

STATE OF MICHIGAN
COURT OF APPEALS

In re SUSAN ARLENE CARINI TRUST.

SUSAN ARLENE CARINI TRUST, by WEST
MICHIGAN COMMUNITY BANK, Trustee,

UNPUBLISHED
June 21, 2012

Petitioner-Appellee,

v

No. 302187
Ottawa Probate Court
LC No. 10-057706-TV

ROBERT CARINI,

Respondent-Appellant,

and

CURTIS CARINI and VICTORIA CARINI,

Respondents-Appellees.

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Petitioner West Michigan Community Bank (WMCB) is the trustee of the Susan A. Carini Trust (the Trust). Respondent Robert Carini appeals as of right the probate court's December 30, 2010 order that approved WMCB's proposed administration and distribution of the Trust. We affirm in part, vacate in part, and remand.

Susan Carini had two sons, Robert and respondent Curtis Carini. Susan established the Trust in 1998. Pursuant to the Trust, upon Susan's death, the assets of the Trust were to be divided into equal portions for each of her living children. The Trust provided that any amounts that either of her sons owed Susan at the time of her death were to be forgiven and treated as part of the son's portions. In addition, the Trust stated that any gifts that Susan had made to either of her sons were to be charged against the son's share. Susan died in 2005. She was survived by Robert and Curtis.

On appeal, Robert challenges the probate court's approval of five aspects of WMCB's proposed administration and distribution of the Trust. We review a probate court's factual

findings for clear error and its dispositional rulings for an abuse of discretion. *In re Lundy Estate*, 291 Mich App 347, 352; 804 NW2d 773 (2011). A probate court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008).

First, Robert argues that WMCB failed to administer the Trust when it failed to obtain proper evidence of the value of Parcel I in 2000, which was when Susan deeded her one-half interest in the parcel to Curtis and his wife, respondent Victoria Carini. WMCB relied on the 2000 state equalized value (SEV) of Parcel I to place a value of \$45,000 on Susan's one-half interest in the parcel. A trustee is required to "administer a trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries . . ." MCL 700.7801. The Trust bound the beneficiaries to WMCB's good faith valuation of the Trust assets.

A representative of WMCB acknowledged that an SEV can trail the actual market value of a piece of property and that there would have been other real estate transactions that could have been reviewed. However, Robert presented no evidence that the 2000 SEV of Parcel I trailed the actual market value. In addition, there was evidence that an appraisal was done on Parcel I in 2000. According to Victoria, after she and Curtis applied for a loan from Old Kent Bank to build a house on Parcel I, the bank had the parcel appraised. The appraisal valued Parcel I at \$75,000. Thus, pursuant to the appraisal, a one-half interest in Parcel I in 2000 would have a value of no more than \$37,500, which was \$7,500 less than the value WMCB placed on Susan's one-half interest. Accordingly, the value of Susan's interest in Parcel I that was approved by the probate court was the highest value for which there was evidence presented and the value was to the benefit of Robert. Robert has not shown that, based on the evidence before the probate court, the probate court's approval of WMCB's valuation of Susan's one-half interest in Parcel I at \$45,000 was outside the range of reasonable and principled outcomes.

Second, Robert claims that WMCB failed to administer the Trust when it failed to include within the valuation of the Trust's one-half interest in Parcel G a value for the blueberry bushes. WMCB valued the Trust's interest in Parcel G at \$125,000. There is nothing in the record to suggest that the valuation was not a good faith valuation. WMCB began its valuation with a 2005 appraisal. The appraisal valued the parcel at \$325,000, meaning that a one-half interest in the parcel would be valued at no more than \$162,500. Robert does not argue that the factors WMCB used to discount the value of the Trust's current interest in the parcel—the decline in property values and the limited market for the interest—did not warrant the lower valuation of \$125,000. While it is true that the 2005 appraisal did not consider the value of the blueberry bushes, Robert does not claim that he presented any evidence regarding the value of the blueberry bushes to the probate court. It is also true that Robert offered to purchase the Trust's interest in Parcel G for \$150,000. However, he did this during the course of the three-day evidentiary hearing, and only after he had previously offered \$90,000, an amount which WMCB believed was lower than the value of the Trust's interest. Robert offered no explanation for why he offered \$150,000, as opposed to any other amount. Based on the evidence before the probate court, the probate court's approval of WMCB's valuation of the Trust's one-half interest in Parcel G at \$125,000 fell within the range of reasonable and principled outcomes.

Third, Robert argues that WMCB “unilaterally” determined the amount of the debt that he owed the Trust and that he was denied the right to his day in court. Because Robert has not cited any legal authority in support of his argument that he was denied the right to his day in court, he has abandoned the claim. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Regardless, it is clear that Robert was given the opportunity and did contest WMCB’s decision that he owed the Trust \$125,000. In its petition, WMCB asserted that it believed, as evidenced by Robert’s 1999 judgment of divorce, that Susan made a gift of \$125,000 to Robert. Robert responded to the petition, arguing in part that the balance of the loan was no more than \$60,000. Then, at the evidentiary hearing, Robert was allowed to question WMCB’s representative and to present his own evidence. He took the witness stand, testified that the judgment of divorce did not accurately state the amount of the debt, and introduced evidence—a 1992 promissory note and a 1992 check from him on which the words “farm loan, balance \$60,000 cash loan” were written on the memo line—to support his testimony. Under these circumstances, we reject Robert’s arguments that he did not receive his day in court and that the amount of the debt was “unilaterally” set by WMCB.

We also reject Robert’s argument that WMCB completely disregarded his evidence concerning the amount of the debt. WMCB’s representative testified that he had seen the 1992 check, but that he discredited it because he was not convinced that the notation on the memo line had been written by Susan and because it was written seven years before the judgment of divorce, indicating the amount of \$125,000. We agree with the probate court that it was “entirely reasonable” for WMCB to determine that the amount of the debt owed by Robert was \$125,000. Accordingly, we affirm the probate court’s approval of WMCB’s determination that the amount of Robert’s debt was \$125,000.

Robert also argues that interest should not be calculated on the debt after the 2005 date of Susan’s death. We agree. The parties also agreed at oral argument that 4% interest was calculated on Curtis’s debt for Parcel A for the time between when Susan died and the date of distribution. The Trust provided that “[a]ny amounts owed to me by my sons at the time of my death shall be forgiven and treated as their portions.” The WMCB representative admitted that if a debt is forgiven by WMCB, the debt no longer accrues interest. A trustee must administer a trust in accordance with its terms. MCL 700.7801. WMCB did not administer the Trust in accordance with its terms when it decided that interest should accrue on Robert’s and Curtis’s debts after the date of Susan’s death. According to the Trust, the debts were forgiven on the date that Susan died, but because WMCB decided that interest should accrue until the date the Trust was distributed, the debt was not treated as forgiven. Accordingly, the probate court abused its discretion in affirming WMCB’s decision that interest should accrue on Robert’s and Curtis’s debt until the date of distribution. We vacate the probate court’s approval of WMCB’s decision that interest should accrue on the debts after the date of Susan’s death and remand for redetermination of each party’s distributive share of the trust.

Fourth, Robert argues that WMCB failed to administer the Trust when it refused to determine the amount that Curtis owed the Trust for the Bass River Estates project. Robert presents his argument as if, in fact, Curtis owed money to the Trust and WMCB simply failed to determine the amount of the debt. However, the issue before the probate court was WMCB’s request to abandon any claim for breach of fiduciary duty against Curtis for his alleged failure to account for all the proceeds from the Bass River Estates project.

WMCB, pursuant to the Trust, had discretion to compromise any claims held by the Trust. Pursuant to statute, MCL 700.7817(dd), WMCB had discretion to release, compromise, or abandon any claim of the Trust. The representative of WMCB testified that he reviewed accountings provided by Robert and Curtis regarding the profitability of the Bass River Estates project. However, there was no formal agreement between Curtis and Susan for the project and there was no central bookkeeping. Thus, according to the representative, he had “[n]o ability to really do anything other than to try to look at the documentation that has been provided and come to a conclusion as to the accuracy of it.” He came to believe that if there were profits for which Curtis failed to account, those profits were of little value to the Trust and that the Trust, which was limited in value and liquidity, would have to spend a dollar to make a dollar.

Regarding the accounting that Curtis and Victoria supplied to WMCB, which included a Net Profit Analysis, Robert complains about a \$200,000 loan that Curtis received in 2002 and the seven percent real estate commissions and the ten percent development fee that were given to Curtis. Curtis admitted that, pursuant to his accounting, the development costs for the Bass River Estates project were not more than \$753 per year after 2002. He further admitted that nothing in the accounting showed how the loan money was used. But, Robert did not present any evidence to suggest that the loan money was not used for the development of the Bass River Estates project. And, when Robert questioned Curtis about the loan, Curtis stated that the township required him to rebuild a street. It was undisputed that there were no written agreements for the commissions and development fee. The representative for WMCB testified that he saw no documentation suggesting that Curtis actually received commissions or a development fee. Curtis even admitted that he had not actually paid himself commissions or a development fee. However, Curtis testified that Susan had wanted him to keep the money, and the WMCB representative testified that the amount of the fee and commissions were reasonable. Accordingly, the record does not support Robert’s argument that the \$200,000 loan and the real estate commissions and development fee were profits for which Robert failed to account.

We conclude that the probate court did not abuse its discretion in approving WMCB’s request to abandon any claim for breach of fiduciary duty against Curtis. The accountings provided by Robert and Curtis were studied and, while WMCB never came to the conclusion that Curtis had accounted for all the profits from the Bass River Estates project, it believed that the Trust would receive little benefit, if any, from pursuing a claim for any unaccounted for profits. There is nothing in the record to suggest that WMCB’s decision to abandon the claim was not based on the best interests of the Trust and its beneficiaries.

Finally, Robert argues that WMCB failed to properly determine the value of Susan’s gift of Parcel A to Curtis and Victoria. It was disputed whether Susan gifted Parcel A to Curtis and Victoria or whether they purchased the parcel from Susan. The WMCB representative testified that the initial documentation of the conveyance of Parcel A, which included a warranty deed that recited “none” as the consideration for the deed, indicated that the conveyance was a gift. However, the representative testified that after a review of additional documents, including evidence of payments from Curtis and Victoria to Susan, which included cancelled checks for \$10,000 and \$7,000, and deposit slips showing those amounts deposited into Susan’s bank account, convinced WMCB that there had been an undocumented purchase. Because there was evidence to support WMCB’s determination that Curtis and Victoria purchased Parcel A from

Susan and made payments of \$17,000, the probate court did not abuse its discretion in approving WMCB's decision to give Curtis and Victoria a credit for the \$17,000 made in payments.

Affirmed in part, vacated in part, and remanded for proceedings consistent with this opinion. No costs, neither side having prevailed in full on the merits of the case. MCR 7.219(A).

/s/ Pat M. Donofrio

/s/ Jane E. Markey

/s/ Donald S. Owens