

STATE OF MICHIGAN
COURT OF APPEALS

In re HOWARD J. STODDARD TRUST.

VIRGINIA PEERY,

Petitioner-Appellee/Cross-
Appellant,

and

CHARLES C. STODDARD,

Petitioner-Appellee,

and

US TRUST, Trustee,

Appellee,

v

STANFORD C. STODDARD, Trustee,

Respondent-Appellant/Cross-
Appellee.

UNPUBLISHED
December 4, 2007

No. 270508
Ingham Probate Court
LC No. 01-001534-TI

Before: Before: Owens, P.J. and Bandstra and Davis, JJ.

PER CURIAM.

Respondent Stanford C. Stoddard (Stanford) appeals as of right the probate court's order dividing the Howard J. Stoddard Trust (trust) into three separate trusts for the benefit of Stanford, and petitioners Virginia Stoddard Peery (Virginia) and Charles C. Stoddard (Charles). Virginia cross-appeals the probate court's order granting Stanford's motion for payment of attorney fees and costs from the trust. We reverse and remand for entry of a revised order regarding attorneys fees but otherwise we affirm.

Virginia, Stanford and Charles are the surviving children of Howard J. Stoddard, the settlor of the trust, and are income beneficiaries of the trust. Following more than ten years of litigation over the administration of the trust, Virginia petitioned the probate court to divide the

trust. Charles joined that petition. After a nine-day trial, the probate court ruled that the contentious history of the administration of the trust and its detrimental effect on family relationships constituted exigent circumstances permitting division of the trust. The probate court also determined that, as individual trustee, Stanford was entitled to payment of his attorney fees and costs from the trust.

On appeal, Stanford asserts the probate court clearly erred in determining that there was significant family discord sufficient to permit the court to divide the trust, especially because splitting the trust is neither mentioned nor contemplated in the trust documents. Stanford further argues that the trial court abused its discretion by removing him as the individual trustee of the separate trusts established for Virginia and Charles. We disagree.

This Court reviews the probate court's findings of fact for clear error. MCR 2.613(C); *Gumma v D&T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). We do so recognizing the probate court's unique opportunity to observe the witnesses and giving due deference to the probate court's superior ability to judge the credibility of witnesses appearing before it. MCR 2.613(C); *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004); *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). "A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court is left with the definite and firm conviction that a mistake has been made." *Amb's, supra*. This Court reviews the trial court's decision to split the trust and remove Stanford as the individual trustee for the separate trusts of Virginia and her heirs and Charles and his heirs for an abuse of discretion. *Comerica Bank v Adrian*, 179 Mich App 712, 729; 446 NW2d 553 (1989). An abuse of discretion occurs only when the trial court's decision falls outside the range of principled outcomes considering the facts and circumstances of the case. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007); *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Michigan's probate courts have equitable jurisdiction over proceedings involving the administration, distribution, modification, reformation, or termination of a trust. MCL 700.1302(b). Exigent circumstances, unforeseen by the settlor, can provide a basis for a court to exercise its equitable powers to modify a trust. *Young v Young*, 255 Mich 173, 179-180; 237 NW 535 (1931). A probate court exercising its equitable powers "may act in opposition to the provisions of a trust, and it may do whatever is necessary, not only for the preservation of the trust property, but also, whatever is necessary for the protection of the rights of the beneficiaries and the promotion of their interests." *Evans v Grossi*, 324 Mich 297, 305; 37 NW2d 111 (1949).

Here, the probate court determined that "the hostility within the family has created the unusual exigency" warranting division of the trust. The probate court found "highly persuasive" the notion that "Howard J. Stoddard would never have had this trust created if he knew it was going to be the destruction of his family" and concluded that "[f]or too long these cases have destroyed a family. That cannot go on any longer."

Stanford does not assert that the probate court lacked the equitable authority to split the trust. Rather, he argues that the court clearly erred in determining that there were exigent circumstances warranting that result. We disagree. The record amply reflects that Stanford was in almost constant disagreement with both the former and current corporate trustees, repeatedly

frustrating their attempts to invest trust assets in accordance with an investment plan stipulated to by the parties, and that he continually asserted positions in contravention of that plan and of the prudent investor rule, which the parties also stipulated was applicable to this trust. Both Virginia and Charles testified that the nearly continuous litigation resulting from Stanford's course of conduct had a devastating effect on family relationships. The representative of a former corporate trustee also observed that the resultant discord had a deleterious effect on the family. Virginia opined that her father would have been "appalled" at the amount of litigation involving the trust. Additionally, both Virginia and Charles indicated that litigation would continue given Stanford's insistence on positions contravening court orders and prior agreements of the parties and representatives of the former and current corporate trustees. Therefore, having reviewed the lower court record, we are not left with a firm and definite conviction that the probate court was mistaken in concluding that exigent circumstances had arisen warranting modification of the trust. *Amb's, supra*.

Exigent circumstances being present, the probate court did not abuse its discretion in ordering the division of the trust. Representatives of both the former and current corporate trustees testified that division of the trust was the most appropriate remedy, and that anything short of that would not improve matters. Moreover, according to Virginia and Charles, the only remedy offering the possibility of a return to normal family relationships was division of the trust. Further, the language of the trust agreement does not limit the probate court's exercise of its equitable powers to modify the trust. *Evans, supra*. Therefore, considering the nearly continuous disagreement between the corporate trustees and Stanford, and the resulting litigation and degree of discord amongst the family, we conclude that the probate court's order splitting the trust and removing Stanford as trustee of the separate trusts established for Virginia and her heirs and Charles and his heirs was within the range of principled outcomes. *Saffian, supra; Maldonado, supra; Comerica Bank, supra*.

On cross-appeal, Virginia asserts that the probate court abused its discretion by ordering that the trust reimburse Stanford for his attorneys fees and that income of the trust, rather than the principal, be used for that purpose. We disagree.

This Court reviews the probate court's decision to award attorney fees for an abuse of discretion. *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001); *In re Estate of L'esperance*, 131 Mich App 496, 501; 346 NW2d 578 (1984). The factual findings of the probate court supporting its decision are reviewed for clear error. MCR 2.613(C); *Gumma, supra*.

Pursuant to MCL 700.7401(1), a "trustee has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, use, and distribution of the trust property to accomplish the desired result of administering the trust legally and in the trust beneficiaries' best interest." This includes the authority to retain, and reasonably compensate, an attorney "to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties." MCL 700.7401(2)(w).

In awarding Stanford attorneys fees, the trial court found that Stanford legitimately believed his actions opposing division of the trust to be in the best interest of the trust.¹ Stanford testified that his duty as trustee was to defend the trust agreement and to act in a manner consistent with the settlor's wishes as conveyed to him verbally and by that agreement. Considering that the trust agreement neither mentions nor contemplates division of the trust, Stanford justifiably opposed division of the trust as contrary to the intent of the settlor as set forth in the trust agreement. Therefore, having reviewed the lower court record, we are not left with a firm conviction that the probate court was mistaken in its factual conclusion that Stanford's conduct opposing division of the trust was undertaken to benefit the trust. *Amb's, supra*. Nor do we find that the probate court's order awarding attorney fees is outside the range of principled outcomes considering the facts and circumstances of the case. *Saffian, supra; Maldonado, supra; Comerica Bank, supra*.

Finally, we agree with Virginia's assertion that the probate court improperly determined that attorney fees be paid first from trust income, and then if necessary from the principal, rather than from both equally. That approach is inconsistent with Article XI of the trust agreement, which provides that both the trust "estates" (which we conclude refers to the principal of the trust) and the "income therefrom" shall be chargeable with the reasonable expenses incurred by the trustees in administering the trust.

We reverse the trial court's decision that attorneys fees be paid first from income, then principal, and remand for entry of an order requiring that they be paid equally from both sources. In all other respects, we affirm. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis

¹ We interpret the trial court's opinion stating its conclusion that Stanford acted in the best interest of the court, rather than the trust, to be a mistaken representation of what the trial court actually found, as stipulated by the parties at oral argument.