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In re: Christian Family Trust, 136 Nev. Adv. Op. 73 (Dec. 3, 2020)

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TRUST ACTION: PERMITTING PAYMENT OF A CREDITOR'S CLAIM

SUMMARY

The Court determined whether a creditor of a settlor can satisfy its claim against the settlor's trust in situations where the trustees approve the payment, but the trust does not expressly provide for payment of the claim. When the settlor's interest in the trust is not exclusively discretionary, and there is not a profligate provision precluding payment of the claim, the Court held that a creditor may bring a claim against a settlor of a trust. In instances of a trust granting broad discretion to its trustees, the trustees may approve a creditor's claim against the trust. In this matter, the Court affirmed a creditor's claim because it was proper, and the trustees were within their broad discretion in approving the claim.

BACKGROUND

Settlers Nancy and Raymond Christian, Sr., created the Christian Family Trust (the Trust), and named their three children as co-trustees. The Trust established that Nancy and Raymond had a mandatory interest in all income and principal from their community property, as well as a mandatory interest in the income and principal of their own separate property.

Following the death of one settlor, the Trust stated that, within their discretion, the trustee may pay the administrative expenses, the decedent's illness and funeral expenses, and any debt owed by the decedent. The Trust did not establish a similar provision in the case of the second settlor's death.

Following Raymond's death, Nancy removed appellants as trustees, assigning her son (Trustee Reason) from a previous marriage as trustee. Appellants challenged the replacement and Nancy retained respondent law firm (Barney, Ltd.).

After Nancy's death, Barney, Ltd., requested attorney's fees and costs for representing Nancy from Trustee Reason, and after he resigned, from Trustee Utkin—both approving the request. Despite appellant's objection, the district court ordered \$53,031.97 of frozen trust funds to be released to pay Barney, Ltd.

DISCUSSION

Both parties have standing to maintain this action, and the appeal is not moot

This Court disagrees with Barney, Ltd., and his contention that appellants lack standing to pursue an appeal because they are no longer trustees. The appealed order reduces the Trust assets available for disbursement to the trustees as beneficiaries, allowing appellants to have standing to appeal.² Additionally, the Court rejected appellant's claim that Barney, Ltd. lacked standing to

¹ By Nina Hebibovich.

² Heirs of an estate may contest an award of attorney fees where the award reduces their legacies. *See In re Estate of Herrmann*, 100 Nev. 1, 26, 677 P.2d 594, 610 (1984).

petition the district court for payment. NRS 132.390 grants Barney, Ltd. standing to pursue such claim because Trustee Reason and Trustee Utkin accepted its claim.³

Moreover, Barney, Ltd. also contested that this appeal is moot due to the district court previously unfreezing trust assets such that the current Trustee is now free to approve his request for payment.⁴ However the district court merely unfreezing Trust asset does not automatically render the appeal moot. The Court did not agree that the lower court's action rendered this appeal moot, reasoning that it had no impact on the propriety of using the Trust assets to pay for alleged non-Trust expenses.

The Trust allows for payment of Barney, Ltd.'s attorney fees

The parties disagreed whether the Trust permitted payment of Barney, Ltd.'s fees. The court reviewed this matter de novo due because it involved trust interpretation and there were no disputed facts.

The Court held that the Trust did authorize payment of Barney, Ltd.'s claim from Trust assets. When a creditor brings a claim against a settlor for the assets of a trust, the settlor's interest in the trust may not be purely discretionary.⁵ Here, Nancy did not have a solely discretionary interest in the Trust. Nancy was not only the surviving settlor after Raymond's death, but was also a beneficiary of the Trust and had a discretionary interest in receiving support from Trust assets and a mandatory interest in possessing the residence and Raymond's; other personal property. Additionally, the spendthrift provision in the Trust does not apply to a settlor's interest in the Trust estate. Thus, Barney, Ltd.'s claim for attorney fees and costs against the Trust was proper.

Barney, Ltd. satisfied the procedural requirements to file a creditor's claim

The Court rejected appellant's argument that Barney, Ltd. had to file a creditor's claim against the settlor while she was alive. NRS 164.025 requires a creditor to file a claim against a settlor within 90 days from notice of settlor's death—providing for claims against a settlor after a settlor's death.

The Court further rejected appellant's argument that Barney, Ltd. did not follow the applicable procedure to file a creditor's claim. NRS 164.025(1) provides that a trustee of a nontestamentary trust must notify known creditors of the settlor's death. Then, a creditor must file a claim within 90 days after the first notice if they have a claim against the trust estate.⁶ NRS 164.025(3) requires one with a claim against a settlor to file a claim with the trustee within 90 days of notice.

Here, Barney, Ltd. sent letters to Trustee Reason and Trustee Utkin within 90 days of Nancy's death, notifying them of its claim against her. The Court held that this satisfied the procedural requirements under NRS 164.025(3).

The Trustees had broad discretion to approve Barney, Ltd.'s claim

Trustee Reason and Trustee Utkin had broad authority under the Trust to exercise their discretion in making payment of the debts, despite the Trust being silent as to the payment of the successor settlor's death. Using this discretionary power, they approved payment of Barney, Ltd.'s claims. Generally, NRS 163.115(1)(i) allows for maintenance of a suit by a beneficiary to recover

³ See NEV. REV. STAT. § 132.390(1)(C)(8).

⁴ See NEV. REV. STAT. § 155.123.

⁵ See NEV. REV. STAT. § 163.5559(1).

⁶ See NEV. REV. STAT. § 164.025(2).

property or its proceeds that has been wrongfully disposed of. However, in this matter, the Trust expressively contradicts NRS 163.115(1)(i). Here, the Trust exonerates persons dealing with the trustees. Thus, because Trustee Reason and Trustee Utkin utilized their broad discretionary power to approve payment to Barney, Ltd., and because persons dealing with the trustees are exonerated under the Trust, the Court upheld the lower court and approved the disbursement of Trust funds to pay Barney, Ltd.'s claim.

CONCLUSION

Individuals have standing to appeal when the appealed order reduces the Trust assets available for disbursement to them as beneficiaries. Additionally, a creditor of the settlor who has a claim which has been permitted by the trustees is an interested person as to the trust and may bring rise to a claim.

When the settlor's interest in the trust is not solely discretionary and there is not a spendthrift provision precluding payment of the claim, a creditor may bring a claim against a settlor of a trust. Moreover, a creditor's claim against the settlor does not have to be filed when the settlor is alive. A claim against a settlor can be filed with the trustee within 90 days of notice of settlor's death.

Lastly, when a Trust grants broad discretion to its trustees, trustees may disburse of Trust funds to pay for creditor's claims.