Recent Cases of Interest to Fiduciaries: Part 3 – Jurisdiction and Standing

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TABLE OF CONTENTS

Page

Nelms v. Kramer, 2011 U.S. Dist. LEXIS 21957 (March 3, 2011)

Anna Louise Madsen's will was admitted to probate in the Kerr County, Texas on April 29, 2010. Aurelia Nelms, Anna's domestic care worker, then sued Jean Madsen Kramer, the executor under Anna's will, in federal district court for unpaid overtime compensation. The executor asked the court to abstain from exercising jurisdiction and transfer the case to the state court in the county where the will was probated.

The issue was referred to a federal magistrate, who found that state custody of Anna's estate did not preclude a federal court from adjudicating Aurelia's claim, since Aurelia did not raise probate matters but instead sought a determination of her entitlement to compensation under the Fair Labor Standards Act and damages in the form of unpaid overtime pay, liquidated damages, attorney fees, and costs. Citing the decision of the U.S. Supreme Court in *Marshall v. Marshall*, 547 U.S. 293 (2006), the magistrate noted that "the probate exception . . . precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court, but it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction." In its recommendation, however, the magistrate noted the limits to the district court's exercise of jurisdiction in the matter, stating that the federal court could not go so far as to order payment of a judgment from Anna's estate because to do so would assume control over probate assets.

The magistrate recommended denial of the motion to abstain, finding that the district court had jurisdiction over Aurelia's claim and was obliged to exercise jurisdiction because no important countervailing interest had been demonstrated sufficient to justify federal court abstention.

John Fitzgerald Kennedy v. the Trustees of the Testamentary Trust of the Last Will and Testament of President John F. Kennedy, 2010 U.S. App. LEXIS 22573 (October 28, 2010)

Plaintiff, John Fitzgerald Kennedy, the claimed illegitimate son of Marilyn Monroe and President John F. Kennedy, filed a claim in district court (1) seeking an order compelling the trustees of the testamentary trusts under the will of President John F. Kennedy to pay him funds from the late president's testamentary trust upon proof of his claim to being the son of the late president and (2) alleging breach of fiduciary duty for failure to investigate his claims.

The district court found that: (1) the probate exception applied to the plaintiff's request for an order compelling the trustees to pay John funds from the testamentary trust upon proof of his claim to being a beneficiary of a class gift in President Kennedy's will; and (2) the probate exception did not apply to the plaintiff's request for an order compelling the trustees' to investigate the claim. The district court dismissed the breach of fiduciary duty claims against the trustees.

On appeal, the court affirmed the district court's decision, noting that the probate exception applied to the order compelling funds but did not apply to the mere declaration of rights to the funds. The court considered and affirmed the district court's dismissal of the breach of fiduciary duty claim against the trustees, based on the district court's interpretation of the word "children" under Massachusetts law. The court found that a fiduciary duty was only owed to beneficiaries of the trust, or President Kennedy's children, and that the district court had properly concluded that at the time the will was executed, and in the absence of any contrary intent, the word children referred only to children born in wedlock. The plaintiff's failure to allege any facts that could if true overcome the presumption that the term children included only those born in wedlock, made dismissal for failure to state a claim appropriate.

Noel v. Liberty Bank of Arkansas, 2010 U.S. Dist. LEXIS 72298 (July 16, 2010)

On May 12, 2010, Virginia Noel, a Georgia resident, commenced an action in federal district court against Liberty Bank of Arkansas, based on diversity of citizenship and an alleged amount in controversy exceeding $75,000. Virginia sued in her capacity as both trustee and beneficiary of a trust, and alleged that the bank committed multiple errors in transfers of investment securities owned by the trust. Virginia sought equitable relief in the form of an accounting and production of documentation, along with damages discovered by the accounting.

The bank moved to dismiss based on lack of subject matter jurisdiction, arguing that: (1) Virginia's complaint failed to make specific allegations demonstrating that the amount in controversy exceeded $ 75,000; and (2) there was not complete diversity of citizenship because the situs of the trust was Arkansas (where the bank was also located).

The district court held that, while a request for a general accounting does not always meet the amount in controversy requirement, here Virginia had sufficiently demonstrated that the amount in controversy exceeded $ 75,000 by specifically asking the court to determine the cause of transfer errors that allegedly resulted in over-deliveries of assets from three different mutual funds valued at $120,000, $2,800,000, and $370,000, and by providing account records from the bank and the trust that showed discrepancies in the asset transfers.

On diversity of citizenship, the court held that Virginia, a Georgia resident, had standing to sue in her capacity as both trustee and as beneficiary for an accounting and was entitled to bring a diversity action in either capacity on the basis of her own personal citizenship. The court held that diversity existed where Virginia was a citizen of Georgia and Liberty Bank was an Arkansas entity. The court noted that it was her citizenship, and not the trust situs, that determined diversity, therefore diversity was not defeated.

Emil Peter III, v. Hon Susan Schultz Gibson, 2010 Ky. LEXIS 297 (December 16, 2010)

In 1983, Emil Peter IV's grandmother bequeathed to him all of the benefits due under her employee pension plan, which initially totaled $86,409.46. At the time, Emil was a minor and pursuant to the Uniform Transfer to Minors Act, Emil's father was named custodian for Emil. Emil had only a general understanding that his grandmother had left him some money, and several distributions made by the custodian to Emil were described as gifts.

When Emil reached age 18, his father failed to give the remaining custodial assets to Emil as required by statute. Emil later learned of the size of his grandmother's gift through public records, and filed an accounting action against his father in circuit court.

The circuit court dismissed the accounting action for lack of subject matter jurisdiction due to the UTMA's exclusive grant of jurisdiction to the district court, but then changed position and held that circuit court had subject matter jurisdiction.

The father appealed the circuit court's exercise of subject matter jurisdiction, and sought a writ of prohibition to bar an accounting of funds. On appeal, the Kentucky

Supreme Court affirmed the circuit court's exercise of jurisdiction on the grounds that: (1) while the legislature had granted district courts exclusive jurisdiction to order a custodian to make an accounting under the UTMA, the statutes only allowed a minor, a minor's guardian, an adult member of a minor's family, or a transferor of custodial property to petition the district court for an accounting; (2) from its plain language, the statutes only applied to minors or individuals petitioning on behalf of minors and therefore could not apply to custodial property that should have been released to an adult beneficiary; (3) because UTMA gave no authority to the district court to order an accounting based on the petitioner's past status, the proper court for an adult to file an accounting action was the circuit court with general subject matter jurisdiction over suits in equity; and (4) because the father failed to release the custodial property to his son, a constructive trust was created and the rights and remedies of the parties as well as subject matter jurisdiction were governed by the law of constructive trusts and not UTMA. Two judges dissented.

Sheryl Ragen v. Peter Veloz, 2010 Cal. App. Unpub. LEXIS 7262 (September 13, 2010)

Sheila and Tom Veloz established a family trust in 1988 that they restated and amended in June 2001. Sheila had two daughters from a prior marriage, Sheryl Ragen and Janine Ragen Jones. Tom had two sons from a prior marriage, David Veloz and Peter Veloz. Sheila died in July 2001. After Sheila's death, Tom became the sole trustee and the trust was divided into three separate trusts: (1) a survivor's trust; (2) a QTIP marital trust; and (3) a non-marital trust.

Tom was the income beneficiary of the QTIP trust and Sheila's daughters were the remainder beneficiaries. The remainder interest in the QTIP trust was Sheryl and Janine's primary inheritance from their mother. The primary asset of the QTIP trust was 48,500 shares of common stock in Ultra Violet Devices, Inc., a closely held family company. The remaining shares of Ultra Violet were owned by Tom, his children, and his grandchildren. Tom served on the board of directors of Ultra Violet and controlled the company while he was alive.

In the two years following Sheila's death, Tom distributed $8 million to himself out of Ultra Violet, which was more than half of the company's value. Tom also improperly characterized distributions from Ultra Violet to the QTIP trust as income, failed to account for company distributions to shareholders, improperly allocated QTIP trust expense to principal, and failed to properly invest the trust's assets, investing 70% of the QTIP trust's cash in loans to private parties that provided no growth of principal, while providing Tom with $200,000 of interest income annually.

Over the five-year period of Tom's trusteeship, the value of the QTIP trust decreased by almost $5.7 million to about $7.9 million. At Tom's death, Sheila's daughters had accessible assets of only about $400,000 plus a condominium.

After Tom's death, Sheila's daughter Sheryl and Tom's son David became co-trustees of the QTIP Trust. In September 2007, Sheryl as beneficiary and co-trustee of the QTIP trust filed an $8 million creditor's claim in the probate court against Peter as trustee of a trust created by Tom, alleging that Tom breached his fiduciary duties during the time he was sole trustee of the QTIP trust.

Peter as trustee rejected the claim in January 2008, and Sheryl filed a verified petition with the probate court in April of 2008. Peter filed a general demurrer to the petition asserting: (1) that Sheryl lacked standing as a beneficiary to file the petition because a trust beneficiary is not the real party in interest; and (2) because Sheryl was only the co-trustee of the QTIP trust, she could not pursue her petition without the participation of her co-trustee, Tom's son David.

The trial court sustained the demurrer, ruling that Sheryl had no standing to bring the petition because she was not the sole trustee of the QTIP trust and because a beneficiary may not bring a claim against a former trustee. Nevertheless, the court granted Sheryl leave to amend her petition and Peter again generally demurred. The trial court entered an order sustaining the demurrer to the first amended petition without leave to amend, finding again that Sheryl lacked standing. Sheryl appealed.

On appeal, the court reversed the trial court and held that Sheryl had standing as both a beneficiary and as a co-trustee to bring her claims against Peter as representative of Tom's estate, on the grounds that: (1) there is an exception to the rule that a beneficiary is not the real party in interest for bringing a claim where a complaint alleges malfeasance by the trustee which confers standing to sue on the beneficiary under the common; (2) a trust beneficiary may bring an action against a third party to recover property transferred to the third party by the trustee in breach of trust; (3) where David took no action for appointment of a neutral co-trustee in his place and steadfastly refused to take any action that might reduce his own inheritance under Tom's trust, Sheryl was not required to obtain David's participation and consent to file a claim or petition for the QTIP trust's losses, because a co-trustee must have the ability to redress a breach of trust irrespective of the other co-trustee's concurrence or refusal to take action; and (4) Sheryl had a right to seek redress for Tom's breaches of trust against the representative of his estate, and was permitted to file a petition against Peter as admitted successor in interest to Tom, for recovery of the QTIP trust property allegedly diverted to Tom's trust, and for Tom's negligent handling of the QTIP trust.

In Re: James Craig Guetersloh, 2010 Tex. App. LEXIS 8730 (November 1, 2010)

James Craig Guetersloh, who was not a lawyer, applied for writ of mandamus after a trial court refused to schedule a hearing on his motion to transfer venue of a suit he filed *pro se* to terminate a trust, in both his individual capacity and in his capacity as trustee of a trust.

In reviewing the application for mandamus relief, the court considered for the first time whether a trustee of a trust has the same right to appear *pro se* in his representative capacity as he does in his individual capacity. The Texas Court of Appeals held that the right to self-representation is not absolute, and refused to extend the right to appear *pro se* to the trustee of a trust because, as trustee, Guetersloh was "necessarily representing the interests of others." The court found that, consistent with the Texas legislature's definition, an appearance in the trial court as trustee falls within the definition of the "practice of law" and accordingly, a non-attorney appearing in court of behalf of a trust represents the interests of others and is engaging in the unauthorized practice of law.

Accordingly, the court found that Guetersloh was entitled to mandamus relief in his individual capacity alone, denied the request for relief in his capacity as trustee, and conditionally granted the writ of mandamus asking the trial court to schedule a hearing on Guetersloh's individual motion to transfer venue.

Joshua Lickter et al. v. Maggie Lickter, 2010 Cal. App. LEXIS 1849 (October 27, 2010)

Lois Lickter died in August 2007, leaving a trust that provided for the distribution of $10,000 distributable to her grandsons, Joshua and Jezra, and the entire residue distributable to her son, Robert. If Robert predeceased Lois, the residue was to be distributed to Robert's daughters from a prior relationship, Maggie and Kate. Under the trust terms, the residue would only be distributed to Joshua and Jezra if Robert, Maggie, and Kate all predeceased Lois.

After Lois' death, the grandsons sued Robert, Maggie, and Kate, and the daughters' mother, Mary, for elder abuse and other related causes of action that belonged to Lois prior to her death.

The grandsons asserted that they had standing to maintain the cause of action by California statute (Welfare and Institutions Code section 15657.3(d)). The defendants moved for summary judgment for lack of standing. The trial court granted summary judgment in favor of the defendants and the grandsons appealed.

On appeal, the California Court of Appeals affirmed on the grounds that: (1) the grandsons' status as trust beneficiaries was insufficient to render them "interested persons" for purposes of pursing an elder abuse action, because they were not persons whose rights could be impaired, defeated or benefited by the proceeding as defined by the California statute; (2) the grandsons could not maintain an action as Lois' successors in interest, because the grandsons could not prove that Robert, Maggie, and Kate should be treated as predeceasing Lois by clear and convincing proof that they had committed physical abuse, neglect, fiduciary abuse, acts in bad faith, or reckless, oppressive, fraudulent, or malicious action.

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