomas and defendant were Genevieve's only surviving children.

Article VII indicated that Genevieve intended her children to inherit the entire trust estate but also directed the trustee to convey the house to Thomas when Genevieve died. Because Article VII directed the trustee to convey the house to Thomas and because Michigan courts favor early vesting of estates, *In re Jamieson Estate*, 374 Mich 231, 245; 132 NW2d 1 (1964), we conclude Thomas had a vested interest in the house. "A vested interest is one that is capable of becoming possessory immediately upon the expiration of the preceding estate." *In re Childress Trust*, 194 Mich App 319, 322; 486 NW2d 141 (1992), citing *Stevens Mineral Co v Michigan*, 164 Mich App 692, 696; 418 NW2d 130 (1987). Furthermore, because no contrary intent clearly appeared in the trust, Thomas' vested interest encompassed the entire ownership interest in the house. *Taylor v Richards*, 153 Mich 667, 673; 117 NW 208 (1908).

On the other hand, Article XV authorized the trustee to not convey the house if he determined the beneficiary could not properly administer the payment. According to defendant, he believed Thomas was unable to properly administer the house. Article XV is consistent with MCL 700.3918(3), which provides in pertinent part:

- (3) If the heir or devisee is under legal disability, other than minority, the personal representative is authorized to distribute to any of the following:
 - (a) A trustee
 - (b) An attorney in fact
 - (c) The spouse, parent, or other close relative with whom the individual under legal disability resides¹

While Thomas was not adjudicated legally incompetent, Article XV gave the trustee, rather than the court, discretion to determine whether the beneficiary had the ability to handle the house.

¹ While Genevieve executed the second amendment to the trust on September 17, 1987, before enactment of the Estates and Protected Individuals Code, MCL 700.1101 *et seq.*, § 8101 of the code provides that

The act applies to a proceeding in court pending on [April 1, 2000] or commenced after that date regardless of the time of the decedent's death except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of the infeasibility of applying this act's procedure. [MCL 700.8101(2)(b).]

Because Thomas was never adjudicated legally incompetent, no guardian or conservator was appointed over his estate. However, regardless to whom the trustee transferred the house, Article XV unambiguously required it to be used for the care, support, or education of the beneficiary. This is consistent with MCL 700.3918(4), which provides in pertinent part: “A person receiving . . . property for an individual under legal disability shall use the . . . property only for that individual’s support.” Therefore, whomever received the house on Thomas’ behalf acted as a de facto guardian or conservator, and a de facto guardian is subject to all duties and liabilities of a legal guardian. *Smith v Cameron*, 158 Mich 174, 176; 122 NW 564 (1909).

Although a guardian retains property for the benefit of an incapacitated individual, upon the incapacitated individual’s death, the property passes to the beneficiary’s heirs. *Taylor, supra* at 673. Thus, the house should pass to Thomas’ heirs. It appears that Genevieve’s purpose was to devote her entire interest in the house to Thomas. Article VII provided for this purpose. She gave defendant the discretion to withhold the house pursuant to Article XV to ensure that Thomas could enjoy the house, not to deprive him of it. Therefore, Article XV did not prevent the house from vesting in Thomas.

MCL 700.5423(2) provides that a conservator may “collect, hold, or retain estate property,” acquire “an undivided interest in estate property in which the conservator, in a fiduciary capacity, holds an undivided interest,” and “acquire or dispose of estate property.” See MCL 700.5423(2)(a), (d), and (g). Furthermore, MCL 700.7403 allows a trustee to act, even if his duty and his individual interest conflict, if the trust expressly authorizes the act. Therefore, despite Thomas’ vested interest and despite any conflict of interest, defendant had the express power to convey the house to himself as an individual as long as Thomas was alive. However, this right terminated on Thomas’ death. MCL 700.5308; MCL 700.5426(4). Therefore, when Thomas died, defendant could no longer convey the house to himself, but was required to turn it over to Thomas’ personal representative.

Affirmed.

/s/ Michael R. Smolenski
/s/ Richard Allen Griffin
/s/ Peter D. O’Connell